

UK Government Open consultation: Total restriction of online advertising for products high in fat, sugar and salt (HFSS)

**Response prepared by World Cancer Research Fund International
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Annex A: consultation questions

1. Do you support the proposal to introduce a total online HFSS advertising restriction?

Yes.

Please explain your answer and provide relevant evidence

World Cancer Research Fund International (WCRF International) leads and unifies a network of cancer prevention charities with a global reach, including World Cancer Research Fund UK (WCRF UK). We are the world's leading authority on cancer prevention research related to diet, weight and physical activity. We work collaboratively with organisations around the world to encourage governments to implement policies to prevent cancer and other non-communicable diseases (NCDs).

We welcome the UK Government's proposal for a total restriction of online advertising for products high in fat, sugar and salt (HFSS). This is a positive step towards achieving the Government's ambition of tackling obesity in adults and children, and will have multiplying positive effects, as we know that obesity increases the risk of at least 12 different types of cancer [1].

In line with the government's Obesity Strategy, the purpose of this online advertising ban is to reduce children's exposure to HFSS advertising, in order to help reduce their consumption of HFSS products. Achieving this goal requires stronger regulation on the marketing of HFSS products and ensuring that children are less likely to be exposed to these advertisements.

Research demonstrates that children and young people's exposure to digital marketing of unhealthy foods (such as HFSS products) is associated with the use and consumption of these products [2] [3]. The current broadcasting restrictions on HFSS advertising, while necessary, are weak and do not address the pervasiveness of food marketing in the digital sphere effectively [4]. Given an absence of transparency in demonstrating the level of exposure to harmful marketing of children, governments should adopt a precautionary approach and therefore develop a comprehensive ban on the marketing of HFSS products.

Online marketing restrictions should address marketing for mixed audiences, including sites, platforms and apps, likely to be of interest to children – and as stated

here “likely to come to the attention of UK children” – even if they are not the primary target audience [5].

Restrictions limited to child-directed online content have been shown to have a limited impact [6], and it is therefore recommended that digital marketing regulations of HFSS attempt to capture all the marketing that children are exposed to, and should refrain from focusing on advertiser’s intent, or child proportion’s audiences, to effectively limit children’s exposure to HFSS promotions.

The proposed definition is therefore not only more comprehensive in scope, but also presents an innovative model for marketing restrictions being implemented, with knowledge that many more children are exposed to online advertising than targeted. It is progressive that the proposed regulations in the digital environment address all types of marketing, such as on social media platforms, websites, game platforms and apps, as supported by existing research [7]. However, it is important that once introduced, the digital advertising environment is monitored for new, innovative way of reaching audiences, especially children.

As members of the Obesity Health Alliance, we also support its submission and the concerns raised in their consultation response.

[1] World Cancer Research Fund / American Institute for Cancer Research. Continue Update Project Expert Report 2018. Body fatness and weight gain and the risk of cancer. Available at <http://www.dietandcancerreport.org/>

[2] Buchanan, L., Kelly, B., Yeatman, H., & Kariippanon, K. (2018). The Effects of Digital Marketing of Unhealthy Commodities on Young People: A Systematic Review. *Nutrients*, 10(2), 148.

[3] Baldwin, H., Freeman, B., & Kelly, B. (2018). Like and share: Associations between social media engagement and dietary choices in children. *Public Health Nutrition*, 21(17), 3210-3215. doi:10.1017/S1368980018001866

[4] Boyland, Emma and Tatlow-Golden, Mimi (2017). Exposure, Power and Impact of Food Marketing on Children: Evidence Supports Strong Restrictions. *European Journal of Risk and Regulation*, 8 pp. 224–236.

[5] Golden-Tatlow, M. & Garde, A. (2020). Digital food marketing to children. Exploitations, surveillance and rights violations. *Global Food Security*. 27. 100423.

[6] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children’s rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

[7] Ibid.

Scope

2. We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of

UK children and which have the effect of promoting identifiable HFSS products, while excluding from scope:

- **marketing communications in online media targeted exclusively at business-to-business. We do not seek to limit advertisers' capacity to promote their products and services to other companies or other operators in the supply chain**
- **factual claims about products and services**
- **communications with the principal purpose of facilitating an online transaction**

Do you agree with this definition?

No

Please explain your answer and provide relevant evidence

While we agree with most of this definition, we also believe there are some gaps and potential for implementation loopholes in the provided exclusions that need to be addressed.

The current exclusions, as outlined in the definition, would result in children being exposed to HFSS promotions, even if it is for the purpose of business-to-business marketing communications, factual claims, and for the purpose of facilitating an online transaction, due to a lack of clarity of what may be interpreted under each of these exemptions.

