

# CAP Consultation on food and soft drink advertising to children: Individual responses N-P

56 – Nestlé UK

## Executive Summary

Nestlé UK supports the proposed CAP code changes.

We are committed to marketing our products responsibly and are supportive of measures that will lead to greater consistency of the rules applied in the UK (regardless of the media channel) and a more level playing field, for the benefit of consumers and advertisers alike, particularly in the context of HFSS products and children.

So far as possible, the proposed language in the CAP code should be clear to avoid ambiguity and guidance should be provided to assist advertisers in complying with the rules. For example, we would strongly encourage CAP to develop guidance for advertisers on the ASA's expectations how advertisers are to apply the 25% test in non-broadcast media where the age of the audience is more difficult to assess and / or measure.

We have provided input to the FDF in respect of their response to this consultation.

## Consultation Questions

1

### Restrictions on HFSS product advertising

**(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

We are supportive of measures that will lead to greater consistency of marketing and advertising restrictions of HFSS products to children in the UK, regardless of the media channel.

**(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?**

**Please explain your reasons. Please consider CAP's recommendations in [Section 44](#) when answering this question. The text of the BCAP guidance note is available via the link above or in Annex 5.**

We support the proposal for CAP to use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products. This will ensure consistency of application across all media and create a more level playing field in this area.

2

### **Selecting a nutrient profiling model**

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

**Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model. Please consider CAP's recommendation in section 45 and the information on potential nutrient profiling models included in Annex 6 when answering this question.**

For the purpose of aligning the two advertising codes in the UK, we welcome a consistent HFSS profiling model to be applied in both the CAP and BCAP codes. Given that the use of the Department of Health nutrient profiling model is already well established in the BCAP Code, we think there is benefit in adopting the same model for the CAP code to identify HFSS products.

We are aware that Public Health England is currently in the process of reviewing the Department of Health nutrient profiling model following the publication of the SACN report on carbohydrates and health last year. We will input into that process via the Food and Drink Federation through the expert working group that we understand is being formed to address the update process. We will also consider providing a response to any consultation on a new model.

Should CAP decide to consult on the potential adoption of a new model for the purpose of differentiating HFSS and non-HFSS products following the changes to the HFSS profiling model, continued alignment of the CAP and BCAP codes should be ensured.

3

### **Existing prohibitions on the use of promotions and licensed characters and celebrities.**

**There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?**

**The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons. Please consider CAP's recommendation in section 46 when answering this question.**

We support the proposal for the existing restrictions on advertising to children to focus on HFSS products only. In order to ensure consistency across all media, the age gate for HFSS restrictions should be moved to under 16s.

4

### **Introducing placement restrictions**

**(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

We support the introduction of this rule to the CAP code which we believe will help provide a meaningful reduction in children's exposure to HFSS product advertising in non-broadcast media, and ensure further alignment of the CAP code with the BCAP code.

In our view, for certain types of non broadcast advertising it may be more difficult to assess if it is targeting children as a result of its placement. One example would be an out of home poster campaign. We would welcome further guidance from CAP as regards the rules on placement restrictions of non-broadcast advertising of HFSS products to provide as much clarity as possible to consumers and advertisers

Clear guidance would be useful, for example, on the application of the restrictions around schools (e.g. xxx meters from the school gate or a certain radius around schools) and as regards bus stops or public transport used by school children, to ensure clarity and create a level playing field across industry.

**(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:**

**i) aged 11 or younger?**

**ii) aged 15 or younger?**

**Please explain your reasons. Please consider CAP's recommendations in section 47 when answering this question.**

We acknowledge evidence that suggests children's critical understanding of more integrated online media may not be fully developed until the age of 12. We also acknowledge that the signatories of the EU pledge such as ourselves use an age gate of 12 for marketing restrictions to children, and that in a European Union context this is considered the most appropriate definition.

However, in the UK, the BCAP code uses an age gate of 16 for the purposes of defining restrictions to HFSS advertising. We agree that to create consistency across all media in the UK, non-broadcast restrictions should also be set at 15 or younger.

**5**

**Defining the audience**

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.

**Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

**Please explain your reasons. Please consider CAP's recommendation in section 48 when answering this question.**

We agree that the CAP code should apply a 25% measure to assess if HFSS advertising is of particular appeal to children.

We refer to our comments above at Question 4 regarding the difficulties that may arise regarding placement restrictions. In respect of the "particular appeal" test for non-broadcast advertising, there is less high-quality research available to assess the age of the audience in non-broadcast media.



It would therefore be welcome if further guidance could be developed on how the 25% measure is to be used and how to assess the age across different non-broadcast channels in order to ensure consistent application of the rules across industry. Most online sites for example do not have their audiences independently measured in the same way that traditional media do. This means that there is more of an element of judgement, and less science, when it comes to avoiding sites that might have a high proportion of child viewing.

## 6

### **Application to different media**

**Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?**

**Please explain your reasons. Please consider CAP's recommendation in section 49 when answering this question.**

**Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.**

We support application across the scope of the current CAP code, including online advertising. Online media consumption is growing dramatically, and in many cases children are viewing online channels such as YouTube in preference to traditional broadcast media.

However, as outlined in the answer to question 5, certain channels are easier to identify as targeting children than others and quality research is less available for non-broadcast than for broadcast audiences. Therefore it is often difficult to identify online audiences by age. This is likely to lead to uncertainties, and we would strongly encourage the CAP to develop guidance for advertisers on the ASA's expectations how advertisers are to apply the 25% test in non-broadcast media where the age of the audience is more difficult to assess.

## 57 – News Media Association (NMA)

The News Media Association is the voice of national, regional and local news media organisations in the UK – a £6 billion sector read by 47 million adults every month in print and online. The NMA exists to promote the interests of news media publishers to Government, regulatory authorities, industry bodies and other organisations whose work affects the sector.

The News Media Association supports the self regulatory system of advertising upheld by the Advertising Standards Authority and is a member of the Committee of Advertising Practice. It is important that any new restrictions upon advertising that are to be effected by changes to the CAP Code, including the extension of restrictions to non-broadcast media that have applied to broadcast media, must be within remit, justified by reference to evidence, necessary and proportionate.

The NMA would therefore be particularly concerned if the proposed changes were to be adopted and implemented in any way that might have the effect of imposing restrictions upon advertising in its members' publications, in print or online, where these are not currently considered to target advertising at children and young people. We have therefore set out responses to questions 5 and 6 below.

**QUESTION 5** *Defining the audience It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising? Please explain your reasons. Please consider CAP's recommendation in section 48 when answering this question.*

If HFSS product advertising is to be restricted, then CAP's 'particular appeal' test should be applied where more than 25% of the audience are understood to be of a particular age or younger, to identify media that should not carry advertising for certain products media.

It is important that generally available media, such as national and local newspapers, in print or online, should not inadvertently be caught and subject to the new restrictions. Publishers of regional news media in particular have also pointed out that as they do not target younger audiences, they measure audience from 15/16 upwards. They stress that it would be an unnecessary burden on the industry if they were forced to measure 16 and under in their audience research, simply to prove for these purposes that their under 16 year old readership was less than 25% of their audience.

**QUESTION 6** *Application to different media Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising? Please explain your reasons. Please consider CAP's recommendation in section 49 when answering this question. Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.*

We refer you to our answer to question 5 above. National and local news media which do not target such advertising at children and young people and are not considered to do so under the tests currently applied by CAP should not be subject to the proposed restrictions. However, if the audience definition tests are changed in anyway that might catch such media, in advertently or otherwise, then the possibility of non-broadcast media exemption must remain open.

## About Us

NHS Health Scotland is a national Health Board working with public, private and third sectors to reduce health inequalities and improve health.

Our corporate strategy, [A Fairer Healthier Scotland](#), sets out our vision of a Scotland in which all of our people and communities have a fairer share of the opportunities, resources and confidence to live longer, healthier lives.

Our mission is to reduce health inequalities and improve health. To do this we influence policy and practice, informed by evidence, and promote action across public services to deliver greater equality and improved health for all in Scotland.

## Key Messages:

- NHS Health Scotland supports the proposal to place further restrictions on advertising to children of foods and soft drink products in non-broadcast media. This would include extending the code to cover children up to the age of 15 years old.
- It is important that the proposals are considered within the wider context in which advertising takes place and the potential for harm in balance with self-expression, information, competition and all the other merits of advertising.

## QUESTION 1:

QUESTION 1	Restrictions on HFSS product advertising
	<p>(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?</p> <p>(b) Should CAP use the existing <a href="#">Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products</a> to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?</p> <p>Please explain your reasons. Please consider CAP's recommendations in <a href="#">Section 44</a> when answering this question. The text of the BCAP guidance note is available via the link above or in <a href="#">Annex 5</a>.</p>

NHS Health Scotland welcomes the proposal to amend the CAP code to place tougher restrictions on the advertising of high fat, salt and sugar (HFSS) products to children in non-broadcast media including online.

In Scotland we need to take action to improve the nation's diet. Our levels of overweight and obesity are amongst the worst in OECD countries and we have made very little progress in achieving our dietary goals over the past 15 years.

We now need to take action at a variety of levels and agree that the responsible advertising of HFSS products has a role in this approach. It is important that this is tailored and targeted to address inequalities.

We consider the BCAP guidance on identifying brand advertising as sufficient but should be regularly reviewed to ensure that it continues to reflect current advertising strategies.

## QUESTION 2:

QUESTION 2	Selecting a nutrient profiling model
	<p>Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?</p> <p>Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model. Please consider CAP's recommendation in <a href="#">section 45</a> and the information on potential nutrient profiling models included in <a href="#">Annex 6</a> when answering this question.</p>

We are content that the principles of the nutrient profiling model are an appropriate mechanism to identify HFSS products. The current DH model is no longer relevant and should not be used until a review is complete in light of new scientific evidence.

## QUESTION 3:

QUESTION 3	Existing prohibitions on the use of promotions and licensed characters and celebrities
	<p>There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?</p> <p>The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons. Please consider CAP's recommendation in <a href="#">section 46</a> when answering this question.</p>

NHS Health Scotland welcomes the promotion of healthier products to children and young people in an appropriate manner. However the current models for nutrient profiling suggested within this consultation are not sufficient and there is a risk that children will be exposed to advertising of unsuitable products.

Risks include products that fall just within the nutrient profiles being promoted which do not support the improvement of the Scottish Dietary Goals. Wider consideration of how healthier foods could be effectively promoted should be taken forward to ensure the reduction of discretionary foods and the increase in foods such as fruit and vegetables.

#### QUESTION 4:

QUESTION 4	Introducing placement restrictions
	<p>(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?</p> <p>(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:</p> <p style="padding-left: 40px;">i) aged 11 or younger?</p> <p style="padding-left: 40px;">ii) aged 15 or younger?</p> <p>Please explain your reasons. Please consider CAP's recommendations in <a href="#">section 47</a> when answering this question.</p>

We agree that CAP should introduce a rule to restrict the placement of HFSS product advertising.

We would recommend that a restriction in line with the BCAP code rule on TV advertising to increase the age range would be advisable. This would ensure consistent messaging to all children and young people and is especially important with the shift in exposure and engagement to non-broadcast advertising within this extended age range.

The Scottish Health Survey 2014 showed the percentage of children who are overweight or obese increases at each age stage. This reflects the importance of ensuring that the wider age range is captured within the updated code.

All children – overweight (including obese)

2-6 years	7-11years	12-15 years
27%	32%	37%

Scottish Health Survey 2014



## QUESTION 5:

QUESTION 5	Defining the audience
	<p>It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.</p> <p>Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?</p> <p>Please explain your reasons. Please consider CAP's recommendation in <a href="#">section 48</a> when answering this question.</p>

We do not agree that the recommendation of the 25% measure for the purpose of restricting HFSS product advertising is sufficient to ensure that children and young people are not exposed to HFSS advertising.

We would suggest that a working group is set up to consider the wider implications on children's exposure to the various types of non-broadcast advertising of HFSS products. One example may be to consider a 9pm watershed on relevant types of media.

Whilst not covered specifically in this consultation, we feel that due to the disproportionate amount of advertising of HFSS products that restrictions for the wider population should be considered.

## QUESTION 6:

QUESTION 6	Application to different media
	<p>Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?</p> <p>Please explain your reasons. Please consider CAP's recommendation in <a href="#">section 49</a> when answering this question.</p> <p>Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.</p>

We agree that it is important that the restrictions cover all areas included in the CAP code including online advertising. This is important to ensure consistency and avoid any potential areas of challenge arising.

We do feel that there are areas out with the CAP code that may also benefit. It will hopefully set a precedent and clear guidance for areas which fall outside the code such as instore promotions and encourage responsible advertising of HFSS in these areas.

## 59 – North East Directors of Public Health

Alongside persistently high levels of obesity amongst children, particularly in more deprived areas, non-broadcast forms of advertising, notably online advertising aimed at children, have become more prevalent, including the promotion of food high in fat, sugar and salt (HFSS). This may have been, at least in part, an unintended consequence of much needed restrictions on television advertising.

