



Television Advertising of Food and Drink Products to Children

Final statement

Statement

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Section 1

Executive Summary

Introduction

- 1.1 Ofcom is the independent regulator of television, radio, telecommunications and wireless communications services in the UK. Part of our role is to set standards for television advertising. All television broadcasters must comply with these standards in relation to any advertising they transmit. In late 2004 we transferred the responsibility for the Television Advertising Standards Code to the Advertising Standards Authority (ASA), including the functions of complaints handling and code policy development. However, under this co-regulatory scheme Ofcom still retains ultimate responsibility for all television advertising standards as the backstop regulator under the terms of the Communications Act 2003 ('the Act'). In particular, Ofcom retains direct responsibility for advertising scheduling policy.
- 1.2 The relevant objectives to be secured by these standards include protecting under 18's, and preventing the inclusion of harmful advertising and unsuitable sponsorship. Ofcom also has a number of other duties which it must take into account including to further the interests of citizens and consumers, to maintain a sufficient plurality of providers of different television services and to secure the availability of a wide range of television services of high quality and calculated to appeal to a variety of tastes and interests. In performing these duties Ofcom must have regard, amongst other things, to the vulnerability of children and to the degree of harm and offence likely to be caused by the inclusion of any sort of material, and the likely size and composition of the audience. In imposing regulatory measures Ofcom has to act in a proportionate and targeted manner.
- 1.3 As well as setting standards to secure these objectives, the Act permits Ofcom to set standards which prohibit certain advertisements and forms and methods of advertising or sponsorship.

Background

- 1.4 A growing body of research¹ has generated concerns in government and society about rising childhood obesity levels and ill-health due to dietary imbalance, specifically the over-consumption of high fat, salt and sugar (HFSS) foods² and the under-consumption of fresh foods, fruit and vegetables. Both the Department of Health (DH) and the Food Standards Agency (FSA) have identified television advertising as an area where action should be considered to restrict the promotion of HFSS foods to children.
- 1.5 In December 2003, the Secretary of State for Culture, Media and Sport, Tessa Jowell MP, asked Ofcom to consider proposals for strengthening the rules on television advertising of food aimed at children.

¹ See for instance: Tackling Obesity in England, National Audit Office, 2001; Annual Report of the Chief Medical Officer, 3 July 2003; Obesity Statistics, 12 December 2005.

² See for instance: *The National Diet and Nutrition Survey of Young People aged 4 to 18 years* (FSA June 2000); *The FSA's School Lunchbox Survey* (FSA May 2003).

- 1.6 In response, in early 2004, Ofcom conducted research into the role that television advertising plays in influencing children's consumption of foods that are HFSS. In publishing its research report in July 2004, Ofcom concluded that advertising had a modest, direct effect on children's food choices and a larger but unquantifiable indirect effect on children's food preferences, consumption and behaviour. Ofcom therefore concluded that there was a case for proportionate and targeted action in terms of rules for broadcast advertising to address the issue of childhood health and obesity. However, Ofcom also noted that one of the conclusions from the independent research was that multiple factors account for childhood obesity. Television viewing/advertising is one among many influences on children's food choices. These other factors include social, environmental and cultural factors, all of which interact in complex ways not yet well understood. In these circumstances Ofcom considered that a total ban on food advertising would be neither proportionate nor, in isolation, effective.
- 1.7 In November 2004, DH published a White Paper reiterating the Government's view that there was 'a strong case for action to restrict further the advertising and promotion to children of those foods and drinks that are high in fat, salt and sugar' in both the broadcasting and non-broadcasting arenas. At the same time the FSA published a consultation on a scheme which would identify HFSS food and drink products by means of nutrient profiling. This model was intended to help Ofcom reach decisions on the restriction of television advertising for less healthy foods. In December 2005, the FSA completed their work on a nutrient profiling scheme and delivered it to Ofcom.

Consultation Process

- 1.8 In March 2006 Ofcom proceeded to consult on a range of different options for new restrictions on television advertising to children. On 9 May 2006 Ofcom announced that it would be publishing an update to its Impact Assessment intended to make it more straightforward to replicate the analysis undertaken by Ofcom, in particular by using the most up to date information for calendar year 2005. In order to provide consultees with an opportunity to consider the revised data and take it into account in their responses to the consultation, Ofcom announced that it would be extending the consultation period until 30 June 2006. This update to the consultation was published on 8 June 2006.

November Statement and Further Consultation

- 1.9 Following that consultation, Ofcom published a Statement and Further Consultation on 17 November 2006³ ('the November Statement'). This present Statement should be read in the light of the November Statement and in conjunction with it. In the November Statement, Ofcom said that it had concluded that, in the context of its statutory duties, the aims of further regulation in relation to television advertising should be to balance the regulatory objectives set out below. In the light of the consultation responses and after considering all the available evidence, it had extended the scope of the first regulatory objective to include all children under the age of 16, instead of children under the age of 10. Ofcom decided that the revised regulatory objectives were to:

³ 'Television Advertising of Food and Drink Products to Children – Statement and Further Consultation' (http://www.ofcom.org.uk/consult/condocs/foodads_new/foodads3.pdf)

- reduce significantly the exposure of children under 16 to HFSS advertising, as a means of reducing opportunities to persuade children to demand and consume HFSS products;
- enhance protection for both older and younger children as well as parents by appropriate revisions to advertising content standards, so as to reduce children's emotional engagement with HFSS advertisements, and reduce the risk that children and parents may misinterpret product claims, and to reduce the potential for pester power;
- avoid disproportionate impacts on the revenue of broadcasters;
- avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages; and
- ensure that any measures that are put in place are appropriate and sufficiently timely to enable Government to observe changes to the nature and balance of food promotion by early 2007.

1.10 The November Statement identified Package 1 as its preferred option, but sought views on whether a modified version of this package (Modified Package 1) would better fulfil Ofcom's regulatory objectives. Modified Package 1 was set out in detail in the November Statement and further in section 4 of this Statement.

Summary of Responses

1.11 Ofcom received more than 50 representations from groups and individuals on its consultation on Modified Package 1: consumer and health groups (17), advertisers and food manufacturers (16), broadcasters and related bodies (12) and individuals (8).

Conclusions

1.12 After a detailed examination of all consultation responses and the available evidence, Ofcom has decided for the reasons set out in this document that Modified Package 1 should be adopted. Accordingly, the following package of measures to restrict the scheduling of television advertising of food and drink products to children will be applied:

- scheduling restrictions will be confined to food and drink products that are assessed as HFSS as defined by the FSA's nutrient profiling scheme;
- advertisements for HFSS products must not be shown in or around programmes specifically made for children (which includes pre-school children). For the avoidance of doubt this measure will remove all HFSS advertising from dedicated children's channels;
- advertisements for HFSS products must not be shown in or around programmes of particular appeal to children under 16; and
- these restrictions will apply equally to programme sponsorship by HFSS food and drink products.

1.13 Ofcom has also decided that, alongside these scheduling restrictions, revised content rules will apply to all food and drink advertising to children irrespective of when it is

scheduled. The full content rules are set out in Annex 4 of this Statement. Key elements of the content rules include a prohibition on the use of licensed characters, celebrities, promotional offers and health claims in advertisements for HFSS products targeted at pre-school or primary school children.

Implementation and timing

- 1.14 The revised content rules, set out in Annex 4, will come into force for new campaigns with effect from the date of this Statement. Any campaigns that are already on air or in planning must comply with the new rules from 1 July 2007.
- 1.15 The scheduling restrictions, set out in Annex 3, will come into force in two stages as follows for all channels except children's channels:
- with effect from 1 April 2007, HFSS advertisements will not be permitted in or around programmes made for children (including pre-school children), or in or around programmes that are likely to be of particular appeal to children aged 4-9; and
 - with effect from 1 January 2008, HFSS advertisements will not be permitted in or around programmes that are likely to be of particular appeal to children aged 4-15⁴.
- 1.16 Children's channels will be allowed a graduated phase-in period, with full implementation required from 1 January 2009 (see further section 5).
- 1.17 In accordance with the co-regulation arrangements put in place by Ofcom and its co-regulatory partners, responsibility for interpreting the rules rests with the Broadcast Committee on Advertising Practice (BCAP), while the ASA is responsible for securing compliance. All the new rules, both for scheduling and for content, will form part of and be included in the BCAP Television Advertising Standards Code.
- 1.18 The scheduling restrictions and revised content rules will apply to all channels transmitted by UK broadcasters whether aimed at UK audiences or outside the UK.

Structure of this document

- 1.19 This document is structured as follows:
- section 2 sets out Ofcom's role;
 - section 3 describes the work undertaken by Ofcom and the consultation process;
 - section 4 sets out the points made by consultees on the issues raised in the November Statement, and Ofcom's response;
 - section 5 sets out the decisions reached by Ofcom on the issues described in section 4;

⁴ If the audience index of children aged less than 15 years old (or 9 years old in the case of the April 2007 stage) for a programme exceeded 120 that programme would be said to be of particular interest to this group. The 120 index measures the demographic mix of the audience to a programme and specifically identifies those programmes which have an audience composition in which the proportion of children (either 4-15 or 4-9) is at least 20% higher than would be found in the population in general.

- the document also contains a number of annexes which include a summary of responses received at Annex 1, an Impact Assessment at Annex 2 and the final texts of the revised scheduling rules and content rules at Annexes 3 and 4 respectively.

Section 2

Ofcom's role

- 2.1 The Communications Act 2003 ("the 2003 Act") gives Ofcom the responsibility for regulating communications within the UK, including the use of radio spectrum, the provision of a wide variety of telecommunications services and the licensing and regulation of broadcasters. Ofcom does not possess expert knowledge relating to health and dietary matters and therefore is reliant upon the expertise of those with that knowledge (such as the DH and FSA) when considering regulation in this social policy area.
- 2.2 As part of its duties in relation to broadcasting, Ofcom is ultimately responsible for setting broadcast standards for advertising and the sponsorship of programmes. The relevant objectives to be secured by these standards include:
- that persons under the age of eighteen are protected (section 319(2)(a) of the 2003 Act);
 - to prevent the inclusion of advertising which may be misleading, harmful or offensive in television services (section 319(2)(h));
 - that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services (section 319 (2)(k)); and
 - to prevent the unsuitable sponsorship of programmes included in television services (section 319(2) (j)).
- 2.3 In setting such standards, Ofcom has to have regard to a number of matters including:
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes (including advertising); and
 - the likely size and composition of the audience (section 319 (4) (a) and (b)).
- 2.4 As well as setting general standards to secure these objectives, the 2003 Act permits Ofcom to set standards which prohibit certain advertisements and forms and methods of advertising or sponsorship, whether generally or in particular circumstances (section 321 (1)(b)). Ofcom has both a general responsibility with respect to advertisements and methods of advertising and sponsorship, as well as a related power to include conditions in any licence granted by Ofcom that go beyond the provisions of Ofcom's code. In addition, Ofcom is required from time to time to consult the Secretary of State about the descriptions of advertisements that should not be included in programme services and the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services (section 321(5)). The Secretary of State may also give Ofcom directions as to these matters and Ofcom has a duty to comply with any such directions that are issued (section 321 (6)). Similarly, Ofcom may issue general or specific directions to its licensees in relation to advertising and in particular, exclude advertisements from a specified part of a licensed service, e.g. at different times of the day or for different types of programmes (section 322).

- 2.5 In discharging its functions, Ofcom's principal duties are to further the interests of citizens and consumers (section 3 (1) of the 2003 Act) and to secure a number of other matters including:
- maintaining a sufficient plurality of providers of different television services (section 3 (2) (d));
 - the availability throughout the UK of a wide range of television services which are both of high quality and calculated to appeal to a variety of tastes and interests (section 3 (2) (c)).
- 2.6 In performing these duties, Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, a number of other considerations including:
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation (section 3(4)(c));
 - the vulnerability of children (section 3(4)(h));
 - the interests of different ethnic communities (section 3(4)(l)); and
 - the opinions of consumers in relevant markets and of members of the public generally (section 3(4) (k)).
- 2.7 Ofcom also seeks to abide by a set of regulatory principles which it has developed in the light of its general duties and the principles of best practice in regulation. These are published on Ofcom's website⁵, but those of particular relevance to this consultation are as follows:
- Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives
 - Ofcom will research markets constantly and will aim to remain at the forefront of technological understanding; and
 - Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.
- 2.8 Where it appears to Ofcom that any of its general duties conflict with one another, it must secure that the conflict is resolved in the manner it thinks best in the circumstances (section 3(7)).
- 2.9 Ofcom is required to carry out an assessment of the likely impact of regulatory measures it may propose where the proposal is carried out for the purposes of or connected with the carrying out of its statutory functions and it appears to Ofcom to be important (section 7). For the purposes of this section a proposal is "important"

⁵ Ofcom's regulatory principles (<http://www.ofcom.org.uk/about/sdrp/>).

inter alia if it is a proposal which would have a significant impact on businesses in the markets for which Ofcom has regulatory functions or on the general public in the United Kingdom. We have therefore carried out a detailed impact assessment which is included at Annex 2.

