

# CAP Consultation: food and soft drink advertising to children

## Annex 4

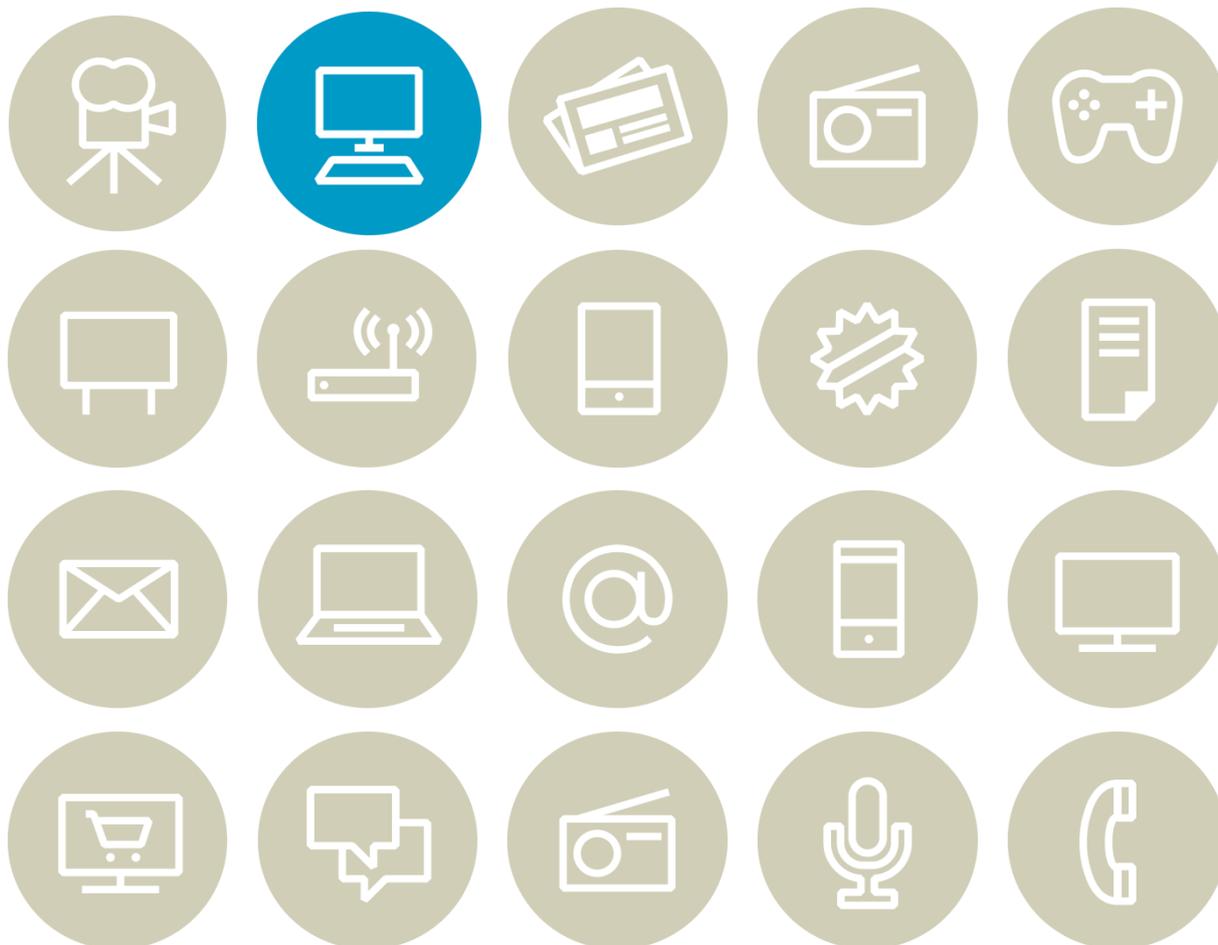
Pre-consultation respondent briefing paper



# Exploring the introduction of new restrictions on food advertising in the non-broadcast media

Information pack for pre-consultation participants

November 2015



## 1. Introduction

You have been invited to contribute to the Committee of Advertising Practice's ([CAP's](#)) pre-consultation on whether to introduce new restrictions on the marketing of food and soft drink to children in non-broadcast media. CAP [has committed](#) to formally consulting on the possibility of introducing new restrictions in early 2016.