First, what is included under factual claims should be defined to ensure that this exemption cannot be used as a promotional tactic. Secondly, the definition outlines “communications with the principal purpose of an online transaction” as being an exclusion to this marketing ban. We believe that this may also constitute a potential loophole, given the advances with social media channels and the built-in features which allow users to buy directly off their platforms. While facilitating online transactions is just a feature of these platforms, we believe they have a principal role in marketing and advertising of products, and therefore should not be exempt from the regulations.

Furthermore, with the UK being at the forefront of novel digital advertising strategies, such as outdoor digital advertising, it is beneficial that policies are designed to be flexible to incorporate these new and evolving digital marketing tactics [8]. In addition, regulating social media and mitigating the effects of “influencer marketing” should be further developed in the scope of this proposal, given the growing trend in online influencer marketing. We therefore suggest that the restrictions should be expanded to include the use of social influencers advertising or promoting an HFSS product.

It is important that the regulations include a mechanism for the scope of the restrictions to be formally reviewed and revised to close any loopholes that emerge, and that NGOs and academics have a role in developing the definitions.

[8] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

3. Do you foresee any difficulties with the proposed approach on types of advertising in scope?

Yes

4. If answered yes, please can you give an overview of what these difficulties are? Please provide evidence to support your answer. Please explain your answer and provide relevant evidence

While we agree with the above definition, we believe that there are additional features to be considered in order to ensure that the scope is comprehensive and clear.

Firstly, a difficulty regarding the exclusion of “factual claims” exists when considering the advertising impact that brand awareness and recognition has on the marketing HFSS items to children. Children are not protected from brand marketing [9], where an unhealthy food company can still promote its brand to children even if it does not promote unhealthy food directly. The use of factual claims can therefore bear unintended consequences of marketing HFSS products, through brand awareness and recognition.

Secondly, there are concerns regarding the shift towards digital technologies being used for outdoor advertising, which would allow advertisements from websites to be used for outdoor digital spaces. We believe that this type of advertising should be explicitly included within the scope of the propose restrictions, in order to prevent any loopholes in the regulations from being exploited.

Additionally, we anticipate some enforcement difficulties included in this policy, due to the extensive grounds that it aims to cover. While we strongly support the aim of the policy, we believe that, as the policy is currently outlined, the inclusion criteria is extremely vast and there will be challenges in implementing this ban to all that is included if a strong enforcement mechanism is not mandated in the policy.

It is not clear whether an age-based system of monitoring HFSS marketing is being introduced to support the enforcement of this proposal and, if so, what the defined minimum age would be. Research shows that the minimum legal age for HFSS marketing should be set at 16 years at least [10], but preferably up to age of 18, to

be in line with a child rights-based approach [11]. Conversely, if an age-based model is not being used, it is unclear how the government will assess, monitor and restrict all the potential advertisements to which audiences, including children, are exposed to, without collecting age-based data.

We posit that the proposed policy can be perceived as including contradictions, specifically regarding the use of age-based data. As such, we suggest that a robust and fail-safe way forward would be to apply a precautionary approach and enact a total ban but collects age-related information to inform monitoring and compliance.

We outline our proposals for a strong monitoring and enforcement system under the 'Enforcement and Liability' section of this consultation.

[9] VicHealth (2020), Under the radar: Harmful industries' digital marketing to Australian children. A report prepared by the Victorian Health Promotion Foundation, Melbourne.
<https://doi.org/10.37309/2020.CI910>

[10] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

[11] World Cancer Research Fund International (2020). Building Momentum: lessons on implementing robust restrictions of food and non-alcoholic beverage marketing to children. Available at wcrf.org/buildingmomentum

5. Do you agree that for the purpose of a total online advertising restriction for HFSS products, the term 'advertiser' should be defined as a natural or legal person, or organisation that advertises a product or service?

Yes

Please explain your answer and provide relevant evidence

We agree with the current definition but recommend that its meaning be clearly defined through accompanying guidance. Research and literature on the subject of digital marketing defines 'advertisers' as companies that are involved in selling the product, brand or service and paying for the advertising. Their activities include commissioning advertising, approving concepts, financing the marketing, purchasing access to specific audiences (with less control over the final placement and format of the advertisement itself) [12] [13]. Under the definition included in the policy proposal, advertising agencies, who are commissioned by the brand itself to conceive advertising strategies, may not be included. However, we believe this presents a potential gap in the proposed policy, and that all advertising bodies, including advertising agencies, should be held accountable in the regulation.

