

FSA RESPONSE TO OFCOM CONSULTATION ON BROADCAST ADVERTISING OF FOOD TO CHILDREN

Executive Summary

1. This paper provides an update on developments since the Board's discussion in May 2006 on Ofcom's consultation proposals on tightening controls on broadcast advertising to children and seeks agreement to the Agency response to the consultation.

2. Board Members are invited to:
 - **agree** the minutes of the discussion at the May meeting;
 - **note** developments since; and
 - **agree** the consultation response at Annex C.

NUTRITION DIVISION

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FSA RESPONSE TO OFCOM CONSULTATION ON BROADCAST ADVERTISING OF FOOD TO CHILDREN

Issue

1. To agree the Agency response to this consultation.

Strategic Objective

2. Action in this area contributes to the Agency's objective of achieving improvements in children's diets.

Background

3. In May 2006 the Board agreed the content of the Agency's response to the Ofcom consultation document '*Television advertising of food and drink products to children: options for new restrictions*' (www.ofcom.org.uk/consult/condocs/foodads/). The draft minutes of the meeting and the background paper are attached at Annexes A and B respectively. An audio record of the discussion has also been published.
4. The Board agreed that the response should:
 - conclude that none of the proposed options provides a sufficient response to concerns about children's diets and the evidence on the effect of promotional activity on children's food preferences and behaviour;
 - argue that advertising restrictions should be underpinned by the FSA's nutrient profiling model; and
 - press for restrictions to apply up to the 9pm watershed in order to provide adequate protection for older children.

Recent Developments

5. On 19 May Ofcom announced that it would extend the consultation deadline to 30 June to allow consultees to take account of an updated impact assessment based on data for the whole of calendar year 2005. This is understood to be in response to requests from industry representatives developing an alternative approach. This assessment is expected to be available before the Board discussion. Ofcom also indicates in its announcement that it would welcome views on a pre-9pm watershed ban, although it considers this would be disproportionate.

6. On 23 May the National Heart Forum announced that it was preparing an application for judicial review against Ofcom's decision not to include an option based on the 9pm watershed in its consultation package.

Draft Response

7. A draft response is attached at Annex C.

Board Action Required

8. Board Members are invited to:
 - **agree** the minutes of the discussion at the May meeting;
 - **note** developments since; and
 - **agree** the consultation response at Annex C.

FSA RESPONSE TO OFCOM CONSULTATION ON BROADCAST ADVERTISING OF FOOD TO CHILDREN

(Paper CLO 06/05/04)

[Prior to the discussion of this item Richard Ayre declared an interest as a potential employee of Ofcom and, with the agreement of the Chair and the Director of Legal Services, consequently left the room and took no part in the discussion and determination of this issue.]

1. The Chair informed Board members that this item was being taken at this closed Board meeting because there was no open Board meeting scheduled before the end of the Ofcom consultation period (6 June). Ofcom had not been prepared to agree to an extension to its deadline to allow the Board to discuss this issue at its next open meeting on 15 June. It had therefore been agreed that this item would be sound recorded for later transmission on the FSA's website to meet the FSA's commitment to transparency and openness.
2. The Chair invited Rosemary Hignett (Head of Nutrition Division) to the table to introduce the paper and answer questions.
3. Rosemary Hignett reminded Board members that in July 2004, the Board had agreed that action needed to be taken to address the imbalance in TV advertising of food to children. This decision had been based on
 - the fact that many children eat too much fat, salt and/or sugar;
 - an independent review of the evidence, which had concluded that advertising affected children's eating related behaviour¹; and
 - evidence that the majority of food advertisements during children's TV are for foods high in fat, salt or sugar.
4. The Board had concluded that
 - action on advertising during children's TV programmes would be likely to have a beneficial effect and that wider action may be justified; and
 - action on the relative amounts of advertising for foods high in fat, sugar or salt ("HFSS" foods) compared with "healthier" foods, and the times at which these adverts are scheduled, was likely to be the most effective way to address the current imbalance.

