

Joint response to the UK Government's consultation on introducing a total online advertising restriction for products high in fat, sugar and salt ('HFSS').

22 December 2020

Introduction

This is a joint response on behalf of our memberships to the UK Government's consultation on introducing a total online advertising restriction for products high in fat, sugar and salt ('HFSS'). This unprecedented joint response from the Incorporated Society of British Advertisers ('ISBA'), the Internet Advertising Bureau UK ('IAB UK') and the Institute of Practitioners in Advertising ('IPA') reflects the potential existential impact of this proposal across the advertising industry.

For food and drink manufacturers; restaurants and takeaways; food retailers and food delivery platforms who choose to advertise in the UK; for advertising agencies (both media and creative); for the digital advertising supply chain; and for digital media owners – including news media brands – this proposal threatens investment and jobs for all and, for some, their very viability.

This proposal comes as a significant and unwelcome headwind, during a climate of economic uncertainty driven by Brexit and the impact of COVID-19. It says to the world that the UK is an unpredictable place to invest in tech, with arbitrary changes to policy and regulation out of step with the modern world. It says to the food industry, which during the pandemic has been championed for keeping the nation fed whilst tackling significant commercial challenges, that they should no longer invest in reformulation and innovation. It says to the wedding cake manufacturer, the Indian restaurant and the local café that government doesn't care about their ability to grow their business.

It is a disproportionate and inequitable response to the sought policy outcome – to reduce children's exposure to HFSS online advertising – built on an evidence base that is incomplete and flawed. It ignores, without justification, good practice in the market and a more proportionate and sophisticated response that builds on that good practice.

We address all these points throughout our response – or as well as we have been able to in the very short time allowed.

Our Organisations



The IPA is the professional body for advertising, media and marketing communications agencies based in the United Kingdom. We have approximately 300 agency brands within our membership.

As a membership body incorporated by Royal Charter, the IPA's role is two-fold: (i) to provide essential core support services to our corporate members who are key players in the industry; and (ii) to act as our members' spokesperson.



ISBA is the only body in the UK that enables advertisers to understand their industry and shape its future, because it brings together a powerful network of marketers with common interests, empowers decision-making with knowledge and insight and gives a single voice to advocacy for the improvement of the industry.

ISBA is a member of the Advertising Association and represents advertisers on the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice, sister organisations of the Advertising Standards Association, which are responsible for writing the Advertising Codes. We are also members of the World Federation of Advertisers.

We are able to use our leadership role in such bodies to set and promote high industry standards as well as a robust self-regulatory regime.



IAB UK is the trade association for digital advertising, made up of over 1,200 of the UK's leading media owners, advertising technology providers, agencies and brands. We have a Board comprised of 25 leading businesses in the sector. Our purpose is to build a sustainable future for digital advertising, a market that was worth £15.69bn in the UK in 2019.

The IAB is actively engaged in working towards the optimal policy and regulatory environment to support a sustainable future for digital advertising. We also develop and promote good practice to ensure a responsible medium.

Executive Summary

A summary of the arguments set out in this response and appendices is as follows:

I. As a preliminary matter, the fundamental assumptions underlying the proposal to ban all HFSS advertising online are not valid.

A. First, the Proposal inappropriately assumes that reducing child exposure to HFSS food advertising is a viable and meaningful approach to addressing childhood obesity. The evidence indicates otherwise.

- The evidence does not support the assumption that child advertising exposure has “caused” increased rates of overweight or obesity.
- In fact, evidence suggests that food ad exposure and caloric intake both declined during the period that overweight and obesity rates spiked upward. Unfortunately, however, caloric expenditure through physical activity was in even steeper decline during that period, creating the significant caloric imbalance which has been the core driver of the obesity problem.
- International evidence shows that **child advertising restrictions have had no success** in impacting child overweight/obesity rates, presumably because they do not address the core driver of the problem.
- Closer to home, the UK already has imposed substantial restrictions on HFSS advertising (arguably the strictest in the world) and **child HFSS ad exposure has been cut nearly in half** since the imposition of those restrictions in the UK, **but no improvement in obesity rates has followed from that.**

B. Second, the Proposal inappropriately assumes that children are exposed to such a meaningful volume of HFSS food advertising that regulatory intervention is necessary to control this. In fact, UK children are exposed to very little HFSS advertising today – and this minimal exposure is dropping rapidly (without regulatory intervention) as child media habits change.

- According to the evidence presented in the Proposal’s Evidence Note and within the 2019 consultation stage Impact Assessment (IA), the average UK child is exposed to around 36 seconds of HFSS food advertising per day – around **13 seconds online** and around **23 seconds on television**. The Evidence Note also indicates that as children shift more of their media consumption to online media their television exposure is expected to decline by 11% per year going forward, while only 3.4 percentage points of that decline will be offset by online exposure.
- Thus, without any additional regulatory intervention at all, one would expect (based on the evidence presented by government) that **child exposure to HFSS food advertising will continue to drop substantially**. Over the next three years, for instance, television exposure would drop by seven seconds, with only one second of that decline being offset by online exposure.

- In any event, the current 36 seconds of total exposure per child per day in the UK is **already stunningly low**, compared with around **113 seconds per day in Canada** and around **139 seconds per day in the U.S.**, to pick two examples.¹

C. Third, the Evidence Note makes inappropriate assumptions (and ultimately a key arithmetic error as well) en route to suggesting that eliminating all online HFSS food ads will translate to a reduction in caloric intake of 2.84 calories per child per day. None of this is supported by actual evidence.

- The only evidence that is cited in favour of the need to further reduce the estimated 13 seconds of online HFSS advertising exposure per child per day is a single “meta-analysis” study **whose authors explicitly cautioned against drawing the conclusion** that the government draws from their work.
- The entire proposed online ad ban – and 100% of the benefit assumptions made in the accompanying Evidence Note – relate to the idea that there is a linear relationship between X seconds of online HFSS ad exposure and Y incremental calories consumed. This does not exist. The **only** evidence for this supposed linear relationship is a meta-analysis that:
 - a. specifically said it did **not** find such a linear relationship;
 - b. did not involve **any** testing of online HFSS ads (only television ads); and
 - c. was based on **such highly unrealistic** laboratory studies involving non-representative samples of children from various parts of the world that **even the authors of the meta-analysis cautioned against its use.**
- Even if one ignores the cautions expressed by the authors of the meta-analysis and accepts the consultation’s misapplication of the research, the government’s conclusion that this online ad ban would reduce calorie consumption by **2.84 calories per day is wrong for several reasons:**
 - a. First, the **2.84 is based on a simple arithmetic error** in the Evidence Note—if that error is corrected, the 2.84-calorie number drops to **2.43 calories**.²
 - b. Second, **the Evidence Note fails to address “compensation behaviour”**—which is the understood phenomenon, fully accepted by the government in its companion 2019 consultation on restricting locational promotions and volume promotions of HFSS foods at retail, but noticeably absent here, that

¹ Canadian exposure data sourced from: <https://www.acaweb.ca/en/wp-content/uploads/sites/2/2017/08/ACAfullcommentsforHealthCanadaconsultation.pdf>, at Table 3, Line 1, showing 191 seconds of total child food advertising (including both HFSS and non-HFSS) in Canada. Based on analysis commissioned from Group M/Mindshare (using Kantar and Nielsen data), U.S. children were exposed to 152 seconds of food advertising (per child per day) on television alone (not counting online advertising). Though we do not have online data for the U.S., if the ratio between online and television exposure in the U.S. is comparable to the UK (where online represents 13/36 of the total exposure), the total exposure in the U.S. is likely around 236 seconds. Both the Canadian numbers and the U.S. numbers reflect total food ad exposure by children—not “HFSS” food ad exposure specifically—but applying the Evidence Note’s estimate that 59% of food ads are for HFSS foods (which would likely be conservative in the U.S. and Canada where such ads are not regulated) child exposure levels in Canada and the U.S. for HFSS food ads are likely at least 113 and 139 seconds, respectively.