[12] UNICEF. (2018). Children and Digital Marketing: Rights, risks and responsibilities Discussion Paper. Retrieved at: https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-

_Rights_Risks_and_Responsibilities.pdf [11] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region.

[13] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

6. Do you agree that, for the purpose of appropriate measures, the term "online service providers" should include all internet services that supply services or tools which allow, enable or facilitate the dissemination of advertising content?

Yes

Please explain your answer and provide relevant evidence

Beyond advertisers (as defined above), online service providers – including platforms such as Facebook, Google, YouTube and Instagram – that are involved in allowing, enabling or facilitating the dissemination of advertising content should be included in this regulation.

Multiple studies report that the internet platforms children visit most are not child-directed but are those providing content for mixed ages, such as Google, Facebook, Instagram and YouTube. This means that children of most ages are vulnerable to these practices, since age restrictions on these platforms are often not respected or effectively enforced; they are therefore part of a digital environment which requires regulation [14]. Internet providers have the ability to block advertising – which has been the case in gambling advertising [15]. Based on this experience, internet platforms should be included in the process of determining the scope of advertising restrictions.

An effective way of restricting digital marketing is to require internet content providers and platforms to regulate the distribution and accessibility to unhealthy food content online, for example with the mandate given to Google to become a de facto watchdog for individual privacy on the internet. While there may be opposition from internet providers, there are successful examples of online intermediaries complying with regulations that require the removal of content online [16]. Additional support is presented in an OECD report, which states that in order to comprehensively address advertising, service providers need to be included in the regulation process [17]. Notably, in Belgium, the criminal law extends its sanctions to those bodies which are accessories involved in assisting regulatory infractions – suggesting that online service providers can, and should, bear responsibilities for what is marketed online [18].

[14] Boyland, Emma and Tatlow-Golden, Mimi (2017). Exposure, Power and Impact of Food Marketing on Children: Evidence Supports Strong Restrictions. *European Journal of Risk and Regulation*, 8 pp. 224–236.

[15] VicHealth (2020), Under the radar: Harmful industries' digital marketing to Australian children. A report prepared by the Victorian Health Promotion Foundation, Melbourne. <https://doi.org/10.37309/2020.CI910>

[16] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

[17] OECD (1999), "Online Advertising and Marketing Directed Toward Children", OECD Digital Economy Papers, No. 46, OECD Publishing, Paris, <https://doi.org/10.1787/236506677507>.

[18] Ibid.

7. Our proposed exemption for factual claims about products and services would include content on an advertiser's social media. Do you agree with this approach?

No

Please explain your answer and provide relevant evidence

The proposed exemption for factual claims is not considered appropriate for two reasons: a) HFSS brands have a large following amongst children and young people; and b) 'factual claims' can still be translated into content that has an effect of promoting HFSS products (for example, through brand recognition). In fact, for the reasons outlined below, these exemptions could provide significant gaps that would allow children and adolescents to be exposed to HFSS digital advertising.

First, the proposed approach conflicts with the growing evidence indicating that followers of social media accounts of HFSS brands include millions of children and adolescents. For example, demographic data of Twitter and Instagram users in the US showed that an estimated 6.2 million adolescents followed 27 of the most highly advertised fast food, snack, and drink brands [19]. In the same setting, a cross-sectional survey of 1564 adolescents found that approximately one-half reported engaging with fast-food, snacks, candy and sugary drink brands [20].

In the UK, an innovative experimental study carried out among adolescents suggested that, when it comes to social engagement with brand content, adolescents are as susceptible to effects when ads originate from a company or brand, as they are when ads are shared by celebrities or their peer group. [21].

Furthermore, it is important to note that such estimates of engagement with the social media accounts of HFSS brands among adolescents remain difficult to produce. This is because researchers often cannot access data held by the major food, marketing and social media companies on children and HFSS marketing. At

the same time, these companies use sophisticated data analytics that allow them to target individual users, including children and young people, effectively [22]. Based on this evidence, and with the application of a precautionary approach, all content included on the social media of HFSS brands must be included within the regulation.

Second, the distinction between factual claims and promotional content is difficult to judge. Producers of HFSS foods often have high brand recognition, which means that even the name of products – such as those which have been historically targeted at children – will function as promotional content. Furthermore, even if the content on HFSS brands' social media accounts is not 'considered to have been created for the purpose of being widely shared' (as indicated in this proposal), there is nonetheless potential for the content to be widely promoted and shared – and to go 'viral'. Consequently, children may still be exposed to content that is effectively promotional when such content becomes publicly shared on social media platforms [23].

