

**Joint response from Action on Salt and Action on Sugar to DHSC's Consultation:
Introducing a total online advertising restriction for products high in fat, sugar and salt (HFSS)**

Action on Salt

Action on Salt is an organisation supported by 24 expert members, working to reduce the salt intake of the UK population to prevent deaths, and suffering, from heart disease, stroke, kidney disease, osteoporosis and stomach cancer.

Action on Sugar

Action on Sugar is a group of experts concerned with sugar and obesity and its effects on health. It is working to reach a consensus with the food industry and Government over the harmful effects of a high calorie diet, and bring about a reduction in the amount of sugar and fat in processed foods to prevent obesity, type 2 diabetes and tooth decay.

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- **Do you support the proposal to introduce a total online HFSS advertising restriction?**

We strongly support a total online HFSS advertising restriction. It is well established that as part of a systems approach to addressing obesity, reducing children's exposure to HFSS advertising can lead to lower calorie intake. Restrictions on HFSS advertising can also drive the reformulation of products and a total online restriction is easy to implement, easy for advertisers and regulators to understand and easy for parents and guardians to understand.

The existing rules restrict HFSS advertising to children or where more than 25% of the audience is under 16 years old. This is extremely hard to enforce in the online environment and creates significant loopholes. For example, in April a complaint was made to the ASA regarding Kellogg's irresponsible advertising of their Pringles snack products in a 'pre-roll' ad to *PE with Joe*, which would have been viewed by thousands of children (and their parents). The complaint was 'informally resolved' and Kellogg's removed advertising from the channel, but by then the ad had already been viewed extensively. Oreos (Cadbury / Mondelez) also placed pre-roll ads on Joe Wicks' YouTube channel. Furthermore, children can view content on online platforms using their parents accounts, without being signed into an online account, or by clicking a box to certify that they are over 16 years of age. The ASA's research using child mimicking avatars provides strong evidence into the unreliability of existing targeting methods, proving that existing measures do not protect children.

A total ban would provide comprehensive protection to children across multiple online channels. A 9pm watershed would likely only apply to 'Paid' media as they are targeted and can be switched on and off at certain times of the day but 'Earned' and 'Owned' media are shared on social media, appear as content recommendations and appear in search engine results pages. Once advertising content is shared by a user, there is no ability to control what time that content is viewed. Studies show that junk food brands frequently ask users to share or invite others to participate to extend its reach. Brands also post organically on their own social media pages and channels as part of their marketing mix. Despite changes made by social platforms to limit the reach of organic posts, brands with large followings can get significant reach. For example, on Facebook brands can still expect

their posts to be seen by 5.5% of their followers (1). A major fried chicken retailer's UK Facebook page has over 55 million followers, so each post could be reaching over 2 million people.

While the consultation document lists a comprehensive list of outlets, we strongly recommend that all digital advertising, including billboards, streaming (eg music, film, TV and podcasts) services and podcasts should be included in the scope of this proposed restriction. Outdoor marketing is commonly used by food brands and according to Outsmart, is the most efficient medium for those brands in terms of return on investment having such a wide reach that 98% of people are exposed to some form of outdoor marketing daily (1). Current CAP rules provide extremely limited protection to children with a suggestion that HFSS advertising should not be placed within 100m of a primary school. This guideline is regularly breached (2).

A recent study examining outdoor HFSS advertising in Liverpool found that HFSS adverts were disproportionately placed in areas of social deprivation (3). Given the existing inequality in levels of childhood obesity, significant displacement of HFSS advertising to outdoor advertising could contribute to widening this inequality. Extending the scope to include outdoor digital advertising would provide significant additional protection to children when they are out and about.

The online marketing environment is fast-paced and innovative with new formats and marketing techniques developing all the time. It will be challenging for the Government to effectively future proof this policy by identifying now, all types of marketing scope that will be in use in the future. Therefore, it is vital that the regulation has a regular two-yearly review mechanism, where the scope can be adjusted to capture new marketing techniques that have evolved that may be exempt currently.