² SLG Economics Ltd, *Review of the government’s proposals for introducing a total ban on HFSS advertising online* (December 2020) (referred to below as the “SLG Report”).

increases in caloric intake at one eating occasion will be offset by reductions at others. In the 2019 consultation, it was assumed that 40% of any caloric reduction initially caused by these HFSS food promotion restrictions would ultimately be negated by “compensation” by consumers, whereby consumers would replace the calories from the foods they were no longer buying and consuming (due to the promotional restrictions) with calories from other foods.³ Academic literature would support a much higher rate of compensation, even 100%. But the failure to apply even the 40% reduction in the Evidence Note is a major oversight. If the 40% reduction is applied here, the 2.43 calories **must be reduced by 40% to 1.46 calories per child per day**.

- c. Third, as pointed out by the expert report of Stephen Gibson, the Evidence Note disregards evidence that 25% of online ads to which children are “exposed” are never actually viewed by them, which further reduces the 1.46 calories by 25% to **1.09 calories per child per day**.⁴
 - d. Moreover, **several more errors make even the 1.09-calorie estimate far too high**. These errors include:
 - applying the weighted average of the huge “confidence interval” from the meta-analysis, instead of following the academic literature which would suggest that the lower end of the interval should have been used (resulting in a **95% overstatement of calorie impact**);⁵
 - applying erroneous ad exposure data that is **likely around five times too high**;⁶ and
 - failing to account for the fact that since 6 October, Google has **ceased serving HFSS food ads to anyone under 18**.
 - e. Correcting for these last errors (not counting the Google change, which cannot be quantified yet) **reduces the purported 2.84-calorie impact to around 0.01 calories per child per day – around 3.65 calories per child per year**. And that would only happen if the meta-analysis had validly found the linear impact that it expressly did **not** find. The reality is that this Proposal will achieve nothing of any significance, other than damage businesses and harm competition and free speech interests to the detriment of all involved.
- Therefore, this Proposal is not a meaningful strategy for addressing child obesity and, if anything, will simply **distract attention and resources away from actual solutions** to the

³ See, e.g., HM Government, Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar (HFSS), Impact Assessment (IA) No. 13012, Nov. 2018, p9.

⁴ See SLG Economics Report.

⁵ Because the data is unable to predict true effect with any real accuracy, academic literature indicates that it is the lower end of the confidence interval that should be used to guide any policy decisions. See, e.g., T. Hak et al., *How to interpret results of meta-analysis (Version 1.4)*, July 2018, at 7-9, available at https://www.erim.eur.nl/fileadmin/erim_content/images/meta-essentials/How_to_interpret_results_of_meta-analysis_1.4.pdf (last visited 4 June 2019) (instructing that where meta-analysis results “lack [precision] as indicated by the width of the confidence interval . . . policy makers should decide whether . . . the lower bound of the confidence interval of the estimate of the combined effect is large enough for deciding in favour of the intervention”). In this case, the lower bound of the confidence interval is 20 times lower than the “weighted average” relied on by the Evidence Note.

⁶ See SLG Economics Report.

crisis. Indeed, even if the full 2.84-calorie impact claimed by the Evidence Note were valid, that would still be far too small to represent a strategy that would meaningfully contribute to solving the obesity problem. But **because that 2.84-calorie estimate overstates the impact by a factor of several hundred, the Evidence Note has overstated the benefits of this Proposal by several hundred times as well.**

- While massively overstating the benefits, the Evidence Note also grossly understates the costs by over 76%.⁷ The result is a highly skewed suggestion in the Evidence Note that the benefits will exceed costs, when in reality the **benefits are negligible to non-existent while the costs are massive.** Indeed, if we correct both the benefit side of the ledger (from £7.772 billion in the Evidence Note to its truer value of £0.027 billion) and the costs side of the ledger (from £4.472 in the Evidence Note to its truer value of £8.323 billion), **the costs of the Proposal outweigh its benefits by a factor of 308 times, equating to a net cost of around £8.3 billion.**⁸ And that is only the monetary cost – not the cost to consumers of reduced competition and decreased innovation (due to the inability of food companies to properly promote product improvements), nor the cost to free speech interests.

II. Even if the Proposal's fundamental assumptions were supported by valid evidence – such that reducing child exposure to HFSS food advertising online would be as beneficial as the Evidence Note suggests – the Proposal would still be an unreasonable approach to reducing such exposure, because far more tailored and proportionate alternatives are available for achieving such a reduction (or even achieving a greater reduction); yet these alternatives were not considered.

D. The government should have considered an approach based on age-targeting HFSS ads away from children because such an approach would be at least as effective, and likely even more effective, at reducing child HFSS ad exposures.

- The expert report prepared by Oxford Professor Andrew Stephen, one of the UK's leading academics focused on marketing and a deep expert on online advertising, establishes that a widely available range of technological solutions could easily be deployed to **reduce child exposure to HFSS food ads online by "precision targeting" HFSS ads away from children.**
- Professor Stephen **disputes the government's "evidence" that suggests that these tools are not sufficiently reliable or available** and, in particular, challenges the government's misapplication of the findings of an ASA research study to support its Proposal. Professor Stephen notes that **these precision targeting technologies are already quite robust**, and fully capable of addressing concerns (such as those cited by the government) relating to children providing false age information. He further notes that, through the use of machine learning and AI, these technologies are rapidly improving and becoming ever closer to being entirely precise, even when a user may not have provided age data directly.

⁷ See id.

⁸ Benefits were adjusted downward by a factor of 284 times for the reasons described above. Costs were adjusted upward as provided in the SLG Economics Report.

- Professor Stephen notes that an approach based on such age-based precision targeting would not only be as effective as the proposed total online ban at reducing child exposure to HFSS ads, but that **such an approach would be even more effective**.
 - The government itself explicitly assumes that its Proposal would eliminate only 78% of the HFSS ad exposures that children currently experience online because the remaining 22% would simply migrate to other media, as advertisers would be forced to move these ads elsewhere (and children would therefore continue to be exposed to them). In other words, the government is assuming a 78% effective rate for its Proposal.
 - By contrast, Professor Stephen states that aged-based precision targeting could be essentially 100% effective at reducing child exposure to these ads online, and these ad exposures would be unlikely to migrate to other media because a targeting-based approach would still fully allow advertisers to reach their intended (adult) audience online and therefore would not force displacement of these ads to other media (where children might still see them). Thus, a targeting-based approach would have a 100% effective rate.
 - Thus, had the government considered this approach, it could have increased its total benefit calculation by 28% (i.e., the ratio of 100/78 converted to a percentage increase).

E. Critically, a precision targeting approach would not only be more effective (and therefore more beneficial), but also far more cost-efficient and proportionate.

- The costs of this age-targeting approach would be miniscule in comparison to the “total online ban” in the Proposal.
- Unlike the current Proposal, such a **targeting approach would not wreak havoc on competition** within the food and media industries by foreclosing online advertising to most food and drink advertising. Instead, advertisers would remain fully able to reach their actual intended (adult) audience online, and few of the Proposal’s downstream impacts on the advertising/media value chain would therefore be present.
- Unlike the current Proposal, **a targeting approach would not force consumers to bear the “costs” of a diminution in innovation and reformulation within the food industry**. The Proposal would significantly suppress such innovation and reformulation because food companies are unlikely to invest in these changes when such costs cannot be recouped through effectively promoting the improved product through advertising.
- Unlike the current Proposal, **a targeting approach would be substantially more proportionate and would not treat food – something we all need to sustain life, and which can be a source of great joy and connection to tradition, culture, and family – as if it were an illegal substance**. The current Proposal, by contrast, represents an unjustifiable and highly disproportionate intrusion on the free speech interests both of advertisers (to communicate the benefits of their products to adult consumers) and the consumers who receive these communications.