The recent evidence review by Public Health England found that children in England are not only exposed to a high volume of traditional and new forms of marketing and advertising, including cinema, press, social media and 'advergames' but that 'available research evidence shows that all forms of marketing consistently influence food preference, choice and purchasing in children and adults' (PHE, *Sugar Reduction. The evidence for action.* 2015).

The Faculty of Public Health recognises that to a large extent, food advertising operates at a subconscious level and for children in particular, the boundaries between socialising, entertainment and marketing may not be clear. Furthermore, the ability of parents to mediate is limited by the range and scope of non-broadcast marketing techniques aimed at or appealing to children and young people (FPH, *Food Marketing to Children Position Statement*, 2013).

We therefore welcome the opportunity to contribute to this CAP consultation to strengthen the protection afforded to children through restrictions in non-broadcast advertising. Our response to the consultation questions is as follows:

### Question 1: Restrictions on HFSS product advertising

More robust restrictions on HFSS products are necessary, taking into account the results from the National Child Measurement Programme (NCMP) 2014/15 that 22% of children in reception year were overweight or obese, rising to 33% by year 6. Children in the most deprived areas are twice as likely to be obese than children in least deprived areas. Whilst not a solution in isolation, responsible advertising can play a part in restricting children's exposure to products that have the potential to harm their health.

### Question 2: Selecting a nutrient profiling model

We strongly support a review of the nutrient profiling model developed by the FSA, in order for it to be consistent with current definitions of high fat, salt and sugar food. However, in the meantime we consider the current model supported by DH to be the most appropriate one available.

### Question 3: Existing prohibitions on the use of promotions and licensed characters and celebrities

Please see response to question 4 below. We call for an end to all advertising of HFSS products aimed at or appealing to children aged 15 or younger, not just those advertisements using promotions, licensed characters and celebrities, therefore the proposed new wording would not apply. Once a review of the nutrient profiling model has taken place to align with current recommendations e.g. in the Scientific Advisory Committee on Nutrition (SACN) carbohydrates and health report, consideration should be given to

removing these restrictions for non-HFSS products, allowing for, and encouraging creative advertising to promote healthier options.

#### Question 4: Introducing placement restrictions

Obesity is a serious public health concern for all ages, with a clear pattern across the social gradient, however as this consultation focuses on advertising relating to children, we will focus our response on that age group. We therefore recommend that as a minimum, the placement of HFSS product advertising should be prohibited for media aimed at or appealing to children aged 15 or younger, particularly as research from Ofcom has shown that in 2015 96% of 12 to 15 year olds spent more time online than watching television. However, we would urge consideration of extending this to advertising of HFSS products targeted at all age groups, consistently applied across CAP and BCAP.

#### Question 5: Defining the audience

If our minimum recommendation is applied, i.e. prohibiting advertising of HFSS products to those under 16 years of age, for consistency the CAP code should use the same measure for the 'particular appeal' test as for other restrictions i.e. 25% of the audience.

#### Question 6: Application to different media

Restrictions on advertising of HFSS products should apply to all non-broadcast media within the remit of the code, including online advertising. Such a measure would be consistent with the NICE recommendation to restrict the marketing, advertising and promotion of HFSS products to children and young people via all non-broadcast media, including manufacturers' websites (NICE guidelines, PH25, 2010).

Our recommendations, as above, are both proportionate and necessary in view of the prevalence of obesity amongst children and young people, the resulting impact on their current and long-term health and the potential for non-broadcast advertising to contribute to the problem, when it could be part of a positive response to this public health challenge.



### **Cross-cutting remarks**

Nourish Scotland campaigns for a rights-based approach to food in which everyone has financial and geographical access to adequate, safe, nutritious and culturally appropriate food, with dignity and choice now and in to the future. Our current ‘obesogenic’ food environment is making us ill and we’re particularly concerned about the current and long-term health of children across the UK. We believe we need to change our food environment so that choosing healthy, tasty food is the default for everyone.

Advertising practices are a key part of the food environment. We believe it is first and foremost up to the UK and Scottish governments to set out a statutory framework for advertising practices. These should always be seeking to match international best practice, and adhere to World Health Organisation recommendations. The forthcoming UK Childhood Obesity Strategy would be one appropriate avenue for taking this forward. The Committee of Advertising Practice and other relevant bodies/regulators should then align their rules and regulations with those of democratic governments. Transparent monitoring of advertising and stronger enforcement mechanisms is also required, including effective sanctions for transgressions. Industry self-regulation has proved to be not a strong enough mechanism to significantly alter advertising practices to put the health and well-being of our children front centre.

### **Specific responses**

In our consultation response, we are supporting the positions laid out by the Children’s Food Campaign, World Obesity and the Food Foundation.

#### **QUESTION 1 Restrictions on HFSS product advertising**

*Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?*

Yes. The Committee of Advertising Practice rules should be harmonised across all forms of media (including in cinemas, on posters, in print, online and advergames), using the current restrictions on broadcast advertising of HFSS products to children under 16 as a starting point, but going further.

*(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?*

No. The existing BCAP guidance is not strong enough. The definition of advertising needs to be widened to cover all forms of ‘commercially-sourced messages’, including brand names or brand-related images.

BCAP’s current guidance allows *advertisement[s] for a specific non-HFSS product [which] refer to or feature... a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product.*

We support the following proposals for tightened regulations put forward by the Children's Food Campaign:

- Brand characters can only be used if all products which used those characters were non-HFSS.
- An ad featuring a brand but not the products would only be allowed if all varieties of that brand were non-HFSS.
- If an ad focused primarily on a competition / a giveaway and only featured one (non-HFSS) variety in the ad, it would only be allowed if all varieties available were non-HFSS.

#### **QUESTION 2 Selecting a nutrient profiling model**

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?*

Yes, the DH nutrient profile model should be adopted immediately for assessing whether a food or drink marketed in non-broadcast media is high in fat, sugar and/or salt and considered 'less healthy'. However, the model is currently being reviewed and strengthened and the new model should be adopted upon release.

#### **QUESTION 3 Existing prohibitions on the use of promotions and licensed characters and celebrities**

*There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?*

No. We believe it's not up to food and drink companies to tell children what they should be eating. Mass promotion of healthy foods such as fruits and vegetables and minimally processed products should be left to the government, if at all.

In addition to this, products that score below the HFSS threshold, including low-calorie soft drinks, often can't be considered healthy.

Rather than loosening, we need to tighten the restrictions on the techniques that food and drink companies can use to engage with children, including plugging the loopholes that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising. The restrictions on the use of media characters, mascots and celebrities should extend to point-of-sale/purchase, packaging, in-store promotion, toy giveaways and competitions. The same should also apply to 'equity brand characters'.

#### **QUESTION 4 Introducing placement restrictions**

*(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?*

Yes.

*(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:*

*i) aged 11 or younger? ii) aged 15 or younger?*

We believe that restrictions should apply to at least the age of 15 and under, but we would give preference for age 17 and under, following the WHO recommendations and the UN Convention of the Rights of the Child that define a child as anyone under 18.

#### **QUESTION 5 Defining the audience**

*It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.*

*Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?*

No. The 25% measure offers insufficient protection to children: It would still allow up to 25% of children to be exposed to the marketing communication, when the aim of the restrictions is to minimise children’s exposure to commercial messages that induce or encourage poor dietary choices.

The ‘particular appeal test’ is also almost impossible to implement or enforce effectively for many forms of nonbroadcast media, as we lack reliable audience breakdown data.

We support the submissions of others made to this consultation - notably World Obesity and the Children’s Food Campaign– which propose that a more sophisticated measure is needed which considers several key issues in identifying the media to which the code should apply, using a matrix approach:

- 1) The message of a particular advert: how child-focussed is the product being advertised
- 2) The communication method of a particular advert: how child-focussed is the language/style of the advert
- 3) The placement of the particular advert: what is the *probability* that the advert’s location (in physical/digital space) will expose children to HFSS content

Overall we believe no food or beverage products should be directly marketed to children (i.e. promoted using messages and methods that attract children’s attention) by food and drink companies. Also, products designed specifically for children should be promoted to parents only if they pass the DH nutrient profiling threshold.

#### **QUESTION 6 Application to different media**

*Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?*

Yes, the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP’s remit, including branded messaging and entertainment (e.g. online branded games), food-branded toys and household items, licensed and equity characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

## 61 – Obesity Action Scotland

Obesity Action Scotland welcomes this consultation. The current obesity crisis in the UK has many underlying influences. A fundamental influence is the obesogenic environment in which we live, where inactivity and overconsumption of energy dense foods is extremely easy, available, affordable and accepted. Introduction of a new rule prohibiting the placement of high fat sugar salt (HFSS) product advertising in media targeted or likely to appeal to children is a positive step towards the UK becoming a healthier nation.

Obesity Action Scotland is a new unit that was established in summer 2015 to provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland. It is funded by a grant from the Scottish Government and hosted by the Royal College of Physicians and Surgeons of Glasgow on behalf of the Academy of Medical Royal Colleges and Faculties.

The main aims of the Unit are:

- To raise awareness and understanding of what drives obesity and the health problems associated with obesity and overweight with health practitioners, policy makers and the public
- To evaluate current research and identify strategies to prevent obesity and overweight based on the best available evidence
- To work with key organisations in Scotland, the rest of the UK and worldwide, to promote healthy weight and wellbeing

The Steering Group of Obesity Action Scotland has members across various disciplines involved in preventing and tackling obesity and its consequences e.g. clinicians, public health experts, epidemiologists, nutritionists and dieticians, GPs and weight management experts.

### **Consultation questions**

#### **1. Restrictions on HFSS product advertising**

##### **(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

Yes. The CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS). Research shows that marketing greatly influences the food children choose to eat<sup>1</sup>. It also increases the amount of food they eat<sup>2</sup>. Marketing is a pivotal factor in the obesogenic environment, and tackling children's obesity cannot be done effectively without restrictions on marketing to children. We do not currently have effective rules to protect children from exposure to HFSS marketing. We believe that a child's right to a healthy start in life should not be traded off against commercial freedoms to promote unhealthy food and drinks.



**(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?**

No. The existing broadcast guidance on identifying brand advertising is not strong enough; BCAP guidance needs to reflect the breadth of advertising techniques used in non-broadcast media. Tougher rules should be adopted for both broadcast and non-broadcast brand advertising. This should include further restrictions to limit brand awareness and use of celebrities.

**2. Selecting a nutrient profiling model**

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes but with significant reform to the nutrient profile model. The Department of Health nutrient profiling model to identify HFSS products should be adopted immediately. That model should also be updated to reflect current nutrition guidance: reflecting the latest evidence on recommended levels of free sugar intake. The new model should be adopted for all non-broadcast marketing as well as broadcast.

A revised nutrient profile model should reflect other, stricter, models used elsewhere. For example, a WHO\_EURO model does not allow advertising fruit juices and diet cola<sup>3</sup>. At the moment, the FSA/Ofcom model classifies 53% of foods as unhealthy, compared to 67% by WHO\_EURO model, 75% by WHO\_EMRO model, 81% by EU\_pledge model, and 86% by PAHO model<sup>4</sup>.

**3. Existing prohibitions on the use of promotions and licensed characters and celebrities**

**There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?**

No. Existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should only be loosened for demonstrably 'healthier' products, but not for all non-HFSS products, and not for brands which include any prominent HFSS products.

We suggest classifying foods based on the degree of processing (i.e. unprocessed or minimally processed, processed, and ultra-processed) as described by Monteiro et al<sup>5</sup>. UK diet was assessed according to these criteria using NDNS data 2008-2012<sup>6</sup>. The intakes of minimally processed foods and lower intakes of ultra-processed foods were associated with the most healthful dietary profiles; processed food was associated with higher body weight. Only 28% of energy in UK diet was obtained from minimally processed foods; 66% came from processed and ultra-processed foods (alcohol was not included)<sup>2</sup>.

#### **4. Introducing placement restrictions**

##### **(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

Yes. CAP should introduce a rule restricting the placement of HFSS product advertising, as reducing exposure to advertising will consequently reduce the impact on an audience.

##### **(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?**

Of the two options given, we support aged 15 and under. However, we believe that 17 and under should be the audience that media placement restrictions apply to; although we note that option was not given in the consultation.

#### **5. Defining the audience**

**It is often straightforward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.**

##### **Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

No. The 25% audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children. Additional measures to more broadly define the ‘particular appeal’ of marketing to children (including content, marketing techniques and placement) should be introduced.

We also have concerns over how the threshold would be implemented due to lack of robust and reliable data available on the audience consuming digital media.