Under the current definition, this proposal is not a total HFSS restriction – merely a restriction on HFSS products that fall within the SDIL, sugar and/or the significantly truncated calorie reduction programme categories, despite the Sugar Reduction Programme being scheduled to end this year and, to date, no further targets have been proposed. Furthermore, the Nutrient Profiling Model (NPM) is a widely used and established, evidence-based tool that is already being used for advertising restrictions to children's programmes. Introducing categorisation adds complication; the NPM's very purpose is to define products as HFSS. Using just the NPM, without categorisation, would provide a greater incentive to reduce overall calories, sugar, saturated fat and salt rather than just focusing on one nutrient, whilst also increasing beneficial nutrients such as fruit and vegetables, fibre and protein. The NPM was reviewed in 2018 and updates were suggested to reflect the latest dietary advice, but the outcome of the review is yet to be published. Therefore, we propose that the current version of the NPM should be used, to avoid delays, against all food and drink products, including salty products, alcohol and infant formula and not just on certain categories.

Due to the categorisation set out, the proposal fails to include so-called 'follow-on milks', alcohol or any salt reduction programme categories.

Follow-on Milks

We strongly recommend that any sweetened milk or milk alternative marketed for children over 1 year of age is included in the scope for these guidelines, including those marketed as a 'follow on' milk – they are currently not included in the Sugar Reduction Programme. There is no scientific basis for these products and there are no regulations that control the composition of milks for children over 1 year of age, even though many are currently marketed with the same branding as infant formula. These are simply sweetened dried milk powders or liquids (using primarily lactose and maltodextrins as sweeteners) with added nutrients. UK Government guidance says that growing up

and toddler milks are not necessary and this should be reflected in all policies relating to advertising and marketing restrictions.