- 2.10 Ofcom is a public authority within the meaning of section 6 of the Human Rights Act 1998. It is therefore required to interpret its statutory obligations, and act, in a way that is compatible with rights under the European Convention on Human Rights (“the Convention”). The right to freedom of expression provided for by Article 10 of the Convention includes commercial speech⁶. Any restriction on this right must be necessary in a democratic society and proportionate to the legitimate aim pursued. In this context, the relevant aim is the protection of the health of children.
- 2.11 The standards applicable under the Convention are informed by the requirements of international law, which include the United Nations Convention on the Rights of the Child 1989 (the “UN Convention”) which has been ratified by the United Kingdom. The UN Convention requires that in all actions concerning children undertaken by administrative authorities, such as Ofcom, the best interests of the child shall be a primary consideration (Article 3). It also provides for a right to receive information subject to such restrictions as are necessary for the protection of public health (Article 13).
- 2.12 Ofcom must also take into account its obligations under the Television without Frontiers Directive (as amended) (the “TWF Directive”). This requires positive action to be taken by regulators to protect children from the harmful effects of television advertising (Article 16 of the TWF Directive). It also provides that each member state shall ensure that all broadcasts under its jurisdiction comply with “the rules of the system of law applicable to broadcasters intended for the public in that member state”. In this context, Ofcom has had regard to Article 49 of the EC Treaty, which requires that any restrictions on free movement of services must be justified and proportionate.
- 2.13 In pursuance of the principle of promoting self-regulation, Ofcom contracted out its regulatory functions in relation to broadcast advertising to the ASA⁷. However before any Code changes recommended by the ASA’s code-making body BCAP can be applied, Ofcom must approve them.

⁶ see Markt Intern Verlag GmbH & Klaus Beerman v Germany (1989) 12 EHRR 161 and R (British American Tobacco UK Ltd & Others) v Secretary of State for Health [2004] EWHC 2493 (Admin).

⁷ http://www.ofcom.org.uk/media/news/2004/11/nr_20041101

Section 3

Consultation and evidence gathering

Pre consultation research

3.1 During early 2004, Ofcom commissioned an extensive independent survey of existing research into the effects of television advertising on children's food preferences and consumption and also commissioned bespoke qualitative and quantitative research⁸. In late 2005, we asked Professor Sonia Livingstone (a contributor to the original 2004 report) to update this work to take account of more recent research. This work led Prof. Livingstone to confirm her original conclusions which were that:⁹

- multiple factors account for childhood obesity. Television viewing/advertising is one among many influences on children's food choices. These other factors include individual, social, environmental and cultural factors, all of which interact in complex ways not yet well understood. More research is needed into the multiple factors that contribute to children's diet and, within this broader picture, what is the role of food advertising/promotion. Very little is known about forms of food promotion other than in television advertising. This is a crucial gap as promotional strategies diversify;
- although experiments have identified causal relations between advertising and food choice, it remains unclear how these operate under the complex conditions of daily life at home and school. However, there is a growing consensus that advertising works. Given that most food advertising to children is for products high in salt, sugar and fat, this influence is likely to be harmful to children's health. Expert commentators are now convinced that television viewing plays a role in contributing to the problem of children's unhealthy diet;
- the experimental evidence suggests that television advertising has a modest direct effect on children's (age 2-11) food preferences and – under experimental conditions – on their food choices (behaviour). In both experimental and survey studies, the measured effects of advertising/television are small. Estimates vary, but some suggest that such exposure accounts for some 2% of the variation in food choice/obesity. Although small in statistical terms, cumulatively this may make an appreciable difference to the number of children who fall into the 'obese category', and may be no smaller than some other important influences on BMI. For example, one study suggests that the effect on Body Mass Index (BMI) attributed to television viewing and advertising may be larger than the measurable effect of exercise and dietary intake;
- a growing body of well-conducted national and international surveys show a consistent association between overall television exposure and weight/obesity. This applies to children of all ages up to 16. It remains unclear whether this association reflects the specific influence of exposure to television advertising or whether it is due to increased snacking while viewing or to a sedentary lifestyle with reduced exercise.

⁸ *Childhood Obesity – Food Advertising in Context* (Ofcom, July 2004)

⁹ Sonia Livingstone, *New research on advertising foods to children – an updated review of the literature*, 22 January 2006 (See Annex 9 - <http://www.ofcom.org.uk/consult/condocs/foodads/foodadsprint/>)

Consultations and Further Research

- 3.2 In March 2006 Ofcom proceeded to consult on a range of different options for new restrictions on television advertising to children including three proposed packages of measures, a pre-9 pm ban and voluntary self regulation¹⁰. Ofcom also invited any stakeholder to submit a fourth package of proposals if it commanded broad support and seemed a sensible response to the issues and to Ofcom's regulatory objectives. The March consultation was accompanied by an impact assessment which included analysis of the effect of the policy packages and the other options included in the consultation document. The consultation was scheduled to close on 6 June 2006. Ofcom subsequently published an update to its Impact Assessment and extended the consultation period until 30 June 2006¹¹.
- 3.3 Alongside this public consultation, Ofcom also commissioned an independent research consultancy, Opinion Leader Research to gauge the public's response to these proposals through a programme of deliberative research. The report on the deliberative research was published on Ofcom's website on 9 October 2006¹².
- 3.4 Ofcom received 1097 responses to its March 2006 consultation, including 114 responses from interested parties such as consumer bodies, broadcasters, academics, advertisers, food manufacturers and health and medical bodies and from the Office of the Children's Commissioner and Scotland's Commissioner for Children and Young People. There were a very large number of responses from private individuals. Ofcom also received a proposal from the Food Advertising Unit (FAU) on behalf of the food, soft drinks and advertising industries in response to Ofcom's invitation to industry to submit an alternative proposal.
- 3.5 Following the March 2006 consultation, Ofcom issued the November Statement which set out, amongst other things:
- its decision to modify one of its regulatory objectives ('to reduce significantly the exposure of children to HFSS advertising, as a means of reducing opportunities to persuade children to demand and consume HFSS products') so that it applied to children aged under 16, rather than children under 10;
 - its decision that of the packages and other options considered, Packages 2 and 3 should not be adopted, neither should voluntary self-regulation, positive messaging, a pre-9pm ban and the option proposed by food manufacturers, advertisers and broadcasters;
 - its view that Package 1, which provided for restrictions on the advertising of HFSS products in or around programmes made for children (including pre-school children) and in or around programmes of particular appeal to children up to 9 years old, was its preferred way forward on the basis of all the evidence received, the analysis done and in light of Ofcom's statutory duties and regulatory objectives; but stating that:

¹⁰ Television Advertising of Food and Drink Products to Children: Options for new restrictions (March 2006) <http://www.ofcom.org.uk/consult/condocs/foodads/>

¹¹ Television Advertising of Food and Drink Products to Children: Options for new restrictions (update June 2006) <http://www.ofcom.org.uk/consult/condocs/foodads/>

¹² Regulating TV advertising of food and drink to children, October 2006, Opinion Leader Research, http://www.ofcom.org.uk/research/tv/reports/regulating_tvadverts/

- its regulatory objectives might be even better fulfilled by some extensions to Package 1, in order to prevent advertising around programmes of particular appeal to older children as well.
- 3.6 Accordingly, in the November Statement Ofcom also considered possible changes to Package 1 having regard to the responses to the consultation and other available evidence as well as to its revised regulatory objectives. It identified a preferred package of restrictions which it called Modified Package 1 which extends the restriction on HFSS advertising from programmes of particular appeal to children from 4 to 9 years, to children from 4 to 15 years.
- 3.7 In light of this and in light of the potential impact of the Modified Package 1 on the revenues of music channels in particular, Ofcom consulted further on Modified Package 1 in so far as it extended the restrictions contained in package 1 to children up to 16.
- 3.8 Ofcom also concluded that revised content rules should be a component of any restrictions and that they should incorporate differentiation based on the FSA's nutrient profiling model for three specific rules relating to the use of particular advertising techniques (celebrities and licensed characters, promotional offers and nutritional and health claims). Ofcom was minded to extend additional protection to primary school children through preventing these particular advertising techniques from being used in HFSS advertisements targeted at them, but a final decision on this would be made in light of conclusions on the final policy package.

Section 4

Consultation responses and Ofcom's assessment

Introduction

- 4.1 In response to the November 2006 Statement, more than 50 representations from groups and individuals were received representing the main range of stakeholders: consumer and health groups (17), advertisers and food manufacturers (16), broadcasters and related bodies (12) and individuals (8). Copies of all the non-confidential submissions have been posted on Ofcom's website¹³.
- 4.2 In addition to responding to the issues (and related matters) on which Ofcom sought views in its November Statement, a number of the consultation responses commented on decisions taken by Ofcom and reported in that Statement. Most of these comments concerned Ofcom's decisions:
- to amend its regulatory objectives to reduce the impact of HFSS advertising on children up to 16;
 - to restrict the advertising of foods that are high in fat, salt or sugar on the basis of the FSA's nutrient profiling scheme; and
 - to reject a pre-9pm ban on television advertising of HFSS products, and the industry Option 4.
- 4.3 A summary of all the consultation responses and Ofcom's views on points raised is attached at Annex 1.

Ofcom's regulatory objectives

Consultation responses

- 4.4 While many respondents (mainly consumer group, and health and medical organisations) welcomed Ofcom's decision to amend its regulatory objectives to extend protection to under 16s and offered many arguments in favour of this approach, a significant number of other respondents argued that Ofcom should not have decided that its first regulatory objective should aim to reduce HFSS advertising to under 16s rather than under 10s.
- 4.5 Several food manufacturers and some broadcasters argued that the Government's objectives were limited to protecting UK primary school children and that it was inappropriate for Ofcom to go beyond this age range.
- 4.6 Broadcasters, food manufacturers and advertisers also argued that Ofcom's decision to amend its first regulatory objective so as to aim to reduce HFSS advertising to under-16's is not justified on the evidence. In a response endorsed by several manufacturers, ISBA said that there was little evidence on the impact of food and drink advertising on older children, and even less linking advertising with obesity in

¹³ The responses can be seen on Ofcom's website at <http://www.ofcom.org.uk/consult/condocs/foodads/responses/>.

older children. Advertisers and one multi channel broadcaster said that the majority of the academic research on which Ofcom based its assessment was focused on younger children and was not applicable or relevant to older children.

- 4.7 Several respondents stated that research suggests that older children have a greater understanding of the persuasive intent of advertising. Some advertisers and broadcasters noted that Ofcom itself had concluded that teenagers were fully media literate and were able to recognise the commercial intent of advertising messages after the age of 12. Advertising representatives said that although Prof. Livingstone's views, upon which Ofcom had relied, were that the greater media literacy of older children was not a sufficient defence against the influence of advertising, her views ran counter to an academic consensus that teenagers were often more sophisticated, discerning and discriminating than many adults and that their media literacy greatly reduced the influence of adverts. Accordingly, the presumption should be that older children were sufficiently media literate not to need further protection from scheduling restrictions.
- 4.8 A few broadcasters and representatives of manufacturing and advertising interests also said that Ofcom did not provide evidence to substantiate additional arguments used to support the age increase to age 16, including the propositions that younger children may be influenced by older siblings, that older children have more spending power than younger children, and that obesity is more common in older children.

Ofcom's response

- 4.9 Ofcom's decision that its first regulatory objective should be to reduce significantly the exposure of children under 16 to HFSS advertising was taken on the basis of a significant body of available research and following its March consultation on its regulatory objectives and in light of responses to that consultation.
- 4.10 In making its decision, Ofcom considered, amongst other matters, the Government's position. Ofcom understood the Government's position to be that, whilst it considered primary school children to be the most vulnerable age group, and therefore was concerned that regulatory measures should be targeted at that group, it also took the view that this should not be to the exclusion of measures targeted at older children. Ofcom continues to understand this to be the Government's position, most recently confirmed to Ofcom in a letter from Caroline Flint, the Minister of State for Public Health.
- 4.11 Further Ofcom is under a statutory duty to set appropriate standards to ensure that children up to 18 years of age are protected in relation to the content of television programmes¹⁴.
- 4.12 Ofcom recognises that whilst much of the body of available research focuses on younger children, there is research, in particular a report by the US Institute of Medicine¹⁵ which reviews various recent research studies and concludes that there is strong evidence that exposure to television advertising is associated with adiposity in children ages 2-11 and teens aged 12-18 years.

¹⁴ Section 319(2)(a) of the Communications Act 2004

¹⁵ Study published the Institute of Medicine in the United States, cited in Annex 9: Literature Review to *March Consultation* document.

- 4.13 Further, Ofcom considers that, in the absence of evidence to the contrary, it is reasonable to take the precautionary¹⁶ view that, as with younger children, television advertising is likely to have a modest direct effect on older children's food preferences, and on their food choices. Moreover, while we agree that media literacy is very important, and that, generally, older children have a greater understanding of the intention of advertising than younger children, we do not consider that media literacy generally provides a sufficient reason for Ofcom not to include in its regulatory objective the protection of older children. There is evidence that all age groups are affected by advertising¹⁷. Again, Ofcom considers that, in the absence of evidence to the contrary, it is reasonable to take the precautionary view that media literacy does not obviate the need to take account of the effects of television advertising of HFSS products on older children.
- 4.14 In addition, advertisers who target older children clearly believe that advertising is capable of influencing their purchasing and consumption decisions. Data from Nielsen suggests that, of the 14 billion 4-15 year old child impacts delivered by television advertising for food and drink targeting children in 2006, over half were for children aged 10-15.
- 4.15 Further Ofcom also considers that it is a reasonable and commonsense assumption, in the absence of evidence to the contrary, to take the view that younger children may be influenced by older siblings, and that older children have more spending power than younger children. Additionally, the Department of Health's 2002 Survey of Children and Young People, cited by Ofcom in its March 2006 consultation document, noted a steady upward trend in Body Mass Index of children, with the most marked increase in children aged 6-15 and amongst young adults aged 20-24.
- 4.16 Ofcom having considered the comments made continues to believe that its decision in the November Statement to amend its regulatory objective to extend protection to under16s is justified.