Consultation Response

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

- 1.1 No. The desired policy objective for the Government is to ‘reduce children's exposure to HFSS advertising, in order to help reduce their overconsumption of HFSS products’ and to ‘ensure that any potential future restrictions would be proportionate’. There are two key elements of that objective; the narrow focus on children and the implicit desire to better target rather than eradicate. The Government’s preferred policy of a total ban online overreaches on both counts. It is a disproportionate response which has wide-ranging impacts for brands, advertising agencies (both media and creative), media owners and the wider digital advertising industry.
- 1.2 As government is aware, advertising plays a crucial role in brand competition, drives product innovation and fuels economic growth. Many industries such as arts, sport and culture depend on it for their revenues and it also funds a diverse and pluralistic media enjoyed by people of all ages. Advertising is a driver of economic growth and competition. We have estimated that every pound spent on advertising returns £6 to GDP through direct, indirect, induced, and catalytic economic effects. Advertising spend will be over £21.5 billion in 2020, which we estimate results in £129 billion to GDP, supporting 1 million jobs across the UK.

Process and Timing

- 1.3 This consultation was announced, and will conclude, without the Government having published its response to the 2019 consultation. Stakeholders are therefore unaware of how the Government has considered those responses, including on critical issues which have a clear impact on the current consultation, where the Government appears to have ignored or dismissed the points made in response to that consultation, particularly around the evidence base. Indeed, this consultation document fails to set out (or in fact contradicts itself on) clear definitions on critical areas under consideration. It is a fundamental requirement of a fair and lawful consultation that it takes place at a time when proposals are still at a formative stage and that the product of the consultation is given conscientious and genuine consideration in policy development. This lack of proportionality is further underscored by the fact that the Government has at its disposal less restrictive alternatives that can achieve its objective to reduce children’s exposure to HFSS advertising as effectively (if not more effectively) than the proposed total online ban.
- 1.4 Given the severity of the proposals, we and our members requested adequate time be provided for stakeholders to analyse the proposals and to submit their views. We do not accept the Government’s claim that this policy is purely an extension of the previous policy (a 9pm HFSS advertising watershed online), on which it consulted, and therefore justifies only a short, technical consultation. A statutory advertising ban is an intervention of an entirely different nature, magnitude and impact than the previous proposals, and warrants full and proper scrutiny. We have previously requested, formally, that DCMS hold a full 12-week public consultation. Given the complexity and the impact of the proposals, sufficient time should have been granted to allow interested parties to give a fully considered response, in line with

the Government's own consultation principles, which state that "Consulting too quickly will not give enough time for consideration and will reduce the quality of responses".⁹ The Government has not provided sufficient time, which has constrained both our and our members' ability to engage with this consultation both in terms of the policy and the evidence.

- 1.5 The Evidence Note states: "The aim of this consultation is to gather and update evidence to help the Government understand the impacts of a total ban of HFSS adverts online as well as how it would be implemented". It is highly unlikely, however, that such a curtailed process will deliver the breadth and depth of information that is needed to make an informed decision on this policy, particularly given the gaps in the evidence base (see appendices A and B). We therefore ask that adequate time is set aside in the new year for more detailed consultation and evidence-gathering.
- 1.6 It is clear that this proposal will restrict fundamental rights, including commercial free speech. There are also concerns regarding the discriminatory nature of the proposal, with no cogent justification for the proposed differential treatment between the introduction of the 9pm advertising watershed on TV and a total ban of online advertising. The engagement of these issues means that the Government must establish that any measures are justifiable and proportionate, and that they are a suitable and necessary means of achieving the stated health objective. However, the Government has not established a case to support moving forward with its proposal.
- 1.7 The principal legal consideration for this policy is Article 10 of the European Convention on Human Rights (ECHR) concerning freedom of expression, which provides that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

- 1.8 Article 10(1) of the ECHR protects the right to commercial freedom of expression, albeit to a lesser degree than political, religious or cultural expression. Any restrictions imposed must be a proportionate means of achieving the aim of restricting children's HFSS exposure. Government must then have regard as to whether there are less restrictive, alternative means of achieving that aim. This is a point highlighted within the Better Regulation Framework, as below:

1.1.3 *An options appraisal should consider a range of policy options. These should include alternatives to statutory regulation, such as industry-led approaches, as a means of delivering the policy outcome.*

- 1.9 In short, the greater the potential impact of the restriction – on free speech or lost revenue, for example – the greater the need for robust evidence to justify it. We do not believe that the Government has met that benchmark (and nor did it for the earlier consultation on less restrictive measures). Instead, stakeholders have been delivered a consultation process with a presupposed outcome, which – setting aside the issues we have identified with the cost-benefit analysis – suggest that eliminating all online HFSS food and drink advertising would, based on the assumption of a direct correlation between reduced adds and reduced consumption – translate to a reduction in caloric intake of 2.84 calories per child per day (in any event, a flawed estimate, as we demonstrate below).
- 1.10 Additionally, as noted by Professor Stephen in his Expert Report (Appendix B), forcing food companies to stop all online advertising of HFSS products would have adverse consequences not present in a targeting-based solution, such as undermining competition and product improvement by prohibiting food companies from effectively communicating with, and presenting product benefits to, adults, including about how products may have been reformulated to improve nutrition.
- 1.11 Both procedurally and substantively, this proposal is unfair, unjustified, and not proportionate. It raises serious questions in terms of the Government's understanding of advertising generally, digital advertising specifically, and its approach to regulating online, not least through the conflicts this policy creates with policies the Government is pursuing in other areas of this industry.

Issues with the evidence base

- 1.12 Turning to the Evidence Note – the deficiencies of which are detailed extensively in the Expert Reports attached as appendices A and B – the Government has failed to meaningfully address the lack of evidence that exists to justify the need for further advertising restrictions, or to demonstrate that further restrictions are a meaningful strategy for addressing childhood obesity:
- Evidence does not support the assumption that child advertising exposure has “caused” increased rates of overweight or obesity.
 - The Evidence Note's assumption of a reduction in caloric intake of 2.84 calories per child per day is based on an arithmetical error (and 2.84 calories is negligible in any event).

- There is no valid evidentiary support for the Evidence Note's assumed linear relationship between X seconds of ad exposure and Y incremental calories consumed. The meta-analysis that has been used as a basis for this assumption specifically warned against it being used in the way the Evidence Note does (see our analysis in response to question 38). There is no justification for this.
- Because of these errors and deficiencies, the benefits of the proposal are grossly overstated and the costs grossly understated.
- Evidence does not explore whether a lesser intervention could be more proportionate.

- 1.13 Fundamentally, even if the proposal's core assumptions were supported by valid evidence – such that reducing child exposure to HFSS food advertising online would be as beneficial as the Evidence Note suggests – the proposal would still be an unreasonable approach to further reducing such exposure when far more tailored and proportionate alternatives are available.
- 1.14 Once again, as demonstrated by the Expert Report (Appendix B), according to the Government's own assumptions (which we will take as accurate for the sake of this point), it would be likely that an approach based on precision targeting would be *even more effective* than the Government's proposed total ban, because the Government expressly assumes that its plan will cause substantial displacement of children's online HFSS ad exposures to other media (the Government assumes a 22% displacement). By contrast, a precision targeting-based approach, because it will still allow these online ads to be shown to the adults for whom they are actually intended, is unlikely to lead to any significant displacement because advertisers would have no need to move their ads to other media to reach their audience. As a consequence, total child exposure to HFSS ads across all forms of media should be lower under a precision targeting approach than under a total online ban according to the Government's own assumptions.
- 1.15 As trades bodies, we and our members have sought to engage with officials since July to ensure that the Government understood the potential scope of options available to them in meeting the desired policy outcome. The most viable, and shortest, route to reduce children's exposure to HFSS advertising online remains for government to work with industry to utilise the tools available for targeting away from certain audiences and to ensure effective compliance.
- 1.16 We recognise that monitoring by the ASA has identified some issues of non-compliance that need to be addressed and we are willing to take the necessary, targeted action to do so, even though we do not accept government's reliance on the ASA's work to justify its proposal (as referenced below and further explained in the Expert Reports attached in appendices A and B). Despite the evidence supporting such a solution and the willingness of industry to work with government to deliver it, these more sophisticated and effective options have been dismissed out of hand.