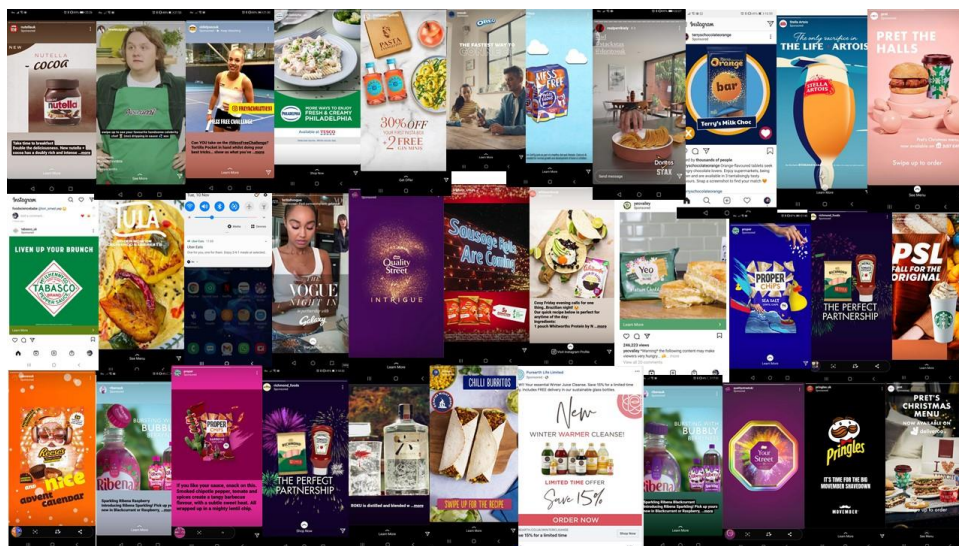
Alcohol

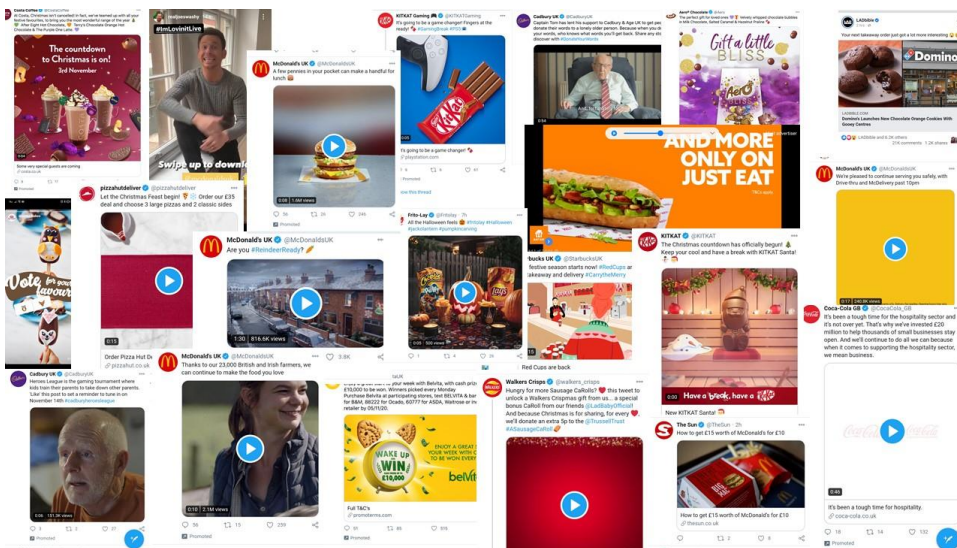
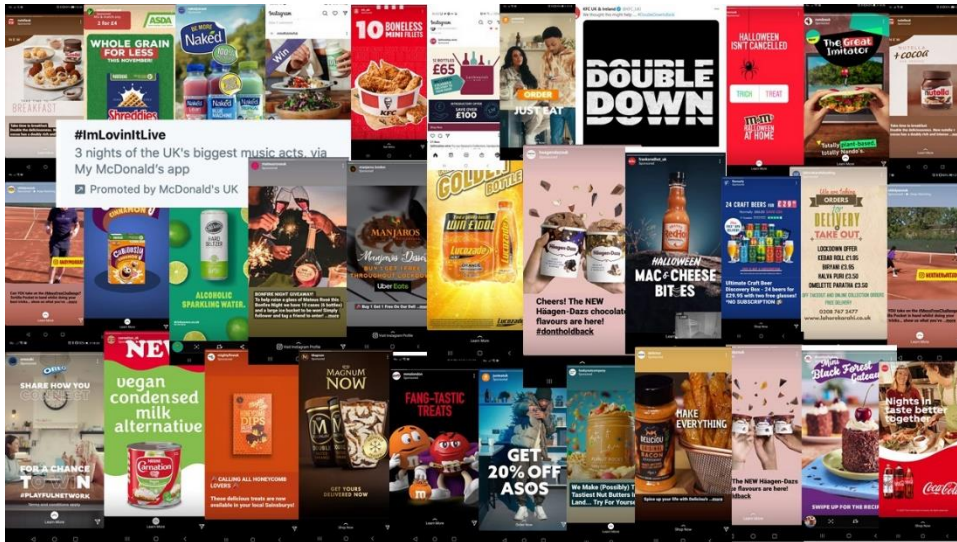
The proposals could be strengthened by including alcoholic drinks. There is a need for stricter marketing restrictions to protect children and young people from alcohol advertising. Just like all marketing, alcohol adverts do appeal to children and young people. Products such as energy drinks are gateway products and children and young people who drink energy drinks are more likely to develop health damaging behaviours such as drinking alcohol. Evidence demonstrates the particular appeal of sweet, brightly-coloured ready-to-drink products amongst adolescents (4, 5). Not only is there evidence to suggest that they appeal to young people, our research has shown the extremely high sugar content in these drinks (6).

Salt reduction programme categories

Salty products not covered by the calorie reduction programme categories would still be advertised, including cheese and salted butter, baked beans, deli meats, stocks and gravies, all of which are major contributors of salt to children’s diets. We know that an individual’s preference to salt and salty foods is a learned behaviour that we acquire in childhood, therefore it is imperative that we reduce advertising of these foods to ensure children eat as little salt as possible. A high salt intake increases blood pressure and therefore the risk of stroke and cardiovascular disease which is already a risk factor of obesity.

Adults are also impacted by HFSS online advertising (7) and the high volume of HFSS adverts online is likely to be particularly unhelpful when adults are making efforts to eat more healthily or provide healthier meals for their families. Over the course of a six-week period, five CASSH team members spot-checked their own, or CASSH, social media channels for adverts and found that a very small minority were for non-HFSS products with the overwhelming majority being for HFSS products:





We consider that a total restriction would also bring significant benefits to adults' health.

1. <https://www.outsmart.org.uk/>
2. https://www.sustainweb.org/news/nov18_asarulings/
3. Palmer *et al* (2020) <https://arxiv.org/abs/2007.04611>
4. Gates, P., et al (2007). The influence of product packaging on young people's palatability rating for RTDs and other alcoholic beverages.
5. *Alcohol and Alcoholism*, 42: 2, pp. 138–142; Metzner, C. & Kraus, L. (2007). The impact of alcopops on adolescent drinking: A literature review. *Alcohol and Alcoholism*, 43: 2, pp. 230–239; Morey, Y., et al (2017). *Youth engagement with alcohol brands in the UK*. Cancer Research UK
6. Action on Sugar (2020) <http://www.actiononsugar.org/surveys/2020/ready-to-drink-alcoholic-beverages/#d.en.764846>
7. [Boyland E \(2019\). Unhealthy food marketing: the impact on adults](http://obesityhealthalliance.org.uk/wp-content/uploads/2019/05/JFM-Impact-on-Adults-Boyland-May-2019-final-002.pdf)
<http://obesityhealthalliance.org.uk/wp-content/uploads/2019/05/JFM-Impact-on-Adults-Boyland-May-2019-final-002.pdf>

- **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**

We do not agree that any of this highlighted options should be excluded from scope.