Advertising restrictions: Package 1 and Modified Package 1

- 4.17 Both Package 1 and Modified Package 1 would comprise:
- no HFSS advertising to be shown in or adjacent to programmes made for pre-school children;
 - no HFSS advertising to be shown in or adjacent to programmes specifically made for children;
 - no sponsorship by HFSS products of programmes affected by the restrictions; and
 - revised content rules.
- 4.18 Package 1 would include a rule stating that no HFSS advertising is to be shown in or adjacent to programmes of particular appeal to children of 4 - 9 years old. In contrast,

¹⁶ The precautionary principle accepts that action may be justified even if the probability of a risk occurring is small, because the outcome of that risk occurring might be adverse

¹⁷ *Advertising foods to children – understanding promotion in the context of children's daily lives – Literature review*, Livingstone and Helsper, 7 May 2004 (revised 6 July 2004) (http://www.ofcom.org.uk/research/tv/reports/food_ads/appendix2.pdf)

Modified Package 1 would include a rule that no HFSS advertising is to be shown in or adjacent to programmes of particular appeal to children of 4 -15 years old.

Consultation comments

- 4.19 In general, consumer organisations and health and medical groups strongly supported Modified Package 1 over Package 1 (see paragraph A1.3 of Annex 1). Two broadcasters supported Modified Package 1. However, most other broadcasters who responded opposed it, as did several of those representing advertising and manufacturing interests.
- 4.20 The main arguments made in support of Modified Package 1 were as follows:
- it is closer to generally-accepted definitions of childhood;
 - it would help to protect older children who were most at risk of obesity;
 - older children have greater autonomy in decisions about which food and drink to purchase;
 - older children have generally poorer diets than younger children;
 - it is in line with government policy;
 - it would result in restrictions being applied to a relatively small volume of additional programming; and
 - unlike Package 1, it would mitigate the tendency for advertising simply to switch from children's channels to more generalist channels.
- 4.21 Some consultees strongly opposed Modified Package 1 and made the following arguments:
- Modified Package 1 is based on a regulatory objective which they argue is not sufficiently evidence-based (some broadcasters, advertising and manufacturing interests); and
 - Modified Package 1 would result in revenue losses to music channels, and some other channels that would be disproportionate to the benefits. Some channels also argued that they would face operational difficulties in implementing the extended restrictions, and would need more time to give effect to them.

Ofcom's response

- 4.22 As regards the points made in opposition to Modified Package 1:
- Ofcom's response to the arguments relating to Ofcom's first regulatory objective is set out in paragraphs 4.9 to 4.16 above;
 - Ofcom has assessed the effects on broadcasters of Modified Package 1 in comparison with Package 1, and these are set out below and in the Impact Assessment in Annex 2;
 - Ofcom has set out its response to the operational difficulties that some channels say that they would face in paragraphs 4.48 – 4.53.

Effects of Package 1

Table 1: Summary of the effects (ie. impacts) of Package 1

	Reduction in HFSS Impacts (%)		Estimated revenue loss (£million pa)			Estimated revenue loss as % of total revenue	Highest % loss for a channel in each category
	4 - 9	4 - 15	Low	Central	High		
All Channels	49	37	13.3	17.6	20.8	0.3%	15.3%
PSB	21	16	6.9	9.9	11.9	0.3%	0.6%
DCC	100	100	4.6	5.2	5.9	4.7%	15.3%
Music	2	1	0.0	0.0	0.0	0.0%	0.3%
Other Cab-sat	15	12	1.7	2.4	2.9	0.1%	2.4%

Number of channels with >5% revenue loss	Efficiency		Benefits (£million pa)					
	Adult impacts per 4-15 HFSS impact	Adult impacts per 4-9 HFSS impact	QALY			VOL		
			Low	Central	High	Low	Central	High
4	1.3	2.6	19	38	76	92	184	368

- 4.23 The table above shows that Package 1 would lead to a **49%** or **37%** reduction in 4-9 or 4-15 HFSS impacts respectively. For each 4-9 or 4-15 HFSS impact restricted, **2.6** or **1.3** adult impacts respectively would be restricted.
- 4.24 Package 1 would have an estimated cost of **£13.3m - £20.8m pa** compared to an estimated benefit of **£19m – £76m pa** (QALY) or **£92m – £368m pa** (VoL). Just over half of this cost (£6.6m - £11.9m pa) would fall on PSBs which would account for about 0.3% of their revenues. The cost to dedicated children's channels (DCC) would be just under **5% of their total revenues** with one children's channel estimated to lose **over 15% of its total revenue**. Four channels are estimated to lose more than 5% of their revenue.
- 4.25 It should be noted that the ranges given for the costs and benefits are independent. so the low estimate of the costs could occur alongside the high estimates of the benefits and vice versa. However, the two measures used to estimate the benefits are linked because they rely on the same assumption relating to the mapping of nutrient intake substitution into adulthood. Therefore the high QALY estimate could not occur in conjunction with the low or central VoL estimate.

Effects of Modified Package 1

Table 2: Summary of the effect (ie. impact) of Modified Package 1

	Reduction in HFSS Impacts (%)		Estimated revenue loss (£million pa)			Average revenue loss as % of total revenue	Highest % loss for a channel in each category
	4 - 9	4 - 15	Low	Central	High		
All Channels	51	41	17.4	22.6	26.5	0.4%	15.3%
PSB	20	17	7.3	10.4	12.4	0.3%	0.7%
DCC	100	100	4.6	5.2	5.9	4.7%	15.3%
Music	41	44	2.1	2.4	2.7	1.9%	8.8%
Other Cab-sat	22	23	3.4	4.6	5.4	0.2%	6.3%

Number of channels with >5% revenue loss	Efficiency		Benefits (£million pa)					
	Adult impacts per 4-15 HFSS impact	Adult impacts per 4-9 HFSS impact	QALY			VOL		
			Low	Central	High	Low	Central	High
9	1.4	3.0	21	42	84	101	203	405

- 4.26 The table above shows that Modified Package 1 would lead to a **51%** or **41%** reduction in 4-9 or 4-15 HFSS impacts respectively. For each 4-9 or 4-15 HFSS impact restricted, 3.0 or 1.4 adult impacts respectively would be restricted.
- 4.27 Modified Package 1 would have an estimated cost of **£17.4m - £26.5m pa** compared to an estimated benefit of **£21m – £84m pa** (QALY) or **£101m – £405m pa** (VoL). A little less than half of this cost (£7.3m - £12.4m pa) would fall on PSBs which would account for about 0.3% of their revenues. The cost to dedicated children’s channels would be just under **5% of their total revenues** with one children’s channel estimated to lose **over 15% of its total revenue**. The cost to music channels would be about **1.9% of their revenue** with one music channel estimated to lose **almost 9% of its revenue**. Nine channels are estimated to lose more than 5% of their revenue.

Comparison of the impacts of Package 1 and Modified Package 1

- 4.28 In light of its statutory duties, its human rights obligations and its regulatory objectives, Ofcom needs to exercise a judgement as to the proportionality of its decisions and of their effect on broadcasters, television audiences, advertisers and others having regard to the assessed benefits to children’s future health. This duty does not lend itself to a formulaic approach – it requires Ofcom to make a judgement in the light of various considerations that bear on the issue of proportionality in this case.
- 4.29 As well as a direct comparison of the costs and benefits of Package 1 and Modified Package 1, a number of Ofcom’s regulatory objectives are relevant to a consideration of the impacts of the two packages:
- To reduce significantly the exposure of children under 16 to HFSS advertising, as a means of reducing opportunities to demand and consume HFSS products;

- To avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages; and
- To avoid disproportionate impacts on the revenues of broadcasters.

4.30 When considering the proportionality of the regulatory measures and its regulatory objectives Ofcom has taken account of three key factors:

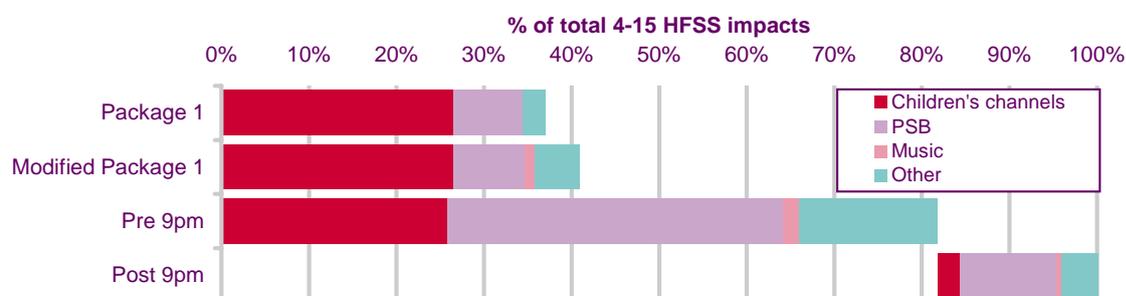
- a comparison of the reduction in 4-15 HFSS impacts that each package delivers
- a comparison of the ‘efficiency’ of each package (the ratio between adult impacts lost to 4-15 impacts lost) and
- a comparison of the percentage of revenue each channel or broadcaster group is expected to lose under each package.

Reduction in 4-15 HFSS impacts

4.31 Modified Package 1 restricts 4% more 4-15 HFSS impacts than Package 1 across all channels (41% compared to 37%). This 4% extra reduction represents a 6% reduction in HFSS viewing in the 10-15 year old category (31.4% compared to 25.6%). Modified Package 1 restricts 44% of the 4-15 impacts on music channels compared to around 1% for Package 1 – although this only accounts for about 1% of the 4% difference between the two packages.

4.32 The difference in the reduction of 4-15 viewing of HFSS advertising under Package 1 and Modified Package 1 is shown below in Figure 1. For reference, the composition of 4-15 HFSS viewing before and after 9pm is also shown.

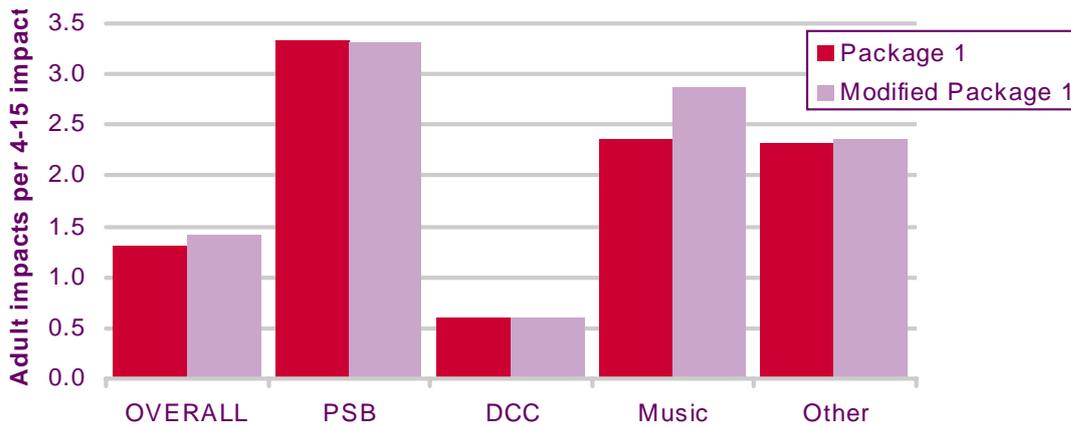
Figure 1: Reduction in impacts from Package 1 and Modified Package 1



Efficiency

4.33 Under Package 1, 1.3 adult impacts would be lost for every 4-15 child impact restricted. In comparison, under Modified Package 1, 1.4 adult impacts would be lost. As can be seen, there is very little difference between the two packages on this measure. Figure 2 below shows the very slight differences in efficiency, for the various channel groups, of Package 1 and Modified Package 1 – both are far less intrusive than for example a restriction on PSBs during children’s airtime or a pre-9pm ban.

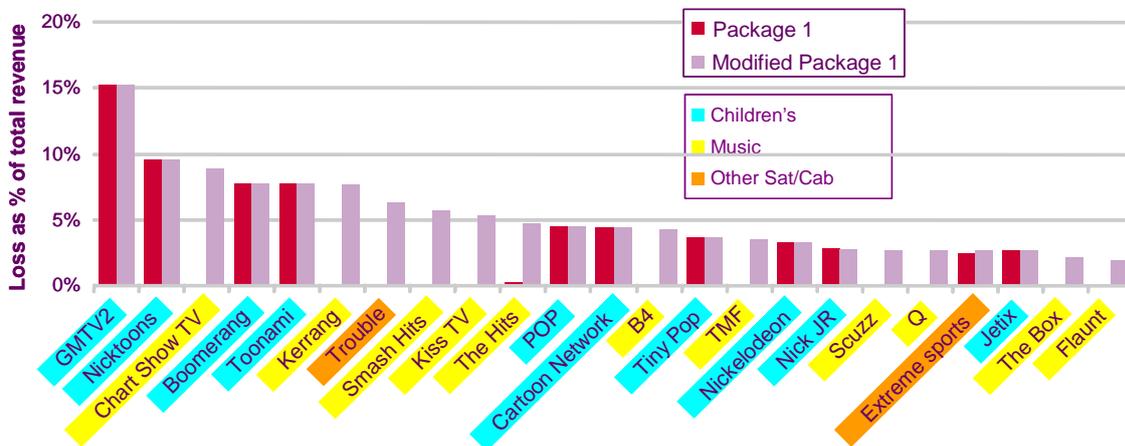
Figure 2: Comparison of the efficiency of the composition of the Packages



Proportionality of impact

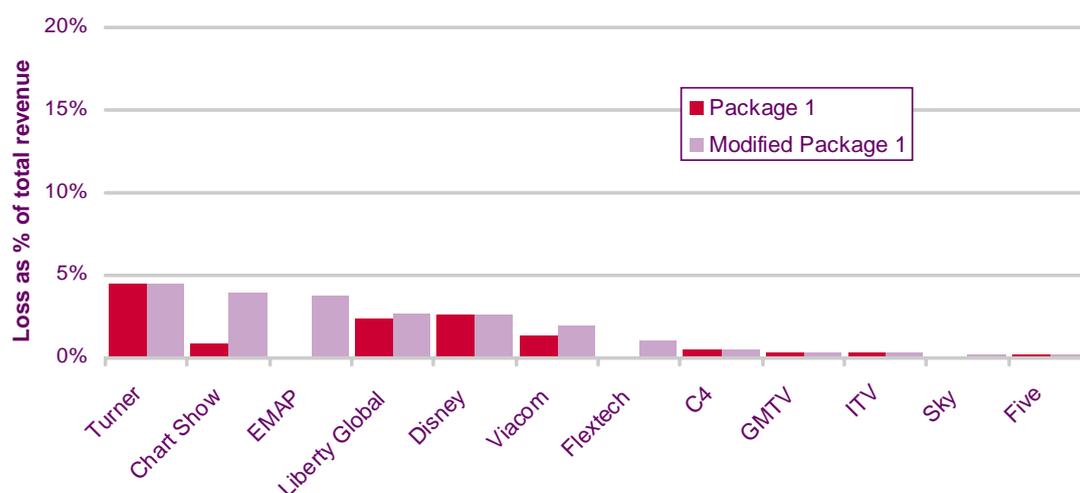
- 4.34 The impact of the two packages on children’s channels is identical and that on public service broadcasters is virtually identical. Figure 3 below shows the effect on the (mostly children’s and music) channels who face a greater than 2% loss of revenue from either of the restrictions.
- 4.35 Broadcasters of music channels (together with Trouble and Extreme Sports) face a significantly increased estimated loss of revenue under Modified Package 1 – similar to the proportion of revenue lost by children’s channels under Package 1. However no channel faces a worse position under Modified Package 1 than the two hardest hit channels under Package 1.