Alternative approaches

- 1.17 Rather than designing an appropriate form of regulation for the online market, the Government has simply lifted a regulatory model (time-based restrictions) which has traditionally been used for linear broadcast television and sought to impose it on online advertising, for which it is simply an inappropriate approach – just as one would not try to impose time-based restrictions on print or outdoor advertising. It seems obvious that when the Government realised that there are inherent problems in trying to implant restrictions appropriate to broadcast media to online platforms, it simply opted for a total online ban because doing so would be easier. That cannot be a proportionate or justifiable means of policy imposition. It fails to recognise that the online media require a different approach to regulation from linear broadcasting and that designing a regulation based on the characteristics of the advertising medium is critical to an effective regulatory framework that achieves the maximum benefit for a proportionate and reasonable cost – in line with the Government’s manifesto commitments.
- 1.18 Appendix B attaches the expert report of Professor Andrew Stephen, a senior academic at the University of Oxford who serves as the L’Oréal Professor of Marketing at Oxford’s Saïd Business School and head of the school’s marketing faculty. Professor Stephen has dedicated much of his career to the study of the effectiveness and efficiency of digital advertising, and draws on his expert knowledge and insights into the technological developments in the advertising space as well as how AI and machine learning algorithms are being used in digital advertising.
- 1.19 As Professor Stephen makes clear in his report, he does not see any merit in the Government’s proposal of a total ban on online advertising for HFSS products, characterising the proposal as overly broad, unduly restrictive given the availability of alternatives, not evidence-based and, thus, disproportionate.
- 1.20 Professor Stephen identifies a number of areas where the Government’s proposal falls short and/or is inappropriate.
- Despite the availability of precision targeting for online advertising as a viable technological solution to achieve the Government’s objectives, the Government has not listed its use as an option.
 - Critically, Professor Stephen concludes that an alternative that is fundamentally based on using precision targeting would be at least as effective as a “total online ban” at reducing child exposure to HFSS ads and likely substantially *more* effective. Professor Stephen observes that under the Government’s total online ban, there will (on the Government’s view) be substantial displacement of HFSS food ads to other media that are not as strictly regulated. Thus, the Government itself concludes in its Evidence Note that its total online ban will be only 78% effective in reducing child exposure to these HFSS ads, because 22% of the current exposures will simply move to other media as HFSS advertisers are forced to move their media spending elsewhere. By contrast, under a precision targeting approach, food and drink advertisers will not need to “displace” their advertising to other media because they will still be fully able to reach adults online. Therefore, there would not be a displacement of 22%

of child ad exposures to other media. The ads would remain online and children would not see them because precision targeting can ensure that they will not be served to children. In this way, a precision targeting approach may be close to 100% effective instead of only 78% effective.

- Machine learning can (and is) used to compensate for problems associated with either not knowing a user's age (because they have not given it at all) or if a user has lied about their age (i.e., the case of a child inflating their age). The Government, however, has not considered its use as an alternative, despite the fact that such an alternative can achieve the Government's objectives.
- An approach based on precision targeting that makes use of AI and machine learning technologies already in broad use across online media would likely increase in efficacy over time and be more flexible in accommodating new digital media types and apps that children may gravitate towards in the future.
- The main evidence used by the Government as a basis for its proposal to ban all HFSS online advertising is not fit for purpose and should not be relied upon for purposes of setting policy.

1.21 Professor Stephen also notes that the total ban will impose a major burden on the food industry, as well as on companies involved in the digital advertising/media value chain (e.g., agencies, platforms, technology companies). There will be large compliance costs, enforcement will not be easy or without significant cost, and food companies will be prohibited from communicating to adult consumers in digital channels.

1.22 In summary, Professor Stephen concludes that "if the goal is to reduce child exposure to HFSS food advertising, developing an approach based on precision targeting would not only achieve that goal (i.e., reduce that exposure by as much and likely substantially more than would the proposed total ban), but would do so at far lower cost".

1.23 An industry-led solution developed by the Committee of Advertising Practice ('CAP') and enforced by the Advertising Standards Authority ('ASA') would have several advantages over the proposal for a total ban. It would be far less costly, be designed to be fair and workable for all business models (e.g. both owned media and open demand) without distorting competition, present a more proportionate intervention designed to meet the Government's policy objective, and cause far less damage to businesses, whilst benefitting children and the wider audience and preserving parity of outcome between broadcast and online. It would preserve the revenues which are necessary to sustain a compliance ecosystem. It would also benefit from the nuance and specificity, and industry expertise, that can be achieved through the advertising Codes, and it could be delivered on a shorter timeframe than the end of 2022.

1.24 As industry trades bodies, we recognise and support the need for any such alternative solution to meet the Government's objectives of reducing children's exposure to HFSS advertisements, and its thresholds for compliance, accountability and efficacy, and deliver parity of outcome between rules in different media. In order to be implemented, any such solution must also satisfy CAP's evidence-based

policy requirements and the underlying legal tests to which it is subject for new interventions. Despite the challenges, as bodies representing the industry, we are committed to an alternative pathway that meets these tests and have already begun the process towards doing so.

1.25 The CAP Code, enforced by the ASA, has mandatory application to all advertisers. The rules set out in the Code are not ‘voluntary’, a mistruth which many campaigners seek to use to denigrate a system which is seen as amongst the strictest in the world. The ASA and CAP are committed to regulating in a way that is transparent, proportionate, targeted, evidence-based, consistent and accountable through a system funded by the industry at no cost to the taxpayer. The ASA’s reputation is fundamental to its authority, which is accepted by the overwhelming majority of advertisers who agree to amend or remove an ad on the ASA’s direction. ISBA sees this desire to comply and continually improve on a regular basis from its membership.

1.26 An alternative pathway could look to strengthen the following areas, by way of example, which are already within CAP’s remit and part of the non-broadcast advertising Code:

- The child audience threshold – seeking to meaningfully reduce it from the current 25%, and working in conjunction with:
- Toughening targeting policies – including raising the minimum age threshold to ensure an ‘air gap’ between advertisers’ target audience and children the Government’s obesity strategy seeks to protect;
- Supporting compliance with the rules through more detailed and specific guidance for advertisers on appropriate compliance strategies, campaign governance and how best to use the available tools and technologies to target HFSS advertising away from child audiences;
- Expanded compliance monitoring and targeted enforcement from CAP and the ASA.

1.27 More widely, online regulation is already a key focus for the ASA. In its 2019-2023 strategy “More Impact Online”, the ASA commits to:

- improve its regulation of online advertising, working more closely with the large online platforms and addressing any gaps in online advertising regulation;
- improve how it monitors compliance and proactively identifies and removes irresponsible ads (particularly online) and its sanctioning of non-compliant advertisers;
- develop its thought leadership in online advertising regulation, including on advertising content and targeting issues;
- raise awareness of its online regulation, to the public, the advertising industry and micro and SME businesses (where it will seek the help of the large online platforms and ad intermediaries to communicate with advertisers); and
- explore opportunities to engage the wider digital ecosystem to identify opportunities to support and improve advertiser compliance.

1.28 This commitment from the ASA and industry to further drive positive change is evidenced by the following.

- **Accountable measurement:** In answer to question 11, we have set out in detail why a single, transparent set of data does exist upon which measurement of online consumption can be reported accurately. From 2021 UKOM's measurement of children's behaviour and online campaigns will improve this even further and will therefore present a more reliable understanding of children's activity online, which could potentially be used to better understand the extent to which children are exposed to HFSS advertising online. Further improvements to measurement will continue to evolve, as demanded by the market.
- **Online Platforms and Networks Standards:** CAP is exploring how best to respond to various challenges, particularly strengthening consumer protection online by engaging platforms and networks in upholding the CAP Code and developing a sustainable funding model for the ASA. The industry recognises that these are important issues and in part fuel growing calls for government to introduce a statutory framework for online advertising regulation, which could compromise key principles and benefits of self-regulation. CAP will consult industry during 2021.