## **6. Application to different media**

**Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?**

Yes. The placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This should be extended to include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

## 62 – Obesity Group of the British Dietetic Association (formerly DomUK)

1. We welcome this consultation and the opportunity to contribute to it. This is a very important issue and one about which we feel strongly.
2. In terms of the age of children, in our view this should be under 16 years according to the specific proposal laid out by CAP, but ideally would be extended to include under 18 year olds. The capacity of children and young people to make informed decisions is not entirely dependent on age, and in our view the use of product placement alongside activities that appeal to young people (such as sport) and use of subconscious messaging means that in order to protect children and young people, a higher age cut-off would be preferable.
3. In our view the CAP code should be updated to introduce tougher restrictions on advertising of foods and drinks high in fat, salt and sugar (HFSS). National data shows that intake of sugar, saturated fat and salt is too high in many age groups including children and young adults. Snacking and soft drinks consumption including juice is also high in these age groups.
4. We think that the definition of broadcast media needs to be widened.
5. At the moment the nutrient profiling model is the best tool that we have to define HFSS foods and drinks. However in our view there are products that may fall outside the definition of HFSS used by the model but still should not be recommended in children's diets e.g. carbonated non-sweetened drinks which can contribute to dental erosion. We would like to see an independent organisation look at products that are deemed suitable using the nutrient profiling model, to see if they are products that should be recommended for children and young people.
6. We think the existing prohibitions on use of promotions and licensed characters and celebrities should be maintained and ideally strengthened. It should not apply only to HFSS since other foods and drinks that pass the nutrient profiling model are not necessarily ideal for children and young people for other reasons.
7. Placement of HFSS product advertising should be regulated and again we would like to see this apply to the highest age group possible; according to this consultation that is aged 15 years or younger but we would ideally like to see this apply across all products since family products are likely to be accessible to children anyway.
8. We do not agree with the use of the 'particular appeal' test, since 25% is arbitrary and it is our understanding that this is inappropriately high in relation to broadcasting figures. It is not acceptable that 25% of an audience may be made up of children before the rules apply, and it is likely that this may increase health inequalities since children from more deprived backgrounds watch more television and may have greater exposure to other media forms than children from other socioeconomic groups, and also have diets of poorer quality and greater prevalence of conditions such as obesity.



9. We have no doubt that the placement restriction on HFSS advertising should be extended to include online advertising, and that this should include all methods used by industry and advertising that appeal to children and young people such as games, branded toys and merchandise and packaging.

## 63 – Obesity Health Alliance

This document outlines the aligned response of the Obesity Health Alliance Steering Group to the CAP Consultation on non-broadcast advertising of HFSS products to children. We encourage member organisations to submit their own responses to the consultation using (and building where applicable) on the key points below.

### **General statement**

The Obesity Health Alliance is a coalition of over 30 charities, medical royal colleges and campaign groups who have joined together to fight obesity.

[www.obesityhealthalliance.org.uk](http://www.obesityhealthalliance.org.uk)

Constant exposure to unhealthy food and drinks on TV, radio, the internet, social media, in magazines, and for some even at school makes it very difficult to children and their families to make healthy choices and greatly influences the food they eat. Currently one in five children in England is overweight or obese before they start primary school, and by the time they leave, this increases to almost one in three. Obese children are more likely to be obese as adults, which in turn increases their risk of developing serious physical health conditions such as Type 2 diabetes, cancer, liver and cardiovascular disease and associated mental health problems. These conditions have a devastating human impact and also place a huge financial burden on our already stretched health service. This is why we need tough and far reaching action to protect children from harmful advertising and to give them the best possible chance of a healthy future. While we welcome the opportunity for consultation on this area, the Government has rightly declared that childhood obesity is a national emergency so we need a game changing approach to tackle it.

### **Consultation Questions**

#### **1. Restrictions on HFSS product advertising**

##### **(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

Yes. Children are also eating too much sugar, salt and saturated fat.<sup>iii</sup> We know that eating too much can lead to weight gain and obesity.

Research shows that marketing greatly influences the food children choose to eat,<sup>iii</sup> and also increases the amount of food they eat.<sup>iv</sup> Marketing is a pivotal factor in the obesogenic environment and tackling children's obesity can't be done effectively without restrictions on marketing to children. We don't currently have effective rules to protect children from exposure to HFSS marketing.

We believe that a child's right to a healthy start in life should not be traded off against commercial freedoms to promote unhealthy food and drinks.

**(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?**

Yes, but with clear reforms.

There is evidence showing the impact brand advertising has on children's consumption. Not only do advertisements for certain branded products make children more likely to prefer and purchase that particular product, it also encourages consumption of similar products.

We believe the guidance needs tightening to offer better protection to children. For example the current guidance is vague in specifying how advertising featuring a range of products from one brand is categorised when one or more would be classed as HFSS. We want to see specific guidance on how to enforce the statement that 'a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product' would be deemed HFSS.

Therefore further work should be carried out to ensure that the BCAP guidance is clear and takes into consideration recent evidence around brand advertising.

## **2. Selecting a nutrient profiling model**

**Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes. In addition we believe the current nutrient profiling work should be updated to reflect the latest evidence on recommended levels of free sugar intake. We welcome the current PHE-lead review of the current nutrient profile model to take into consideration changes to dietary guidance since its creation. The new model should be adopted for all non-broadcast marketing as well as broadcast.

## **3. Existing prohibitions on the use of promotions and licensed characters and celebrities**

**There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?**

No. These rules should continue to apply to all food and soft drink advertising directed at children.

However, we recognise the potential for marketing to be used to promote healthy lifestyles. As such we welcome the possibility excluding fruit and vegetable products with no added sugar, fat or salt only. The rules should not be relaxed to include non HFSS products as some products categorised as non HFSS still have significant levels of sugar, salt and fat. The rules should only be relaxed for only the healthiest products, rather than healthier products.

#### **4. Introducing media placement restrictions**

##### **(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

Yes. Children's media consumption has changed significantly in recent years with children accessing media via tablets and smartphones. The rule should restrict placement of HFSS product advertising across all forms of media including social media, advertising in cinemas, on posters, in print, online and advergames. This will bring rules in line with those governing broadcast media and protect children from exposure to HFSS marketing.

##### **(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?**

The media placement restriction should cover children under 16 to bring it into line with broadcast regulations.

#### **5. Defining the audience**

**It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

We do not believe this mechanism provides sufficient protection to children as it is based on percentage, rather than volume of children in the audience. This means media which is universally popular with both adults and children would not meet the threshold.

We also have concerns over how the threshold would be implemented due to lack of robust and reliable data available on the audience consuming digital media – for example a child may be watching online videos signed into their parent's YouTube account which would identify them as an adult and serve advertising content accordingly.

#### **6. Application to different media**

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes. We believe there should be no exemptions to any type of media. We also support the extension of regulation to cover areas currently outside of CAP's remit – e.g. packaging, licensed and equity characters.

## 64 – People Against Sugar Tax

Response to CAP consultation on HFSS product advertising

### Question 1

People against Sugar Tax believe that introducing additional restrictions on the advertising of HFSS foods is anti-consumer and anti-business.

Businesses should be free to advertise food and non-alcoholic drinks as they see fit. Introducing restrictions on what can be advertised constitutes an unjustified attack on business.

The restrictions would also penalise consumers who are sensible with what they eat and drink.

The evidence that suggests consumers are forced to buy HFSS products because they see them in an advert is very weak indeed.

We would also disagree strongly with the sentence in section 44.2 which states 'HFSS products can contribute to weight gain and adverse health outcomes, especially when consumed excessively.'

Our view is that HFSS foods eaten in sensible amounts pose little health risks to most consumers. It is only when eaten in excessive amounts, that weight gain and adverse health outcomes can result.

### Question 2

We support the idea for CAP to use the Department for Health nutrient profiling model to identify HFSS products. It does not make sense to have different profiling models, and so a standardised approach is best.

### Question 3

We do not support any amendment to the rules governing the use of promotions and licensed characters and celebrities.

Any changes to the rules would be discriminatory against companies that produce HFSS products, and would be deeply unfair. Restricting the use of children's characters and celebrities either has to be on all children's foods or none at all.

We fully agree that companies that produce healthier food do not advertise as much as HFSS companies, but that is no justification for discriminating against HFSS products.

### Question 4

We do not support introducing new rules restricting the placement of HFSS product advertising.

New rules would result in a huge amount of bureaucracy and cost to businesses and regulators, and would make little difference to childhood obesity levels.

We are aware that there are rules in place for broadcast media, and that media neutrality is important. But we do not believe that can be used as a justification for extending the rules to non-broadcast media.

### Question 5

We do not agree to the CAP code using the 25% measure as we do not support any further restrictions on HFSS advertising (mentioned earlier).

However, we recognise that the 25% measure has some merit in developing a standard or model for defining the audience.

#### Question 6

Although we understand and support the aims of media neutrality, we do not support HFSS product restrictions to all non-broadcast media.

## 65 – PepsiCo UK

This paper is a response from PepsiCo in the UK to the Committee of Advertising Practice (CAP) proposals for further restrictions on the advertising to children of food and soft drink products in non-broadcast media.

### **PepsiCo UK**

PepsiCo UK is home to Quaker, Walkers, Pepsi Max and Tropicana. Our product range also includes Copella apple juice, Naked juice smoothies, Scott's Porage Oats, 7UP, Market Deli and Sunbites.

Responsible advertising and marketing practices are embedded in the way we do business and over the last ten years we have made a number of voluntary commitments around advertising our products to children.

We don't directly advertise any products within our portfolio to children under 16 years of age.

Since 2007 we have voluntarily extended the BCAP rules, on the advertising of HFSS foods to children, to all other paid for media channels; print, radio, digital and social media including advergaming. Additionally since 2006 we have only advertised low or no sugar cola drinks to all audiences.

We have also signed up to a number of voluntary industry pledges including EU Pledge; AA UK Brand Ambassador and Peer to Peer Marketing pledge; IFBA code on Responsible Marketing and Advertising to children; BSDA.

**We therefore welcome this CAP review and the opportunity to comment on its proposals.**

### **Question 1: Restrictions on HFSS product advertising**

- a) *Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)*
- Given that children now experience advertising through social media and other online channels we would support strengthening the current CAP Code to cover those media.
  - This is in line with PepsiCo's existing voluntary advertising commitments which have been in place for nearly 10 years.
- b) *Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?*
- We support the principle but have reservations about the implementation of this approach. Existing BCAP rules suggest a guidance approach which if to be replicated in the CAP codes would require more clarity. We would therefore support further engagement with industry on developing the detail of that guidance.

### **Question 2: Selecting a nutrient profiling model**

*Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?*

- If the BCAP code criteria is to be extended to other media it makes sense to adopt the existing FSA/DH Nutrient Profiling Model (a points based scheme) as used by OFCOM/BCAP.
- However, as pointed out in Annex 6, Public Health England has been commissioned to carry out a review of the DH nutrient profiling model which is likely to lead to changes in the current scheme. As the review will not be completed until 2017 we agree with CAP's caveat that if the review seeks significant changes a further consultation will be sought by CAP before adopting a new profiling model.



### **Question 3: Existing prohibitions on the use of promotions and licensed characters and celebrities**

*There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?*

- We support this idea. It would act as an incentive to develop products which are not HFSS.
- However, with the commercialisation of childhood in mind, we believe that there should be no advertising of any products directed at the under 8s. PepsiCo has made this voluntary commitment globally.

### **Question 4: Introducing placement restrictions**

*a) Should CAP introduce a rule restricting the placement of HFSS product advertising?*

- Yes

*b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?*

- We believe that the rules should apply to those **aged 15 or younger**. It would be a backward step to drop this to aged 11 and younger and would make no sense in the context of the BCAP and Ofcom rules.
- This would be in line with our own existing commitments.

### **Question 5: Defining the audience**

*It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?*

- Yes provided 'of a particular age or younger' is defined as those 15 years and under.
- We would however request that clear guidance be introduced for advertisers in relation to the steps they should take to establish what percentage of an audience are understood to be of a particular age. This can be difficult to assess, especially amongst new social media platforms.

### **Question 6: Application to different media**

*Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?*

- Yes and this is in line with existing industry commitments (eg BSDA) as well as our own.

## **Introduction**

- 1) Pact is the UK trade association representing and promoting the commercial interests of independent feature film, television, digital, children's and animation media companies. We have 500 members and around 100 of these have been involved in children's and animation programming.
- 2) Driven by regulatory changes, investment in original British children's TV amongst the commercial public service broadcasters (PSBs) fell by 95% over the last decade, from £58m in 2003 to £3m in 2013.<sup>1</sup>
- 3) A ban on HFSS advertising to children in 2006 in particular led to a removal of a material part of the revenue available for such programming has been a large part of this decline. The consequences of this ban were not fully anticipated at the time.
- 4) Whilst we acknowledge the arguments around improving children's health and reducing obesity rates, Pact urges CAP to also consider the economic impact of any additional options proposed in this consultation process on UK children's broadcasters - who invest in original UK children's programming. Online platforms have also started to commission original content from the Independent sector too although these revenues remain limited for the time being. Both public service and commercial sectors are already facing economic pressures and we cannot allow further pressure on content budgets which have already fallen so dramatically in recent years.

