

## **Introducing a total online advertising restriction for products high in fat, sugar and salt (HFSS)**

*Consultation response submitted by the Centre for Diet and Activity Research (CEDAR), MRC Epidemiology Unit, University of Cambridge*

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### **Consultation questions**

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

**Yes:** Consuming too much high fat, salt and sugar (HFSS) foods and drinks increases risk of overweight, obesity, and several non-communicable diseases.[1] In 2017-18, 22% of 4-5 year olds, 34% of 10-11 year olds,[2] and 64% of adults in England were overweight or obese.[3] Prevalence is higher in males and those living in more deprived circumstances [2], [3] Overweight and obesity are associated with adverse respiratory, psychological, musculoskeletal, cardiovascular and cancer outcomes,[4], [5] account for 10% of years of life lost in England,[6] and are estimated to cost society more than £27bn/year.[7]

There is a long history of heavy marketing of HFSS foods and drinks, particularly to children, and evidence that this is associated with a variety of consumption habits in children.[8]–[11] Advertising is a form of promotion, which is one component of marketing. Other features of marketing include decisions about the composition, size, price and format of the product itself, and its placement in retailing ('4 Ps of marketing'),[12], [13] which together form a communication process with consumers to encourage purchases.[14] There is evidence that the relationship between exposure to advertising and other marketing of food products and their consumption is causal.[15] Expenditure on advertising is disproportionately directed to HFSS products: for example, between 2010 and 2015, only 1.2% of all food and non- alcoholic drink advertising expenditure was on promoting vegetables,[16] yet fruit and vegetables should make up at least a third of the diet according to government guidance.[17]

The effect of marketing is a function of exposure and power.[18] Online advertising may be particularly effective because it can be more creative and interactive than other forms, and thus highly powerful.[19] Children spending more time online, and via numerous devices, may mean they are also more likely to be exposed to it.[20] Emerging evidence suggests that online advertising is more strongly associated with consumption than other forms of advertising,[21] and companies are increasing their online advertising expenditure despite cuts elsewhere.[22] The COVID-19 pandemic may have resulted in children spending more time online, and food and drink companies spending more money advertising in these spaces.[23] Thus, restricting online advertising of HFSS products has significant capacity to reduce consumption of these products; particularly if implemented alongside other measures to limit marketing of HFSS products overall.

#### **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?**

**I don't know:** Though we have no evidence to provide that conflicts with this definition, it is possible that designing regulation on the nature of the product (i.e. HFSS) or the platform (i.e. online) may be ineffective in fully restricting a multi-platform marketing process. Product advertising occurs across many platforms and is usually coordinated by a brand ('identity'). This means that regulation defined by the nature of the product and platform could lead to a counteractive increase in brand advertising

(as has been seen before).[24] For brands that have both HFSS and non-HFSS products in their portfolio, this would result in HFSS products continuing to be promoted by stealth.

It would also be helpful to publish the 2018 review of the existing UK Nutrient Profiling Model (NPM) 2004/5.[25] Evidence suggests the existing NPM is not consistently discriminating among foods and their association with cardiovascular disease.[26] Publishing the updated the model could be important for informing the scope of online advertising ban, and ensuring it reflects current UK dietary recommendations.

It also worth noting that it possible some features of marketing excluded from the scope of the regulation may be exploited. It may be possible for business-to-business marketing communications to influence consumers should it appear in public media. Many factual claims can be used to market a product. A strict definition of “communications with the principal purpose of facilitating an online transaction” will be required to avoid a loophole in the regulation.

### **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.**

The ‘balloon effect’ of regulation argues that restrictions on one form of commercial activity may lead to compensatory increases in others.[27] This may be particularly true of advertising given it forms part of marketing, which is a much broader commercial activity. For example, the balloon effect suggests it is possible that a ban on online advertising may lead to compensatory increases in promotion via other, less regulated platforms. Furthermore, advertising is often coordinated by a brand, which means that regulation defined by the nature of the product (here, HFSS), could lead to an increase in brand advertising.[24] This might mean a HFSS product continues to be promoted by stealth.

Food systems are complex networks of related stakeholders, which means regulation can have unanticipated consequences depending on how these stakeholders react to it.[28] A comprehensive evaluation of the online advertising ban will be necessary to ensure it has the desired response.