In conclusion, we recommend that the exclusions for factual claims not apply to social media accounts of HFSS brands. We would also propose that factual claims should be more clearly defined both with regards to where these claims can be made and what is understood as being a factual claim (to prevent the use of this exemption as a loophole).

[19] Rummo, P.E., Cassidy, O., Wells, I., Coffino, J.A. and Bragg, M.A., 2020. Examining the Relationship between Youth-Targeted Food Marketing Expenditures and the Demographics of Social Media Followers. *International journal of environmental research and public health*, 17(5), p.1631.

[20] Fleming-Milici F, Harris JL. Adolescents' engagement with unhealthy food and beverage brands on social media. *Appetite*. 2020 Mar 1;146:104501.

[21] Murphy, G., Corcoran, C., Tatlow-Golden, M., Boyland, E. and Rooney, B., 2020. See, like, share, remember: Adolescents' responses to unhealthy-, healthy-and non-food advertising in social media. *International Journal of Environmental Research and Public Health*, 17(7), p.2181.

[22] Tatlow-Golden, M., Tracey, L., & Dolphin, L. (2016). Who's Feeding the Kids Online? Digital food marketing to children in Ireland: Advertisers' tactics, children's exposure and parents' awareness.

[23] Unicef. (2018). Children and digital marketing: rights, risks and responsibilities. Available at: https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities.pdf

8. We propose that any advertisers which sell or promote an identifiable HFSS product or which operate a brand considered by the regulator to be synonymous with HFSS products should be required to set controls which ensure that their posts regarding HFSS products can only be found by users actively seeking them on the advertisers own social media page. This could be achieved, for example, by ensuring that the privacy settings on their social media channels are set so that their content appears on that page only. Do you think this would successfully limit the number of children who view this content?

No

Please explain your answer and provide relevant evidence

Allowing advertisers to create content on their own social media pages with the suggested privacy settings will not limit the number of children who view HFSS promotions. As shown above, followers of social media accounts of HFSS brands include millions of children and adolescents. These children and young people will be left exposed to content and branding that is synonymous with HFSS products, because these regulations would not protect them. Furthermore, some large social media platforms (such as Facebook) do not have settings that disable the sharing function. This would mean that content from HFSS brands could be widely shared and even more children and adolescents exposed. It is also important to acknowledge that a key driving factor for social media platforms is for the channel and the content to go viral and be widely circulated, and therefore, goes against the purpose of these platforms to set controls to restrict their content from being viewed.

While other online platforms such as SnapChat or Instagram are gaining ground among children and adolescents, Facebook remains one of the most popular online locations for older children and teens in the UK, with 69% of 12-15 years old having a profile on the platform. Furthermore, age restrictions on Facebook are easily bypassed by young people [24]. This means that children and adolescent in the UK would be exposed to Facebook posts regarding HFSS products, and these posts would be able to reach them in a variety of ways.

Furthermore, advertising campaigns can become news stories in themselves, as a consequence of the blurring boundaries between broadcast and non-broadcast advertising. For example, in November 2020, McDonalds released an advert that targets adolescents and parents by promoting the McDonalds brand with a feeling of childhood nostalgia. The Express published a post in its online version with the following blurb 'McDonald's have released their Christmas advert for 2020 and the festive season could not come sooner. Watch the full McDonald's Christmas advert here [25]. The Manchester Evening Standard published a commentary by the title 'McDonald's fans take issue over 'bleak' Christmas advert' [26]. Native advertising- which was pioneered by websites such as BuzzFeed – has become ubiquitous. Thus, content that promotes HFSS foods and brands can be presented in a widely shareable forms (quizzes, posts or videos) that match the form and tone of editorial content [27].

[24] https://www.ofcom.org.uk/__data/assets/pdf_file/0023/190616/children-media-use-attitudes-2019-report.pdf

[25] <https://www.express.co.uk/showbiz/tv-radio/1359186/Mcdonalds-Christmas-advert-2020-watch-full-mcondalds-Christmas-advert-forever-young-evg>

[26] <https://www.manchestereveningnews.co.uk/news/uk-news/mcdonalds-christmas-advert-bleak-detail-19277533>

[27] Unicef. (2018). Children and digital marketing: rights, risks and responsibilities. Available at: https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities.pdf

9. In your sector or from your perspective, would a total restriction of online HFSS advertising confer a competitive advantage on any particular operator or segment of the online advertising environment?