## **Consultation questions**

- 1.1 Pact's interest in this area is the impact of any proposed changes on the ability of UK broadcasters to invest in original children's content commissions. As such, this is a general response to the changes outlined in the consultation.

**Pact supports a proportionate approach to changing the CAP code, provided that it does not lead to any reduction in the spend that producers rely on to make high quality children's content**

- 1.2 Pact, like CAP, wants an evidence-based approach to policy-making and has understood the need to review the CAP code with regards HFSS advertising for non broadcast advertising, whilst being proportionate.

- 1.3 We agree with CAP that since the rules were strengthened there has been no significant new evidence on non-broadcast advertising's effect on children which presents itself for regulatory change; the current system appears to be working with regards to the effect of non broadcast advertising on children's poor diets and health.<sup>2</sup>

#### ***Collapse in the provision of children's content***

- 1.4 The last decade has seen a collapse in the provision of original children's content on the commercial PSB channels. Spend has fallen by 95% since 2003.<sup>3</sup>

- 1.5 This has been caused in large part by two key regulatory changes. The Communications Act 2003 removed quotas on the Public Service Broadcasters for children's programming, and the ban on HFSS advertising to children in 2006 removed a material part of the revenue available from such programming. In neither case do the consequences appear to have been fully anticipated.

#### ***Ban on HFSS advertising***

- 1.6 Implemented by Ofcom in 2006 in support of Government policy at the time, this removed a key source of ad spend. Ofcom estimated that the HFSS restrictions would cost the commercial PSBs £10.4m of revenue.<sup>4</sup> Ofcom couched this in terms of overall PSB revenue, noting that it represented 0.3% of the total. Certainly a £10.4m loss was unlikely to represent a threat to the PSB operators overall. However, this figure was far more dramatic by comparison to spend on children's programming – in 2006 the commercial PSBs spent just under £40m.<sup>5</sup> Clearly the loss of a sum equal to a quarter of the budget was likely to have a drastic effect on the profitability of the genre.

- 1.7 At the time Ofcom acknowledged that the restrictions "could have a knock-on effect on original children's programming, the scale of which is difficult to determine", but added optimistically "independent producers have already shown themselves to be skilled at developing different sources of financing for their programmes".<sup>6</sup>

- 1.8 Given the actual out-turn; this suggests that the impact of this change was underestimated. It removed the incentive for first run commercial PSB children's programming. The result has been a collapse in production. Pact underlines the important cultural value of having original British content for British children, rather than endless repeats and the value in development and societal terms for children seeing themselves reflected on screen.



### ***Non-broadcast media revenues***

- 1.9 If CAP introduces further restrictions on HFSS products in all non-broadcast media it could further curtail investment into an already fragile market. Although online TV advertising revenues represent only a small proportion (5.6%) relative to TV advertising and sponsorship market in terms of revenue, income from online TV is steadily growing: 38% year on year. This means it is clearly a significant amount of revenue for the commercial PSBs and multi channels.<sup>7</sup> We can expect that with online viewership increasing with younger age groups this is likely to shift in the future. With this in mind we do not want to further limit any investment that the commercial PSBs might make on non-broadcast media to help their revenues as this would in turn hamper any investment it may make with children's programme making sector.
- 1.10 In light of the potential further detriment to the children's programme making sector, Pact supports the retention of the current system. Pact notes – that CAP has already strengthened the guidance and found that advertising has a small effect on immediate food preferences especially when compared to factors like parental and peer influences and the decline in physical activity rates. In its independently commissioned literature review ahead of this consultation it found that 'the extent and quality of the evidence base around the impact of online food and soft drink marketing to children is limited.'<sup>8</sup>
- 1.11 Pact looks forward to reading the findings of the CAP review. Should evidence show that the CAP guidance needs to be further amended, then we would welcome a further discussion about how this option could be pursued in a way which would not harm the ability of the commercial and public PSBs to invest in high-quality, original, PSB content for children.

## 67 – The Professional Publishers Association (PPA)

The Professional Publishers Association (PPA) is the voice of the magazine media, representing publishers and providers of consumer, customer and business media in the UK. Our membership comprises over 230 companies, publishing around 2,500 consumer magazine titles, 4,500 business-to-business publications, data and information providers, and smaller independents. The PPA's membership includes a number of publishers with titles in the children's market, as well as many publishers whose titles appeal across generations.

We welcome CAP's consultation and the opportunity to consider how non-broadcast media can contribute to tackling the serious societal challenge of childhood obesity.

Responding to the CAP's core proposals, the PPA:

- **Support the introduction of a new rule**, as a symbolic step in supporting a wider public health approach to tackling obesity, noting the evidence is unclear on the impact of such a rule.
- Support prohibition of HFSS product advertising in media targeted at, or of particular appeal to, **children under 12**.
- **Welcome the application of existing rules** on licensed characters and celebrities to HFSS product advertising only.
- **Support the use of the Department of Health nutrient profiling model** to identify HFSS products

Responding to the specific consultation questions:

- 1 **(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

Yes. We accept the proposal, acknowledging that although the available evidence does not support the assumption that a ban on HFSS advertising targeted to children has any impact on childhood obesity, there is a desire for the regulatory framework to make a gesture in contribution to wider efforts to combat the problem of childhood obesity.

**(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules? Please explain your reasons.**

Yes. It make sense in this case to align the CAP and BCAP codes in order to provide advertisers with a consistent framework.

- 2 **Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes. We accept the Department of Health profiling model for the reason CAP have outlined in the consultation document. However, any revisions to the Department of Health profiling model should be subject to agreement by CAP before being adopted into the Code.

- 3 There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?**

Yes. Given the assumption behind these proposals to prohibit HFSS advertising targeted at children, it makes sense to use the full creative power of advertising in non-broadcast media to promote healthier food and drink options to children.

- 4 (a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

As stated above, we accept the proposal.

**(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?**

The PPA supports any restricts covering media directed at or likely to appeal to children aged 11 or younger.

As CAP outlines in the consultation document, under-12s are acknowledged in the current regulatory framework as a vulnerable group. We see no evidence to suggest this group should be expanded to include young adults up to the age of 16. This risks distorting the media market at the fringes, where media targeted or likely to appeal to under 12s is more clearly segmented.

- 5 It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

While the statement may be correct for under-12s, it is certainly not always clear where media is targeted at teenagers how this audience splits between under- and over-16s.

Magazine media with a teenage audience would be difficult to distinguish. Industry standard audience measurement, in the form of the NRS – and its successor PamCo – measure the readership of magazine media among adults aged 16 and over. Advertising sales and targeting are largely based on this metrics, however there may be titles, notable examples include TV listings, news and hobby titles, which are designed for whole family entertainment. Using the CAP proposed definition of 25% of a title’s audience may be both unenforceable where the regulator is unable to determine the size/share of audience under 16 and restrictive against advertising in title it is not intended to cover.

Similarly in other non-broadcast mediums, e.g. Cinema, prohibition to under 12s is achievable and measurable within film age-restriction classification set out by the British Board of Film Classification. If prohibition extended to under-16s, this would effectively provide a complete ban on HFSS products in cinema advertising as just 4% of cinema releases were classified at 18 in 2014 which may be the only available measure for targeting.<sup>1</sup>



**6 Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?**

Yes. The code is established on a non-discriminatory basis.

Additionally to the questions highlighted in the consultation document, a number of publishers have raised concerns that any interpretation of the Code changes could extend to cover mounts on magazines. While our understanding is that CAP rules apply to advertising and therefore only apply in paid-for space, it may be helpful to point out in guidance following any rule change as a result of this consultation, that this does not prohibit the inclusion of items such as prohibited under HFSS advertising rules on cover mounts.



## 68 – Provision Trade Federation (PTF)

### Who We Are

It is sent on behalf of the *Provision Trade Federation* (PTF), a long established trade association representing companies of all sizes involved in supplying dairy products (including milk powders, cheese, butter, yogurt and other dairy desserts), bacon, pig meat and fish. Our members include importers and exporters, as well as processors and manufacturers.

Some of our members make branded products, where they themselves are responsible for advertising decisions. Others supply major retailers, who market and promote products under their own labels.

### Introductory Comments

It is perhaps something of an understatement to say that much has happened in the weeks since the consultation was launched in early May.

At public policy level, the industry is still responding to publication of Public Health England's revised Eatwell Plate, which makes particular recommendations about reducing the proportion of dairy products in diets. We understand that there may be a judicial review process around the evidence base and consultation procedures for this. There is also an ongoing review of the Department of Health's Nutrient Profiling Model, which is directly relevant to the classification of HFSS foods. The Scientific Advisory Committee on Nutrition (SACN) has just embarked on a substantive review of the evidence about the impact of saturated fat on diet and health. Consultations are also due to take place on the proposed levy on high sugar drinks, again including definitions. Finally we are still awaiting publication of the Government's Childhood Obesity Strategy, which is expected to set out a series of actions for tackling what the industry as a whole acknowledges to be a major societal challenge. Those could include specific recommendations on advertising.

At a broader level, the Government is now committed to a policy of UK withdrawal from the European Union, following the result of the 23 June referendum on membership. This has major implications for the whole of food and farming and for the regulatory frameworks in which we operate.

As your consultation itself makes clear, advertising is just one small factor in an extremely complex equation around food and consumer behaviour. In the light of the very significant uncertainties referred to above, we do wonder if consideration should be given to postponing any conclusions on the issues raised in this exercise until we are clearer about the broader direction of travel.

Against that background, we have the following specific responses to three of the questions posed. These also need to be seen in the context of our view that lightly processed dairy and meat products are not currently perceived as contributors to the obesity crisis, but would be within the scope of your exercise on the basis of the current nutrient profiling model. We also believe that in order to safeguard our children's future health, it is vital that messages around foods which contribute to a healthy balanced diet reach all children. Advertising and other promotional activity can have a key role to play in ensuring that meat and dairy products are recognised as important contributors of vitamins and minerals and should be consumed regularly to ensure an adequate intake of calcium and iron in particular.

### **Should The CAP Code Be Updated To Introduce Tougher Restrictions On The Advertising Of Food High In Fat, Salt Or Sugar (HFSS) ?**

PTF wholeheartedly supports efforts to reduce obesity, particularly in children. It is a serious and growing problem and we agree that action must be taken. However, the introduction of restrictions for products with higher levels of fat, salt or sugar would severely restrict the advertising options for lightly processed dairy and meat products, such as cheese and ham, which are not generally regarded as “junk” foods.

Many of the products that fall within PTF’s remit score above 4 using the (existing) DoH nutrient profiling model and therefore will be classified as “less healthy” and will be subject to the proposed restrictions on advertising. We strongly object to the classification of these products as “unhealthy”. Instead they are important contributors of nutrients to children’s diets. Pork is naturally rich in protein, and provides ten vitamins and minerals that contribute towards good health and wellbeing. It is rich in thiamine, niacin, vitamin B6 and vitamin B12, and a source of riboflavin, zinc, potassium, phosphorus, selenium and pantothenic acid. Dairy is a key contributor of high value protein in the diet as well as a valuable source of calcium, vitamin B12 and zinc. Dairy and meat are included in the [‘School Food Plan’](#) in recognition of their importance in children’s diets, with dairy to be consumed every day and meat/poultry to be consumed at least three times per week.

Advertising can be used not just to sell products, but also to inform and educate consumers. Introducing restrictions based on levels of fat, salt and sugar will, among other things, deny companies the option of educating children about the value of meat and dairy products in their diets. This is of particular importance as many children, particularly girls, are known to be lacking in calcium and iron.

We are particularly concerned that CAP proposes to introduce what amounts to a ban on advertising meat and dairy products, while at the same time acknowledging that the available evidence continues to suggest that advertising has a relatively small effect on children’s immediate food preferences.

Other factors in the family home, playground, school dining room and playing fields have a greater role in driving up levels of childhood obesity when compared to the role played by advertising.

### **Should The CAP Code Adopt The DoH Nutrient Profiling Model To Identify HFSS Products?**

We have some very specific issues with the use of the DoH nutrient profiling model for assessing the ‘healthiness’ of lightly processed dairy and meat products. We have already raised these directly with the DoH. The model is currently under review and, we believe, requires some fundamental changes. It is very difficult to comment on the appropriateness of the model for this exercise if we do not know what the revised model will look like. However, if the model retains its simplified focus on saturated fat, salt and sugar and continues to ignore the significance of other nutrients, such as calcium and iron, which are known to be severely lacking in children’s diets, our position will not change.