Figure 3: The Effect on Different Channels



- 4.36 Ofcom recognises that channels are, in the main, part of broadcaster groups. Figure 4 below shows that while some broadcaster groups face an increased loss under Modified Package 1, none stand to lose more than 5% of their revenue. Moreover, none of these broadcaster groups faces a greater percentage loss of revenue under Modified Package 1 than the hardest hit group under Package 1.

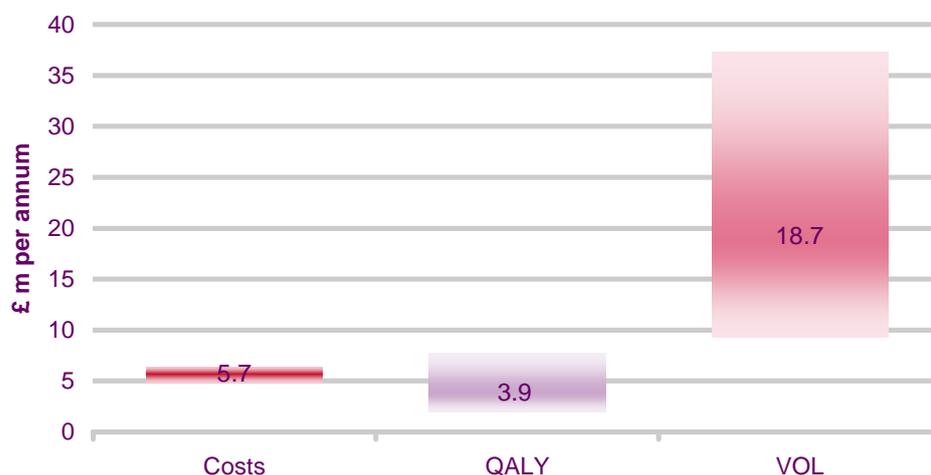
Figure 4: The Effect on Broadcaster Groups



Comparing the costs and benefits and absolute cost of the packages

- 4.37 Both packages have benefits that significantly exceed the costs – whichever measure of benefits is used (VoL or QALY).
- 4.38 Figure 5 below demonstrates the ranges for the incremental cost and benefits of Modified Package 1, with the darkest sections of the bars representing the central estimates. On a VoL measure, the entire range of incremental benefits of Modified Package 1 exceeds the whole range of costs by a margin of over £5m per annum. However, on an unaugmented QALY measure, the extra costs of Modified Package 1 lie within the range of benefits¹⁸.

Figure 5: The Range of Incremental Costs and Benefits¹⁹



¹⁸ As set out in Section 3 of the Impact Assessment, the QALY and VoL methodologies represent a range within which the true value of the benefits is expected to lie. Figure 5 shows that without an adjustment to the QALY methodology, the large majority of this range of benefits lies above the incremental costs.

¹⁹ These costs include the additional costs to UK licensed channels who broadcast overseas of Modified Package 1 over Package 1 (see Impact Assessment paras. 4.10 – 4.11)

- 4.39 As set out in Section 3 of the Impact Assessment, a QALY measure, unadjusted for an absolute value of life, would understate the lower limit of the benefits. To make the QALY more accurate would require it to be adjusted to include the pure value of life. The resulting 'augmented QALY' measure would be significantly greater than the pure QALY measure. This would significantly raise the lower limit of the incremental benefit of Modified Package 1 over Package 1.
- 4.40 Ofcom has estimated that if an absolute value of life of £200,000 were included in the QALY calculation, the central case of the augmented QALY measure would exceed the high case of the costs²⁰.
- 4.41 The absolute value of life adjustment that should be added to the unaugmented QALY based calculation of benefits is a similar concept to the willingness to pay for life element of the VoL calculation. Since, in that calculation, the pure value of life accounts for £1.3m of the VoL, and it is believed not to decline significantly with age, it seems reasonable to believe that the appropriate augmentation in the QALY case is at least the £200,000 necessary to lift the central case of the augmented QALY measure above of the upper limit of the costs²¹.
- 4.42 For the reasons set out above and in the Impact Assessment, considering the costs and the VoL and QALY based estimations of the benefits, along with their likely ranges, Ofcom considers that the net benefits of Modified Package 1 are greater than those of Package 1.

Absolute cost²²

- 4.43 Package 1 is estimated to impose costs between £13.3m – £20.8m pa on broadcasters, approximately 0.3% of total revenue. Modified Package 1 is estimated to impose costs between £17.4m - £26.5m pa on broadcasters, approximately 0.4% of total revenue.
- 4.44 A detailed assessment of the impact of Package 1 on the viability of some channels and on programme quality eg through its effect on programme commissioning is set out in the November Statement (pages 50 to 51). Modified Package 1 is estimated to impose costs amounting to on average an additional 0.1 per cent of total revenue per annum. The costs under either package are therefore broadly similar. Accordingly Modified Package 1 would not have a significantly different impact to Package 1 for most broadcasters.
- 4.45 Modified Package 1 does however have a greater financial impact than Package 1 on music channels and this difference may have an impact on the viability of some channels and programme quality, for example through its effect on programme commissioning. However most music channels commission very limited volumes of originated programming and moreover do not target a child audience directly, aiming to target the 16 - 34 year old audience, against which their advertising is sold. Therefore to the extent (if any) that there is an impact on their ability to commission

²⁰ The inclusion of a pure value of life of £200,000 was offset by decreasing the value of each QALY to £25,775. The offsetting reduction ensures that there is some consistency between the VoL and QALY measures of benefit.

²¹ Further evidence from a recently published paper (H. Mason, A Marshall, M Jones-Lee and C Donaldson for the SVQ Project Team, *Estimating a Monetary Value of a QALY*, 2006 available at http://pcpoh.bham.ac.uk/publichealth/nccrm/PDFs%20and%20documents/RM03_JH31_Final_Report.pdf) cited by the FSA after Ofcom's Board made its decision to adopt Modified Package 1, suggests a pure value of life of around £400,000 for mortality in a person in their mid-70s.

²² These costs exclude the costs to UK licensed channels who broadcast overseas

programming, that impact needs to be compared with the large overall volume of commissioning for young people across all broadcasters.

- 4.46 Any impact on music channels' ability to commission is not considered by Ofcom to be disproportionate in the context of the overall volume of commissioning for their target audience. The impact on music channels' revenue is 1.9%, which Ofcom does not consider in itself disproportionate. Having considered all the available evidence, Ofcom therefore does not consider that the difference in impact on the music channels would render the adoption of Modified Package 1 on this ground, disproportionate for broadcasters overall or for music channels specifically.

Summary

- 4.47 The above discussion together with the analysis in the Impact Assessment shows that:
- Modified Package 1 restricts 4% more 4-15 HFSS impacts than Package 1, about 1% of this is from music channels, the remaining 3% is mostly from other cable and satellite channels;
 - Modified Package 1 is slightly more intrusive into adult airtime than Package 1, but not significantly so;
 - Under Modified Package 1 the effect on music channels is similar to the effect of Package 1 on children's channels;
 - Five extra channels (four music channels plus Trouble) lose more than 5% of their revenue under Modified Package 1 than Package 1, however no channel faces a worse position under Modified Package 1 than the two hardest hit channels under Package 1 (GMTV2 and Nicktoons);
 - No broadcaster group faces a loss of more than 5% under Package 1 or Modified Package 1;
 - Although some broadcaster groups face an increased loss of revenue under Modified Package 1 compared to Package 1, none faces a worse position under Modified Package 1 than the hardest hit group under Package 1 (Turner);
 - For the reasons set out above and in the Impact Assessment, Ofcom considers that the net benefits of Modified Package 1 are greater than those for Package 1;
 - The absolute cost of Modified Package 1 to broadcasters is higher than that of Package 1 but its impact is not significantly different to that of Package 1 for most broadcasters
 - The absolute cost of Modified Package 1 to music channels is higher than that of Package 1 but any potential impact on their ability to commission originated programming for their target audience of 16-34 year olds is not disproportionate in the context of the overall volume of commissioning for this target audience.

Implementation of scheduling restrictions

- 4.48 In the November Statement, Ofcom stated that the scheduling restrictions would come into force with effect from 1 April 2007, but would be phased in for dedicated children's channels over the period up to the end of December 2008.

4.49 In general, those health and medical bodies and consumer organisations that commented were in favour of implementing the advertising restrictions as proposed in the November Statement, although some felt that the transitional arrangements for dedicated children's channels were not justified. By contrast, some broadcasters, advertisers and manufacturers suggested that they should have a similar phasing period to the restrictions as that afforded to dedicated children's channels and gave several reasons why the implementation arrangements should be adjusted:

- pointing to the small size and volatility of audiences for some channels, some broadcasters said that using indexing as a predictive tool would be problematic;
- advertising was sometimes sold as packages across channels and indexing could not be applied to individual programmes;
- two broadcasters said that, if Ofcom decided to press ahead with changes to indexing, it should consider changes that would mitigate the impact on broadcasters, including more time to implement the arrangements – by deferring the start of indexing for 4-15 year olds until the end of 2007, given that programme budgets had already been committed, and that airtime sales and monitoring systems would need to be altered. One added that it could not make changes to its automated sales systems until after a new system has been implemented later this year, and that in the meantime it would be unable to carry out 4-15 indexing on a programme by programme basis across the channels it sells and would have instead to implement a complete ban on HFSS advertising before 9pm at a considerable cost. Another broadcaster set out different reasons why a delay in implementation until the beginning of 2008 would enable it to mitigate losses significantly;
- music channels argued that, given the significance of HFSS advertising revenue to their budgets, they should be allowed a transitional period at least as long as that for dedicated children's channels; one argued that music channels should be allowed a longer period, on the grounds that it had not been clear that restrictions might apply to music channels until late in the process;
- as regards overseas channels some noted that providing data to implement the indexing would be difficult and costly; and
- the Voice of the Listener and Viewer said that public service channels should also be allowed time to phase in the scheduling restrictions, as they spent more money on original children's programming than public service channels.

Ofcom's response

4.50 Our analysis of 2005 viewing patterns for UK music channels shows that it is feasible for these channels to use historical data to predict which half-hour slots will index over 120 for children aged up to 16, and BARB has confirmed that this data is easily available where channels do not already have it. Indeed, one broadcaster asked that it be allowed to use this approach (so-called 'time-banding'). We believe that the time banding approach is consistent with BCAP's guidance²³ on how indexing is to be applied in practice and can reasonably be used as a proxy for predicting the indexing

²³ BCAP's Advertising Guidance Note No. 5 (*Audience indexing: identification of programmes likely to appeal to children and young people*), at http://www.cap.org.uk/cap/codes/broadcast_codes/Guidance_Notes/Advertising+Guidance+Note+No.5.htm.

of individual programmes, which music channels cannot reliably do. We are confident that BCAP will be amenable to the use of this alternative to prediction based on the indexing of individual programmes.

- 4.51 We would expect that broadcasters may wish to change the way they sold advertising in order to mitigate losses. However in their consultation responses no broadcaster said that it would be unable to implement 4-9 indexing with effect from 1 April 2007. Accordingly, one option for addressing these implementation issues would be to implement 4-9 indexing with effect from 1 April 2007, and 4-15 indexing with effect from 1 January 2008.
- 4.52 We do not however consider that it would be either feasible or appropriate to devise a phase-in period for music channels analogous to that decided on for children's channels. The degree to which individual music channels would be affected would vary considerably according to their target demographics, and their sources of revenue. Moreover, all affected music channels have some scope either to move HFSS advertising into time bands that are not of particular appeal to older children, or to make changes to their schedules or formats to reduce their appeal to older children. This makes it impractical to devise an equitable and transparent approach to phasing the reduction of HFSS advertising along the lines to be adopted for children's channels, on which HFSS advertising will be eliminated completely.
- 4.53 We do not agree that it would be appropriate to allow PSB channels the same phase-in period as that allowed to children's channels. Children's channels have no opportunity to shift HFSS advertising to other times of the day, whereas PSB channels have much more flexibility. For similar reasons, we see no reason to change Ofcom's decision to allow children's channels (but not other channels) a phase-in period.

Content rules

- 4.54 Ofcom previously decided that the FSA's nutrient profiling model should be adopted for the scheduling rules to identify those products that are HFSS, whether Package 1 or Modified Package 1 is adopted. Similarly, the content rules would be included in both of these packages. Ofcom said in the November Statement that these rules should incorporate differentiation based on the FSA's nutrient profiling model. This would mean that three specific rules restricting advertising techniques used when targeting children aged 9 and under (relating to celebrities and licensed characters, promotional offers and nutritional and health claims) would apply only to HFSS product. In addition, Ofcom said that it was minded to extend this additional protection to all primary school children (children aged 11 and under), but would make a final decision in the light of its conclusions on the components of the final policy package.