Yes

Please explain your answer and provide relevant evidence

The proposed regulations exclude one important type of online platform which will have an interest in promoting HFSS products: those platforms whose principal function is the buying or selling of products, including food and drink, such as Deliveroo or Uber Eats, which have a strong interest in advertising HFSS products. This has already been highlighted in relation to the ban on HFSS advertisement in the Transport for London (TfL) network. Before a further refinement in rules to address this issue, delivery platforms were still allowed to promote HFSS products, thus undermining the intent of the ban, which was to protect children from HFSS marketing. Moreover, the COVID-19 lockdowns, which have closed other out-of-home venues, have provided an opportunity for such platforms to access a larger proportion of the UK population [28]. The advertising efforts during 2020 have reflected this shift and more delivery services have appeared [29]. In this context, excluding such platforms from this proposal is a major gap that is likely to decrease the effectiveness of the proposed policy.

[28] https://www.sustainweb.org/blogs/may20_junk_food_marketing_covid/

[29] Collin J; Ralston R; Hill SE, Westerman L (2020) Signalling Virtue, Promoting Harm: Unhealthy commodity industries and COVID-19. NCD Alliance, SPECTRUM

10. If answered yes, are there steps that could be taken when regulating an online restriction to reduce the risk of competitive distortions arising?

Yes

Please explain your answer and provide relevant evidence

It is important that takeaway platforms and third-party intermediaries be included in the scope of these regulations. This will increase the effectiveness of the total online advertising restriction, while also reducing the risk of competitive distortions. These distortions would help takeaway platforms to grow faster and will allow HFSS manufacturers to advertise their products directly to consumers. We therefore suggest that delivery platforms should also be included under the scope of this ban, alongside a clear definition of what products they can promote, following the example of the TfL which allows only healthier products (according to a Nutrient Profile Model) that are actually available on menus to be advertised.

11. We are proposing that broadcast video on demand (BVoD) is subject to a watershed restriction as Project Dovetail will mean they have BARB equivalent data. Do you know of other providers of online audience measurement who are able to provide the same level of publicly available assurance with regard to audience measurement?

I don't know

Please explain your answer and provide relevant evidence

12. If answered yes, do you think that platforms or advertisers using those forms of audience measurement should be subject to a similar approach as BVoD?

N/A

Enforcement and liability

13. What sanctions or powers will help enforce any breaches of the restriction or of the appropriate measures requirements by those in scope of this provision?

Please explain your answer and provide relevant evidence

The proposed enforcement mechanisms - of breaches being resolved by responding to individual complaints and promoting voluntary cooperation with the restriction – amounts to self-regulation, which has been shown to be ineffective [30] [31] [32] and thus will not achieve the aim to minimise children's exposure to HFSS advertising. Therefore, we recommend that stronger, proactive enforcement mechanisms be developed, which would apply stronger punitive measures for instances of non-compliance.

This would include fines as a first, and not last, recourse – as is currently proposed. Where there is little risk of financial sanction, a business could decide it is more in its interests not to follow softer regulatory mechanisms such as the ones proposed [33]. Furthermore, since digital marketing of HFSS products aimed at youth is widespread, compliance will be difficult to enforce. Therefore, we recommend that the system of complaints run by ASA be replaced by a robust monitoring system, developed and put in place in order to inform effective enforcement.

There should also be full transparency, with full details on all complaints, investigations and resolutions publicly available.

[30] World Cancer Research Fund International (2020). Building Momentum: lessons on implementing robust restrictions of food and non-alcoholic beverage marketing to children. Available at wcrf.org/buildingmomentum

[31] Boyland, E.J. and Harris, J.L., 2017. Regulation of food marketing to children: are statutory or industry self-governed systems effective?. *Public Health Nutrition*, 20(5), pp.761-764.

[32] Reeve, B. and Magnusson, R., 2018. Regulation of food advertising to children in six jurisdictions: a framework for analyzing and improving the performance of regulatory instruments. *Ariz. J. Int'l & Comp. L.*, 35, p.71.

[33] Garde, A., B. Jeffery and N. Rigby, Implementing the WHO Recommendations whilst avoiding real, perceived or potential conflicts of interest. *European Journal of Risk Regulation*, 2017. 8(2): p. 237–250.

14. Should the statutory "backstop" regulator for HFSS marketing material be:

a) a new public body

Please explain your answer and provide relevant evidence.

Should the final proposals lead to the creation of new central government arm's length bodies, then the usual, separate government approval process would apply for such entities. This equally applies to proposals elsewhere in this document.