We believe that the DoH model is flawed. In particular it takes no account of the overall nutrient content of the product, focussing almost entirely on saturated fat, salt and sugar and ignoring the contribution to the diet from vitamins and minerals. As a consequence, nutrient dense products such as cheese, are classified as less healthy. Other products which are traditionally perceived as “healthy products”, notably ham, are also classified as “less healthy” according to the model. Classifying nutrient dense protein foods as “less healthy” sends out a message to our children which is completely at odds with the generally accepted view of the importance of a balanced diet, which should include these foods.

We are aware of other models which take a more comprehensive view of the food overall. These include the EU pledge model which specifies nutrient thresholds for food categories, rather than using a scoring system, and takes into account other nutrients currently viewed as positive contributors (such as fibre, vitamins and minerals). In addition, where the parameters of a model are set by food category, they can be set at a level where there is an incentive to reformulate. This is not true of the DoH model which blocks the advertising of many cheeses, for example, even if they are reduced fat versions.

Another major flaw of the model is that scoring is based on 100g of a product, regardless of normal portion size. Foodstuffs which are consumed in amounts considerably less than 100g (such as cheese for which the standard portion size is about 30g) are therefore at a disadvantage.

For the reasons given above, we do not believe that the model is appropriate for simple, single ingredient foods such as dairy and meat products which are well known for providing a range of essential nutrients to children's diets. We should be educating our children on the importance of a healthy, balanced 'diet' and the variety of foods which can contribute towards that, not demonising certain products unnecessarily.

**If A Media Placement Restriction Is Introduced, Should It Cover Media Directed At Or Likely To Appeal Particularly To Children:**

- i) Aged 11 Or Younger?**
- ii) Aged 15 Or Younger?**

Although this is not a subject on which we can speak with authority, we suspect that it would be much more difficult to target, with any real accuracy, media 'directed at or likely to appeal to children aged 15 or younger'. If anything, this range of media is likely to be so extensive as to render the policy inoperable.

We would therefore limit any restrictions to media likely to appeal to children aged 11 or younger. This option is also in line with the EU pledge nutrient profiling model.

## 69 – Public respondent

I am pleased to include below my response, as an individual, to the above consultation. I do not have specialist knowledge about the above. However, I have carefully read through the document, and considered the issues that have been discussed.

### QUESTION 1      **Restrictions on HFSS product advertising**

(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes.

*There is a need for tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS). As stated on page 4 it is appropriate to "...reduce children's exposure to HFSS product advertising and reduce opportunities for advertisers to promote HFSS products to children, including online."*

*Also, I agree with the comment on page 5 about the "...increasingly acute public policy imperative for more decisive action to head off the public health and economic impacts associated with obesity...."*

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

*Yes, it seems sensible to take this approach.*

Please explain your reasons. Please consider CAP's recommendations in Section 44 when answering this question. The text of the BCAP guidance note is available via the link above or in Annex 5.

### QUESTION 2      **Selecting a nutrient profiling model**

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

*I will let those with specialist knowledge respond about this.*

Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model. Please consider CAP's recommendation in section 45 and the information on potential nutrient profiling models included in Annex 6 when answering this question.

**QUESTION 3                      Existing prohibitions on the use of promotions and licensed characters and celebrities**

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

Yes.

*There is need for action, bearing mind the reference in paragraph 12.4 to "a growing consensus shared by government, public health and industry bodies on the need for renewed action on obesity to address harms caused to individuals and to lessen the wider costs to society and the economy. "*

The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons. Please consider CAP's recommendation in section 46 when answering this question.

**QUESTION 4                      Introducing placement restrictions**

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes.

*The pertinent reference by Public Health England (mentioned in paragraph 24.1) concerning that "obese children are more likely to be ill, be absent from school due to illness, experience health-related limitations and require more medical care than normal weight children" highlights that action needs to be taken.*

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

- i) aged 11 or younger?
- ii) aged 15 or younger?

*I support ii) i.e. aged 15 or younger.*

*Indeed, bearing in mind that there is a problem with obesity within the public at large (of all ages) I would support an age limit much higher than 15.*

Please explain your reasons. Please consider CAP's recommendations in section 47 when answering this question.

## QUESTION 5

### Defining the audience

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

*Yes, this seems a reasonable approach.*

Please explain your reasons. Please consider CAP's recommendation in section 48 when answering this question.

## QUESTION 6

### Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

*Yes, a comprehensive approach is needed.*

Please explain your reasons. Please consider CAP's recommendation in section 49 when answering this question.

Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.

## 70 – Public Health Devon

Public Health Devon believe in ensuring children get the best start to life possible. The health problems caused by poor dietary intake are vast and an important way to prevent these problems is to start to tackle the obesogenic environment.

Actions need to be taken in many different areas to create significant change. The current marketing rules are too vague and fail to protect children from HFSS marketing online and in other types of media. We therefore very strongly support CAP in revising these rules and doing as much as possible to protect our children from the marketing and promotion of less healthy food and drink.

Please find the response from Public Health Devon below. We agree with and support the response recently submitted by the Children's Food Campaign.

### **Response to CAP Consultation Questions:**

- 1) (a) **Yes** - the CAP code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar.

(b) **No** – the existing broadcast guidance on identifying brand advertising is not strong enough; tougher rules should be adopted for both broadcast and non-broadcast brand advertising.

The current rules do not distinguish between healthy and unhealthy products and are inconsistently applied. They also fail to address marketing techniques such as the use of brand characters, including the Nesquik rabbit and the Honey Monster. Particular consideration needs to be given to alternative marketing of HFSS products, including branding of apps, gaming and vloggers.

- 2) **Yes** – the Department of Health nutrient profiling model to identify HFSS products should be adopted immediately. That model should also be updated to reflect current nutrition guidance and to close loopholes.

Public Health England has just started conducting a review of the current nutrient profile model for broadcast advertising, to check if it is still fulfilling its purpose and to incorporate new dietary recommendations on sugar reduction and fibre intake.

Assuming that the result of the review is a strengthened model, then this revised model should be adopted for non-broadcast too. In the meantime, the current model should be adopted.

- 3) **No** – existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should only be loosened for demonstrably 'healthier' products, but not for all non-HFSS products, and not for brands which include any prominent HFSS products.



We are very concerned that by allowing any non-HFSS product to be advertised to children using celebrities and licensed characters, there would be many products just under the threshold score for HFSS which would choose to exploit such advertising techniques. These products may not be 'less healthy' as defined by the nutrient profiling model, but might be high in sugar and/or with sugar, salt and saturated fat levels formulated to come in just under the thresholds. It is common to find branded products reformulated or new variations created which score 9 or 10 on the nutrient profile model before taking into account fibre and protein.

However, there is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit and vegetables. Using marketing techniques that have previously been so successful in promoting unhealthy products could be effective in increasing in healthy product consumption.

- 4) (a) **Yes** - CAP should introduce a rule restricting the placement of HFSS product advertising.

(b) We believe the audience the media restrictions apply to should be **aged 17 and under**, although we note that option was not given in the consultation. Of the two options given, we support aged 15 and under.

WHO recommendations and the UN Convention of the Rights of the Child define a child as anyone under 18. Therefore that should be age definition which is used to give the best protection to all children.

However, we also recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum which the CAP rules apply to.

There is ample evidence to rule out under 12s as a sufficient definition. Children aged 12 and above are substantially influenced by junk food marketing due to their greater independence and higher levels of media consumption. In addition, newer forms of digital and social media food marketing practices are often difficult, even for older children, to recognise and resist.

- 5) **No** – the 25% audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children. Additional measures to more broadly define the 'particular appeal' of marketing to children (including content, marketing techniques and placement) should be introduced.

It would still allow up to 25% of children to be exposed to the marketing communication, when the aim of the restrictions – and of WHO's recommendations – is to minimise children's exposure to HFSS advertising. That 25% could also be 25% of a very large number, especially for something which was particularly popular online for instance, and thus potentially 100,000s of children could see the advert whilst it still being allowed.

Alternative proposal:

Any marketing that is particularly appealing to kids is child-directed, and should be classified as such based on its overall impression, irrespective of the media platform or venue, or the percentage or total numbers of children exposed.

There is precedent already from the Advertising Standards Authority for this approach. In certain complaints, they must judge whether an advert appeals to children and have an ad hoc list of marketing techniques and cues which help them to decide this.

- 6) **Yes** – the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

## 71 - Wales Dietetic Leadership Advisory Group (WDLAG) and Public Health Dietitians in Wales (PHDiW)

Please find below a collated response from the Wales Dietetic Leadership Advisory Group (WDLAG) and Public Health Dietitians in Wales (PHDiW) .

WDLAG is a Statutory Advisory Group to the Welsh Therapies Advisory Committee (WTAC). Membership comprises Heads of Service and Operational Dietetic Managers from all NHS Wales Health Boards/LHB and Velindre Trust, and representation from Registered Dietitians in Public Health Wales and Cardiff Metropolitan University. It's role is to address issues relevant to managing Nutrition and Dietetic Services in NHS Wales and to provide specialist dietetic advice to WTAC.

PHDiW are a group of Specialist Dietitians employed within University Health Boards or Public Health Wales (NHS). Public Health Dietitians provide credible and unbiased nutrition information, accredited training and resources to support key settings (such as nurseries, schools, and care homes), organisations (such as Communities First, Families First and the voluntary sector), communities, and members of the public to make healthy food choices with knowledge and confidence.

Public Health Dietitians are trusted stakeholders frequently engaged in a range of local and national working groups, and have assisted, or led in the development of food/ nutrition related policies and guidelines in Wales.

WDLAG and PHDiW welcome the opportunity to respond to the CAP Food and Soft drink consultation. The following information represents our collated views and responses to the questions:

### **Question 1 Restrictions on HFSS product advertising**

#### **1a Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?**

Yes, we agree that there should be tougher restrictions, and in particular regarding the broader range of multi-method non broadcast media advertising channels (1), which are proliferant and in view of the statistics that 96% of 12 to 15 year-olds spent more time online than watching TV (OFCOM, 2015).

This would bring the UK in line with other countries that enforce restrictions on advertisements directed at children such as Norway, Sweden and Canada (2)

The current evidence base relies heavily on the impact of TV advertising and therefore there is a risk that insufficient evidence of the impact of non broadcast food advertising may dilute the arguments to impose further restrictions in this area. But TV advertising has been around

longer and the nature of the advertising within the non broadcast media advertising is similar and in many cases of audi visual online advertising is identical (CAP 40.4 Clarke and Svaenes,2014)

Clearly food companies promote and market their products in order to increase sales and there is clear evidence of the link between HFSS foods and poor diet and links between poor diet and non communicable diseases.

CAP rules are in place to avoid causing harm and to protect vulnerable groups, in this case children and therefore CAP cannot claim to be socially responsible and protecting vulnerable groups if these rules only apply to one type of advertising medium, and a medium which is no longer the dominant medium in advertising to children

It is fundamental therefore that the current restrictions on broadcast TV should be replicated in other forms of now more popular internet and non-broadcast media aimed at children particularly with the amount of screen time that children are now reported to be undertaking .

If CAP accept that this evidence of a small positive impact from new restrictions could equate to a meaningful reduction in harm to children (see 41.6) and strive to meet their responsibilities to children as a vulnerable group (2.2), there is no reason not to act on the wide consensus view in favour of tougher restrictions in the original CAP consultation now.

We would argue that simply not hindering or undermining public health work in promotion of healthy eating is a positive outcome, and combined with the “limited” academic evidence for tougher restrictions should be sufficient basis for change. This is CAP's/ASA's opportunity to show that it is not slow to react and attempt to combat criticism of its ability to self-regulate the industry.

Whilst it is acknowledged that obesity in children has a multifactorial cause it is paramount that action is taken on all factors that contribute. Advertising of HFSS is arguably one of these factors.

It is disappointing that in section 15 of the CAP consultation document headed “The legal test that CAP must satisfy”, reference is only made to industry's rights under Article 10 of the European Convention of Human Rights (freedom of expression). Article 3 of the United Nations Convention of the Rights of the Child provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. This section is heavy on industry's rights, but completely fails to mention that the best interests of a child should be a top priority in these decisions.

### **1.b Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?**

We agree CAP should use the existing Broadcast Committee of Advertising Practice guidance on identifying brand advertising that promotes HFSS products as the initial basis. Advertisers are familiar with this, so it should reduce compliance costs. Advice should be taken from those involved day to day in enforcing as to whether these rules work in practice.

**Question 2 Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?**

Yes, the current Department of Health (DH) nutrient profiling model should be used to identify HFSS products. The model applies to all food and drinks without exemptions and will be consistent across all media. However as PHE's review of the DH nutrient profile is due to be completed in 2017, it would be timely to await this.

Again, Industry is already familiar with this, and it was widely consulted on at the time so any revision to this as a result of the current review should be adopted.

Other models, whilst more strict, are overly complicated, with multiple categories, which would entail more complex methods of enforcement and therefore more difficult to regulate and adhere to.