- Business to business communications

These communications could still be seen by users of the platform that the communications appear. Companies could simply 'tag' companies in posts to continue advertising their products.

- Factual Claims

This provides a significant loophole. It is unclear from the wording of this question if factual claims would only be allowed on companies' own channels, which is stated in the consultation document. Regardless, factual claims about products and services could cover anything from companies using public polling data highlighting that consumers prefer their product, to companies extensively posting content on social media and other platforms to say they've won an award for their HFSS products, to simply stating 'this is a chocolate bar'. Even if this is only allowed on company social media channels, UK Twitter accounts alone for McDonald's, KFC, Burger King and Five Guys have a combined following of 462,000 which doesn't take into account the numerous accounts each of these companies has on top of their UK accounts (i.e. each company has several accounts for each country they have presence in, in addition to PR accounts and competition accounts).

- Facilitating online transactions

Again, this provides a significant loophole. Companies could add a 'buy now' button to their advertising, and continue with established practices. Companies already use social media platforms to promote their products, and Instagram has a 'swipe up' function which leads viewers of a video or ad to external websites. A person may 'opt-in' to email communications from a food, drink or delivery company but may then be inundated with discounts and push notifications which could drive purchasing. This must not be exempt from the proposed restrictions.

The definition of 'Identifiable HFSS products' must be developed independently by experts. Companies must have data demonstrating that their products pass the NPM to advertise.

Influencer marketing

Influencer marketing is now a well-established digital channel worldwide. Whilst reports vary on influencer marketing budgets within the UK, one 2018 study found 20 percent of UK PR and marketing professionals planned to spend between £10,000 and £100,000 on influencer marketing over the next 12 months (1). According to YouGov/IAB, 50% of brands believe in influencer marketing's ability to drive success (2). One in four complaints about online advertising submitted to the UK's Advertising Standards Authority (ASA) in 2019 took issue with sponsored influencer posts. This equated to 4,000 complaints (3). In addition [YouGov](#) reported 73% of brand executives describing the influencer marketing industry as "murky" (4).

Definitions of what is and is not included within the scope of this restriction must be regularly reviewed to ensure they are up to date and comprehensive.

1. <https://www.statista.com/statistics/869362/influencer-marketing-planned-spend-in-the-united-kingdom-uk/>
2. https://www.iabuk.com/sites/default/files/user_attached_file/Influencer%20Marketing%20Marketers%20Survey_0.pdf
3. <https://www.thedrum.com/news/2020/06/03/influencer-posts-dominate-online-complaints-uk-ad-watchdog>
4. <https://yougov.co.uk/topics/resources/articles-reports/2020/05/11/influencer-marketing-spend-drops-trust-influencer->

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

A total restriction is clear and easy for all to understand. However, there will be significant push back from the industry which can be characterised as the 4Ds: Delay, Divide, Deflect, Deny.

DELAY

In November, the Food and Drink Federation (FDF), UK Hospitality, ISBA and the Advertising Association wrote a letter to Matt Hancock pleading for more time to answer the consultation as they are 'feeding the nation'. This letter ignores the fact that obesity is linked to worse outcomes as a result of COVID-19, and many companies represented by this letter have extensive portfolios of HFSS products. The letter also stated the ban is 'a disproportionate proposal with an impossibly short time period given for responses given the level of technical detail sought' – the proposed restrictions in this consultation were first proposed in the Childhood Obesity Plan chapter 2 (2018). A joint statement from IAB UK, ISBA, IPA and the Advertising Association in response to the launch of this consultation reiterated the points raised in the joint letter, stating 'the proposal to completely outlaw online advertising of certain food and drink is a severe and disproportionate measure that goes far beyond the Government's objective of protecting children' (1).