Consultation comments

- 4.55 There were relatively few comments from broadcasters, advertisers or manufacturers on the revised content rules. The decision to apply specific rules to HFSS products was welcomed by consumer organisations and one health promotion body. A retailer and a manufacturer sought clarification on the interpretation of some points, which will be matters for BCAP.
- 4.56 In response to Ofcom's statement that it was minded to extend the application of revised content rules to children of primary school age, a number of health and consumer groups argued that the three further specific rules should apply to children

up to the age of 16. Among the arguments adduced in support of broadening the age restrictions were that:

- a) it was illogical to seek to protect children up to the age of 16 using scheduling rules, but not to do the same with content rules; and
- b) since scheduling restrictions would not prevent HFSS advertising around programmes most popular with children, it was all the more important that the content rules should protect children up to the age of 16.

Ofcom's response

4.57 Ofcom agrees that both younger and older children are influenced by advertising, although older children are more media literate and are likely to be affected by advertising in different ways compared to younger children. However Ofcom notes the following points in relation to its consideration of the age to which the restrictions on the use of celebrities and licensed characters, promotional offers and nutritional and health claims should apply:

- For the reasons set out in this Statement Ofcom has decided to adopt Modified Package 1 which excludes HFSS advertising from all programmes made for children and from around programmes of particular appeal to children under 16.
- Should manufacturers therefore in future wish to target children of any age with HFSS advertising, this could only be done in adult- or family-oriented airtime. Given that it would be very expensive for advertisers to seek to target children at times when adults form the majority of the audience, Ofcom considers that the volume of advertising specifically targeted at children under 16 in adult- or family-oriented airtime is likely to be small.
- The content rules therefore represent an additional level of protection for children on top of the scheduling restrictions.
- Those advertisements that will still be targeted at children notwithstanding the above will have to comply with generality of the content rules (see Annex 4) which apply to all food and drink advertising to children regardless of the age of the target audience or the time of day, and which require that specific techniques such as the use of celebrities and licensed characters as well as promotional offers be used with 'a due sense of responsibility'.

4.58 Taking all these points into account, and noting that research suggests that those techniques involving the use of licensed characters and promotions such as give-aways may be more likely to appeal to younger children, Ofcom does not consider it necessary to extend the three age-specific content rules (relating to celebrities and licensed characters, promotional offers and nutritional and health claims) to under 16s in order to meet its regulatory objective of reducing significantly the exposure of children under 16 to HFSS advertising.

4.59 Accordingly, Ofcom considers that there is sufficient protection for children of all ages in place from the measures contained in Modified Package 1 for these three specific content rules to be applied to primary school children and not to under 16s. Ofcom has also committed to a review in about a year of the way in which the new advertising restrictions are working. It will in doing so examine whether advertisers are using adult airtime to promote HFSS products to children. In this, it will work

closely with the Department of Health, which is collecting data about advertising treatments which will be available to Ofcom for this review.

Section 5

Ofcom's decisions

Introduction

5.1 This section sets out the further decisions reached by Ofcom in light of its statutory duties and regulatory objectives, taking account of the consultation responses and available evidence and based on the analysis set out in this Statement and in the Impact Assessment.

Decision on scheduling restrictions

5.2 Ofcom has decided to adopt Modified Package 1. In doing so it has had regard to the degree of support received for each of Package 1 and Modified Package 1 and the analysis of each package's effects, including in particular as set out in the Impact Assessment.

Decision on implementation of scheduling restrictions

5.3 In its November Statement Ofcom decided the scheduling restrictions should come into force with effect from 1 April 2007 for all channels except for dedicated children's channels. In the light of the consultation responses Ofcom has now decided to modify this so that

- with effect from 1 April 2007, advertisements for HFSS products should not be shown in or around programmes aimed at children (including pre-school children), or in or around programmes that are likely to be of particular appeal to children aged 4-9; and
- with effect from 1 January 2008, HFSS advertisements should not be shown in or around programmes that are likely to be of particular appeal to children aged 4-15²⁴.

5.4 Ofcom's decision in its November Statement that dedicated children's channels would be allowed a transitional period for implementation of the new scheduling restrictions until 31 December 2008, during which period they would continue to be allowed to broadcast some HFSS advertisements, remains unchanged. This decision provided that:

- For the period from 1 April 2007 until 31 December 2007 on each dedicated children's channel not more than 75% of the average minutage devoted by that channel to HFSS advertising in calendar year 2005 shall be allowed.
- For the period from 1 January 2008 to 31 December 2008, not more than 50% of the average minutage devoted by that channel to HFSS advertising in calendar year 2005 shall be allowed.
- The average minutage will be calculated by deriving an average monthly figure from the 2005 total, and multiplying that by the number of months for the

²⁴ A programme with a 4-15 year old child audience index of 120 or more is deemed to be of particular appeal to that age.

applicable period (i.e. nine months from 1 April 2007 to 31 December 2007, 12 months for the calendar year 2008)²⁵.

- From 1 January 2009 onwards, the scheduling restrictions will apply in full to dedicated children's channels.
- 5.5 The scheduling rules described above are set out in Annex 3 as they will appear in the BCAP Television Advertising Standards Code from the date of publication of this Statement. Broadcasters may be required to satisfy Ofcom that they will have in place by 1 April 2007 satisfactory arrangements for giving effect to these rules for all licensed channels.
- 5.6 In the event of a complaint, responsibility for determining whether an advertisement is for an HFSS product or not, and for securing compliance with the scheduling rules in Annex 3 rests with Ofcom's co-regulatory partner, the ASA.

Decision on content rules

- 5.7 In the light of the arguments summarised in section 4 (and where appropriate, the arguments set out in the November Statement), Ofcom has decided to confirm its provisional decision in the November Statement to extend the protection offered by the three content rules restricting the use of celebrities and licensed characters, promotions, and nutritional and health claims from children aged 9 and under in the case of the first two rules, and from children of pre-school age in the case of the third rule, to all pre-school and primary school children (children aged 11 and under).
- 5.8 It has also decided that the revised content rules set out in their final form in Annex 4 shall be included in the BCAP Television Advertising Standards Code. The revised rules will apply with immediate effect for new advertising campaigns. Any campaigns that are under way or in planning must comply with the new rules from 1 July 2007.
- 5.9 The final version of the content rules set out in Annex 4 incorporates minor textual modifications from the November draft which in Ofcom's view are not significant and accordingly have been agreed by BCAP and approved by Ofcom.
- 5.10 In the event of complaints concerning the content of advertisements for food and drink, responsibility for enforcing the content rules rests with Ofcom's co-regulatory partner the ASA.

²⁵ In the case of channels which started up in the course of 2005 or later, Ofcom will determine a notional annual minutage over the 12 months from the date on which the channel started up. In the case of channels for which 12 months of advertising data does not exist, Ofcom will determine a notional annual minutage by grossing up the available data for HFSS advertising minutage in 2006.

Annex 1

Summary of consultation submissions

Introduction

A1.1 Over 50 responses were received, mainly from bodies and interest groups associated with consumers, health promotion, broadcasting, the food industry and advertising, as well as eight individual responses. These are listed below, with the acronym used in the summary where appropriate.

List of Respondents

- Advertising interests
 - Food Advertising Unit (FAU) of the Advertising Association
 - Incorporated Society of British Advertisers (ISBA)
- Broadcasters and related interest groups
 - Eleven broadcasters (including public service, music, multichannel and other broadcasters). All the broadcaster responses were confidential.
 - Producers Alliance for Cinema and Television (PACT)
 - Voice of the Listener and Viewer (VLV)
- Consumer/citizen Groups
 - Children's Food Bill Coalition (Sustain)
 - The Consumer Council, Northern Ireland (CCNI)
 - National Consumer Council (NCC)
 - School Food Trust (SFT)
 - Which?
- Food manufacturers and related interests
 - Baker & McKenzie (BM) (partly confidential)
 - Biscuit, Cake, Chocolate and Confectionery Association (BCCCA)
 - Two manufacturers
 - Coca-Cola (CC)
 - Food and Drink Federation (FDF)
 - GlaxoSmithKline (GSK)

- Kellogg's (partly confidential)
- Kraft Foods UK & Ireland (Kraft)
- Masterfoods (MF)
- McDonald's Restaurants Ltd (MD)
- Provision Trade Federation (PTF)
- Snack Nut and Crisps Manufacturers Association (SNACMA)
- A retailer
- Health and Medical Groups
 - British Heart Foundation (BHF)
 - British Medical Association (BMA)
 - Cancer Research UK (CRUK)
 - Heart of Mersey (HoM)
 - International Obesity Task Force (IASO)
 - Irish Heart Foundation (IHF)
 - Medical Research Council – Human Nutrition Research (MRC/HNR)
 - National Heart Forum (NHF)
 - National Heart Alliance of Ireland (NHA)
 - Northern Ireland Chest, Heart and Stroke (NICHS)
 - Royal College of Physicians – Faculty of Public Health (RCP/FPH)
 - The Nutrition Society (NS)
- Individual responses
 - 9 responses were received from individuals.

Summary of responses

Package 1 vs. Modified Package 1

A1.2 Ofcom's November Statement sought views on the following issue:

In light of the impact of modified package 1 in particular on the revenues of music channels, Ofcom is seeking views on modified package 1 in so far as it extends the restrictions contained in package 1 to children up to 16.

Consultation comments

- A1.3 In response to this invitation, consumer organisations (CCNI, NCC, NFWI, SFT, Sustain) and health and medical groups (BHF, HoM, IASO, IHF, MRC/HNR, NHA, NHF, NS, RCP/FPH) strongly welcomed the proposal to extend the restrictions contained in Package 1 to children up to the age of 16. However, many consumer groups (NFWI, SFT, Which?) and health and medical bodies (BHF, BMA, CCNI, CRUK, HoM, IASO, IHF, NHA, NHF, NCC, NFWI, Sustain, Which?) bracketed this support with criticism of the decision not to extend scheduling restrictions up to 9pm. Amongst the points made by respondents who supported the extension of the age bracket to 16 were that it was closer to generally-accepted definitions of childhood (CCNI, HoM, IASO, Sustain), that it would help to protect older children who were most at risk of obesity (Sustain), that older children had greater autonomy in decisions about which food and drink to purchase (BMA, CCNI, Sustain) and generally poorer diets than younger children (Sustain), that it was in line with government policy (Sustain), and that it would have a relatively small effect on music broadcasters (BMA, Sustain).
- A1.4 A multichannel broadcaster and a public service broadcaster supported Modified Package 1. The public service broadcaster said that it agreed with Ofcom's objectives, and considered that Ofcom had struck a sensible balance, notwithstanding that it would result in restrictions being applied to a relatively small volume of additional programming. A multichannel broadcaster said that, while it continued to believe that the proportion of healthier lifestyles would be a more effective contribution to tackling obesity, Modified Package 1 addressed its concern that more narrowly targeted restrictions would simply result in advertising switching from children's channels to more generalist channels. The public service broadcaster also said that it was essential that non-broadcast media adopt similar restrictions, to prevent advertising budgets simply migrating to other media.
- A1.5 However other broadcasters and PACT opposed the idea of extending indexing to cover under 16s, as did all advertising and manufacturing interests. Several broadcasters (a public service broadcaster, two music channel broadcasters and two multichannel broadcasters), manufacturers (BCCCA, FDF, Kellogg, Kraft, MF, SNACMA and one other) and advertisers (FAU, ISBA) argued that the extension was not justified by the evidence. In a response endorsed by several manufacturers (FDF, Kellogg, MF, and a manufacturer), ISBA said that there was little evidence on the impact of food and drink advertising on older children, and even less linking this advertising with obesity. They suggested that none of the key studies, cited by the author (Prof. Livingstone) of Ofcom's 2004 and 2006 research reviews, looked at the link between food advertising and obesity in children over 12 years (FAU, ISBA, MF), nor did these studies suggest that children over 12 should be targeted with advertising restrictions (FAU, ISBA, MF, SNACMA). Of the 49 studies reviewed, only 11 had looked at children aged up to 15 years old (FAU).
- A1.6 Moreover, in the 2006 review, Prof. Livingstone had noted that the limitations of the evidence base led the US Institute of Medicine to conclude that the 'evidence of effects is stronger for children than it is for adolescents.' The individual research studies included in the research reviews were criticised over the sample sizes used and the fact that some were conducted overseas.
- A1.7 Several respondents (BCCCA, FAU, ISBA, MF, SNACMA and two broadcasters) said that research suggests that older children have a greater understanding of the persuasive intent of advertising. ISBA pointed out that the research review supported the view that children aged 8 and over had grasped the intention to

persuade, and by the age of 11 or 12 could articulate a critical understanding of the intention of advertising. It notes the results of an unpublished YouGov survey of 2,375 adults conducted in December 2006, which it says suggests that 80% of respondents thought that children under 16 were able to think critically about advertising designed to market food and drinks high in fat, salt and sugar. A manufacturer (MF) noted a recent article by the American Academy of Paediatrics stating that media literacy can mitigate the harmful effects of advertising. A few (FAU, MF) noted that Ofcom's own media literacy review stated that 11 to 16 year olds are more able to understand advertising. ISBA and others (FAU, MF) also said that Prof. Livingstone's view in her 2006 article that advertising literacy is an insufficient 'cognitive defence' against the effects of advertising puts her at odds with other academic opinion, and that her view is an insufficient basis for Ofcom to justify the effectiveness of a proposed measure.

A1.8 ISBA and broadcasters also said that Ofcom did not provide evidence to substantiate additional arguments used to support the age increase to age 16, including the propositions that younger children may be influenced by older siblings, that older children have more spending power than younger children, and that obesity is more common in older children.