Ofcom has a history of being a strong enforcer of communications services regulations and would be a good option as a first step, short-term regulator. However, we believe that an expansion of its remit to online advertising would be a significant departure from its current mandate, based on the magnitude of the new task. Therefore, we recommend that a new statutory body be established that would be equipped with the capacity to effectively monitor online marketing, including its continuously developing techniques, as well as the enforcement of restrictions on advertisers and online service providers.

15. If answered b, which body or bodies should it be?

Please explain your answer and provide relevant evidence

N/A

16. Do you agree that the ASA should be responsible for the day-to-day regulation of a total online HFSS advertising restriction?

No

Please explain your answer and provide relevant evidence

The ASA should not be responsible for the day-to-day regulation of the HFSS advertising restriction because it has been shown to be a weak enforcement body. In particular, the regulatory work of ASA has been shown to not be sufficiently transparent and independent. Some of our concerns regarding the ASA is in its failure to be proactive. Rather, the ASA generates a more reactive response to complaints of HFSS advertising, which is slow and allows for many more breaches to go unobserved. Further, in 2020, the ASA itself has reported not being able carry out an assessment of children's exposure to HFSS marketing online, due to the complexity of the digital marketing ecosystem [34].

[34] Tatlow-Golden M, Parker D. The Devil Is in the Detail: Challenging the UK Government's 2019 Impact Assessment of the Extent of Online Marketing of Unhealthy Foods to Children. *International Journal of Environmental Research and Public Health*. 2020 Oct;17(19).

17. Do you agree with our proposal that advertisers are liable for compliance with a total online HFSS advertising restriction.

Yes

Please explain your answer and provide relevant evidence

Advertisers should be liable because most HFSS advertisers have some form of legal entity within the UK jurisdiction, so government regulators will be better able to hold them to account [35].

[35] World Cancer Research Fund International (2020). Building Momentum: lessons on implementing robust restrictions of food and non-alcoholic beverage marketing to children. Available at wcrf.org/buildingmomentum

18. Do you consider that online service providers should be prohibited from running advertising that breaches the restriction or should be subject to a requirement to apply appropriate measures?

a) Prohibited

Please explain your answer and provide relevant evidence.

In order to be comprehensive and effective, the total ban of HFSS should include restrictions that apply to online service providers [36], as well as advertisers (producers of HFSS foods and advertising agencies). Furthermore, the online service providers include platforms such as Facebook and its affiliates, TikTok, Twitch or Snapchat, which have a duty to ensure that they protect children's privacy and data online [37].

[36] VicHealth (2020), *Under the radar: Harmful industries' digital marketing to Australian children*. A report prepared by the Victorian Health Promotion Foundation, Melbourne. <https://doi.org/10.37309/2020.CI910>

[37] OECD (2020). Protecting Children Online. An Overview of Recent Development in Legal Frameworks and Policies. Available from: https://www.oecd-ilibrary.org/science-and-technology/protecting-children-online_9e0e49a9-en

19. If answered b, please expand on what you consider these measures should be.

Please explain your answer and provide relevant evidence

N/A

20. Do you consider that the sanctions available (voluntary cooperation and civil fines in instances of repeated or severe breaches) are sufficient to apply and enforce compliance with a total online HFSS advertising restriction?

No

Please explain your answer and provide relevant evidence

Co-regulatory responses to online marketing have been shown to ineffective. Enforcement mechanisms being reliant on complaints is insufficient, particularly since online advertising is ever-expanding and there is evidence of complaints not being handled effectively. For example, with the Children's Food Campaign's complaint to the ASA in 2019 on Ben & Jerry's ice cream adverts [38].

Furthermore, the UK is known as one of the countries in which advertisers have adopted the most novel approaches to online advertising. As such, the ban needs to be associated with a strategy to monitor compliance. This is one of the major gaps in this consultation document and much more rigorous consideration needs to be given to monitoring and accountability mechanisms. Furthermore, placing the role and responsibilities of online service providers outside the scope and timeline of this current policy proposal can limit the government's ability to develop a comprehensive regulation at a later time.

Given the above, we strongly recommend the introduction of mandatory government regulation, monitoring of enforcement as well as stronger enforcement mechanisms. We also recommend that online service providers be considered at the same time the ban for advertisers is designed. Such online service providers include:

- online delivery services who will directly advertise HFSS products, as well as
- platforms that would enable sharing promotional content, even when that content is not considered for the purpose of becoming viral.