¹ Review of research on the effects of food promotion to children: Hastings *et al*/ September 2003

5. The content of an evidence package published by Ofcom in July 2004 and details of commitments to action by health departments across the UK had been set out in Annex 2 to the paper. The Ofcom consultation package, described in Annex 3 to the paper, updated the evidence package published in 2004 and set out four possible options. The costs and benefits of three of these had also been assessed. The focus in options 1 to 3 was on children up to nine years of age despite the fact that the evidence from the Hastings review covered children aged 2-15 years. The points proposed to be made in the FSA's response had been set out in paragraph 13 of the paper and made clear that the FSA did not consider any of the proposed options to be a sufficient response to the problem of imbalance in TV advertising to children; in particular that focussing on children up to age 9 was not justified by the evidence on impact.
6. The Chair drew Board members attention to the letter sent by Which? to the Chief Executive dated 28 April.²
7. In discussion Board members made the following points:
 - there was general disappointment on the options proposed and two Board members made pleas for a more radical approach;
 - with some exceptions, there was overall support for using nutrient profiling to underpin advertisement restrictions (option 1 was the only one that did so);
 - adverts were usually aimed at a few years above the target age group due to the aspirational nature of children. A more realistic approach would be to ban the advertising of HFFS foods before the 9pm watershed;
 - the proposals should take more account of children above age 9; children between 9-15 years often made their own food choices/purchases, and statistics showed the biggest problem with childhood obesity was in this age group;
 - it was illogical to have restriction of advertisements for all foods (options 2 and 3), as this would restrict advertising of healthy foods such as fruit and vegetables. It was important to encourage the industry to reformulate foods to achieve a healthier nutrient profile;
 - parents' views needed to be taken into account, and the Which? research indicated that they supported action to restrict food advertising for less healthy foods³;

² Copies of the Which? letter had also been sent separately to Board members. The letter provided details of recent research by Which? indicating that the Ofcom proposals failed to meet the Government's objectives to ensure that children are not encouraged to eat too many foods high in fat, sugar and salt.

- it would be preferable to propose a new option, rather than option 1 with significant amendments;
 - it was agreed that finding a means of accessing HFSS food advertising revenue to promote healthier options would not be feasible.
 - with respect to brand advertising it was considered that this was a complex issue to which the Board had no ready answer.
8. In summary, the Chair noted that the Board had agreed that the FSA should submit a short, focussed response covering the following points:
- that options 1- 3 did not provide a sufficient response to the situation, bearing in mind the concerns about children's diets and findings of the Hastings review;
 - that advertising restrictions should be underpinned by the FSA's nutrient profiling model; and
 - that restrictions on the advertising of HFSS foods should apply up to the 9pm watershed to extend protection to older children;

³ Which market research – a survey of 815 parents of 0-16 year olds in Great Britain took place from 9 February to 7 March 2006. According to latest Which? market research almost four out of five of parents thought that TV advertisements for unhealthy food should not be shown at the times when children are most likely to be watching TV.

CLO 06/05/04

AGENDA ITEM 4.1, 11 MAY 2006

FSA RESPONSE TO OFCOM CONSULTATION ON BROADCAST ADVERTISING OF FOOD TO CHILDREN

Executive Summary

1. This paper summarises the options Ofcom is consulting on to tighten controls on broadcast advertising of food to children. It considers how these might contribute to improving the promotional environment for children, and proposes issues to be covered in the Agency's response to the consultation.
2. Board Members are invited to:
 - **note** the options being considered by Ofcom; and
 - **agree** that the Agency's response should cover the points listed in paragraph 13.

Nutrition Division

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FSA RESPONSE TO OFCOM CONSULTATION ON BROADCAST ADVERTISING OF FOOD TO CHILDREN

Issue

1. To agree the direction and outline content of the Agency's response to this consultation.

Strategic Objective

2. Action in this area contributes to the Agency's objective of achieving improvements in children's diets.

Background

3. In July 2004 (*FSA 04/07/05*) the Board agreed that action was needed to address the imbalance in TV advertising of food to children. This was based on:
 - the fact that many children eat too much fat (particularly saturated fat), salt and/or sugar;
 - an independent review of the evidence which concluded that advertising affects children's eating related behaviour⁴ and
 - evidence that the majority of food advertisements during children's TV are for foods high in fat, salt or sugar.
4. The Board concluded that:
 - action on advertising during children's TV programmes would be likely to have some beneficial effect and that wider action might also be justified; and
 - action on the relative amounts of advertising for foods, high in fat, sugar or salt ("HFSS foods") compared with "healthier" foods, and the times at which these adverts are scheduled, was likely to be the most effective way to address the current imbalance.
5. The content of an evidence package published by Ofcom (see Annex 1 for a description of the role of Ofcom) in July 2004 and details of commitments to action by health departments across the UK are set out in Annex 2.