DIVIDE

Many articles from the advertising industry have attempted to reshape the narrative and confuse the public on the necessity of the proposed restrictions, with many stating they wouldn't be able to advertise olive oil or avocados and would lose their jobs – all of which are blatantly untrue. Manufacturers have vast brand portfolios, but they do not advertise all their products. These restrictions will give them the opportunity to advertise products that pass the NPM, thereby promoting more diversity within their brands and giving a continued need for the advertising industry. Reformulation will also provide more jobs in new product development, such as food technologists, nutritionists and marketers. It has been found that reformulation can be profitable for the company. Irn-Bru for example, reformulated their products so that 99% were exempt from the SDIL. Whilst it would be assumed to cause a drop in sales from customers 'wanting the original flavour', Irn-Bru had a 6.4% improvement in gross profit (2).

DEFLECT

Social media advertising is very cheap and so it is frequently used by small companies. In their joint letter, companies query 'Is it really the government's intention that a local wedding cake business, for example, would not be able to share product details on its Instagram account in order to grow its sales?'. It is not clear from the letter the proportion of sales gained by small wedding cake companies through social media versus the proportion gained via word of mouth or from couples searching online for companies available in their area. Furthermore, the joint letter did not detail how many local wedding cake businesses advertise on social media, and the proportion of those

businesses represented by signatories of the letter. When loopholes and exemptions are introduced, policies are weakened and frequently larger companies push back on the new proposals for their own gains.

DENY

The advertising industry has united in skewing the narrative, pleading the case that the current restrictions are adequate and that the proposals are futile. The CEO of the Advertising Association said:

‘Existing UK rules mean that ads for HFSS products cannot be targeted at children in any media and are among the strictest in the world. Children are protected up to the age of 16 – significantly higher than most countries, where rules apply only to under 12s. The UK’s self- and co- regulatory system has been in place for over 50 years and is the international gold standard.’

and

‘Broadcast rules have been in place for over a decade and from 2007 when they were introduced up to 2010, there was a 37% decline in HFSS ads seen by children. From 2010 to 2017, children saw 40% fewer food and drink ads. Despite this, obesity rates have not changed.’ (3)

We strongly recommend that experience from Transport for London’s (TfL) HFSS advertising ban is taken into account, which has raised issues around incidental advertising.

1. <https://www.iabuk.com/news-article/industry-responds-launch-governments-hfss-consultation>
2. Investors Chronicle. AG Barr benefits from reformulations <https://www.investorschronicle.co.uk/shares/2019/03/26/ag-barr-benefits-from-reformulations/>
3. <https://www.adassoc.org.uk/our-work/10-key-facts-about-hfss-advertising-in-the-uk-2/>

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

Incidental advertising

TfL’s ban saw many companies introducing incidental advertising to their adverts. For example, a well-known bank used their advert to sell their services by showing customers eating cake. If HFSS products are not the primary purpose of the advert, then they should not be included. Partnerships are also an issue e.g. adverts for an event that has a partnership with a manufacturer of HFSS products could simply advertise the event but attending the event itself could lead to attendees being dominated by images and selling of the HFSS products.

This is just one example of a potential difficulty; the NGO community cannot be relied upon to cover all loopholes industry will seek to exploit. The restrictions must be adaptable to future circumstances to continue protecting children from the barrage of HFSS advertising they experience every day.

- **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?**

It is important that the definition of ‘advertiser’ is broader than the food or drink brand owner. A significant portion of food and drink advertising online is by organisations that sell food on behalf of brand owners. This includes food delivery platforms such as Just Eat, Deliveroo and Uber Eats along with larger retailers. There are also several smaller retailers who sell branded HFSS food products as

part of hampers or gifts, and recipe boxes can form partnerships with manufacturers of HFSS products, ensuring those products end up in the recipe box e.g. Mindful Chef has a partnership with Maldon Sea Salt, Hello Fresh with TikTaks. It's important that the definition creates a level playing field and helps prevent displacement of advertising to third party organisations.

- **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?**

As above, companies have significant following on social media, and factual claims could reasonably include everything from public polling data, to awards, to health and nutrition claims. Companies also use their channels for virtue-signalling posts and short videos. For example, PepsiCo recently posted a video detailing how they are helping their customers to eat a healthy balanced diet, while continuing to sell products high in salt and saturated fat (1).

1. https://twitter.com/pepsico_uk/status/1331937943091617792

- **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?**

Different platforms have different approaches to privacy settings – for example, Instagram profiles can be set to private and content cannot be seen or shared by others unless they follow that account, whereas on Facebook, if content is shared by the follower of a page, it can potentially be viewed by friends of the follower. A further concern related to this approach is the algorithm approach used by many social media platforms (as outlined in our response to Q2). If a social media user follows an HFSS food profile (e.g. a fast food company) they will not only see the majority of content created by that profile, but the media platform will identify them as a user with an affinity for fast food and serve them related content. This is particularly concerning as it means that if a child has liked or engaged with HFSS related content once, they could continue to be bombarded with other HFSS content. This must be addressed in the final restrictions.