[38] https://www.sustainweb.org/news/jun19_benjerry/

21. Do you consider that the imposition of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures requirements?

Yes

Please explain your answer and provide relevant evidence

Civil fines imposed by a statutory regulator would be a strong mechanism to have in place in order to enforce compliance [39]. Experience shows that civil fines can be an effective measure, however, the nature and gravity of these sanctions to those in penalty for breaches, should be adequate to present a strong disincentive to advertisers and online service providers from promoting HFSS products [40]. For reference, the European Union GDPR enables authorities to impose fines of up to 4% of a company's global annual turnover for breaches of its principles. This has received significant attention from executives implementing the Regulation, suggesting that high monetary penalties would be an effective deterrent for breaching HFSS food marketing regulations [41].

[39] WHO Regional Office for Europe. (2019). Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

[40] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

[41] Ibid.

22. Would a total restriction on HFSS advertising online have impacts specifically for start-ups and/or SMEs?

I don't know

23. What, if any, advice or support could the regulator provide to help businesses, particularly start-ups and SMEs, comply with the regulatory framework?

Start-ups and SMEs may not be as highly equipped with a high level of resources to support them in complying with the regulations compared to larger businesses. The regulator could provide a package of resources, both through financial and guidance support, to ensure that these smaller businesses are able to adjust their advertisements with the regulations and mitigate any potential loss or administrative complications.

24. We note the challenges of applying statutory regulation to overseas persons. It is our intention to restrict the HFSS adverts seen by children in the UK. From your sector or from your perspective do you think any methods

could be used to apply the restriction to non-UK online marketing communications served to children in the UK?

The requirements and guidelines outlined in the WHO Framework Convention of Tobacco Control on tobacco marketing can provide a model for the global coordination of HFSS food marketing regulations in order to apply restriction to non-UK online marketing communications service to children in the UK [42]. A global initiative of similar development can prevent cross-border marketing challenges.

[42] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

25. Do you see any particular difficulties with extending the scope to non-UK online marketing communications as well as UK communications?

Yes, because the regulations and standards will be set at the national level, unless global cooperation and coordination through the implementation of universal standards is developed, there will be difficulty in regulating cross-border marketing communications. We may also see the unintended consequence of advertisers shifting their advertising to an international level to bypass national regulations and standards.

26. Do you see any difficulties with the proposed approach in terms of enforcement against non-UK based online marketing communications as opposed to UK based ones?

As the regulations will be set at the national level in the UK, enforcement will be applied to UK based online marketing communications and liability will be placed upon UK based advertisers and online content providers.

27. Do you think these restrictions could disproportionately affect UK companies?

There is not enough evidence or research conducted, to provide any conclusive comments on the impact these restrictions will have on UK companies versus non-UK companies. Furthermore, there is an overall gap in the literature, due to the novelty of these policy regulations, on understanding the financial repercussions, if any, on companies included under this ban.

Public sector equality duty

28. Do you think that a total restriction on HFSS advertising online is likely to have an impact on people on the basis of their age, sex, race, religion, sexual

orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

I don't know

29. Do you think that any of the proposals in this consultation would help achieve any of the following aims?

I don't know

Socio-economic impact

30. Do you think that the proposals in this consultation could impact on people from more deprived backgrounds?

Yes

Please explain your answer and provide relevant evidence

Evidence from Australia's restriction of unhealthy food and beverages on TV advertising found that the intervention was likely to be cost-saving over the lifetime of children, with greatest health benefits and cost-savings accrued by children living in the most disadvantaged areas compared to least disadvantaged areas [43]. While these results cannot be fully extrapolated to the context of the proposed restrictions (there is sure to be a difference between broadcasting and digital marketing restrictions), there is the potential for some impact. For example, as digital marketing of HFSS foods increasingly identifies and targets children of certain ethnic and socio-economic groups which are more vulnerable, and whose rates of obesity are significantly higher than those of other groups [44], it is possible that these restrictions will have a more positive impact for more vulnerable groups, given the already existing baseline differences in marketing influence. The socioeconomic impact of these marketing restrictions should be monitored and evaluated for future research studies.

[43] Brown, V., Ananthapavan, J., Veerman, L., Sacks, G., Lal, A., Peeters, A., Backholer, K., & Moodie, M. (2018). The Potential Cost-Effectiveness and Equity Impacts of Restricting Television Advertising of Unhealthy Food and Beverages to Australian Children. *Nutrients*, 10(5), 622. <https://doi.org/10.3390/nu10050622>

[44] WHO Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region. Retrieved at: https://www.euro.who.int/__data/assets/pdf_file/0017/322226/Tackling-food-marketing-children-digital-world-trans-disciplinary-perspectives-en.pdf

Annex B: evidence note consultation questions

31. Do the calculations in the evidence note reflect a fair assessment of the transition costs that your organisation would face?