⁴ Review of research on the effects of food promotion to children; Hastings et al September 2003

6. Both the Board and health departments placed their views on the need for further controls on broadcast advertising in the context of wider action to ensure a balanced promotional environment for children. Health departments lead on this issue. In England DH has set up a stakeholder body, the Food and Drink Advertising and Promotion Forum, to consider equivalent arrangements for non-broadcast advertising and other forms of promotion to children.

Ofcom's Consultation Package

7. The Ofcom consultation document updates the evidence package published in 2004, sets out four possible options and assesses the costs and benefits of three of these. Annex 3 describes the package. The closing date for the consultation is 6 June. During the consultation period, Ofcom will be conducting qualitative deliberative research among adults and children across the UK to gauge their views on the policy options. Ofcom plans to issue its final decision later in the year. The timing for implementation will depend on the nature of the decision taken.

Discussion

8. The Board has made it clear that it wishes to see firm action to tackle the imbalance in TV advertising of food, which is dominated by HFSS foods. The FSA's concern has not been limited to impact on children up to age 9. The evidence on impact of food promotion points to effects on children's food preferences, purchase behaviour and consumption in older children too. The Hastings and Livingstone reviews both looked at children aged 2 -15. As all of the proposed options focus on younger children none are acceptable as they stand. In order to help clarify why we think the current options are deficient, we have listed below the key elements in what would underpin an acceptable approach. This list is consistent with previous Board discussions in open session.
9. The important elements of an acceptable approach would be:
 - content and volume or timing restrictions which tackle imbalance in TV advertising to all children, not just those ages up to 9;
 - use of the Agency's nutrient profiling model (outline at Annex 4) to target content restrictions on advertising of HFSS foods. The proposed BCAP content rules would apply to all foods, not just HFSS foods. This is inappropriate because use of promotions, celebrities and licensed characters in promoting healthier foods, should be encouraged, not prohibited; and
 - use of the Agency's nutrient profiling model to target timing or volume restrictions on advertising of HFSS foods.

10. Ideally the Agency would like to see some of the resources allocated to advertising HFSS foods diverted to promoting healthier options. If this is not possible - and Ofcom argue it is not - the next best option is to increase the relative prominence of healthier foods by reducing advertising of HFSS foods. Reducing advertising of all foods, including healthier options, will neither affect the balance of advertising nor provide any incentive to advertisers to reformulate (for example by reducing sugar and salt levels in breakfast cereals) to create healthier foods which can be advertised.
11. Ofcom specifically ask whether advertising or sponsorship for all food and drink should be precluded for programmes aimed at **pre-school children**. As research suggests that the youngest children regard advertising as simply entertainment and are not able to distinguish between programmes and advertisements, it can be argued that there should be no advertising or sponsorship aimed at the youngest children. There is no food policy related reason however for the Agency to object to food advertisements in pre-school programming other than those for HFSS foods.
12. Ofcom specifically asks for **views on brand**, as opposed to product, advertising and sponsorship (e.g. McDonalds, Kentucky Fried Chicken, Harvester, Cadburys). This is an important potential loophole which must be closed, for example by applying the same restrictions to the advertising of food company's brand names as to advertising of HFSS foods.

Recommended Response

13. It is therefore recommended, consistent with previous Board consideration of these issues, that the Agency's response should:
- note the growing body of evidence on the links between TV advertising exposure and children's food preferences;
 - commend the extensive and professional work carried out by Ofcom in developing the consultation package;
 - indicate that the Agency does not believe any of the proposed options are a sufficient response to the problem of imbalance in TV advertising to children and in particular that focusing on children up to age 9 is not justified by the evidence on impact;
 - express regret that it has not been possible to find a means of balancing the promotional diet by accessing HFSS food advertising revenue to promote healthier options;
 - stress that content and timing or volume restrictions should be underpinned by the Agency's nutrient profiling model; and

- urge Ofcom to treat brand advertising in the same way as advertising of HFSS foods, so as to avoid providing a means of avoiding the proposed restrictions.

Next Steps

14. Once the Board has agreed the approach to be taken in the Agency's response the Executive will draft the response for final clearance.