The definition of 'brands synonymous with HFSS' must be independently developed by experts, not left to the regulator. The existing guidance from the Advertising Standards Authority (ASA) is vague and lists scenarios rather than providing an objective definition of an HFSS brand and allows for ASA to make decisions on a 'case-by-case basis' (1).

1. <https://www.asa.org.uk/asset/6B42B9F3-96EC-4A66-A9B50F0E21D845BF/>

- **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?**

As the definition currently stands, companies producing salty products, alcohol companies and infant formula companies are likely to gain advertising space, given they are exempt from the definition. Companies producing healthy products that would pass the NPM will also have an

advantage, in that they will not need to reformulate their products as they are already producing products which would not harm health in the long run.

However, if the definition of what is and is not in scope is comprehensive, no operator or segment of the online advertising environment is likely to have a competitive advantage. The online environment is a fast-moving, innovative space and so it is important that a regular review process is built into the regulations so the scope can be monitored and emerging loopholes closed.

- **Are there steps that could be taken when regulating an online restriction to reduce the risk of competitive distortions arising?**

We strongly recommend reliance on the 2018 NPM to define products as HFSS, rather than relying on categorisation which introduces loopholes.

- **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?**

We are concerned that this consultation does not afford the opportunity to review and comment on Government plans to restrict HFSS advertising on BVoD platforms. If BVoD is subject to a 9pm watershed on HFSS advertising this should be applied to two ways:

- It should apply to programmes that were originally broadcast on live TV between 5.30am-9pm regardless of the time they are being watched on BvVoD.
- It should apply to all content viewed on BvVoD between the hours of 5.30-9pm even if it was previously shown post 9pm on live TV.
- Consideration needs to be given to how BVoD would be regulated. Due to advertising being dynamically served on this platform, it will be significantly more challenging to identify issues of non-compliance.

From the detail provided in this consultation, if streaming platforms such as Netflix and Amazon Prime introduced advertising, it is unclear who would be responsible for monitoring this.

- **Do you think that platforms or advertisers using those forms of audience measurement should be subject to a similar approach as BVoD?**

BARB data provides comprehensive coverage across commercial TV channels of which there are a limited number in the UK. This means that one data set can provide reliable information on TV viewing figures, meaning all data is comparable. We consider that this would be impossible to achieve in the online environment where there is an infinite amount of advertising content. If the Government indicated that platforms or advertisers could develop their own audience measurement approaches, it is likely that different platforms would develop different approaches meaning data could not be accurately compared. The purchase of multiple data sets from different providers would also be a barrier to researchers and NGO who wish to analyse the data.

- **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?**

A governance mechanism to provide the necessary scrutiny of compliance to these restrictions is vital. Currently, ASA is reactive to complaints rather than proactively protecting the public, partly due to a lack of resource. Monitoring and evaluation should ideally be done proactively and transparently, with breaches published to act as a deterrent to others. There must also be fines for

non-compliance, if the organisation conducting the scrutiny are to have any teeth. For example, Mondelez, who ASA have repeatedly engaged with to ‘informally resolve’ likely breaches, has not resulted in changes to their advertising practices. To prevent significant non-compliance, large financial penalties are needed as a meaningful deterrent.

- **Should the statutory "backstop" regulator for HFSS marketing material be: a new public body, an existing public body**

We believe a new public body is needed. In the short term, OfCom is best placed to act as a backstop regulator. However, longer term a new independent authority is needed, reporting directly to Parliament with cross-party buy-in and no political or industry interference. All health policies should ultimately be purpose-driven, and this new authority should be able to govern based on agreed, purpose-driven values.

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

ASA are currently best-placed to carry out this role, however we have serious concerns about their current methods of working and the potential for these to be improved once the proposed restrictions come into place. ASA are not independent and ASA staff have repeatedly stated their opposition to Government action to further restrict HFSS advertising. The ASA only refers to old and widely discredited research indicating advertising’s modest effect on children (1), and ignores the wealth of more recent evidence. Speaking at an IAB member event, a member of ASA staff referred to the 9pm watershed plan as a “danger of bolting on this monolithic watershed concept.” (2). This open opposition to the Government’s approach means they are not well placed to support the robust approach to regulation that is required.