Parity of outcome between media

1.29 Returning to the impact of this proposal, the total elimination of HFSS advertising is – quite rightly – not being sought for TV, or any other form of media. It is essential that food and drink manufacturers and retailers can continue to exercise their rights to legitimately advertise their products freely to adults (although the proposal to ban HFSS advertising on TV pre-watershed would severely curtail those rights). It is not clear, therefore, why digital media should be, or is being, held to a higher standard, namely, a total and permanent restriction of HFSS advertising. No attempt has been made in these proposals to focus the intervention in a targeted way, based on where children are likely to be online. This does not deliver parity of outcome between media, nor reflect the nature or scale of the likely risk of low-level, inadvertent exposure of children to HFSS ads; and it prevents advertising to adults in media intended for, and consumed by, adults.

1.30 The argument that an online ban is justified in order to 'future-proof' the policy, and that targeting cannot be relied on because it is 'porous', misunderstands how digital advertising works, and how it is controlled. A small degree of porosity is present in all media due to the nature of those environments, and is potentially greater in one-to-many media than in one-to-one media. If it is acceptable in TV, for example, which similarly uses data to predict the likely audience of a given programme (and therefore facilitate the placement of the ads around it), then it should be equally acceptable online, where there is more information available to help identify, with more specificity, the likely audience. Children spending more time online does not necessarily equate to more children being exposed to HFSS ads, as it may do in other media, because audience size or volume does not determine ad exposure online. And, as the SLG Economics expert report notes (Appendix A), TV exposure is

decreasing by 11% pa while online exposure is only increasing by 3.4% pa; therefore, children's total exposure is actually reducing over time.

How compliance is managed online

- 1.31 Advertisers have a range of tools available to them when running campaigns online, which utilise data, insights and age targeting or inference tools to direct their advertising away from children. Methods used include creating detailed 18+ target groups; using content verification providers to exclude content sites and keywords that appeal to children; using inclusion and exclusion lists; using data verification providers such as ComScore DCE or Nielsen DAR to cross-reference targets against audience profiles; delivering campaigns to logged-in 18+ users only; and carrying out verification (of where ads are being shown) during and after campaigns.
- 1.32 Brands running campaigns for age-restricted advertising (which HFSS ads already are) may opt to advertise via direct relationships with publishers and other media owners, or only advertise in logged-in environments to ensure the requisite controls are in place.
- 1.33 There is no single safety net online for ensuring age-restricted ads are targeted away from children; instead, a highly effective, multifaceted approach is in place whereby processes and checks, both technological and human, are available at every stage of the digital advertising supply chain to target these ads towards the chosen audience – and away from children. Information setting out some of the processes in place to target away from children, at each stage of the supply chain, can be viewed in Appendix D.
- 1.34 All organisations involved in the digital advertising supply chain have every financial incentive for the targeting techniques being used to be as effective as possible. While no method, in any media, can achieve 100% efficacy in terms of ensuring ads are only seen by adults, the combined use of the tools and controls provided to manage ad placement online is an effective and reliable way to exclude children from seeing age-restricted ads with a high degree of confidence (see next section for examples that demonstrate this), and has involved significant investment across the value chain. Moreover, to the extent that 100% efficacy is not available today, as Professor Stephen points out in his report (see Appendix B), machine learning and AI are improving this efficacy daily and can be expected to be even more highly accurate in the near future.

HFSS ad campaign case studies

- 1.35 Advertisers of HFSS products utilise these processes as standard in their advertising campaigns. They use tools available in the market to target their ads towards their chosen audience, and away from children. Appendix E draws together four case studies of real HFSS advertising campaigns that have been run during the course of this year. They demonstrate, through real examples, the controls that were put in place by the advertiser or their agency to ensure the correct audiences were

targeted to view their HFSS adverts and, crucially, how children were specifically and purposefully excluded from viewing them.

- 1.36 These include the use of positive age targeting, verification tools to exclude publisher content appealing to children, inclusion lists of safe or non-child focused publishers and other methods. The case studies also include the real campaign report data generated for the advertisers, showing how the available information indicates these campaigns were successful in avoiding children's exposure to the HFSS advertising – where the advertising impressions were delivered, and to whom.
- 1.37 These case studies have been anonymised, but illustrate with real examples the efforts that HFSS advertisers and their agencies currently go to in order to comply with the existing HFSS regulations as set out in the CAP Code, and they provide evidence suggesting that this targeting is effective.

Efficacy of existing rules, controls and enforcement

- 1.38 The Government fails to take proper account of the tools used by advertisers and their agencies to effectively reduce children's exposure to all advertising intended for an adult audience and casts doubt on the effectiveness of the targeting of dynamically served advertising, describing it of "limited specific reliability". This assertion misrepresents how online campaigns are managed, suggesting a sole reliance on targeting technology, and is largely based on the wilful misrepresentation of ASA reporting. Further, it misunderstands how compliance with HFSS advertising restrictions is managed in practice through careful media planning, buying and campaign management.
- 1.39 As the SLG Economics expert report notes (Appendix A), the ASA report expressly states that "the monitoring exercise was not intended to replicate the online behaviour of children, so it is not reasonable to extrapolate exposure levels from the data"¹⁰ (emphasis in original). However, that is exactly what the Government has done. In addition, the ASA found that "more than two-thirds of the HFSS ads served to Child Avatars (647) were for products likely to be of little interest to children e.g. supermarkets, high-end cheese and condiments". The Expert Report of Professor Stephen (Appendix B) also makes clear that the Government should not have relied on the ASA's points to make its case.
- 1.40 Therefore, the ASA research is neither a suitable piece of evidence to reach a judgement on whether advertisers are able to avoid children's viewing, nor does it imply what the Government is suggesting – that there is little difference between the proportion and relevance of HFSS adverts that are served to adults and children.
- 1.41 The ASA study looked at adverts that were served to avatars who were not logged in to YouTube (the 'media universe' visited by the avatars comprised 40 YouTube

¹⁰ ASA Monitoring Report on Online HFSS Ads, June 2019: <https://www.asa.org.uk/uploads/assets/uploaded/14be798d-bd30-49d6-bcfbc9ed7e66e565.pdf>.

channels and 120 websites, therefore their results are significantly impacted by the results for YouTube). Since the ASA report was published, Google/YouTube has taken unilateral action to stop any HFSS adverts being served to anyone who is not logged in with a declared age of 18+. The ASA study is retrospective, published in June 2019 and analysing a period between 26 November and 9 December 2018. This pre-dates Google's policy, which was implemented in October 2020 and would likely show very different results if it were carried out today.

- 1.42 The Evidence Note ignores the improvements that social media platforms specifically have made to detect and remove underage users, including using machine learning algorithms and moderators to flag any suspected underage account holders for review and to disable the account if it is determined that the user is underage. In addition, advertisers of products like HFSS food and drink with age concerns can target their adverts away from children to adult audiences. Even if children have signed up to the platform using a falsely declared age, they are only likely to see a limited number of HFSS adverts because their viewing patterns will not match the declared age or target audience for the products.
- 1.43 The targeting of adverts is continually improving – driven by strong financial incentives, therefore one can expect significant improvements both before the proposed restrictions are planned to come into effect at the end of 2022 and thereafter. When analysing the benefits over a 25 year period, the counterfactual 'Do Nothing' option of relying on existing CAP restrictions and any future developments in self-regulation should be increasingly effective at reducing HFSS adverts seen by children, and the incremental benefits from the proposed restrictions to be much lower than suggested in the evidence note. This is notwithstanding the improvements proposed above.
- 1.44 The Government's concern to 'future proof the policy', given children's shift to more online viewing, therefore ignores evidence that children's total exposure to HFSS ads is actually reducing with the shift to more online viewing and this reduction is expected to continue. The consultation wrongly assumes that an increase in online consumption by children has resulted in an equivalent increase in exposure to HFSS advertising. Evidence does not support this. As online targeting of adverts continues to improve, the current CAP restrictions introduced in 2017 will become increasingly effective at preventing HFSS adverts being shown to children and therefore further decrease the total volume of HFSS adverts seen by children. The Government has not taken account of these and other likely developments in the market. It should take this opportunity to do so and consider a more appropriate regulatory policy.

Audience measurement and data

- 1.45 The consultation raises measurement as an issue, and as a basis for justifying an online ban, asserting twice that there is an "absence of any independent, comprehensive, gold-standard and publicly available means of audience measurement online". This is factually incorrect. More details are provided in response to question 11.