A1.9 Several respondents argued that there were other flaws in the reasoning for the extension of indexing:

- a number of respondents reiterated previous arguments that experience overseas suggests that advertising restrictions will have no effect on obesity rates (BCCCA, FDF and one music channel broadcaster);
- food manufacturing interests (BCCCA, CC, FDF, SNACMA, MD and two others), advertising interests (FAU, ISBA) and two broadcasters (a multichannel broadcaster and a music channel broadcaster) argued that the government's objectives were limited to protecting UK primary school children and that it was inappropriate for Ofcom to go beyond this age range. One manufacturer argued that the extension of indexing would be inconsistent with the age range envisaged for revised content rules;
- a number of respondents argued that Modified Package 1 was inconsistent with Ofcom's original objectives, in that it went beyond the original consultation proposals (FAU, MD, MF, SNACMA), and would impact on companies not previously affected by the regulatory proposals (FAU, ISBA, Kellogg). Moreover, the extension of indexing would mean a disproportionate intrusion of regulation into adult airtime (CC, FAU, GSK, ISBA, Kraft, MD and MF);
- two music channel broadcasters suggested that the 120 index would be ineffective in contributing to Ofcom's key objective, and pointed out that while very large audiences of children (over three quarters of a million) would be able to watch HFSS advertisements around Coronation Street, music channels catering to much smaller audiences of children aged 4-15 (a few thousands) at the same time would be forbidden to air such adverts;
- a broadcaster and the FAU argued that Ofcom had based its reasoning on a small number of responses; and
- some respondents (CC, a manufacturer and a music channel broadcaster) said that the restrictions did not properly reflect the fact that adults often purchased products for children.

- A1.10 Several broadcasters (three music channel broadcasters, a multichannel broadcaster and a public service broadcaster) said that Ofcom's Impact Assessment has underestimated the effect on broadcasters' revenues; most (except the public service broadcaster) said that as a result the proposal was disproportionate. Music broadcasters provided alternative estimates of revenue losses from the proposed measures, as against the 1.9% assumed by Ofcom. One multichannel broadcaster thought the revenue loss from the proposed measures would be lower than the Ofcom estimate, though still disproportionate.
- A1.11 One respondent opined that the restrictions would disproportionately affect cable and satellite services with small audiences and younger profiles (FAU). Broadcasters offered a variety of reasons. Some (two music channels, a public service broadcaster and a music channel broadcaster) suggested variously that, faced with more complex restrictions, advertisers were likely to withdraw altogether from food advertising on small channels, or to reduce their spend. Two (a public service broadcaster and a music channel broadcaster) said that this was already happening; one said that the fact that a proportion of the channel's advertising time remained unsold in 2006 showed that the scope for mitigating these losses would necessarily be very limited.
- A1.12 Some respondents said that revenue losses could reduce expenditure on UK-originated programming, undermining the commercial viability of affected channels (a public service broadcaster, a music channel broadcaster and VLV) and reducing opportunities for independent producers of children's programmes as well as UK exports of these programmes (PACT). However, a music channel broadcaster indicated that, in its case, it was more likely that revenue losses would prevent a planned increase in expenditure on originated programmes, than lead to significant cuts, and a multichannel broadcaster suggested that the proposals would not undermine investment in children's programming. Some consumer organisations and health and medical groups (HoM) maintained that the public interest objective of protecting children's health should be paramount, and that Ofcom should not seek to balance it against the impacts on broadcasters' revenue.

Ofcom's response

- A1.13 Ofcom's decision that its first regulatory objective should be to reduce significantly the exposure of children under 16 to HFSS advertising was taken following its March consultation on its regulatory objectives and in light of all the consultation responses.
- A1.14 Whilst we recognise that much of this body of research focussed on younger children, we consider that there are good grounds for Ofcom's decision to extend its first regulatory objective to protect under 16s and therefore do not accept the comments of some respondents that as a result Ofcom's decision was not sufficiently justified:
- first, part of the body of research, a report by the US Institute of Medicine²⁶ reviewing various recent research studies concluded that there is strong evidence that exposure to television advertising is associated with adiposity in children ages 2-11 and teens aged 12-18 years;
 - second, Ofcom considers that, in the absence of evidence to the contrary, it is reasonable having regard to the precautionary principle, to take the view that, as

²⁶ Study published the Institute of Medicine in the United States, cited in Annex 9: Literature Review to *March Consultation* document.

with younger children, television advertising has a modest direct effect on older children's food preferences, and on their food choices; and

- third, while we agree that media literacy is very important, and that, generally, older children have a greater understanding of the intention of advertising than younger children, we do not consider that media literacy generally provides a sufficient reason for Ofcom not to include in its regulatory objective the protection of older children. There is some evidence that all age groups are affected by advertising²⁷. Further, Ofcom considers that, in the absence of evidence to the contrary, it is reasonable, having regard to the precautionary principle, to take the view that media literacy does not obviate the need to take account of the effects of television advertising of HFSS products on older children.

- A1.15 In considering the question of restrictions on television advertising of HFSS products to children, Ofcom has taken account of a significant body of research. We do not accept the comments made by some consultees that this research should have not been taken into account by Ofcom, because certain individual studies included in this body of research had relatively small sample sizes. Nor do we accept the comments made by some consultees that Ofcom should not have taken into account as part of this body of research studies conducted overseas. Ofcom has considered this significant body of research in the round.
- A1.16 In addition, advertisers who target older children clearly believe that advertising is capable of influencing their purchasing and consumption decisions. Data from Nielsen suggests that, of the 14 billion 4-15 year old child impacts delivered by television advertising for food and drink targeting children in 2006, over half were for children aged 10-15.
- A1.17 In making its decision, Ofcom considered, amongst other matters, the Government's position. Ofcom understood the Government's position to be that, whilst it considered primary school children to be the most vulnerable age group, and therefore was concerned that regulatory measures should be targeted at that group, it also took the view that this should not be to the exclusion of measures targeted at older children. Ofcom continues to understand this to be the Government's position, most recently confirmed to Ofcom in a letter from Caroline Flint, the Minister of State for Public Health. Further Ofcom is under a statutory duty to set appropriate standards to ensure that children up to 18 years of age are protected in relation to the content of television programmes²⁸.
- A1.18 Finally, we do not accept the criticism made by some respondents that Ofcom should not, as one among many factors, take into account the fact that it is reasonable, in the absence of evidence to the contrary, to assume that younger children may be influenced by older siblings, or that older children have more spending power than younger children. Additionally, the Department of Health's 2002 Survey of Children and Young People, cited by Ofcom in its March 2006 consultation document, noted a steady upward trend in Body Mass Index of children, with the most marked increase in children aged 6-15 and amongst young adults aged 20-24. A number of the other arguments raised in paragraph A1.9 – A1.12 above have been dealt with in the November Statement and Impact Assessment.

²⁷ *Advertising foods to children – understanding promotion in the context of children's daily lives – Literature review*, Livingstone and Helsper, 7 May 2004 (revised 6 July 2004)

(http://www.ofcom.org.uk/research/tv/reports/food_ads/appendix2.pdf)

²⁸ Section 319(2)(a) of the Communications Act 2004

Part 2: implementation issues

- A1.19 Some respondents suggested that the restrictions would raise practical difficulties. Pointing to the small size and volatility of audiences for some channels, broadcasters (two public service broadcasters, a music channel broadcaster and a multichannel broadcaster) said that using indexing as a predictive tool would be problematic. One broadcaster noted that index-derived scheduling restrictions would cause it particular problems, partly because it sold channels to advertisers as 'packs' so that a high children's index on one channel would affect the ability to sell advertising on another, and partly because the nature of its longer programmes meant that they sometimes straddled periods when children watched in relatively large numbers, as well as those when child audiences were smaller. As regards overseas channels, a broadcaster noted it would be impracticable to obtain audience data for those covering several national territories, and that in some other cases, the costs of compliance might exceed the revenue at stake.
- A1.20 Other respondents sought clarification of how the rules would be applied in practice. A public service broadcaster pointed out that broadcasters did not have expertise in nutrient profiling, and sought assurances that provided it acted in good faith on the basis of advertisers' self-certification, it would not be held responsible for inadvertent lapses. A retailer said that it presumed that the restrictions would not affect the advertising of a 'basket' of products containing some HFSS products, where it forms part of a general promotion, rather than the promotion of specific products.
- A1.21 A public service broadcaster and a multichannel broadcaster said that, if Ofcom decided to press ahead with changes to indexing, it should consider changes that would mitigate the impact on broadcasters, including more time to implement the arrangements. One said that it cannot make changes to its automated sales systems until after a new system has been implemented later this year, and that in the meantime it would be unable to carry out 4-15 indexing on a programme by programme basis across the channels it sells and would have instead to implement a complete ban on HFSS advertising before 9pm at a considerable cost. A music broadcaster noted that programme budgets had already been committed. Three music channel broadcasters and a multichannel broadcaster stated that implementation should include a transitional period at least as long as that for dedicated children's channels - a music channel broadcaster argued that music channels should be allowed an additional eight months, on the grounds that it had not been clear that restrictions might apply to music channels until late in the process.
- A1.22 Another respondent (VLV) said that the same concession should be accorded to commercial public service channels, as it would be disproportionate to enforce advertising restrictions against commercial public service channels at times when very small numbers of children were watching television, while conceding transitional arrangements to dedicated children's satellite channels that commissioned little original programming. A public service broadcaster agreed that there should be no discrimination between channels, but suggested that a transitional period would be of little use as advertisers would not wait for this to end before cutting HFSS advertising.
- A1.23 Music channel broadcasters wanted more flexibility about how to achieve the objectives of indexing; one suggested that it should be allowed to estimate which half-hour segments were most likely to contain programming of particular appeal to children, so that HFSS advertising could be permitted in some long-form programming at times of the day when relatively few children would be watching.

Another public service broadcaster said that a series-based approach to 120 indexing would be an operationally sensible approach to indexing, which would minimise (though not eliminate) anomalies.

Ofcom's response

- A1.24 In addition our analysis of 2005 viewing patterns for UK music channels shows that it is feasible for these channels to use historical data to predict which half-hour slots will index over 120 for children aged up to 16, and BARB has confirmed that this data is easily available where channels do not already have it. Indeed, one broadcaster asked in its consultation response that it be allowed to use this approach (so-called 'time-banding'). We believe that the time banding approach is consistent with BCAP's guidance²⁹ on how indexing is to be applied in practice and can reasonably be used as a proxy for predicting the indexing of individual programmes, which music channels cannot reliably do. We are confident that BCAP will be amenable to use of this alternative to prediction based on the indexing of individual programmes.
- A1.25 We would expect that broadcasters may wish to change the way they sold advertising in order to mitigate losses. Accordingly, one option for addressing these implementation issues would be to implement 4-9 indexing with effect from 1 April 2007, and 4-15 indexing with effect from 1 January 2008.
- A1.26 However, we do not consider that it would be either feasible or appropriate to devise a phase-in period for music channels analogous to that decided on for children's channels. The degree to which individual music channels would be affected would vary considerably according to their target demographics, and their sources of revenue. Moreover, all affected music channels have some scope either to move HFSS advertising into time bands that are not of particular appeal to older children, or to make changes to their schedules or formats to reduce their appeal to older children. This makes it impracticable to devise an equitable and transparent approach to phasing the reduction of HFSS advertising along the lines to be adopted for children's channels, on which HFSS advertising will be eliminated completely.
- A1.27 We do not agree that it would be appropriate to allow PSB channels the same phase-in period as that allowed to children's channels. Children's channels have no opportunity to shift HFSS advertising to other times of the day, whereas PSB channels have much more flexibility. For similar reasons, we see no reason to change Ofcom's decision to allow children's channels (but not other channels) a phase-in period.

Part 3: consultation process issues

- A1.28 Some respondents raised issues connected with the consultation procedure.

²⁹ BCAP's Advertising Guidance Note No. 5 (*Audience indexing: identification of programmes likely to appeal to children and young people*), at http://www.cap.org.uk/cap/codes/broadcast_codes/Guidance_Notes/Advertising+Guidance+Note+No.5.htm.

Consultation process

Consultees' comments

- A1.29 Advertising (ISBA) and manufacturing (FAU) interest groups suggested that as Ofcom had decided to amend its regulatory objective to protect under 16s, it had already taken a decision on indexing regardless of the outcome of the consultation. Two (FAU and a music broadcaster) suggested that Ofcom had relied on a small number of consultation responses in deciding to amend the regulatory objective and (the latter) suggested that similar research to the OLR research commissioned for the purposes of the initial consultation should have been undertaken to look at Modified Package 1.
- A1.30 One respondent (BM) argued that, because consultations on nutritional profiling and advertising restrictions had been carried out separately by the FSA and Ofcom, brand owners and advertisers had not had an opportunity to provide informed and integrated comments about whether the proposed advertising restrictions are necessary and proportionate for any particular product or products. It said that Ofcom should seek views on all aspects of the regulations simultaneously, including the workings of the FSA's nutrient profiling model, and must analyse the proportionality of the proposals as a whole for all affected parties.
- A1.31 Two broadcasters opined that it was inappropriate to compare the restrictions to bans on products which it is illegal to sell to children such as alcohol.

Ofcom's response

- A1.32 Ofcom has taken all consultation responses seriously, and has conducted considerable further analysis in the light of those responses. Contrary to the suggestion of some consultees, no decision on which advertising restrictions should be adopted was taken until after the Board had considered all the responses.
- A1.33 Although the FSA and Ofcom consultations were necessarily carried out separately (the FSA had to consult on its nutrient profiling scheme before it could make a recommendation to Ofcom), both consultations made clear that the intention was that Ofcom should use the FSA's nutrient profiling scheme for the purpose of implementing advertising restrictions, and interested parties therefore had ample opportunity to make representations. Moreover, Ofcom's consultation in March 2006 made clear that it was considering using the FSA's scheme, and set out how this might be applied in options for advertising restrictions. Interested parties therefore had an opportunity 'to provide informed and integrated comments about whether the proposed advertising restrictions are necessary and proportionate for any particular product or products'; several manufacturers did argue in response to that consultation that the FSA scheme was inappropriate to their products, and these points were taken into account by Ofcom.