If the rules are already widely understood by industry, industry are more likely to get on board with attempts to reformulate products to make them healthier .

This would also be supported by the moves to reduce sugar consumption in the population following SACN recommendations

**Question 3 There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?**

No. We agree with the concerns pointed out in 46.4 that this will most likely result in industry taking advantage of any such change to promote foods and drinks that are borderline HFSS and are only just within the limits for medium/amber for fat, sugar and salt, ("healthier" but still not healthy), more heavily and thereby undermining efforts to promote healthier habits amongst children. These differences may well be perceived by parents as being a much better choice and preferred by children if advertised in this way when in reality for young children they will still impact on their health, if eaten as a regular part of their diet. With the large advertising budgets potentially being transferred to borderline products and heavily advertised this could pose just as big a problem.

Fresh fruit and vegetables are already exempted from this prohibition and can be promoted using licensed characters and celebrities.

Yes we should be encouraging advertising of healthy foods, but there has been no evidence provided that there are other categories of foods/drinks that require an exemption, other than fresh fruit and vegetables.

It is important to note that the existing rules do not apply to brand characters e.g. the Honey Monster. These are just as easily recognised as licensed characters and celebrities. An expansion of the rules to include brand characters should be extended to all advertising directed at children.

**Question 4**

**4. a) Should CAP introduce a rule restricting the placement of HFSS product advertising?**

**4. b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:**

**i) aged 11 or younger?**

**ii) aged 15 or younger?**

Yes. It is noted that rules already in use for TV advertising focus on under 16's, not under 12's. There is no reason to dilute new restrictions by applying them only to adverts directed only at the under 12's. These should be under 16's to align with current CAP rules, a more appropriate definition of a child.

It has been found that advertisements impact on children in different ways as they mature in terms of entertainment, information provision, persuasion, understanding aims and sales techniques and consequently the food industry targets adverts at particular ages, using different techniques, and therefore it would be deemed appropriate to prohibit product advertising in media targeted at all children i.e. those under 16 years of age.

Also, the 15 and younger age is in line with the age range that energy drinks should not be promoted to (BSDA Code of Practice).

**Question 5 It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.**

**Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?**

Yes, as a minimum. Industry is familiar with this (same rule for defining the audience for gambling/alcohol). A programme of “particular appeal” is one where children and adolescents make up a certain proportion of the target audience (3). Therefore, we believe a similar approach should be taken with regards to HFSS product advertising in the under 16's.

However, we would also recommend that the composition of the ASA/CAP bodies that adjudicate on complaints should be addressed. When considering whether an advert appeals/is targeted at children there should be equal representation of parents, children and organisations working in public health with industry/commercial bodies to ensure that ALL decisions are both fair and seen to be fair, based on the spirit not the letter of Codes, and consistent and transparent.

Instructions to remove adverts and not to use again may have a short term bad publicity impact on the company, but be of little long term concern. The length of time taken to remove non complaint adverts means that they are seen by large numbers children before action is taken.

Therefore we recommend the use of effective sanctions by the ASA, following complaints that are upheld, for the ASA to be considered as a credible self-regulator, more than just “bad publicity” from ASA rulings.

**Question 6 Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising? Please explain your reasons. Please consider CAP's recommendation in section 49 when answering this question**

Yes, as a minimum. This ensures a level playing field for advertising and is the only way to have any real impact. There is no definitive reason why there should be considerations for exemption.

The direct marketing of energy dense beverages and food of poor nutritional value as well as fast food chains are deemed to be contributory factors in obesity by the WHO, (4). It is also important to consider the impact on poor diets generally not just obesity, which can lead to inadequate nutritional intake in children.

With the increasing use of online activity by children this method of advertising is providing more opportunities to influence children's behaviour around food, particularly with games, competitions, advertorials and advergames .

Companies are also creating advergames to promote their brands. These are video games which have messages embedded within them and designed to be fun and fast paced for children (5).

It is important to note that one significant area which the remit of the Code does not cover is sponsorship, and extending the remit of the Code to cover these should be both considered and reported on.



## 72 – Public Health England (PHE)

Public Health England (PHE) welcomes the opportunity to respond to CAPs consultation on food and soft drink advertising to children. PHE exists to protect and improve the nation's health and wellbeing, and reduce health inequalities. PHE is an operationally autonomous executive agency of the Department of Health and provides expert advice on public health issues to government including nutrition.

***Tougher and far reaching action is required to safeguard children from exposure to advertising of high fat, sugar or salt (HFSS) foods and drinks.***

Poor diets are the leading cause of morbidity and mortality in England<sup>1</sup>. Dietary surveys consistently show that on average all children, and in particular adolescents consume more salt, saturated fat and sugars and less fibre, fruit and vegetables<sup>2</sup> than recommended. Children are consuming three times more sugar than is recommended which is roughly equivalent to one can of a sugary drink a day. High sugar intakes increase the risk of tooth decay, and consuming too many calories, which, if sustained can cause weight gain and obesity. PHE also estimate all age groups also consume more calories than recommended for a healthy weight<sup>3</sup>. Tooth extraction due to dental carries is the primary cause of children aged 5–9 years being admitted to hospital in England<sup>4</sup>.

Children in the United Kingdom (UK) are exposed to persuasive advertising and consistent promotion of unhealthy foods and drinks across a range of platforms, including digital and online marketing<sup>5</sup>. This is known to have an influence and drives unhealthy food choices<sup>6,7,8</sup> affecting the balance of the diet, which increases the risk of excess calorie intake, weight gain and obesity in children. Not only is this a public health concern for children now, but it can negatively impact their future health and wellbeing.

It is well established that food habits and dietary patterns developed in childhood are continued into adulthood<sup>9</sup>. Persistent advertising and promotion of unhealthy foods and drinks to children may encourage them to adopt unhealthy food practices and dietary habits that can persist throughout later life, increasing the risk of obesity and other diet related diseases such as hypertension, Type 2 diabetes, cardiovascular disease and some cancers<sup>10</sup>. Children who are overweight or obese are more likely to experience bullying, stigmatisation and low self-esteem and are also more likely to be overweight or obese adults.

Although the drivers of poor diets in the UK are multifactorial (education, employment, food availability, food composition, price, promotions etc.), the systematic advertising of unhealthy foods and drinks is likely to be a significant contributing factor.

***PHE would encourage CAP to adopt the current DH nutrient profiling model to identify HFSS products and strongly encourage CAP to use the revised nutrient profiling model after agreed by government in 2017.***

In 2004/05 the Foods Standards Agency (FSA) developed a nutrient profiling model for Ofcom to use to help regulate broadcast advertising of food and drinks high in saturated fat, salt, sugar and energy during children's viewing times. The nutrient profiling model has been in use since 2007 and responsibility for the model transferred from the FSA to DH in 2010. The nutrient profiling model is now over 10 years old and does not reflect the recent scientific advice from the Scientific Advisory Committee on Nutrition (SACN) 2015 report on 'Carbohydrates and Health'<sup>11</sup> that concluded the recommended average population maximum intake of free sugars should be halved and fibre intake should be increased. These recommendations have been accepted by government and are now being integrated into key nutrition policy instruments.

In light of these new recommendations on sugar and fibre from SACN, PHE, where expert advice on nutrition now sits, has been tasked by DH to review the existing nutrient profiling model and develop and test options for a new robust model, which will aim to safeguard children's exposure to advertising of foods and drinks high in fat, sugar or salt (HFSS). The review of the nutrient profiling model contributes to the government's commitment to tackling obesity in the UK and has been feeding into the DH's childhood obesity policy and the interventions that will be part of the governments forthcoming Childhood Obesity Strategy.

The review is due to be completed in 2017. PHE are working with a wide range of stakeholders including academics, regulators (CAP), food and drink industry, health and consumer groups and other government departments to ensure the work is comprehensive and transparent. PHE's review will include a rigorous modelling process, impact assessments, public consultation and the recommendations will be agreed by government.

***PHE considers that it is unlikely in the near future there will be evidence of a direct link to clearly illustrate that advertising cause's obesity. PHE recommends that CAP should act now to take precautionary and decisive action to protect children from consuming too much HFSS food and drinks, given the consistent evidence linking advertising of unhealthy foods and drinks to poor dietary choices and unbalanced diets; and the established relationship between unbalanced diets and poor health outcomes, weight gain and obesity.***

PHE's response to the majority of questions in the consultation is supported by Sugar reduction: the evidence for action<sup>12</sup> published by PHE in October 2015 and presented in the Annexes in this document. This report included a review of behaviour changes resulting from marketing strategies targeted at high sugar foods and non-alcoholic drink<sup>13</sup>. While this review was primarily focussed on sugar containing products some of these may also be high in the other relevant nutrients of interest.

Much of the research evidence is reliant on small scale, moderate quality experimental/controlled studies; however PHE recognises the complexity of researching consumer behaviour and the systemic nature that influences obesogenic environments. Action is needed that incorporates food advertising and promotion amongst other measures to tackle those factors that promote unhealthy dietary habits.

There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened drinks is related to childhood obesity<sup>6,14</sup>. However in the absence of direct evidence that suggests advertising causes obesity, and in the view of the generally moderate but consistent evidence adverse effects on diet and behaviour changes resulting from marketing strategies targeted at high sugar foods and non-alcoholic drink, PHE urges CAP to be bold with introducing restrictions and amending rules on advertising of HFSS products which affect children's preferences and choice and play their part in addressing the major public health concern of poor diet and obesity in this country.

***Based on the totality of the evidence, PHE supports the implementation of additional controls in scheduling, placement, use of characters/celebrities and age restrictions.***

One of the actions suggested in PHE's report was to "significantly reduce opportunities to market and advertise high sugar food and drink products to children and adults across all media including digital platforms and through sponsorship". The report suggested that "reducing exposure to marketing by setting broader and deeper controls on advertising of high sugar foods and drinks to children could be achieved through a range of more specific activity including:

- extending current restrictions to apply across the full range of programmes that children are likely to watch as opposed to limiting this to just children's specific programming
- extending current restrictions on advertising to apply across all other forms of broadcast media, social media and advertising (including in cinemas, on posters, in print, online and advergames)
- limiting the techniques that can be used to engage with children, including plugging the 'loopholes' that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising
- tightening the current nutrient profiling model that governs what can be advertised
- consider limiting brand advertising of well recognised less healthy products including through restrictions on sponsorship on e.g. sporting events"<sup>12</sup>

The report also recognised that no single action will prove effective in reducing sugar consumption hence the other suggested actions which covered price promotions, reducing levels of sugar in foods and drinks, implementing a levy as well as more activity around training and within local environments.

The World Health Organisation (WHO) Commission on ending childhood obesity has also outlined comprehensive recommendations on marketing of foods and non-alcoholic beverages to children to reduce the exposure of children and adolescents to, and the power of, the marketing of unhealthy foods<sup>15</sup>.

In summary, from the available evidence PHE concludes that unhealthy foods and drinks are advertised extensively across a range of platforms that consistently influence food preference, choice and purchasing in children, affecting their diets. In addition, advertising is a factor in driving excess calorie consumption and poor patterns of nutrient intakes. This negatively impacts children's health and wellbeing and increases the risk of tracking into adulthood. Advertising and promotion of unhealthy foods and drinks to children contributes to the obesogenic food environment and is one of the drivers of childhood obesity in England<sup>16,17</sup>.

## **1 Restrictions on HFSS product advertising**

### ***(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?***

PHE strongly supports CAP introducing tougher restrictions on the advertising of HFSS products.

The evidence demonstrates that promotions and advertising of food and drink affects children and has a direct impact on their choices<sup>6,7</sup>. This contributes significantly to normalising and driving unhealthy food choices that affect the overall balance of a good and healthier diet. It feeds into establishing a blueprint that lasts well into adulthood of which the related ill health consequences can be devastating.

Children in the UK are regularly exposed to persuasive advertising and promotion of unhealthy foods and drinks across a range of platforms, including an increase in online marketing. CAP's own review<sup>6</sup> showed that online advertising has increased significantly in recent years particularly among children and young people.

The Sugar reduction: The evidence for action<sup>12</sup> review supported previous evidence that marketing is effective in influencing the purchase and consumption of high sugar foods and drinks particularly in children. Further, evidence from a recent systematic review has shown that acute exposure to food advertising increases food intake in children<sup>8</sup>.

PHE's mixed methods review on the impact of advertising on food choice showed that all forms of marketing consistently influence food preference, choice and purchasing in both children and adults and that children are exposed to a high volume of advertising and marketing including TV, radio, cinema, press and billboards, as well as advergames, social media and online advertising and through sponsorship by food and drinks companies of TV programmes, public amenities and events.

The evidence does not support the often expressed advertising industry view that such advertising simply encourages brand switching and competition for market share but has no overall impact on diet. PHE's review demonstrates that advertising of unhealthy foods and drinks effects the balance of the diet making it more unhealthy overall.