- 1.46 Whilst audience data for advertising campaigns broadcast to the TV set are provided by BARB and used as the currency on which trading for TV airtime is conducted, BARB audience data for BVOD and across devices is available at the programme level only. BARB's plans to deliver campaign level reporting for BVOD are long awaited and yet to be announced. Online, UKOM is the industry owned body that has been delivering reliable audience measurement since 2009 and today provides insights to websites and apps across PCs, tablets and smartphones. From 2021, UKOM will be modelling some content and app audiences for children under 15 from a new panel and has plans to deliver advertising campaign measurement later in the year. In addition, ISBA's Project Origin, an advertiser-led initiative, is in development. It aims to deliver accountable and audited measurement of digital and cross media campaigns, with a pilot early in 2021 and roll-out in 2022. *(As advertiser-led and in development, Project Origin is not yet cross-industry endorsed.)*

Displacement of advertising activity

- 1.47 In justifying the need for consideration of a total online ban, government sets out that stakeholder responses to the previous consultation suggested that the online 9pm watershed could raise issues of displacement and competition within the market, which justifies considering a total ban instead (see our response to question 9). It is astonishing, then, that in the Evidence Note, government highlights "a gain of £3.7 billion in additional revenue due to HFSS advertising being displaced from online to other forms of media" as a benefit of the policy. This does not constitute a 'benefit', and nor can it be used to justify a total ban. It creates worse competition risks, and suggests a deliberate attempt and desire to intervene in the market in order to skew spend towards certain media raising serious concerns about the impact of a total online ban from a competition perspective. An independent review of the competition impacts is essential.
- 1.48 In addition, the underlying assumption that advertisers would simply switch their spend from online to other media displays a serious misunderstanding of the advertising market and is not supported by the evidence. Advertising industry data [ref. AA/WARC Expenditure report] shows a long-term shift of ad spend from traditional media to online media; partly due to cost to produce but in high part because of changing consumer habits. The redeployment of advertising spend to media where advertising is already optimised would result in excess frequency (i.e. showing higher volumes of ads for the same campaign to the same audience – which wastes money and creates a poor user experience) rather than compensating for lost campaign reach. Therefore, there would be no purpose to or benefit in moving advertising spend from online to other media where the relevant advertiser is already active.
- 1.49 Many SMEs will simply not be able to 'move' spend to other media, which is more expensive, less easy for them to buy, and does not offer the hyper-local targeting capability that they need in order to maximise the return on their investment. This

raises another competition concern and exposes a potential barrier to smaller businesses introducing products to market or increasing market share.

Lack of consistent policymaking

- 1.50 The drivers of this policy also seem to be at odds with, or in ignorance of, active policies directly related to the regulation of digital advertising. They also fail to take account of the multiple challenges and active policy considerations facing the food and drink manufacturing, food retail and hospitality sectors.
- 1.51 Most obviously, the scope of the DCMS review of how online advertising is regulated includes ‘how standards about the placement and content of advertising can be effectively applied and enforced online so that consumers have limited exposure to harmful or misleading advertising’. That review appears to attempt to bring some urgently needed co-ordination to policymaking in digital advertising, but this HFSS policy proposal entirely undermines both that goal and the work of the review. It risks creating incoherent and conflicting policy and regulatory approaches, establishing unhelpful precedent and making decisions that affect the future regulation of digital advertising more generally without proper evidence and consultation. Decisions about regulating specific advertising content should not be made independently of that review.
- 1.52 This lack of policy co-ordination risks piecemeal, potentially overlapping or conflicting measures being introduced, and exacerbates the environment of excessive regulatory uncertainty that business is struggling to contend with. The digital advertising industry has been shouldering excessive regulatory burden and uncertainty recently as a result of government policy. For example, in addition to the DCMS review of advertising regulation, we have the implementation of competition measures arising from the CMA’s recommendations and the ICO’s age-appropriate design code, as well as other measures that increase cost and erode revenue for businesses in the UK market, such as the Digital Services Tax (which has far-reaching impacts on the wider industry, not just those companies directly in its scope), online harms, and HFSS. This environment is making the UK increasingly less attractive for both UK and international businesses to operate in. The industry is also suffering from the economic impacts of COVID-19 and planning for Brexit. This policy would compound the economic damage, harming sectors that the Government is, elsewhere, providing economic support to in recognition of the damage to businesses caused by the pandemic.
- 1.53 Further, we have concerns that the cumulative effect of Government policies (including on reformulation, net zero, plastics and promotions) alongside the unprecedented pressure on the food and drink manufacturers, retailers and hospitality sectors brought about by COVID-19, and the uncertainties surrounding the UK leaving the EU, is taking its toll. We are already seeing food prices increase as a result of these collective burdens, and no account of this has been taken in the Evidence Note. We would direct the Government to take full account of the submission from the Food and Drink Federation, with whom we have worked closely in the face of a series of unprecedented challenges.

Conclusion

- 1.54 In conclusion, the proposed restrictions on online advertising of HFSS products are not by any measure an effective way of achieving the objective of reducing obesity in children. As explained more fully throughout this response (though, as we note above, we have been given insufficient time to respond as fully as we would have wished) even assuming that the policy would be implemented, on the Government's own calculations, the estimated calorie reduction from the proposed ban on online advertising would not have any meaningful effect on reducing obesity. However, it is the case that the calorie reduction estimated by the government is based on several errors and flawed reasoning. Adjusting for these matters shows that the proposed advertising ban would only reduce calorie intake by, at most, 0.13kcal per day (48 calories per child per year – less than half of the calories in one cup of skimmed milk), and likely by much less than that because (a) this figure accepts as valid the government's use of the "weighted average" of the meta-analysis results it relies on for its calorie calculation, even though it would have been more appropriate to use the lower end of the extremely wide confidence interval for those results, and (b) this figure was calculated without accounting for Google's recently implemented policy of not serving HFSS ads to anyone under 18. These further points would reduce the caloric impact to around 0.01kcal per child per day, at most.
- 1.55 A reduction of, at most, 0.13kcal per child per day would mean that the Government's estimate of 2.84kcal is around 22 times too high. If the reduction is actually not more than 0.01kcal, the Government's estimate would be around 284 times too high. Either way, the Government's benefits estimate is therefore enormously inflated (by at least one or two orders of magnitude), and the true benefits (if any) are disproportionately outweighed by the costs, even if the costs were exactly as the Government assumes. At the same time, however, SLG Economics notes that the government's cost estimates are substantially understated.
- 1.56 The Government's concern to 'future proof the policy', given children's shift to more online viewing, ignores evidence that children's total exposure to HFSS ads is actually reducing with the shift to more online viewing and this reduction is expected to continue. Furthermore, as the management of how online campaigns are targeted continues to improve, we expect the current CAP restrictions will become even more effective at preventing HFSS adverts being shown to children and therefore further decrease the total volume of HFSS adverts seen by children. The Government has not taken account of these and other likely developments in the market.
- 1.57 Concerns over the lack of independent data regarding online audiences also do not take account of recent market developments. In particular, from January 2021 the Ipsos iris platform will build on existing independent, industry recognised measurement of online children's audiences to include enhanced modelling of children based on a regionally and socio-demographically representative single source panel of 10,000 individuals.
- 1.58 The Government's concern regarding the lack of effectiveness of the targeting of dynamically served advertising is based on a misuse of the ASA's research using online avatars. SLG Economics notes that "the ASA research is neither a suitable piece of evidence to reach a judgement on whether advertisers are able to target

children's viewing, nor does it imply what the government is suggesting". Furthermore, the evidence note ignores the improvements in targeting of adverts and measures taken by online media to further restrict HFSS product advertising. Even since the ASA report was published, Google/YouTube has taken action to stop any HFSS adverts being served to anyone who is not logged in with a declared age of 18+.¹¹ Were the ASA study to be repeated now, this would substantially reduce the child avatar's exposure to HFSS ads compared to when the study was undertaken. The ASA has also stated that it expects that Google's new policy will have a positive impact on its ongoing monitoring of age-restricted ads appearing in children's online media.¹²