They also lack capacity to carry out their current role. Companies are not complying with current rules and the ASA relies on members of the public flagging inappropriate advertising to them. By the time ASA act, the advertising has already done its job. The ASA rarely fully investigates HFSS advertising complaints, choosing instead to ‘informally resolve’ them. In August 2019, Action on Sugar raised a complaint (ref: A19-1028061) regarding an advert for a company called Quick Milk:

The advert on Facebook stated that their HFSS product (‘Sipper’) helped encourage milk drinking in children, despite have 84g of sugar per 100g (<https://www.sainsburys.co.uk/gol-ui/product/milk-flavoured-milk/quick-milk-sipper-chocolate-5x6g>). The ASA informally resolved the case without further investigation into the wider advertising practices of the company.

In addition, as mentioned earlier in our response, earlier this year a complaint was made regarding a pre-roll ad for Pringles snacks immediately preceding an episode of Joe Wicks’ school child morning workout “PE with Joe” (A20-1061392 Kelloggs UK). Kelloggs UK claimed they were unaware of Joe Wicks’ appeal to children, despite the workouts having received huge publicity for his daily workout for several weeks since the country went into lockdown, and clear evidence of much longer history of content targeting children on the channel itself. They said Joe Wicks’ channel has been removed from their media list, and the ASA informally resolved the case, without any further investigation into how the company works with its online media buying agencies to identify and remove channels with large appeal to children. We have a number of concerns about these types of complaints being resolved informally:

- There is no official record detailing the nature of the complaint on the ASA website, which means the advertising practices of brand owners is not open to independent scrutiny from stakeholders.
- This creates a false impression of the level of compliance with the CAP code and is used by lobbyists in the food and advertising industries to argue against the need for stronger restrictions.
- There is no public ‘naming and shaming’ for the brand owners breaching the code, which removes the incentive to adhere to the rules. This results in the same companies repeatedly breaking the rules with no sanctions.
- We are particularly concerned that an informal resolution is being used with companies like Mondelez who have been found to repeatedly flout the code, yet continue to target children with advertising.

Some companies do not recognise ASA’s role and refuse to comply with them, as they perceive them to have very little power or influence. However, if restrictions were mandatory and penalties were in place for non-compliance, this could potentially enable them to be more effective in their role. Their performance as a day-to-day regulator must be monitored and where necessary, alternate governance mechanisms must be put in place.

In the long-term we would like to see a comprehensive new approach to regulation of all types of harmful marketing. If ASA is responsible for the day-to-day regulation, we consider it vital key definitions are clearly laid out in the legislation, so judgement is not left to the ASA. These include (but are not limited to), the following:

- What constitutes a factual claim
 - What constitutes a communication with the purpose of fulfilling a transaction
 - Defining a brand as synonymous with HFSS
 - Repeated breach
 - Severe breach
1. ASA, CAP and BCAP response to the Government’s HFSS advertising consultation.
<https://www.asa.org.uk/uploads/assets/uploaded/ec374ffb-0851-49cd-a6c926f052c46e25.pdf>
 2. <https://www.iabuk.com/news-article/hfss-member-forum-we-need-come-together-find-solutions>

- **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?**

We recommend prohibited - Prohibited is clear and easily understood by all; ‘subject to appropriate measures’ paves the way for loopholes.

- **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?**

We would like detailed definitions of what constitutes a repeated and severe breach to be laid out in the legislation, so this is not left to the regulator’s judgement. Fines applied for breaches must be proportionate to the size of the company. If not, large multinational companies may choose to absorb the cost rather than overhaul their advertising practices. The governance mechanisms for these restrictions must have teeth.

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

The level of civil fines should be laid out in the legislation so that this is not left to the regulator's judgement.

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

There must be a tailored package of support for SMEs, similar to the package that was offered by TfL upon the introduction of their restrictions. This support would be necessary in many cases to give companies a more equal footing with large multinational companies.

- **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?**

We think it is extremely likely that brand owners with a global presence and social media sites registered outside of the UK, will still be able to use their global platforms to target UK children. We would like to see the regulation include a requirement for UK brand teams to ensure global operations are not proactively targeting UK audiences.

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

Countries are already looking to potential UK restrictions as the preferred way forward. In Asia-Pacific countries, only South Korea and Taiwan have mandatory restrictions on marketing to children; most other countries have some form of voluntary policy (1). If UK can implement restrictions, it will demonstrate to other countries that the policy is feasible.