Pre-consultation is intended to help CAP better understand the perspectives of key constituencies of stakeholders across the UK, including policy-makers, civil society and industry. We're aiming to highlight where there is consensus and where there are differences, as part of CAP's efforts to take into account relevant information to inform its consultation proposals.

Information on CAP and its regulation of marketing communications in the UK is set out below. Please note CAP covers non-broadcast marketing communications only. The Code covering broadcast advertising is the responsibility of the Broadcast Committee of Advertising Practice (BCAP) working under contract with Ofcom. The BCAP Code already includes [rules](#) on the placement of HFSS advertising in programming for or likely to appeal particularly to children.

## 2. What is this document for?

This document tells you who we are and details the questions we will ask. It also provides you with the necessary background information to prepare for your pre-consultation meeting with us.

The document includes:

- background information on CAP and its decision to consult on changes to its Code;
- an outline of the pre-consultation process and structure of the sessions;
- the pre-consultation questions; and
- what the full consultation will involve and its timings.

We politely request that you take the time to [read all the information](#) contained in this document carefully before you come to your session, so that we can devote your allotted time to recording your views.

## 3. What is CAP?

CAP is the self-regulatory body that writes and maintains the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code). The CAP Code applies to all UK non-broadcast marketing communications, which include those placed in traditional and new media, sales promotions, direct marketing communications and marketing communications on marketers' own websites. It is enforced by the [Advertising Standards Authority](#) (ASA), which acts as an independent jury on the interpretation of CAP's rules.

CAP's members include organisations that represent advertising, sales promotion and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the CAP Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, sales promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including on misleading advertising (Directive 2005/29/EC). Self-regulation is accepted by the Department for Business, Innovation and Skills and the courts as the first line of control in protecting consumers and the industry. Further information about CAP is available at [www.cap.org.uk](http://www.cap.org.uk).

The non-broadcast system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof), which operates independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making. Information about Asbof is available at [www.asbof.co.uk](http://www.asbof.co.uk)

#### **4. To what extent does the CAP Code already regulate non-broadcast marketing of food and soft drink to children?**

In order to help it determine whether new restrictions are necessary, CAP must have regard to the existing [rules](#), which restrict the marketing of food and soft drink to children. You are requested to read these rules prior to your pre-consultation session.

In summary, CAP's approach to regulating food and soft drink marketing has been to prevent food ads from misleading or harming their audience, including by exploiting vulnerabilities and risk factors associated with food and soft drink products e.g. over-eating and condoning poor nutritional habits or an unhealthy lifestyle in children. These rules and the requirement that ads must not encourage 'pester power' apply to all food and soft drink ads directed at children (defined as age 15 or younger). Additional restrictions apply to ads directed at children aged 11 or younger, where promotions, celebrities and licensed characters are prohibited.

The rules apply across all [non-broadcast channels](#) including online (covering, for example, advergames and ads in social media and on companies' own websites), outdoor, print media, cinema and direct marketing.

Rules reflecting the provisions of [Regulation \(EC\) No 1924/2006 on nutrition and health claims made on foods](#), ensure that ads must not mislead as to the nutritional value or health properties of food or soft drink.

#### **5. What are the key factors that CAP must take into account in setting restrictions on advertising?**

CAP is committed to ensuring that the advertising self-regulatory system continues to strike the right balance in regulating ads for food and soft drink products between:

- the protection of consumers (particularly children);
- the right of businesses to advertise their products responsibly; and
- the right of consumers to receive responsible advertising for products that may be of interest to them.

In setting restrictions on marketing communications, CAP must have regard to the following key legal and regulatory factors, which you are requested to take into account in responding to the questions:

- the right to commercial freedom of expression (for the purposes of this work, the right of companies to advertise);

- any restrictions must be necessary in a democratic society for a legitimate aim, including the protection of health;
- any evidence of harm, or a real potential for harm; and
- any restrictions that CAP might impose must be a proportionate means of achieving a legitimate aim, and regard must be had to whether there are less restrictive alternative means of achieving the aim.

## 6. Why is CAP consulting on changes to the CAP Code?

CAP's decision to carry out a public consultation responds, in part, to changes in children's media habits and evolving advertising techniques. It also reflects a growing consensus, shared by public health and industry bodies, about the role of advertising self-regulation in helping to bring about a change in the nature and balance of food and soft drink advertising targeted at children.

Against a background of concern about children's diets, we will ask a broad range of stakeholders whether a change of approach is needed. The proposed approach would introduce, for the first time, non-broadcast rules governing the targeting of advertising of food and soft drink high in fat, salt or sugar to children.