Consultation period

Consultees' comments

- A1.34 Broadcasters of music and other channels as well as some food and advertising interests (FAU, ISBA, Kraft, FDF) argued that they had not been given sufficient time to respond properly to the November consultation. Some argued that the shorter consultation period was against Ofcom's own regulatory principles (FAU, multichannel broadcaster). Two music broadcasters stated that whilst debate has

been going on for some time, it was not clear until the November Statement was published that the restrictions would not have any material effect on them and one concluded that they had not had the same amount of time as other channels to plan their businesses to take account of the restrictions. In particular music channels (two music channels and a joint submission from all music channels) said that they have had far less time to respond than children's channels. Others (ISBA and a manufacturer) argued that the extension of the age range so late in the process fundamentally changed the nature of the argument that all consultees would have made.

- A1.35 Broadcasters said that extra time would have allowed them to respond more effectively, by commissioning studies, conducting detailed analysis and co-ordinating alternative proposals (a music channel broadcaster), and by exploring with BARB whether impacts on different age categories could be measured (a multi channel broadcaster). The same broadcaster said that a delayed implementation for scheduling rules for 10 – 15 year olds would therefore be appropriate.

Ofcom's response

- A1.36 It is not the case that any broadcaster could have concluded that the measures proposed by Ofcom in the March consultation would have no impact on their business and then pay no further attention to the consultation process for that reason. In March Ofcom consulted on a number of alternative policy packages. One of these, Package 3, would have limited the volume of food and drink advertising on all channels during the times that children are most likely to be watching television. The update to the March consultation published in June estimated the cost of such a measure to multichannel broadcasters (including music channels but not including children's channels) to be £5.7 million per year. Though Ofcom decided in its November Statement that Package 3 should not be adopted, until the Statement was published a threat to music broadcasters from this measure remained.
- A1.37 As the November Statement explained, Ofcom decided that a shorter consultation period of four weeks was justified because it concerned aspects of an area that had already been covered in detail in the March consultation, and the subject matter of the November consultation was limited, and of particular significance to a limited number of channels. Moreover, there was a need to issue a final statement as early as possible in 2007 in order to provide certainty on the regulatory regime and to meet the government's objective of achieving a change in the nature and balance of food advertising to children by early 2007.
- A1.38 Ofcom granted a two week extension to the consultation period and received, amongst other responses, very detailed submissions from some broadcasters and consumer organisations. Ofcom made clear that it was not seeking views on alternatives to Package 1 and Modified Package 1, so it was not necessary to provide time for this. It is clear from discussions with BARB that it already makes age-segmented audience data available to broadcasters (including data covering the alternative age bands proposed by some broadcasters and advertisers).

Adequacy of Impact Assessment

Consultees' comments

- A1.39 Some argued that Ofcom had not measured the impact on food and soft drink manufacturers at all (BM, FAU, Kellogg) or on the advertising market (a

broadcaster). Some manufacturers do not target under 12 year olds and were not originally affected by the proposals and may not have participated in the March consultation for this reason (FAU and a manufacturer).

Ofcom's response

A1.40 Although the Impact Assessment published alongside the March 2006 consultation document did not include quantitative estimates of the impacts on food manufacturers, it did explain why Ofcom considered that this would be impracticable, and why any such estimates would be misleading. In brief, we noted that as any restrictions would be incremental to a wide range of Government and industry initiatives to promote healthier diets, it would be very difficult to establish in quantitative terms what the baseline would be (i.e. what would happen if no advertising restrictions were imposed) and what the incremental impact of advertising restrictions would be. Nonetheless, the Impact Assessment described a range of possible impacts, depending on the nature of restrictions envisaged, as well as factors that pointed to a relatively modest economic impact on manufacturers. Furthermore, for the reasons set out in Paragraph A1.36, relating to Package 3, no manufacturer could have assumed that simply because it did not target under 12 year olds, it would not be affected by the measures that Ofcom was proposing in its March consultation.

Part 4: issues consulted upon previously

A1.41 Some respondents commented on issues that had been consulted upon previously, and on which Ofcom reported decisions in the November Statement. Their comments are summarised below.

Pre-9pm ban

Consultation comments

A1.42 Many consumer groups (NFWI, Which?) and health and medical bodies (BHF, BMA, CCNI, CRUK, HoM, IASO, IHF, NCC, NFWI, NHA, NHF, NICHs, Sustain, Which?) argued strongly that the indexing of programmes of special appeal to children aged up to 16 in Modified Package 1 was inadequate, and that a pre-9pm ban would be more effective. Among the arguments adduced were that the reduction in advertising impacts stemming from the extension of indexing would be just half the reduction that would be achieved by a 9pm watershed restriction (BHF, BMA, CRUK, NHF). A number (BMA, RCP/FPH, Which?) pointed out that indexing would not exclude HFSS advertising programmes around those programmes which were most popular with children, and that most children's viewing takes place outside 'children's airtime' (HoM). A number (HoM, Which?) quoted a survey of parents that concluded that about 80% favoured restrictions on advertising unhealthy foods when children were most likely to be watching. Several urged Ofcom explicitly to conduct an early review of the decision (HoM, IASO, MRC/HNR, RCP/FPH).

Ofcom's response

A1.43 The November Statement set out the detailed reasoning for Ofcom's conclusion that a pre-9pm ban would not be appropriate³⁰, and we do not consider that the points made by consultees raise any new issues of significance.

³⁰ See paragraphs 5.120 to 5.128 of *November Statement*.

Alternative Regulatory Proposals

A1.44 Some respondents suggested changes to the approach which they considered would achieve the same objectives. Some broadcasters (a music channel broadcaster and a multichannel broadcaster), advertisers (FAU and ISBA) and manufacturers (CC, MF and SNACMA) suggested that indexing be extended to children aged up to 11 or 12 rather than 16, and that BARB data could be segmented in this way. Two respondents (FAU and a broadcaster) said that this should have been considered by Ofcom as good regulatory practice and one opined that Ofcom had set age limits according to the availability of BARB data. A public service broadcaster argued that advertising of adult-oriented HFSS products should be permitted outside children's airtime, even around programmes of particular appeal to children.

Ofcom's response

A1.45 For the reasons set out in the November Statement, Ofcom has decided that its regulatory objectives should extend protection to under 16s. As explained in section 4 of the Statement, we remain of the view that this is the appropriate approach, and that it would therefore be inappropriate to reduce the upper limit of the age range used for indexing below 16. As regards the public service broadcaster's point, we do not consider that it would be practicable to distinguish clearly between HFSS products that are consumed exclusively by adults and those that are consumed by both children and adults.

Application of advertising restrictions to overseas channels

Consultation comments

A1.46 Of those broadcasters which responded on the application of advertising restrictions on UK-licensed overseas channels, one said simply that, in its view, it was not in Ofcom's remit to regulate the market outside the UK. Another said restrictions would provide no benefit to UK children, and were unlikely to result in any significant reduction of HFSS impacts on overseas audiences, given the scope for advertising on other channels. It also objected strongly to the imposition of advertising restrictions on the grounds that Ofcom had not conducted a detailed analysis of the impact of the restrictions on overseas channels, and that this impact would be significant and it would be disproportionate to apply them. It said that the means to give effect to the restrictions (audience data to allow indexing, and the ability to assess overseas food and drink products against the FSA's nutrient profiling scheme) were non-existent in many countries, or would be impracticable or too expensive to implement, or would be unattractive to advertisers who would simply place food advertising with competing channels that were not regulated by Ofcom. The broadcaster had considered relocating some of its overseas channels, and while the regulatory regimes in some countries made this unattractive, it was actively considering the relocation of at least one channel.

A1.47 Further a joint letter from some broadcasters questioned whether the restrictions were a breach of Article 49 of the Treaty of Rome and one broadcaster stated that the country of origin principle in the TVWF Directive did not extend to non-EU countries.

Ofcom's response

- A1.48 It is not correct that Ofcom has no remit to regulate UK-licensed channels operating in non-domestic markets. The 2003 Act gives Ofcom the power to regulate all UK-based licensees, regardless of the target audience, and this is consistent with the UK's international obligations under the TWF Directive³¹.
- A1.49 As regards the points highlighted above:
- a) in the November Statement, Ofcom pointed out that it had a duty to all children affected by channels that it licensed, whether in the UK or elsewhere³²;
 - b) Ofcom does not agree that it would be impracticable to apply the advertising restrictions in overseas markets, even if the tools (e.g. BARB and the FSA's NP model) available do not precisely replicate those in the UK. For example, such channels are already subject to rules banning the advertising of alcohol during programmes that index 120 or more for child audiences, and have found ways of implementing this restriction. In the event of complaints that a non-domestic channel has breached the rules, the broadcaster will need to show BCAP that it has taken reasonable steps to give effect to the intention of the rules;
 - c) Ofcom considered the possibility that channels might seek to relocate to other jurisdictions if advertising restrictions were imposed. Ofcom drew attention to this possibility in the March consultation document³³. The broadcaster's own assessment suggests that, in most cases, it would not be attractive to relocate its channels overseas;
 - d) Ofcom made an adequate case that the restrictions were justified by reference to Article 49 of the Treaty of Rome³⁴. Ofcom said specifically in the November Statement that it had considered whether the restrictions were justified in this context, and explained the reasons for its conclusions that they were³⁵; and
 - e) Ofcom recognises that the TWF Directive does not apply to broadcasts intended exclusively for reception in third countries and which are not received directly or indirectly by the public in one or more Member State. However, where the Directive does not apply, Ofcom's reasoning for not creating an exemption for overseas broadcasters is adequately set out in the November Statement³⁶.

³¹ Article 2(1) of Council Directive 89/552/EEC, as amended by Directive 97/36/EC, says that 'Member States shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State.'

³² See paragraph 6.37, *November Statement*.

³³ See paragraph 4.8, *Television advertising of food and drink products to children*, Ofcom, March 2006 (<http://ofcom.org.uk/consult/condocs/foodads/foodadsprint/section4.pdf>) and paragraph 6.32 and 6.36 to 6.37 of the associated *Impact assessment*, (<http://ofcom.org.uk/consult/condocs/foodads/foodadsprint/annex6.pdf>).

³⁴ This says that: "Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended."

³⁵ See paragraph 6.36, *November Statement*.

³⁶

See paragraphs 6.34, 6.37, 6.38, 6.39 and 6.40 of the *November Statement*, and paragraphs 3.27 – 3.35 of the *Impact Assessment*.

Nutrient profiling

Consultation comments

- A1.50 There was broad support for the use of the FSA's nutrient profiling (NP) model amongst consumer organisations (NCC, Sustain, Which?) and health and medical groups (BHF, BMA, CRUK, HoM, IASO, IHF, MRC/HNR, NICHS, RCP/FPH). One (BMA) said that it was important that advertising of healthy foods should be permitted, in order that health promotion campaigns and healthy eating initiatives were not undermined.
- A1.51 However, two public service broadcasters continued to argue that it contained 'anomalies', and several manufacturers (GSK, Kraft, PTF and a manufacturer) pressed for it to be reviewed as soon as possible. A number of manufacturers (BCCCA, FDF and a manufacturer) disputed the suggestion that the adoption of nutrient profiling would incentivise manufacturers to reformulate their products to make them healthier (though one multichannel broadcaster asserted that it would); one manufacturer noted that even fat and salt-reduced versions of popular snacks did not meet the FSA's threshold for healthier foods. One manufacturer opined that the FSA model was not intended for the extended age range and this was a significant material change in its usage. One music channel broadcaster noted that the model had no application outside the UK. Several reiterated previous arguments against the FSA's nutrient profiling model, including concerns that a standard base of 100g did not represent a realistic portion size for many HFSS products (FDF, MD, PFT), and that it was scientifically invalid for 'good' ingredients to be balanced against 'bad' nutrients (FDF).

Ofcom's response

- A1.52 We do not consider that respondents raised any new issues of significance. As the November Statement noted, the FSA has already committed to a review of the nutrient profiling model after a year of operation, and Ofcom has said that it would consider the implications of that review and, if appropriate, take steps to adopt any revised version of the model³⁷.

Content rules

Consultation comments

- A1.53 There were relatively few comments from broadcasters, advertisers or manufacturers on the revised content rules. The decision to apply specific rules to HFSS products was welcomed by consumer organisations (CCNI, NCC, NHF, Sustain, Which?) and health and medical bodies (HoM). However, a number (BHF, BMA, HoM, NCC, NHF, Sustain) wanted all of the content rules to apply to children up to the age of 16, rather than limiting the specific rules on licensed characters, promotional offers and health claims to primary age children. Another (NS) said that manufacturers of HFSS products should not be allowed to target children of any age. Among the arguments adduced in support of broadening the age restrictions were that it was illogical to seek to protect children up to the age of 16 using scheduling rules, but not to do the same with content rules (BHF, BMA, HoM); and that since scheduling restrictions would not prevent HFSS advertising around programmes most popular with children, it was all the more important that the content rules should protect children up to the age of 16 (Which?).

³⁷ See paragraph 5.55 of the *November Statement*.