Furthermore, results from dietary surveys show consumption of sugar and sugar sweetened drinks is particularly high in school age children. High sugar intakes increase the risk of tooth decay and of consuming too many calories, which, if sustained, causes weight gain and obesity.

It is of PHE's view that the current self-regulation for non-broadcast advertising of unhealthy foods and drinks plays an important part in maintaining an obesogenic food environment, which encourages over consumption of HFSS foods and drinks. Tougher restrictions and rules on the advertising of HFSS foods and drinks will support action to reduce exposure and protect children from unhealthy food and drink advertising.

PHE proposes:

- "extending current restrictions to apply across the full range of programmes that children are likely to watch as opposed to limiting this to just children's specific programming
- extending current restrictions on advertising to apply across all other forms of broadcast media, social media and advertising (including in cinemas, on posters, in print, online and advergames)
- limiting the techniques that can be used to engage with children, including plugging the 'loopholes' that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising
- tightening the current nutrient profiling model that governs what can be advertised
- consider limiting brand advertising of well recognised less healthy products including through restrictions on sponsorship on e.g. sporting events"

***(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?***

PHE welcomes and encourages CAP to apply the same BCAP guidance to non-broadcast as well as broadcast advertising as a minimum. PHE would also strongly encourage CAP to use the revised and updated nutrient profiling model after securing agreement by government in 2017.

One of the areas for action suggested in PHE's report Sugar reduction: The evidence for action was to "significantly reduce opportunities to market and advertise high sugar food and drink products to children and adults across all media including digital platforms and through sponsorship"; a second was to set a clear definition for high sugar foods to assist with this.

PHE's mixed methods review on the impact of advertising on food choice included five studies which examined the impact of branding, suggesting an influence on high sugar food/drink preference. The evidence of the five studies can be found in Annex A. Although the evidence was difficult to summarise collectively due to the diversity in study designs, there was some evidence (although inconsistent) to suggest that branding may be more influential in children with a higher body weight.

This is of particular relevance as in England 1 in 5 children in Reception and 1 in 3 children in Year 6 are overweight or obese<sup>18</sup> and presents a large population with a higher body weight that could be affected.

## **Question 2 selecting a nutrient profiling model**

***Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?***

Based on the available evidence and data on children's diets, PHE encourages CAP to adopt the current DH nutrient profiling model to identify HFSS products.

The review process to develop the original DH nutrient profiling model was subject to rigorous scientific scrutiny and extensive consultation. The nutrient profiling model has been successful in that it has reduced HFSS foods and drinks being advertised during broadcasting of children's programmes. The UK has been one of the first countries to include it in legislation.

Since the DH model was developed, there is new scientific advice and recommendations on diet and new public health policy being put in place. The current model does have some limitations. Whilst the nutrient profiling model has prevented products with the highest levels of sugar, fat and salt being advertised (on broadcast media), it still allows products that are relatively high in one or more of these nutrients to be advertised.

Therefore, PHE would additionally strongly encourage CAP to use the revised nutrient profiling model which will reflect the latest dietary recommendations once Ministers have agreed it in 2017.

### **Question 3 Existing prohibitions on the use of promotions and licensed characters and celebrities**

***There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?***

PHE is concerned that although changing the rules relating to creative content of food to apply to HFSS products will allow more creative ways for healthier foods to be advertised to children, this may also have unintended consequences. For example, one small study found that children (aged 7-10 years) exposed to fast food advertising where healthier items were depicted did not drive healthier food choices in children but resulted in an increase in children's liking for fast food after viewing the food adverts<sup>19</sup>.

PHE would further encourage CAP to consider the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising.

PHE's mixed methods review on the impact of advertising on food choice considered evidence from six studies on this topic. Five experimental studies (of the six studies considered) demonstrated that use of character branding/spokes characters increases preference for, or intake of, high sugar foods in young children aged 2 to 7 years. The evidence of the studies can be found in Annex B.

In its report PHE stated that limiting the techniques that can be used to engage with children could include plugging the 'loopholes' that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising.

#### **Question 4 Introducing placement restrictions**

##### ***(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?***

For the purposes of answering this question we have defined "placement" as anywhere that advertising of products could be sited.

PHE would like to see CAP introduce restrictions on the placement of HFSS product advertising. This is supported by evidence presented in PHE's mixed methods review. PHE encourages CAP to pay particular attention to restrictions on advertising of HFSS foods and drinks around and in advergames, as well as the physical environment. The evidence is clear such advertising is effective as presented in PHE's mixed methods review on the impact of advertising on food choice. This review considered a range of areas in which advertising could be found. The summary is set out in Annex C.

##### ***(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?***

PHE would like to see restrictions introduced to safeguard children 16 years or younger as a minimum for placement of HFSS advertising. This is in line with current BCAP rules that define children as 'persons below the age of 16'<sup>20</sup>.

The WHO Commission on ending childhood obesity outlined comprehensive recommendations on marketing of foods and non-alcoholic beverages to children to reduce the exposure of children and adolescents to, and the power of, the marketing of unhealthy foods<sup>15</sup>. The UN Convention on the rights of the child, which has been ratified by the UK, defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.

PHE's mixed methods review on the impact of advertising on food choice showed that all forms of marketing consistently influence food preference, choice and purchasing in both children and adults.

Digital marketing strategies are rapidly growing and evolving and are a potentially sophisticated and influential area, given the highly immersive and interactive nature of these approaches. Older children are more likely to have access to online platforms (marketing via mobile and social networks). However, this remains an under-researched field, with current research evidence focusing on advergaming, which was found to significantly influence intake of, or preference for high sugar foods in school age children.

PHE's mixed methods review on the impact of advertising on food choice included three papers that considered the impact of advertising on older children. The evidence of the three studies can be found in Annex D.

Older children are a key demographic and should be considered when restricting advertising of unhealthy foods and drinks. Current estimates of UK sugar intakes from the National Diet and Nutrition Survey programme (NDNS) show that mean intakes are three times higher than recommended in school-aged children and teenagers. Soft drinks (excluding fruit juice) are the largest single source of sugar for children aged 11 to 18 years. On average, all children's age groups are exceeding dietary recommendations for sugar, saturated fat and salt and adolescents have found to have poorer dietary intakes than other groups<sup>2</sup>.

Based on the above, PHE would like to challenge CAP and suggest restrictions should be applied to those under age of 18 years.

#### **Question 5 Defining the audience**

***Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?***

PHE strongly encourages extending restrictions so that these apply across the full range of media that children are likely to be exposed to rather than limiting this to the 'particular appeal' test where more than 25% of the audience are understood to be of a particular age or younger. Using the 25% measure could expose a very large number of children to HFSS product advertising. PHE suggest an approach based on absolute numbers of children would be better.

PHE acknowledges and welcomes the current self-regulation and voluntary codes some parts of industry have put in place regarding restricting the targeting of advertising of HFSS foods and drinks to children; however many brands continue to utilise advertising and marketing techniques which still appeal to children and employ other techniques such as characters which engage and excite children. This requires careful consideration from a public health viewpoint.

PHE's review did not look at the impact of advertising in relation to the '9pm watershed'. However, based on the totality of the available evidence and data on children's diets, PHE would encourage extending the 25% measure for scheduling or basing the measure on the total number of children watching to ensure that fewer children are subjected to advertising of HFSS products.

PHE is concerned that the 25% measure may present a loophole where high traffic overall could mean that high numbers of children are not subject to restrictions and would expose children to marketing that would otherwise be prohibited. PHE feels this is missing the fundamental principle of reducing and protecting children from exposure to advertising of HFSS products.

#### **Question 6 Application to different media**

***Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?***

PHE support restrictions on HFSS product advertising to all non-broadcast media, within the remit of the Code, including online advertising.



PHE's mixed methods review on the impact of advertising on food choice considered the impact of both broadcast and non-broadcast media. The key findings on individual types of media are presented in the answer to Question 4a above.

In more general terms PHE's evidence demonstrates that although TV remains a dominant marketing technique effective at influencing food preferences, many different types of marketing – including advergames, advertising, use of characters and spokespeople, branding, product size, supermarket product placement and discounting can all influence preference for high sugar product selection or consumption.

CAP's own review<sup>6</sup> showed that online advertising has increased significantly in recent years. This coincides with a sharp increase in online media use particularly among children and, it is argued, since regulations were introduced by Ofcom in 2007 restricting advertising during children's TV programming. This review also demonstrated that products considered to be less healthy are now being advertised through online channels, including social networks and mobile apps, raising concerns that children might now be exposed to more advertising for less healthy products. It also identified that online marketing, because of its integrated nature, makes it more difficult for children to recognise and critically review its underlying intent.

Online advertising is a rapidly evolving form of media and PHE is concerned that it has not been adequately explained how this will be applied to the different forms of social media. PHE is also concerned as to how the CAP rules will be future-proofed with such a dynamic form of media.

## Annex A: Evidence

### 1 Restrictions on HFSS product advertising

***(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?***

Of the five studies considered, two experimental and two observational studies examined the impact of branding in children, using a range of objective measures. A very small laboratory study in US adolescents<sup>21</sup>, found that the Coke product advertisements activated gustatory and visual brain regions, and Coke logo advertisements heightened posterior cingulate responsivity in habitual Coke consumers. Another recent US observational study<sup>22</sup> identified a significant relationship between young (aged 3 to 6 years) children's awareness of branded foods high in fat, sugar and salt, and their Body Mass Index (BMI), with children's knowledge of HFSS shown to be a significant predictor of BMI. This finding complemented another US study in 4 to 6 year olds which identified a relationship between branded food intake and BMI, with overweight children consuming more calories (from a food selection which included a high sugar option) in the branded condition. However, the second study in this paper in slightly older children was unable to demonstrate the same relationship to weight status<sup>23</sup>. The remaining Canadian study<sup>24</sup> in a similar age group, examined children's taste preference for food with different branding, however the results were not significant for the high sugar food examined.

## Annex B: Evidence

### Question 3 Existing prohibitions on the use of promotions and licensed characters and celebrities

***There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?***

Six relatively small (n=40 to 343), heterogeneous, low to moderate quality studies, all in children (four from the US<sup>25,26,27,30</sup>, one study from the Netherlands<sup>28</sup> and Belgium<sup>29</sup>, examined the effect of character branding/spokes characters (popular familiar or bespoke unfamiliar cartoon characters) on product packaging. All five experimental studies were conducted in young children aged 2 to 7 years and demonstrated; using a range of objective and subjective measures, that character branding/spokes characters can influence children's food choices. Four of these studies found that character branding/spokes characters increased intake of, or preference for high sugar foods<sup>25,26,30,29</sup>, while the Dutch study did not report a significant impact on the high sugar sweets/candy when compared to the healthy fruit snack<sup>28</sup>. The Wansink study<sup>26</sup> was the only observational study, conducted in an older age group (aged 8 to 11 years). This relatively low quality study found that a popular character branding/spokes character did not significantly influence biscuit/cookie consumption.

## Annex C: Evidence

### Question 4 Introducing placement restrictions

#### ***(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?***

PHE's mixed methods review on the impact of advertising on food choice considered a range of areas in which advertising could be found. A brief summary is set out below; further detail can be found within the report:

- the evidence base on the impact of **screen advertising** is highly heterogeneous in study design, with a reliance on relatively small, variable quality experimental or observational studies. However, the findings from five studies<sup>31,32,33,34,35</sup> suggest that screen advertising has the potential to influence intake of high sugar products, or unhealthy foods to varying degrees in adults, with some evidence to suggest this impact may vary by population subgroup (e.g. individual psychology, gender and body mass index (BMI))
- findings from the studies examining the impact of **screen advertising** in children were mixed, with two studies in parents and children<sup>36,37</sup> demonstrating an association between advertising and self-reported consumption of high sugar foods, and two studies<sup>38,39</sup> (one from the UK) demonstrating an association between high sugar product consumption and TV advertising, while the remaining four studies were inconclusive<sup>40,41,42,43</sup>
- all eight studies examining the role of **advergaming**, demonstrated an impact of increasing consumption of, or preference for unhealthy or high sugar foods, under experimental conditions<sup>44,45,46,47,48,49,50,51</sup>
- one observational<sup>52</sup> and one experimental study<sup>53</sup> provided evidence to illustrate the role of **traditional print** marketing approaches in promoting high sugar product choices in children. The observational study demonstrated that alongside print/transport/school marketing, exposure to TV and digital marketing also influenced self-reported food choices
- **sponsorship** was identified as an emerging marketing strategy however, only one small, relatively low quality Portuguese study<sup>54</sup> examined the influence of event sponsorship on children's purchase intention for a high sugar drink

## Annex D: Evidence

### Question 4 Introducing placement restrictions

#### ***(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?***

An observational study in South Korean children aged 11-13 years<sup>40</sup> showed that increased television exposure to advertising for chocolates, sweets, cakes/doughnuts, fruit flavoured juices, soft drinks and non- alcoholic beverages, were associated with significant ( $p < 0.05$ ) increases in children's preferences and/or intake for respective food categories. Although the observed association disappeared after adjustment for the amount of TV watched.