## 7. What is the pre-consultation for?

CAP is carrying out a broad pre-consultation, holding meetings with a wide spectrum of stakeholders, including: government bodies and the public health community; charities and other non-governmental organisations; the advertising industry; media owners; and the food industry. We are looking to obtain a range of views across all the different constituencies and in different nations of the UK.

The pre-consultation sessions are tightly structured. The questions are the same for all pre-consultees and our approach is intended to ensure that everyone has an opportunity to give their views on an equal footing.

We intend to use the information gained from the pre-consultation primarily to inform a chapter in the consultation document itself. This chapter will:

- provide readers with an up-to-date overview of the range of positions on key questions; and
- highlight where there is consensus and where there are differences of views about the extent to which and how the non-broadcast marketing of food and soft drink to children ought to be restricted.

Please note that we will not attribute particular views to organisations; the relevant section of the consultation document will merely describe the perspectives of different stakeholders within each constituency.

This section of the document will only include your organisation's name in a list of those who have contributed to the pre-consultation. Please inform us in writing and at the meeting, if you do not wish to be included in this list.

## 8. How will the pre-consultation be run?

- Sessions will last no longer than 45 minutes.
- The pre-consultation questions are included in the section below. Please read them and consider what you might say before your session.
- It will be assumed that you are familiar with the background and process – to save time, the interviewers will not repeat administrative matters covered in this document.
- CAP will not circulate the record of the meeting for your approval.
- There will be a short period of time at the end of the interview to allow you to make any other points that you think relevant but that haven't been covered appropriately by the questions.

## 9. Pre-consultation questions

In answering the questions below, please take into account:

- ✓ factors most directly affecting children's diet and health (e.g. the food they eat at home and at school, and the role of education and exercise in child health outcomes);
- ✓ the rules already in place for the non-broadcast marketing, to children, of food and soft drink;
- ✓ your understanding of the evidence relating to the impact of marketing to children of food and soft drink; and
- ✓ the key legal and regulatory factors that CAP must take into account in setting restrictions on advertising.

Please **explain** your answer in each case. 'Yes' or 'no' responses without explanation are unlikely to be helpful to CAP. If you don't know, please say so.

1. Are the current rules on the non-broadcast marketing of food and soft drink to children fit for purpose? Briefly, what are the key factors influencing your answer?
2. Should greater restrictions be put in place for the non-broadcast marketing of food and soft drink high in fat, salt or sugar (HFSS products) than for non-HFSS products? For the purposes of this question please explain 'why' and not 'how'.
3. If new restrictions were to be introduced specifically for the non-broadcast marketing of HFSS products, what model of nutrient profiling should be used to differentiate HFSS products from non-HFSS products?
4. With the exception of fresh fruits and fresh vegetables, non-broadcast marketing communications for food and soft drink products cannot include promotions or licensed characters, if the creative content of the marketing communication is aimed at children aged 11 or younger.

If new restrictions were to be introduced specifically for the non-broadcast marketing of HFSS products, should the existing restrictions on creative content apply to HFSS products only?

5. Should the rules aim to reduce children's exposure to non-broadcast marketing of HFSS products?

If so, should that be done by prohibiting the marketing of HFSS foods in non-broadcast media targeted at or of particularly appeal to children aged 15 or

younger, 11 or younger or some other age category of children? Is there an alternative means of reducing exposure?

6. Is there a case for exempting some media from provisions designed to reduce children's overall exposure to non-broadcast marketing of HFSS foods?
7. Who is likely to be most impacted by the introduction of new restrictions on the marketing of HFSS foods in non-broadcast media targeted at or of particularly appeal to children? Please consider positive and negative impacts.

## **10. What happens next?**

Our record of your comments on the questions will be fed into the drafting process for the consultation document. If we have any further questions or require clarification, we will contact you. We will not circulate a record of the meeting for approval.

## **11. What are the timings for the consultation?**

We aim to publish the full public consultation document in early 2016. The consultation is likely to remain open for ten weeks. We are likely to publish the outcome of the consultation by the end of 2016.

## **12. Who can respond to the full consultation?**

CAP welcomes responses from all parties, public and private. You have been added to a comprehensive contact list to receive notice of the consultation's launch.

CAP commits to evaluate and respond publically to all significant points when it makes public the consultation outcome.

## Contact Us

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