Board Action Required

15. Board Members are invited to:

- **note** the options being considered by Ofcom; and
- **agree** that the Agency's response should cover the points listed in paragraph 13.

THE ROLE OF OFCOM

Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

Ofcom is required under the Communications Act 2003 (“the Act”) and the Broadcasting Act 1996 (as amended) to draw up a code for television and radio, covering standards in programmes, sponsorship and fairness and privacy. This Code is known as the Ofcom Broadcasting Code and applies to radio and television content (with certain exceptions in the case of the British Broadcasting Corporation).

Ofcom has contracted-out its advertising standards codes function to the Broadcast Committee of Advertising Practice Limited (BCAP) which operates in consultation with and with the agreement of Ofcom.

BCAPs delegated authority includes responsibility for maintaining, reviewing and updating the areas concerning advertising. The BCAP Television Advertising Standards Code sets out the rules that govern advertisements on any television channel licensed by Ofcom. The rules are framed to ensure that advertisements are legal, decent, honest and truthful and do not mislead or cause harm or serious or widespread offence.

Ofcom has in addition contracted-out its powers of handling and resolving complaints about breaches of the BCAP Codes to the Advertising Standards Authority (Broadcast) Limited (ASA(B)).

Ofcom retains complaint investigation functions in respect of:

- (a) political advertising;
- (b) unsuitable sponsorship;
- (c) discrimination between advertiser and
- (d) scheduling of advertisements.

ASAB works closely with and under the umbrella of the Advertising Standards Authority (ASA) to provide, insofar as is practicable, a co - ordinated and consistent approach to advertising standards regulation across broadcast and non-broadcast media.

The Committee of Advertising Practice (CAP), also under the umbrella of the ASA is the self regulatory body that creates, revises and enforces the British Code of Advertising, Sales and Promotion and Direct Marketing which covers non broadcast media (advertisements in newspapers, magazines etc).

OFCOM EVIDENCE AND HEALTH DEPARTMENTS' COMMITMENTS

In July 2004 Ofcom published an extensive package of evidence on the market for TV advertising of food, children's viewing patterns, the content of food and drink advertisements, the impact of advertising on children's food related behaviour and consumer attitudes to regulation of broadcast advertising. This evidence package confirmed the Agency's view that advertising has an impact on children's eating behaviour. It also concluded that whilst the direct effect of advertising was modest, the indirect effects were likely to be larger. However, there was insufficient evidence to determine the relative size of the effect of TV advertising compared with other relevant factors such as family eating habits. The consumer research found that parents accepted responsibility for their children's diets but believed that increased regulation of food advertising would help them to encourage their children to eat more healthily.

The 'Choosing Health' White Paper⁵ published in November 2004 called on Ofcom to:

'consult on proposals on tightening the rules on broadcast advertising, sponsorship and promotion of food and drink and securing their effective implementation by broadcasters in order to ensure that children are properly protected from encouragement to eat too many high fat, salt and sugar foods – both during children's programmes and at other times when large numbers of children are watching. It should also include options for broadcasters and advertisers to participate in healthier promotions.'

⁵ This work complements that being taken forward as part of the Scottish Action Plan *Eating for Health, Meeting the Challenge*, the Welsh strategy "*Food and Wellbeing*" and the proposed *Food and Nutrition Strategy for Northern Ireland*.

OFCOM'S CONSULTATION PACKAGE

Ofcom concludes that the updated studies confirm the original findings, and in particular that there is a growing body of evidence of the links between TV advertising exposure and children's food preferences. It also confirms that whilst the analysis shows that TV advertising of food to children is declining as a proportion of advertising spend, there was an increase in absolute terms from 2004 to 2005 and TV is still the key medium for communicating messages about food and drink to the widest audiences. Children's exposure to TV food advertisements fell by 6.25% from 2004 to 2005 but an increasing proportion was delivered during 'adult' airtime.

Ofcom conclude that steps need to be taken to reduce the impact of TV advertising of high fat, salt or sugar (HFSS) foods. They also find that self-regulation alone would not be a sufficient response, given the need for robust action and differing stakeholder views on the issue. Measures to offset the negative impact of HFSS food advertising with positive messaging (e.g. advertisers trading points) are rejected. A pre-watershed (21.00) ban on HFSS food advertising is also rejected on the grounds that it would have a disproportionate impact on broadcasters and because research indicated parents were not favour of this approach.