An observational study conducted in Australian children aged 12-17 years<sup>52</sup> found that greater exposure to commercial television, print/transport/school food marketing and digital food marketing were all independently associated with students' food choices. High commercial television viewers (>2 h/day) were more likely to report higher consumption of high sugars foods. Exposure to two digital marketing sources resulted in reports of higher sugary drink consumption. Exposure to 2 or 3 print/transport or school marketing sources resulted in an increase in reported sweet snacks choices.

An experimental study in 6 to 13 year old English children showed that food preferences of children with higher habitual levels of TV viewing were more affected by exposure to food commercials compared to those with low levels of TV viewing<sup>49</sup>. The study demonstrated an increase in the selection of branded and non-branded fat and carbohydrate rich foods following exposure to food advertising compared to toy advertising. However the type of advertising exposure did not have a significant impact on relative sweet preference in the participating children aged 6 to 13 years but all children selected more sweet than savoury items after both the food and toy commercials ( $p < 0.001$ ).

## 73 – Public Health Kingston

### This document outlines the response of Public Health Kingston to the CAP Consultation on non-broadcast advertising of HFSS products to children

**Representative of an organisation:** Public Health Kingston

**Public Health Kingston:** Public health is about helping people to stay healthy, and protecting them from threats to their health. Ensuring everyone is able to make healthier choices, regardless of their circumstances, and to minimise the risk and impact of illness for people who live and work in the Borough of Kingston.

Please find below the consultation questions alongside the response to each of your question in the table below.

Question	Detail	Response
<b>Q1:</b> Restrictions on HFSS product advertising	a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?	<b>Yes</b> – The CAP code should be updated providing an opportunity to enforce stricter guidelines on advertising HFSS
	(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?	<b>Yes</b> – see below for details
	Please explain your reasons. Please consider CAP’s recommendations in Section 44 when answering this question. The text of the BCAP guidance note is available via the link above or in Annex 5	By using existing BCAP guidance this will bring Non Broadcasting media coverage in line with the current Broadcasting regulation for advertising giving a consistent messages to industries and to the public.  In time, stricter recommendation should be considered for <b>both</b> Broadcasting and Non Broadcasting channels of advertising.  In face of the scale and breath of obesity, every aspect needs to be covered and pressure needs to be constant. Obesity is recognised globally as key public health issue, and more legislation is required to bring about change.
<b>Q2:</b> Selecting a nutrient profiling model	Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?  Please explain your reasons and, if applicable, the details of your	<b>Yes</b> , The Department of Health Nutrient profiling model should be used for Non Broadcasting in line with the Broadcasting regulation for consistency.  There are a limited number of alternatives models currently available for immediate effect. The cost implications and time delays to get an alternative in

	preferred nutrient profiling model.	<p>place will cause further delay bridging the current gap in legislation.</p> <p>In the past 2 years a number of new nutritional recommendations have come into effect:</p> <ul style="list-style-type: none"> <li>- SACN Carbohydrate report - free sugars, recommendation for fibre for children.</li> <li>- New Eatwell Guide</li> <li>- New 5 a day logo</li> </ul> <p>Therefore this may need to be reviewed to ensure the current DoH's nutrient profiling is accurate. Outcomes of a review to be taken into effect as and when new/updated guidance is available.</p>
<b>Q3:</b> Existing prohibitions on the use of promotions and licensed characters and celebrities	<p>There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger.</p> <p><b>Should these rules now be applied to advertising for HFSS products only?</b></p> <p>The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons</p>	<p><b>No:</b> Caution needs to be taken where such measures are in place.</p> <p>For example, it would be helpful if foods that are unprocessed i.e. fruit, vegetables, wholegrains and pulses, etc were creatively advertised. This unfortunately is rarely exercised.</p> <p>However, foods that fall just outside of the HFSS food definition, could exploit this position and heavily advertise in creative ways which are very likely to influence children, who are still developing food preference and choices.</p> <p>Foods deemed 'less unhealthy' via the DoH Food Profiling tool may still have moderate levels of fat, sugar, and/ or salt, and thus would be recommended to be consumed in moderation/ alternative healthier option be a better option.</p> <p>Only food that score minimally (fruits and vegetables in their whole form for example) should be permitted to have such freedom of creativity with advertising.</p>
<b>Q4:</b> Introducing placement restrictions	(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?	<b>Yes</b>
	(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: 11 and under 15 and younger	<p>Children 15 years and younger (Although under 18s would be preferred in line with Alcohol and restrictions).</p> <p>Making healthy the default/norm is a global health priority to reduce Non Communicable disease including obesity (WHO Global Action plan 2013). Non Broadcasting media needs to take more responsibility (i.e. more than the responsibility deal alone). Advertisement is an environmental determinate.</p> <p>We know that children are less likely to be able to distinguish advertisement and characters and are</p>

		<p>therefore susceptible to be misled. CAP aims to be honest and transparent and therefore allowing children aged 16 and 17 to be targeted would appear to go against such aims.</p> <p>Evidence and evidence based recommendation has grown over the last 10 – 15 years in support of mitigating the impact from media in all forms for HFSS foods.</p> <p>It is recognised that the evidence base is stronger for children under 12 years of age, who are still in the process of forming food preferences and developing their dietary choices. This does not mean that the same is not the case for older children.</p> <p>Only a quarter of the evidence identified by the PHE review relates to children over the age of 12. For instance, the evidence in relation to advergames, which made up the majority of the evidence directly relevant to non-broadcast media, covered an age range of 5-12. So it is possible that the same finding would be found if more studies were conducted in older children.</p> <p>Moreover, putting restriction in place for children 15 years or younger will mean that the non-broadcasting is in line with Broadcasting, which would offer a more consistent practise.</p> <p>(As with all age related question, children should be defined as 17 years and younger)</p>
Q5) Defining the audience	<p>It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.</p> <p><b>Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?</b></p>	<p><b>Yes, but as a starting point.</b></p> <p>The 25% measure is a good starting point, although we would be keen to see where this figure was derived from?</p> <p>25% is still a large number of children, many of whom are likely to be the more vulnerable children within society. Such young people are likely to live in households where there is insufficient parental guidance / parenting techniques/abilities when access media. Although parenting is not the advertising responsibility, it does highlight that children who are more likely to need the most protection are the very members of society who slip through the net.</p> <p>Children often watch programmes which are not necessarily aimed or ‘appeal to children’, yet many</p>



		<p>children do enjoyed with the whole family. This indicates a short fall of the current Broadcasting Regulation. A Classic example would be '<i>X factor</i>', '<i>I am a celebrity get me out of here</i>', '<i>Saturday night takeaway</i>' which is all aired during 'primed time' is viewed by millions of children along with parents/carers older adult sibling and are bombarded with HFSS food during the breaks. The success for non broadcasting media should therefore be viewed with caution.</p>
Q6) 6 Application to different media	Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?	<p><b>Yes</b></p> <p>The restriction should be applied to all HFSS product advertising across all media including ones currently not included within CAP remit such as brand characters and packaging which children are likely to develop strong preference for. Labelling, in school marketing and in store placement, tickets and sponsorship should all be 'next step' consideration.</p>
End		

## 74 – Publicis Media

### **Introduction**

Publicis Media welcome the opportunity to respond to the CAP proposal for further restrictions on the advertising to Children of food and soft drink products in non-broadcast media.

Our response will cover the following proposals from the CAP review;

- Introduce a new rule to the UK Code of Non-broadcast Advertising, Direct and Promotional Marketing (the CAP Code) to limit where advertising for food and soft drink products high in fat, salt or sugar (HFSS products) can be placed in all non-broadcast media, including traditional and online media
- Explore through consultation whether the new rule should prohibit HFSS product advertising in media targeted at or of particular appeal to children under 12 or under 16
- Apply the existing rules prohibiting the use of promotions and licensed characters and celebrities popular with children to HFSS product advertising only, allowing more creative ways for healthier foods to be advertised to children

### **Updating the rules**

The current rules already require the following;

- Food and soft drink ads must not condone poor nutritional habits or an unhealthy lifestyle in children.
- Promotions, celebrities and licensed characters are banned in food and soft drink ads directed at younger children, and ads must not encourage 'pester power'.
- The rules are administered by the Advertising Standards Authority and apply across all non-broadcast channels including online, outdoor, print media, cinema and direct marketing.

*As cited in your own article "Available evidence shows advertising has a modest effect on children's food preferences, but other factors like parental influence, opportunities for physical exercise, education etc play greater roles in the causes of and solutions to childhood obesity."*

Source : <https://www.cap.org.uk/News-reports/Media-Centre/2016/Launch-of-public-consultation-on-new-food-ad-rules.aspx#.V4inJNlrLGI>

However we believe as an Industry we must embrace our responsibility and do what we can to set about tackling this issue of Child Obesity in the UK, but we must be mindful of the overall success Vs effect. I.e. A large change to the rules which effects brands rights to advertise would have a huge detrimental effect on Industry revenue/ but may only result in a very minor change in behaviour. We must therefore focus on ensuring all changes create a meaningful outcome.

**Consistency across all media in the UK is paramount;** there is a great disparity in the rules of HFSS advertising across media. We believe an alignment is key.

**By applying the existing rules prohibiting the use of promotions** and licensed characters and celebrities would support the aim of reducing kid's exposure to HFSS and such a change would encourage the promotion of healthier options.

**Targeting Under 12 Vs under 16 on non-broadcast media:**

We would endorse a restriction that mirrors the self-regulated position rules that the TV industry adheres to. That is that content/sites that are aimed at kids or have a high index towards kids will not be allowed to display HFSS brands. However enforcing this across media would be extremely difficult.

**Cinema** – the case of cinema is unique, given its key role around family entertainment. Films are already classified by the BBFC, ensuring viewers can make informed decisions about what they watch. However a U film doesn't mean that it's a children's film, therefore using purely these classifications as the enforcement metric may prove problematic.

We believe a suitable compromise in cinema is to try and enforce a restriction for under 12's (11 and under). If the enforcement covered under 15's a huge range of films would fall into this category (despite the majority of the audience being 15+).

**Digital** - We are in favour of increasing the restrictions within this space, however policing digital environments is extremely complicated due to shared devices.

Current targeting options are made up of inferred and logged in data, whilst logged in tends to be more accurate it still cannot account for shared devices.

Therefore as well as age targeting content restrictions by the media owner must be enforced.

**Press** - The children's press market is extremely small and as it stands titles self-regulate. We however advocate a full restriction on HFSS foods advertising in kids targeted press titles (for under 12's) to ensure any future misuse of this channel.

**Outdoor** – The OOH market is currently self-regulatory with some clients and media owners already enforcing an exclusion zone around schools and playgrounds. Longer term discussions are being held as to an agreed exclusion zone of at least 100m that will be consistent amongst all media owners' inventory. Similar exclusions currently exist for alcohol advertising and have been so far enforced with no known issues.

To summarise Publicis Media UK, would advocate a revision of the Non Broadcast rules, however all revisions must factor in the success Vs effect ratio to provide a rational protection of Advertising Industry revenue and consistency across all media in the UK is paramount.

## 75 – Public respondents (campaign response 567 individuals)

Children have the right to participate in social life and to have their voices heard, but also have rights to health and to have their best interests considered. Children should be able to participate safely online and go about their daily lives without being subject to targeted marketing for products that have been demonstrated to have a negative effect on their health and their well-being.

Children under 18 should be protected from the marketing and promotion of less healthy food and drink across all forms of media, wherever it is placed and whenever it is children see it. This includes a 9pm watershed for junk food adverts on TV, as well as comprehensive and strict rules with no exceptions across non-broadcast media and platforms.

In response to the specific questions raised in the consultation:

Q1a = Yes – the CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS).

Q1b = No – whilst in favour of harmonising rules across all forms of media, the existing broadcast guidance on identifying brand advertising is not strong enough. Tougher rules should be adopted for both broadcast and non-broadcast brand advertising.

Q2 = Yes – the Department of Health nutrient profiling model to identify HFSS products should be adopted immediately. That model should also be updated to reflect current nutrition guidance and to close loopholes.

Q3 = No – existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should only be loosened for demonstrably 'healthier' products, but not for all non-HFSS products, and not for brands which include any prominent HFSS products.

Q4a = Yes - CAP should introduce a rule restricting the placement of HFSS product advertising.

Q4b = aged 17 and under – should be the audience that media placement restrictions apply to; although that option was not given in the consultation. Of the two options given, it should be aged 15 and under, not under 12s.

Q5 = No – the 25% audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children. Additional measures to more broadly define the 'particular appeal' of marketing to children (including content, marketing techniques and placement) should be introduced.

Q6 = Yes – the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement (checkouts) and sponsorship.