- 1.59 We agree with SLG Economics (Appendix A), who conclude: "Therefore, when analysing the benefits over a 25 year period one would expect the counterfactual 'Do Nothing' option of relying on existing CAP restrictions and any future developments in self-regulation to be increasingly effective at reducing HFSS adverts seen by children, and the incremental benefits from the proposed restrictions to be much lower than suggested in the evidence note."
- 1.60 We further agree with Professor Stephen (Appendix B), that a solution based on precision targeting, compared to a total ban, would have the added benefit of not putting undue burdens on food companies and the rest of the advertising and media value chain. Under difficult economic conditions (as the UK economy enters the post-Brexit period and emerges out of the COVID-19 pandemic), a total ban would create considerable compliance costs¹³ and burdens on both advertisers (i.e., companies in the food industry) and other companies in the advertising/media value chain, such as advertising agencies, media agencies, and digital advertising platforms/technology companies. For the food companies, a total online advertising ban would limit their ability to effectively compete with their peers and provide information of value to consumers by literally banning them from using online advertising channels, which are increasingly the predominant advertising channels in the UK.
- 1.61 Moreover, as noted elsewhere in this response, a solution based on targeting has the added benefit of being more effective at reducing child exposure to HFSS advertising than the total ban being proposed. By being far less costly while delivering greater benefits, such an approach would shift the cost-benefit analysis dramatically and would be a far more proportionate approach.

¹¹ Google, Update to Other restricted businesses policy (October 2020). Available at <https://support.google.com/adspolicy/answer/9919030?hl=en#:~:text=In%20October%202020%2C%20the%20Google,Eur,opean%20Union%20as%20described%20below.&text=We%20support%20responsible%20advertising%20of%20food%20and%20beverages.>

¹² ASA, Our latest monitoring sweep to tackle age-restricted ads on children's websites and YouTube channels, 20 November 2020. Available at <https://www.asa.org.uk/news/our-latest-monitoring-sweep-to-tackle-age-restricted-ads-on-children-s-websites-and-youtube-channels.html>.

¹³ Compliance costs could include, but not necessarily be limited to, the following: (a) ongoing processes for identifying which brands and products fit the HFSS definition, (b) processes for appealing government determinations of HFSS status for products when deemed appropriate, (c) self-auditing of HFSS products' ads running in other places to ensure that they don't "accidentally" appear as online ads, and (d) establishing liability for "mistakes" in a complex advertising ecosystem involving advertisers and multiple agencies in the value chain.

2. We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of UK children and which have the effect of promoting identifiable HFSS products, while excluding from scope:
- marketing communications in online media targeted exclusively at business-to-business. We do not seek to limit advertisers' capacity to promote their products and services to other companies or other operators in the supply chain
 - factual claims about products and services
 - communications with the principal purpose of facilitating an online transaction

Do you agree with this definition?

3. Do you foresee any difficulties with the proposed approach on types of advertising in scope?
4. If answered yes, please can you give an overview of what these difficulties are? Please provide evidence to support your answer.

1.62 Our response to questions 2, 3 and 4 is grouped here.

1.63 There are several issues with the proposed scope as presented. Firstly, it assumes that HFSS marketing communications are intended for children, when in fact this is already prohibited by Rule 15.18 of the CAP Code as set out below.

Rule 15.18

HFSS product advertisements must not be directed at people under 16 through the selection of media or the context in which they appear. No medium should be used to advertise HFSS products, if more than 25% of its audience is under 16 years of age.

1.64 As made clear above (see the 'Alternative approaches' section of our response to question 1), the CAP Code is mandatory, and all advertisers must comply with it. No consideration has been given to the scope of communications that fall within and outside of the CAP Code,¹⁴ which, if the Government's proposal is implemented, would cause even greater confusion for businesses and, we would imagine, for the ASA. We would advise government to consider the Scope of the CAP Code in order to understand the range of communications covered by the self-regulatory advertising rules.

1.65 We note that the body of the consultation document describes the scope differently, as being 'all online marketing communications that are either intended or likely to come to the attention of UK consumers' – i.e. adults as well as children. It is unclear why different descriptions have been used, but as a matter of principle we do not agree with a definition that seeks to restrict advertising to adults as a solution to reducing children's advertising exposure online. Nor does this align with the stated policy aim of reducing childhood obesity.

1.66 The proposed scope for this policy as set out in this question provides a description, not a definition. The broad areas set out above are supplemented with additional descriptors that do little to provide the necessary specificity or certainty to allow us

¹⁴ https://www.asa.org.uk/type/non_broadcast/code_folder/scope-of-the-code.html.

or our members to answer this question. As it stands, the wording of the scope is far too broad, vague and subjective. For example, the terms ‘online’, ‘likely to’, ‘have the effect of’, ‘identifiable’, ‘factual claims’ and ‘principal purpose’ are all open to interpretation. Again, we would ask whether government intends to make a distinction between the scope of its intended restriction and the scope of the CAP Code. For example, CAP guidance already explains how the industry should interpret ‘identifiable’.¹⁵

- 1.67 Even the exemptions are unclear. For example, business-to-business marketing communications are not, typically, restricted (in the sense that they are published without measures applied to restrict their audience) though by their very nature they are intended for, and appeal to, other businesses. To that extent, the term ‘exclusively’ could materially dilute the first exemption which surely cannot be the intention. Similarly, the factual claims exemption could also be problematic, not only because of the difficulty in determining what is and what is not a factual claim, but because the current advertising rules cover claims, generally. So, for example, if what might be interpreted as a factual claim is misleading, it will be in breach of the CAP Code. (There is a ‘factual claims’ exemption in Rule 22.12 CAP Code for e-cigarettes, an age-restricted product with a far smaller market than HFSS products.) With regard to the third exemption, no detail has been provided. For example, how does one determine what the principal purpose is of a communication? The lack of detail makes responding clearly and with the required level of detail impossible, particularly in the timeframe afforded to us by this consultation.
- 1.68 The Government’s case for including companies’ owned media in the scope of this proposal is simply not made. No evidence has been provided or assessment made of whether and to what extent children engage with these channels and what – if any – influence such engagement has on their consumption. It cannot be the case that the Government believes that these channels have large child audiences presently, or that they have the potential to attract large child audiences in the future.
- 1.69 To therefore seek to include the principal method of direct communication with adult consumers in the scope of this policy represents an encroachment that is legally questionable and is not logically sound. It is a further example of how this policy represents a disproportionate solution for achieving the policy goal. For the food companies, a total online advertising ban would limit their ability to effectively compete with their peers and provide information of value to consumers by literally banning them from using online advertising channels, which are increasingly the predominant advertising channels in the UK. This impacts quality, consumer choice and the objective of incentivised reformulation. An important mechanism for lowering the sugar and calorie intake of a population in a free market is the ability for companies to market their reformulated versions. Any attempts to restrict this mechanism will limit an organisation’s ability to influence consumer behaviour with the aim that consumers purchase healthier substitutes through informed choice. If the product is unsuccessful owing to poor consumer awareness, they would need to consider the viability of launching similar healthier alternatives in this market.

¹⁵ <https://www.asa.org.uk/asset/6B42B9F3-96EC-4A66-A9B50F0E21D845BF/>

1.70 No justification or evidence has been provided either in this consultation, or the previous one, for extending the scope to other online communications, nor has any account been taken in the evidence note, or the cost/benefits analysis, of the impact on the industry of imposing restrictions on content other than paid-for display advertising. It would be entirely inappropriate to apply a restriction on that basis.

1.71 More specifically, if the Government decides to proceed with its preferred option, then the scope should be narrowly focused on paid-for online advertising only, and only the type of advertising that the Government has assessed in its Evidence Note, as there is no opportunity currently to scrutinise the proposals for any other type of advertising. The Evidence Note says "Exposure through search advertising and social media sponsorship has not been quantified, as there is insufficient evidence on the effects of this type of promotion on children's HFSS consumption." Therefore, no case can be or has been made for applying a restriction to this type of marketing.

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

1.72 Yes, though again we would draw attention to the Scope of the Code section of the CAP Code since the existing advertising rules use different terminology. Most obviously, the rules in the CAP Code apply to marketers and marketing communications.