Of the 4 policy options (summary below) only option 1 uses the Agency's nutrient profiling model (agreed by the Agency Board FSA 05/10/04) to differentiate foods. This option would prohibit advertising of HFSS foods in children's programmes and programmes of particular appeal to young children (up to 9 years old). Option 2 would provide a ban on all food and drink advertisements in children's programmes and programmes of particular appeal to young children (up to 9 years old). Option 3 would restrict the volume of food and drink advertisements across a wider range of programming, including the time period (6 pm–8 pm) when most young children (up to 9 years old) watch TV. Option 3 has been developed because of the impact of options 1 and 2 on channels broadcasting only children's programming. Under option 4 Ofcom invites industry to propose an alternative workable and effective option which meets the regulatory objectives set out and commands wide industry stakeholder support.

The proposed content rules which feature in options 1, 2 and 3 would affect advertising of all food and drink. The key changes are prohibitions on targeting young children via promotions and celebrities and licensed cartoon characters. This would not affect unlicensed cartoon characters (e.g. Tony the Tiger) linked to specific products

Ofcom estimate that options 1, 2 and 3 would each reduce children's exposure to advertisements for HFSS foods by about 50%. Economic analysis carried out by the Agency and the Department of Health has put a monetary value on the attendant public health gains based on the benefits of reducing consumption of saturated fat,

salt and sugar and replacement of advertised foods with healthier options as appropriate. This analysis estimates that annual health benefits would be up to £303m per annum for option 1 or 1250 lives saved, slightly less for option 2 and up to £309m per annum or 1275 lives saved for option 3.

Summary of the Ofcom options

OPTION 1: Timing restrictions on advertising of food and drink products high in fat, salt or sugar (HFSS)

- No HFSS product advertising to be shown in programmes made for pre-school children;
- No HFSS product advertising to be shown in programmes specifically made for children;
- No HFSS product advertising to be shown in programmes of particular appeal to children up to 9 years old;
- No sponsorship by HFSS products of programmes affected by the above restrictions;
- BCAP's rules will be applied to food and drink advertising and sponsorship.

For children's channels only, these timing restrictions to be phased in over a period of three years in order to allow programmers to plan for a potential loss in revenue

OPTION 2: Timing restrictions on all food and drink advertising

- No food or drink advertising to be shown in programmes made for pre-school children;
- No food or drink advertising to be shown in programmes specifically made for children;
- No food or drink advertising to be shown in programmes of particular appeal to children up to 9 years old;
- No sponsorship by food or drink products of programmes affected by the above restrictions;
- The above restrictions do not apply to healthy eating campaigns supported or endorsed by the Government;
- BCAP's rules will be applied to food and drink advertising and sponsorship.

For children's channels only, these timing restrictions to be phased in over a period of three years in order to allow for programmers to plan for a potential loss in revenue.

OPTION 3: Volume based restrictions on all food and drink products

- No food or drink advertising to be shown in programmes made for pre-school children.

- A limit to the amount of food and drink advertising when young children (up to 9 years old) are most likely to be watching. This could be:
 - a limit of 30 seconds per hour between 6am and 9am and between 3pm and 6pm on week days, as well as 6am to 1pm at the weekend;
 - a limit of 60 seconds per hour during family viewing times – between 6pm and 8pm on week days and between 1pm and 8pm at the weekend and
 - a limit of 30 seconds per hour throughout the day for children’s channels – except pre-school channels, which would carry no food or drink advertising at all
- BCAP’s rules will be applied to food and drink advertising and sponsorship.

Cable and satellite broadcasters are allowed to show an average of nine minutes of advertising per hour. Terrestrial broadcasters can show an average of seven minutes per hour, rising to eight minutes at peak times (7am to 9am and 6pm to 11pm).

OPTION 4: an invitation to propose a workable and effective option, combining some or all of the above and/or new elements, which commands stakeholder support.

Current BCAP rules

Advertising must not take advantage of children’s inexperience or their natural credulity and sense of loyalty.

Advertisements for products of interest to children must take account of the level of experience of those in the relevant age groups so as to avoid arousing unrealistic expectations.

If advertisements for products of interest to children show or refer to characteristics which might influence a child’s choice, those characteristics must be easy for children of the appropriate age to judge.

Advertisements must not directly advise or ask children to buy or to ask their parents or others to make enquiries or purchases.