1. <https://www.foodnavigator-asia.com/Article/2020/09/02/APAC-junk-food-ad-bans-Health-experts-encouraged-by-feasible-and-politically-acceptable-UK-move>

- **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?**

The United Nations Convention on the Rights of the Child came into force in the UK in 1992. The Convention is a recognition that children need special protections, and that adults and governments must work to ensure these. Restrictions on HFSS marketing will have a significant positive impact on child health. Children from lower socio-economic backgrounds are more likely to be overweight or obese, with reception and year 6 pupils in the most deprived areas being twice as likely to be obese, according to the latest data from the National Childhood Measurement Programme (1). Marketing influences children's food choice and consumption, altering their food preference. HFSS marketing is often popular with children, leading them to 'pester' parents to buy the advertised unhealthy products (2-6). It has been found that marketing influences teens from the most deprived communities more, where they are 40% more likely to remember junk food advertisements every day compared to teenagers from less deprived communities (7).

1. NHS Digital. National Childhood Measurement Programme Data. 2016/17.

2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470174/Annexe_3_Marketing_evidence_review.pdf
3. Boyland E, Nolan S, Kelly B (2016). Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising on intake in children and adults Am J Clin Nutr.
4. Hastings, G. (2006) The extent, nature and effects of food promotion to children: a review of the evidence. WHO 16. 11. McDermott L et al. (2006))
5. https://www.who.int/dietphysicalactivity/publications/marketing_evidence_2009/en/
6. <https://www.sciencedirect.com/science/article/pii/S0195666312001511>
7. Cancer Research UK (2018). A Prime Time for Action. https://www.cancerresearchuk.org/sites/default/files/executive_summary_-_a_prime_time_for_action_.pdf

- **Do you think that any of the proposals in this consultation would help achieve any of the following aims?**
 - **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**
 - **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**
 - **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?**

Children from lower socio-economic backgrounds are more likely to be overweight or obese, with reception and year 6 pupils in the most deprived areas being twice as likely to be obese, according to the latest data from the National Childhood Measurement Programme (1). Marketing influences children's food choice and consumption, altering their food preference. HFSS marketing is often popular with children, leading them to 'pester' parents to buy the advertised unhealthy products (2-6). It has been found that marketing influences teens from the most deprived communities more, where they are 40% more likely to remember junk food advertisements every day compared to teenagers from less deprived communities (7).

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

This policy will have a more positive effect on people from lower socio-economic backgrounds who are more likely to have excess weight. According to the latest data from the National Childhood Measurement Programme, obesity prevalence for children living in the most deprived areas was more than double that of those living in the least deprived areas for both reception and year 6 (1).

Recent research from Cancer Research UK found teens from the most deprived communities were 40% more likely to remember junk food advertisements every day compared to teens from better-off families (2). This, combined with their already recognised greater risk of unhealthy weight

outcomes suggest that they would potentially have the most to gain from regulation designed to reduce junk food advert exposure.

An Australian modelling study (3) which sought to estimate the cost effectiveness of legislation to restrict HFSS TV advertising before 9.30pm, and examine the health benefits and healthcare costs savings by socio-economic status (SES) showed that legislation to restrict HFSS TV advertising is likely to be cost-effective, with greater health benefits and healthcare cost-savings for children (aged 5-15) in low SES groups.

1. NHS Digital. National Childhood Measurement Programme Data. 2016/17.

2. Cancer Research UK (2018). A Prime Time for Action. https://www.cancerresearchuk.org/sites/default/files/executive_summary_-_a_prime_time_for_action_.pdf

3. Brown V, et al. The Potential Cost-Effectiveness and Equity Impacts of Restricting Television Advertising of Unhealthy Food and Beverages to Australian Children. *Nutrients* 2018, 10(5), 622; <https://doi.org/10.3390/nu10050622>

- **Is the assessment on the number of online impressions a fair assessment?**

We consider the updated assessment of the number of online impressions that children are exposed to be a significant improvement on the previous assessment. However we still consider it likely to be a significant under-estimate. We are pleased to see that the updated calculation reflects the two first steps and data sources outlined in a report by Dr Mimi Tatlow Golden and Dan Parker to the previous consultation (1,2). However the calculation still fails to factor other key steps identified and ultimately is based on spend which is a poor proxy for reach.

We are very concerned that unpublished research on eye-tracking has been used to reduce children's exposure to advertising. This consultation process has not made this research available for stakeholder scrutiny so we have no way of knowing key details that would build confidence in its use such as sample size, research conditions and if participants were specifically shown HFSS advertising. We do not consider this a transparent way for an important government consultation to be conducted.