We urge government to assess thoroughly the potential for such ‘back door’ routes to continued promotion of HFSS foods and drinks to children that may result from this regulation, and to secure such ‘back doors’ to prevent these compensatory actions by industry.

#### **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?**

**No:** Novel forms of online advertising, like the use of ‘influencers’, is of growing concern for their potential effect on the food and drink consumption among children.[29] Viral advertising – in which peer networks are used to advertise a product – might also be harder to encapsulate in this definition. It is important that the term ‘advertiser’ is defined in a way to capture these emerging forms of persuasive advertising delivered through an intermediary.

#### **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?**

**I don’t know:** It is possible that non-HFSS products may find it easier to advertise, for example if a reduction in demand for advertising from companies producing HFSS foods results in a fall in the cost of advertising. However, existing evidence from other advertising restrictions has shown that the proportion of advertising for HFSS products can increase, even in instances where the proportion of advertising for food decreased.[24] This suggests advertising restrictions do not necessarily support

non-HFSS food to enter the market. Achieving greater promotion for healthy foods, such as fruits and vegetables, is likely to require a separate intervention that encourages advertising for these products.

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

- a) a new public body
- b) an existing public body
- c) I don't know

**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.**

a) A new regulatory body that is not effectively an industry body, but an 'externalities' regulator, might be preferable. This body would seek to protect the public and the planet from the adverse social, health and environmental impacts of commercial (privately profitable) activity.

b) Clearcast, a non-government organisation (<https://clearcast.co.uk/>), might also be an appropriate alternative body.

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

**No:** To date, the effectiveness of self-regulation – and specifically for food industry advertising regulation – has been low.[30] Circumstances in which individuals or organisations have conflicts of interests with work they are supposedly undertaking independently can lead to problematic outcomes.[31] There might be a real problem with their ability to effectively enforce regulation, and/or public perception of conflicted interests may undermine public trust in the regulator. These reasons will likely hinder the ability of ASA to regulate effectively.

**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:** For the reasons already mentioned, there is a risk that voluntary cooperation will prove ineffective: to date, the effectiveness of self-regulation – specifically for food industry advertising regulation – has been low.[30] For example, Public Health England's voluntary sugar reduction programme was associated with a 3.0% reduction in the sales weighted average total sugar per 100g in products sold between baseline (2015) and year 3 (2019).[32] Meanwhile, the UK Soft Drinks Industry Levy was associated with a fall in the proportion of drinks with sugar over 5 g per 100 mL from an expected level of 49% to 15% between 2015 and 2019. [33]

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

**I don't know:** The size of the fine relative to the profit margins of that company will determine whether a fine works, and whether it is trusted by related stakeholders. Fines must also be applied consistently for every breach for them to prove effective: multiple transgressions by a company before they are reprimanded will lessen the efficacy of the regulation.

**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?**

**Yes:** Evidence suggests that when restrictions are applied to multinational companies that market and sell harmful commodity products (e.g. tobacco), they expand their market in countries with fewer regulations;[34] a further manifestation of the 'balloon effect'. It is possible that greater restrictions in the UK will lead to multinational companies extending their markets overseas to retain profits.

International conventions, like the World Health Organisations' Framework Convention on Tobacco Control,[35] would be the way for avoiding such dispersion. The idea of a Framework Convention on Healthy and Sustainable Food Systems has been mooted.[36]

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

**I don't know:** It is possible that the balloon effect – in which multinational companies retain profits by extending their market overseas - may follow an online advertising ban, possibly to the competitive disadvantage of companies operating in the UK only. However, responses to the UK Soft Drinks Industry Levy suggests companies may make a range of changes to their products and prices to protect their profits;[33] with evidence suggesting they experienced little financial impact in the UK (though notably many major soft drinks companies are not UK based).[37], [38] A similar food system adaptation may follow an online advertising ban.[28]

**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?**

**Please explain your answer and provide relevant evidence. Please state which protected characteristic/s your answer relates to.**

**Yes:** Evidence shows that BAME individuals are more likely to be targeted by advertising for HFSS products;[39] though this evidence was found in the USA and for non-digital advertising, a similar principle may apply in the UK.

**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 suggests that less affluent people are exposed to more HFSS product advertising across a wide variety of media.[40]–[43] Less affluent people are also more likely to experience overweight and obesity. It has been demonstrated that other advertising regulations, specifically the proposed 9pm advertising watershed, would be more effective among less affluent populations.[40] A similar effect may follow an online advertising ban.

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