I don't know

Please explain your answer and provide relevant evidence

32. Is the time allocated for businesses to understand the regulations a fair assessment?

Yes

Please explain your answer and provide relevant evidence

The Transport for London advertising policy had a three-month window before it came into force in February 2019, following its announcement in November 2018. This three-month period allowed for existing advertising campaigns to complete their contract. It also allowed businesses to work with policymakers to prepare, understand the rules fully and comply, allowing the policy to be introduced on time. We believe the current consultation should serve as a prompt to business to start preparing for the introduction of new regulations.

33. Are there any ongoing costs that your organisation would face that are not fairly reflected in the evidence note?

I don't know

Please explain your answer and provide relevant evidence

34. Is the assessment on the number of online impressions a fair assessment?

I don't know

Please explain your answer and provide relevant evidence

35. It is estimated that a significant proportion of HFSS advertising online will be displaced to other forms of media. Do you think the level of displacement is correct?

I don't know

Please explain your answer and provide relevant evidence

36. It is assumed that the level of displacement to other forms of media would be the same under the options outlined in the evidence note. Would you agree with this approach?

I don't know

Please explain your answer and provide relevant evidence

37. Do you have any evidence on how competition may vary between the options in the evidence note? This can be any form of competition, for example competition between HFSS brands or competition between other forms of advertising.

I don't know

Please explain your answer and provide relevant evidence

38. Do you have any additional evidence or data that would inform:

a) our understanding of children's exposure to online adverts?

There is a wealth of evidence on the extent, nature and effects of the marketing to children of products high in fat, sugar and salt (HFSS), which shows that advertising affects children's eating and drinking behaviour, preferences, requests,[45][46] nutrition knowledge [47] and food intake [48][49], leading them to prefer to consume HFSS products. Marketing of foods affects subconscious cognitive processes and caloric intake,[50], with unequivocal evidence showing how marketing of these unhealthy foods is further linked to weight outcomes [51].

[45] Russell, S.J., H. Croker and R.M. Viner, The effect of screen advertising on children's dietary intake: a systematic review and meta-analysis. *Obesity Reviews*, 2019. 20(4): p. 554–568.

[46] Kraak, V.I., J.A. Gootman, and J.M. McGinnis, *Food Marketing to Children and Youth: Threat or Opportunity?* 2006, National Academies Press.

[47] Hastings, G., et al., *Review of Research on the Effects of Food Promotion to Children*. 2003, Food Standards Agency: London.

[48] Sadeghirad, B., et al., Influence of unhealthy food and beverage marketing on children's dietary intake and preference: a systematic review and meta-analysis of randomized trials. *Obesity Reviews*, 2016. 17(10): p. 945–959.

[49] Boyland, E. and M. Tatlow-Golden, Exposure, power and impact of food marketing on children: evidence supports strong restrictions. *European Journal of Risk Regulation*, 2017. 8(2): p. 224–236.

[50] Kraak, V.I. et al., Progress achieved in restricting the marketing of high-fat, sugary and salty food and beverage products to children. *Bulletin of the World Health Organization*, 2016. 94(7): p. 540.

[51] Kelly, B. et al., A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *American Journal of Public Health*, 2015. 105(4): p. e86–e95.

b) how different types of online advert (for example static display and video adverts) can have different effects on children's calorie consumption?

c) the estimates for additional calorie consumption caused by HFSS product advertising online?

d) the long-term impact of HFSS advertising exposure during childhood (for example on food behaviours and preferences later in life)?

Some studies have identified an association between the cumulative exposure to marketing and longer-term food consumptions. For example, in the United States, collected data on exposure to advertisements over 3 years showed that an exposure to soft-drink advertisements was associated with increased intake of soft drink and fast food in nearly 10,000 children [52]. While there is a deficiency in studies that explore the long-term impact of marketing techniques, given the evidence which demonstrates that eating behaviours established during childhood track into adulthood and contribute to long-term health and chronic disease risk, we believe that early childhood exposures to HFSS advertising will bear long-term health impacts.

[52] Kelly, B., King MPsy, L., Chapman Mnd, K., Boyland, E., Bauman, A. E., & Baur, L. A. (2015). A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *American journal of public health*, 105(4), e86–e95. <https://doi.org/10.2105/AJPH.2014.302476>

- e) the health benefits of either option in the evidence note?**
- f) how consumer spending habits will change as a result of these restrictions?**
- g) how advertisers might adapt their marketing strategies in response to further restrictions in HFSS advertising?**
- h) the impacts on the price of advertising slots, and how this might vary under both options?**

Please provide the relevant evidence or data

For more information:

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