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 use a particular product or service.

Nutrition claims (eg ‘full of the goodness of vitamin C’) or health claims (eg ‘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.

Advertisements must not encourage or condone excessive consumption of any food.

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 option recommends should form a greater part of the average diet.

Advertisements must not encourage or condone damaging oral health care practices.

Proposed BCAP content rules

- Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children;
- Advertisements must not advise or ask children to buy, or ask their parents to buy, the products;
- Promotional offers (including collectables and giveaways) in food and drink advertisements must not be targeted at children under 10;
- Advertisements must not encourage children to eat or drink the product only to obtain a promotional offer;
- Celebrities and licensed characters must not be used in food and drink advertisements directly at children under 10;
- Nutrition claims must be supported by sound scientific evidence, and must not give a misleading impression of the health benefits of the product as a whole
- No nutritional or health claims may be targeted at pre-school children;
- Advertisements must not condone or encourage excessive consumption of any food or drink.

Ofcom consultation questions (**those in bold are of particular relevance to the Agency**)

Q1. Do you agree that the regulatory objectives set out in paragraph 5.2 above are appropriate?

Q2. Do you consider that it is desirable to distinguish between foods that are high in fat, salt or sugar and those that are healthier in order to achieve the regulatory objectives, or could an undifferentiated approach provide a reasonable alternative?

Q3. If so, do you consider the FSA's nutrient profiling scheme to be a practical and reasonable basis for doing so? If not, what alternative would you propose? (Note: The nutrient profiling scheme was developed by the FSA and handed to Ofcom following extensive consultation (see FSA web site). This

being the case, and given the scheme itself and the science upon which it is based fall outside Ofcom's area of responsibility and expertise, it is not appropriate in this consultation to seek responses on those matters).

Q4. Do you agree that voluntary self-regulation would not be likely to meet Ofcom's regulatory objectives or the public policy objectives?

Q5. Do you agree that the exclusion of all HFSS advertising before 9.00pm would be disproportionate?

Q6. Do you agree that all food and drink advertising and sponsorship should be excluded from programmes aimed at pre-school children?

Q7. Do you agree that revised content standards should apply to the advertising or sponsorship of all food and drink advertisements?

Q8 Do you consider that the proposed age bands used in those rules aimed at preventing targeting of specific groups of children are appropriate?

Q9. Do you consider the proposed content standards including their proposed wording to be appropriate, and if not, what changes would you propose, and why?

Q10: Do you consider a transitional period would be appropriate for children's channels in the context of the scheduling restrictions, and if so, what measure of the "amount" of advertising should be used?

Q11: Do you consider there is a case for exempting low child audience satellite and cable channels from the provisions of Package 3?

Q12: Do you agree that there should not be a phase-in period for children's channels under Package 3? Television advertising of food and drink products to children

Q13. Which of the three policy packages would you prefer to be incorporated into the advertising code and for what reasons?

Q14: Alternatively, do you consider that a combination of different elements of the three packages would be suitable? If so, which elements would you favour within an alternative package? (You should note that the analysis in the Impact Assessment has focused on estimating the costs of restricting scheduling, volume, and content separately and would therefore allow consideration of other combinations of the same elements).

Q15. Where you favour either Package 1 or 2, do you agree that it would be appropriate to allow children's channels a transitional period to phase in restrictions on HFSS / food advertising, on the lines proposed?

Q16. Do you consider that the packages should include restrictions on brand advertising and sponsorship? If so, what criteria would be most appropriate to define a relevant brand? If not, do you see any issue with the prospect of food manufacturers substituting brand advertising and sponsorship for product promotion?

Q17: Ofcom invites comments on the implementation approach set out in paragraph 5.45 and 5.46.

Supplementary Impact Assessment questions

AQ1: Do you agree with the basic modelling approach set out above by Ofcom? Are you aware of other data sources which could be used to corroborate the data used by Ofcom?

AQ2: Do you agree that the range of substitution percentages set out in table 7.3 reflect the likely mitigation scenarios? Explain the reasoning behind your answer.

AQ3: For the other non-children's cab/sat channels, is it appropriate to apply the volume restrictions to all of these channels or should there be an audience related threshold applied to these channels before the restrictions come into effect? If there should be an audience related threshold, please provide views on what this should be.