Ofcom's response

A1.54 Ofcom agrees that both younger and older children are influenced by advertising, although older children are more media literate and are likely to be affected by advertising in different ways compared to younger children. However Ofcom notes the following points in relation to its consideration of the age to which the restrictions on the use of celebrities and licensed characters, promotional offers and nutritional and health claims should apply:

- For the reasons set out in this Statement Ofcom has decided to adopt Modified Package 1 which excludes HFSS advertising from all programmes made for children and from around programmes of particular appeal to children under 16.
- Should manufacturers therefore in future wish to target children of any age with HFSS advertising, this could only be done in adult- or family-oriented airtime. Given that it would be very expensive for advertisers to seek to target children at times when adults form the majority of the audience, Ofcom considers that the volume of advertising specifically targeted at children under 16 in adult- or family-oriented airtime is likely to be small.
- The content rules therefore represent an additional level of protection for children on top of the scheduling restrictions.
- Those advertisements that will still be targeted at children notwithstanding the above will have to comply with generality of the content rules which apply to all food and drink advertising to children regardless of the age of the target audience or the time of day, and which require that specific techniques such as the use of celebrities and licensed characters as well as promotional offers be used with 'a due sense of responsibility'.
- Ofcom has also committed to a review in about a year of the way in which the new advertising restrictions are working. It will in doing so examine whether advertisers are using adult airtime to promote HFSS products to children. In this, it will work closely with the Department of Health, which is collecting data about advertising treatments which will be available to Ofcom for this review

A1.55 Taking all these points into account, and noting that research suggests that those techniques involving the use of licensed characters and promotions such as give-aways may be more likely to appeal to younger children, Ofcom does not consider it necessary to extend the three age-specific content rules (relating to celebrities and licensed characters, promotional offers and nutritional and health claims) to under 16's in order to meet its regulatory objective of reducing significantly the exposure of children under 16 to HFSS advertising.

Brand equity characters and brand advertisingConsultation comments

A1.56 A consumer group (Which?) argued that the rules restricting the use of licensed characters should be extended to brand equity characters - since scheduling restrictions would not apply to those programmes that were most popular with children, it was important that the content rules should apply to them in the same way as to licensed characters. By contrast, one food manufacturer marketing

products branded with licensed characters argued that the proposed restrictions were unduly harsh, and asserted that the grounds for exempting brand equity characters (the large sums invested in them) applied equally to licensed characters. Although this manufacturer did not advertise its products on television, it was concerned that Ofcom's decision would be used as a precedent by those regulating non-broadcast media. The same manufacturer also alluded to the possibility that a ban on licensed characters might be anti-competitive due to the prohibition on restrictions on the free movement of goods and services under the EC Treaty.

- A1.57 Some consumer organisations (SFT, Which?) and health and medical bodies (CRUK, HoM, IHF, NHA, NICHHS) argued that advertising of brands associated with HFSS products should also be restricted; some said that brand advertising was a powerful form of advertising (IHF, NHA), and that exclusion of brand advertising from the restrictions would be a significant loophole (Which?).

Ofcom's response

- A1.58 We note that while licensed characters can be exploited in many different ways, each of which may generate income streams, the scope for using brand equity characters is limited by their association with the brand. Accordingly, restrictions on the use of brand equity characters in television advertising would impair the value of the brand far more than would be the case for similar restrictions on the use of licensed characters. As regards the concern expressed that Ofcom's regulation of television advertising could have repercussions for non-broadcast advertising, we note that the decisions will rest with the ASA's Committee on Advertising Practice, not with Ofcom. However the Government has made clear, with support from Ofcom, that it is important to limit the displacement of television advertising to non-broadcast media, if the objective of reducing the influence of HFSS advertising on children's food choices is to be achieved. In relation to the possibility that advertising restrictions might be regarded as anti-competitive, we believe that such restrictions can be justified on the grounds of the protection of health.
- A1.59 As regards brand advertising, none of the respondents offered credible ways of overcoming the practical difficulties explained in the November Statement in distinguishing between brands that were HFSS-related and those that were not³⁹. Ofcom noted in its November Statement that it was not yet clear to what extent advertisers would seek to substitute brand for product advertising; DH will be collecting data on this which will be available for Ofcom's review.

³⁹ See paragraph 5.148 of the *November Statement*.

Annex 2

Impact Assessment

This document is published separately – see http://www.ofcom.org.uk/consult/condocs/foodads_new/statement/ia.pdf.

Annex 3

Scheduling rules

A3.1 The following rules will form part of BCAP's rules on the scheduling of television advertisements⁴⁰.

Rules on the Particular Separation of Advertisements and Programmes

Specific Separation Requirements 4.2

GENERAL NOTES:

- (i) The term 'adjacent' where used in these rules refers to a break immediately before or after the programme in question.
- (ii) The term 'children's programmes' means programmes made for children below the age of 16.
- (iii) Channels devoted to children's programmes, or whose programmes are or are likely to be of particular appeal to children, will be unlikely to be able to carry at any time advertising of the kind restricted under 4.2.1 and 4.2.2 below. Such channels should also take particular note of 4.2.3 and 4.2.4. Thus, for instance, dedicated children's channels may not carry any advertising products or services restricted under 4.2.1(b) below, namely: lotteries, pools and food or drinks assessed as high in fat, salt or sugar.
- (iv) For the avoidance of doubt, any given timing, programme category or age band restriction subsumes any other less severe restriction. Thus, a 'post 9pm' subsumes both a 'post 7.30 pm' as well as the restriction on scheduling in or adjacent to children's programmes or programmes likely to have a significant child audience. Similarly, a prohibition on transmission in 'children's programmes', includes e.g. programmes made for pre-school children. Particular care needs to be exercised where a programme for, or likely to be of interest to, children is transmitted late in the evening or in the small hours, as for example at Christmas. Where such a programme is transmitted after 9pm, no advertisement carrying a timing restriction may be transmitted in or around that programme.

Children and young people 4.2.1

(a) The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:

- (i) alcoholic drinks containing 1.2 per cent alcohol or more by volume;

(See also 4.2.5 below)

(See note (iii) below on identification of programmes of particular appeal)

- (ii) bingo;

⁴⁰ The complete rules may be found at the ASA's website at http://www.asa.org.uk/cap/codes/broadcast_codes/scheduling/Contents.htm.

(iii) religious matter subject to the rules on Religious Advertising in the BCAP Television Advertising Standards Code;

(iv) slimming products, treatments or establishments.

(b) The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16:

(i) lotteries;

(ii) pools.

(iii) food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005.

(c) The following may not be advertised in or adjacent to children's programmes or programmes which are of particular appeal to children under 10:

(i) female sanitary protection products.

(d) The following may not be advertised in or adjacent to children's programmes:

(i) drinks containing less than 1.2 per cent alcohol by volume when presented as low or no-alcohol versions of an alcoholic drink;

(ii) liqueur chocolates;

(iii) matches;

(iv) medicines, vitamins and other dietary supplements;

(v) trailers for films or videos carrying an 18- or 15- certificate;

NOTES:

(i) Full details of the FSA's nutrient profiling scheme are available on the FSA website at: <http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

(ii) The restrictions above include sponsorship of the programme.

(iii) Particular appeal – See ASA Advertising Guidance Note 5 - Audience indexing: identification of programmes likely to appeal to children and young people.

(iv) Depending on content and, in particular, on the extent and nature of any portrayal of violence or sexual activity, an alternative timing restriction such as post 7.30pm, post 9pm or even later may often be appropriate for material in category (d)(v), particularly that which is 18 rated.

(v) Again subject to content, this does not preclude the scheduling in or adjacent to children's programmes of advertisements containing brief extracts from films where these are used in connection with promotional offers derived from films for other types of product or service.

Annex 4

Content Rules

A4.1 The following rules will form part of BCAP's TV Advertising Standards Code⁴¹.

7.2 Food and Soft Drink Advertising and Children

Notes:

1. *The rules in 7.2 must be read in conjunction with the other rules in this Code, especially section 8.3, 'Food and Dietary Supplements'. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements. References to food apply also, where relevant, to beverages.*

2. *The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food or soft drink product.*

3. *These definitions apply in rule 7.2:*

- *Children - refers to persons below the age of 16.*
- *Advertisements targeted directly at pre-school or primary school children – advertisements that directly target pre-school or primary school children through their content as opposed to their scheduling. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements.*
- *Licensed Characters - those characters that are borrowed equities and have no historical association with the product.*
- *Equity Brand Characters - those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.*
- *HFSS products - those food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005. Information on the FSA's nutrient profiling scheme is available on the FSA website at: <http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>*

7.2.1 Diet and lifestyle.

Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children.

Notes:

(1) *This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation.*

⁴¹ The complete Code may be found at the ASA's website at <http://www.asa.org.uk/cap/codes/>.

(2) In particular, advertisements should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed.

(3) It is important to avoid encouraging or condoning attitudes associated with poor diets, for example, a dislike of green vegetables.

(4) Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No advertisement should suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.

(5) Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

7.2.2 Pressure to purchase

Note: Please see also 7.3 [Revised numbering] (Pressure to purchase)

(a) Although children may be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases

Notes:

(1) This extends to behaviour shown: for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.

(2) Phrases such as "Ask Mummy to buy you" are not acceptable.

(b) Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves.

(c) Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not buy, consume or use a product or service.

(d) Advertisements must neither try to sell to children by appealing to emotions such as pity, fear, loyalty or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.

(e) Advertisements addressed to children should avoid 'high pressure' and 'hard sell' techniques, i.e. urging children to buy or persuade others to buy. Neither the words used nor the tone of the advertisement should suggest that young viewers are being bullied, cajoled or otherwise put under pressure to acquire the advertised item.

(f) If an advertisement for a children's product contains a price, the price must not be minimised by the use of words such as "only" or "just".

Note:

Products and prices should not be presented in a way that suggests children or their families can easily afford them.

7.2.3 Promotional offers

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

(a) Advertisements featuring promotional offers linked to food products of interest to children must avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

(b) Advertisements should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product.

(c) Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They should not directly encourage children only to collect promotional items or emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time. There should be no suggestion of "Hurry and buy".

(d) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage children to eat more than they otherwise would.

(e) The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

7.2.4 Use of characters and celebrities

Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

Notes:

(1) Advertisements must not, for example, suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.

(2) This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

(3) Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.

(4) Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc.

8.3 Food and dietary supplements

Notes:

(1) The rules in 8.3 must be read in conjunction with the relevant legislation including the Food Labelling Regulations 1996 (as amended) and especially Schedule 6. They apply to all advertising for food products. If an advertisement is targeted at children, Section 7 of this Code also applies. For HFSS product advertisements scheduled in and around programmes of particular appeal to children, please see the BCAP Rules on the Scheduling of Television Advertisements.

(2) Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers or by setting bad examples, particularly to children. Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

(3) The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food or soft drink product.

8.3.1 Accuracy in food advertising

(a) Nutrition claims (e.g. “full of the goodness of vitamin C”) or health claims (e.g. “aids a healthy digestion”) must be supported by sound scientific evidence. Advertising must not give a misleading impression of the nutritional or health benefits of the product as a whole and factual nutrition statements should not imply a nutritional or health claim that cannot be supported. Ambiguous wording that could be understood as a nutritional claim must be avoided. For example, “goodness” should not be used as a synonym for “wholesomeness” and, if a claim relates to taste, that should be made clear, e.g. “It tastes good”, not “It is good”. The scientific meaning of the word “energy”, i.e. calorific value, should not be confused with its colloquial meaning of physical vigour

(b) Nutritional claims and health claims should relate to benefits that are significant and relevant to groups likely to be strongly interested in the advertisement. Claims should be presented clearly and without exaggeration

(c) No nutritional or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children

Notes:

(1) Advertisements targeted directly at pre-school or primary school children are advertisements that directly target pre-school or primary school children through their content as opposed to their scheduling. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements.

(d) The fact that a food product is a good source of certain nutrients does not justify generalised claims of a wider nutritional benefit

Notes:

(1) Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both. For the avoidance of doubt, HFSS product advertisements may make nutritional or health claims in accordance with 8.3.1.

(2) A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, DEFRA Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid “% fat free” claims (issued November 1999). Appropriate consideration and uniform application of such guidelines is needed from the relevant pre-clearance and adjudicatory bodies.

(3) Licensees may also find the Joint Health Claims Initiative Code of Practice useful.

8.3.2 Excessive consumption

Advertisements must not encourage or condone excessive consumption of any food

Notes:

(1) Interpretation of this rule should be by reference to generally accepted nutritional advice. It would clearly not be inconsistent with shots of someone enjoying a chocolate bar; it would, however, preclude someone being shown eating whole boxes of chocolates in one sitting.

(2) Portion sizes or quantities of food shown should be suitable for the occasion and the people portrayed, especially if children are involved. Advertisements should not suggest that a portion intended for more than one person is to be consumed by a single individual or an adult’s portion, by a small child.

(3) If they feature large pack sizes or promotional offers, e.g. “3 for the price of 2”, advertisements should not encourage people to eat more than they otherwise would.

(4) The notion of excessive consumption relates to the frequency of consumption as well as the amount consumed.

8.3.3 Comparisons and good dietary practice

Advertisements must not disparage good dietary practice. Comparisons between products must not discourage the selection of options such as fresh fruit and vegetables, which accepted dietary opinion recommends should form a greater part of the average diet

Notes:

(1) Advertisements should not seem to contradict or ignore good dietary practice.

(2) To reflect generally accepted good dietary practice, a reasonable variety of other foods should be shown if the advertised product is presented as part of a meal.

(3) Food products not intended as substitutes for meals should not be presented as such.

8.3.4 Oral health

Advertisements must not encourage or condone damaging oral health care practices

Note:

For instance, advertisements must not encourage frequent consumption throughout the day, particularly of potentially cariogenic products such as those containing sugar. This rule has children's dental health particularly in mind.

8.3.5 Dietary supplements

(a) Advertisements must not suggest that it is necessary or therapeutic for the average person to augment their diet or that dietary supplements can enhance normal good physical or mental condition

(b) Advertisements must clearly establish those groups of people likely to benefit from a particular form of supplement

Note to 8.3.5(b):

Only certain groups are likely to benefit from particular vitamin or mineral supplements. They might include people on a restricted dietary regimen, those eating unsupplemented, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.