AQ4: Do you agree that the range of substitution percentages set out in table 7.7 reflect the likely mitigation scenarios for volume restrictions? Explain the reasoning behind your answer.

AQ5: Ofcom would be interested to hear your views on the assumptions and methodology used in this Impact Assessment. If you do not agree with the assumptions and methodology, set out above, please provide the reasoning behind this and details of an alternative approach.

THE AGENCY'S NUTRIENT PROFILING MODEL

The Agency's nutrient profiling model has been specifically developed to help Ofcom with its review of the regulations governing the broadcast advertising of food to children.

In October 2005 the Agency Board agreed the model⁶ as an appropriate basis for underpinning regulatory intervention in relation to broadcast advertising to children both in terms of scheduling and content restrictions. The model was subsequently handed over to Ofcom in December 2005 and was publicly recognised by Caroline Flint MP, Parliamentary Under Secretary for Public Health and James Purnell, Broadcasting Minister for the Department of Culture, Media and Sport, as fit for purpose⁷.

The model is based on a simple "scoring" system which takes into account the key elements of concern in children's diets. It recognises the contribution made by beneficial nutrients (protein – as a marker for the important contribution of meat and dairy products to iron and calcium levels - fibre, fruits, vegetables and nuts) and penalises food with components that children should eat less of (energy, saturated fats, salt and sugars). The contributions made by dairy products, breakfast cereals, meat and fruit and vegetables are taken into account by the model.

Points are allocated depending on the amount of each nutrient in 100g of the food, allowing foods to be categorised on the basis of their overall points score. The scoring criteria are based on advice on nutrient intakes established by the Scientific Advisory Committee on Nutrition (SACN) and the Committee on Medical Aspects of Foods (COMA). Foods with four points or more, and drinks with one point or more, are considered "high" in fat, saturated fat, sugar or salt and could be subject to broadcast advertising restrictions.

The model was developed with advice from an Expert Working Group (including independent nutritionists and dieticians, as well as industry and consumer representatives) following extensive testing and scrutiny and has been tested to ensure the results are consistent with the views of nutrition professionals, and with existing advice on healthy eating, including the Balance of Good Health. The model is suitable for use for age 5 upwards.

The model has been subjected to external scrutiny via an independently chaired scientific workshop attended by independent nutrition academics and has also been considered by SACN, which supported the model for the intended use.

⁶ www.food.gov.uk/multimedia/pdfs/fsa051004.pdf

⁷ www.food.gov.uk/news/newsarchive/2005/dec/finalnutprofmod for press release quotes

DRAFT RESPONSE TO OFCOM CONSULTATION “TV ADVERTISING OF FOOD AND DRINK PRODUCTS TO CHILDREN: OPTIONS FOR NEW RESTRICTIONS”

Thank you for the opportunity to respond to this consultation. The Agency is extremely concerned about the imbalance in many children’s diets and the effect this can have on their health and wellbeing, and welcomes Ofcom’s engagement with this crucial public health issue.

We are disappointed, however, with the three options set out in the consultation document. In our view none of them adequately addresses the issue. The evidence base on the impact promotional activity on children, as set out in the Agency commissioned Hastings review⁸, included studies involving children aged 2-15 years, yet the emphasis in the consultation document is on protecting children aged nine years and younger. We consider that the action taken must also protect older children. We note that the supplementary announcement published on 19 May indicates that you would welcome comments on a pre 9pm watershed on advertisements for food high in fat, salt or sugar. We consider that this offers a practical means of extending protection to older age groups which is consistent with other broadcasting controls and would therefore support that approach.

We are also concerned that only one of the options set out in the consultation document uses the Agency’s nutrient profiling model to make sure the new restrictions only apply to advertising of foods high in fat, salt or sugar. We can not support any approach that would restrict the advertising of healthier foods as this would be in direct conflict with efforts to promote healthy eating to children. Furthermore, without the use of a nutrient profiling approach there is no incentive for industry to reformulate their products to reduce their fat, saturated fat, salt and/or sugar content.

Finally, we were surprised at the decision to extend the consultation deadline to allow industry further time to submit a ‘fourth option’ when our request for an extension to allow discussion at our open Board meeting in June had been turned down. I trust that if any ‘fourth option’ which emerges from industry is considered a viable approach it will be subject to consultation with other interested parties.

⁸ Review of research on the effects of food promotion to children; Hastings et al September 2003