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

1.73 No. Notwithstanding our response to question 18, we do not think that it is a sensible approach to introduce such a broad, generic category as 'online service providers', as described here, as a starting point. A 'one-size-fits-all' approach would be disproportionate and bound to include businesses with little or no involvement in the content of an advertisement or any role in advertiser decision-making.

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

1.74 No. Please see our response to questions 2, 3 and 4, particularly regarding the case for, or need to, include companies' owned media in the scope of this proposal at all.

1.75 However, given that the wording of the question presupposes a total ban is implemented, in those circumstances we would agree with the need for such an exemption. However, we are not satisfied that the definition of factual claims has been considered to an extent that makes it clear to advertisers, consumers or regulators the detail of that exemption.

1.76 As noted above, no detail has been provided on how a regulator would make a clear distinction between what factual claims are and how they differ from promotional claims and communication to facilitate online sales. There are existing precedents in the cases of marketing of e-cigarettes and infant nutrition which show that such a

balance is not straightforward despite those being very specific, defined products. The HFSS products within the scope of this ban enjoy no such specificity.

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

1.77 The premise of this question once again presupposes the outcome of this consultation. In the event that a total ban is implemented, we do not support this measure in principle. Please see our response to questions 2, 3 and 4 about the case for, or need to, include companies' owned media in the scope of this proposal. Additionally, the wording is problematic – it would capture content or accounts that have nothing to do with an HFSS product, and therefore goes way beyond the intended scope of the restrictions that the government is proposing to apply to 'advertising'.

1.78 This element of the proposal introduces the concept of 'a brand considered by the regulator to be synonymous with HFSS products'. The consultation does not explain how the regulator will determine the threshold of synonymy, whilst implying a reliance on ASA rulings in respect of e-cigarettes to propose a restriction on the factual claims exemption. Such products are age-restricted, well defined products. The HFSS products within the scope of these proposals are not, being – as the consultation documents states – an advertising category which is unique in being age restricted in advertising but not otherwise (unlike, for example, alcohol, which is age restricted for purchase and consumption).

1.79 Moreover, were such brands unable to reach adult consumers, this approach will impact significantly on any further investment manufacturers make in reformulation and the drive to incentivise to healthier alternatives. An important mechanism for lowering the sugar and calorie intake of a population in a free market is the ability for companies to market their reformulated versions. Any attempts to restrict this ability will limit an organisation's ability to influence consumer behaviour with the aim that consumers purchase healthier substitutes through informed choice. That is not supposition, it is a fact.

1.80 It is also unclear how this element of the proposal interacts with that referred to in question 7. 'Factual claims' would be permitted on social media but would then be age-gated. This is inconsistent and confusing for the industry and its customers.

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

1.81 We are concerned that no account has been taken of how a ban would affect businesses of different sizes, for example smaller or new digital advertising publishers and service providers, food and drink manufacturers and retailers, restaurants and food outlets, whose revenues and businesses may be impacted in

such a way that they cannot compensate for or recover from the damaging effects of the proposal.

- 1.82 One area of obvious competitive disadvantage is for businesses that only produce HFSS products and/or where those products are hard to re-formulate, whereas companies with a mixed product portfolio would be able to advertise at least some of their products. Similarly, advertising agencies that have HFSS products businesses as their only or their main clients will also be badly affected. It would also competitively disadvantage online media companies compared to other media which does not face a ban.
- 1.83 The Government has failed to provide any competition analysis looking at the effect of its policy proposals, or the potential exemptions, on the market or competition in the industry. The consultation makes several references to conclusions that have been drawn about competition, but no analysis has been provided, nor has any expert assessment of the competition implications been undertaken, to our knowledge. This is particularly problematic in the context of the new regulatory framework for digital markets that is being developed at the time of writing.
- 1.84 We further note that the CMA concluded in its market study that the design and implementation of policy and regulation can disproportionately impact and disadvantage competing firms, and that the Government should take care in formulating future digital policy. This consultation does not follow through on this key CMA recommendation.
- 1.85 In criticising online advertising in terms of transparency, the availability of data and the reliability of targeted advertising, the consultation states that “an approach where compliance relies on the quality and reliability of targeting information and the ability to target certain advertisements away from children, may raise issues of competition”. That may be true, but that assertion is not substantiated (and nor was it explored as part of the 2019 consultation, which put forward this proposal), so we are unable to scrutinise the conclusion that has been drawn.
- 1.86 The consultation notes specific concerns about the absence of a level playing field and the need to minimise risks of market distortion and competitive advantage. However, these issues are compounded by the Government's own proposals for an outright ban online. The Government is determined to implement a total ban on HFSS advertising online while allowing it, under existing regulation, in all other media, ignoring the obvious competition issues in doing so. Indeed, in the accompanying Evidence Note, the Government celebrates “a gain of £3.7 billion in additional revenue due to HFSS advertising being displaced from online to other forms of media”, describing it as a benefit of the policy. Not only does this statement display a misunderstanding of the advertising market, it demonstrates a failure to take account of the impact of a total online ban from a competition perspective or suggests that Government is less committed to greater competition in digital advertising.

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

1.87 The basic fact is that even if the proposed advertising ban were to work exactly as the Evidence Note assumes (which it would not, for all the reasons we have set out in this response and the accompanying expert report from SLG Economics in Appendix A and Professor Stephen in Appendix B), it would still be ineffective in addressing the problem and give rise to competitive distortions.

1.88 In failing to adhere to the Better Regulation Framework¹⁶ and to consult with an open mind, the Government has failed to consider a tailored, proportionate means of achieving a reduction in children's exposure in such a way as to be media neutral and mitigate the risk of distortions in the wider market. By focusing on the stated core aim of the proposal and engaging with industry to more fully understand the options available to deliver such an outcome, the risks of competitive distortions could be addressed.

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

1.89 We would question the representation of Project Dovetail in this question, and the apparent expectation of the assurance it can currently deliver. Project Dovetail sits at the media-player level and explicitly does not measure ads. In layperson's terms, it knows that something is happening in the form of an ad-break but has no ability to see what that is. That capability sits out of scope and there is no roadmap to deliver such a tool.

1.90 We would further question why content is seen as a fair determining factor of where child audiences are likely to be in broadcast, but not online? The government's consultation document states that there is an "absence of any independent, comprehensive, industry-recognised, gold-standard and publicly available means of audience measurement". We dispute this statement and refer the Government to UKOM (UK Online Measurement) – the industry-wide standard for online audience measurement across PC, tablet and smartphone since 2009. From 2021, UKOM will exclusively endorse Ipsos iris, a new online audience measurement platform including propositions to model both children's data and the reach of online advertising campaigns. We believe that UKOM presents an independent, industry-endorsed means of audience measurement for the following reasons:

- UKOM is jointly owned across the online advertising industry by the Internet Advertising Bureau (IAB), the Association of Online Publishers (AOP) and the Incorporated Society of British Advertisers (ISBA). The Institute of Practitioners in Advertising (IPA) also sit on the UKOM Executive Board.

¹⁶ Better Regulation Framework:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf

- The Technical and Commercial Boards of UKOM are represented by trade bodies, agencies and publishers who collectively govern and hold UKOM to account. This ensures all viewpoints across online advertising are represented and that UKOM-endorsed data is held up to a high standard.
- UKOM-endorsed data measures UK audiences in terms of people instead of browser or device metrics, making it representative of actual audience behaviour. It uses a hybrid approach to measurement, combining data from site and app tagging with a respondent panel, representative of the UK. From 2021 the panel will include 10,000 individuals aged 15+. This hybrid model allows for a holistic view of internet use, including demographics.
- Across the digital industry, organisations use UKOM-endorsed data to measure the reach, time spent and audience demographics of different content sites and apps. It provides a unified, objective and unambiguous metric for online audiences.
- In Q1 2021, Ipsos iris will model some content audience data for children under the age of 15 across PCs, tablets and smartphones. It is expected that the modelled data will cover children aged 4 to 14; UKOM and Ipsos expect to announce this decision before the end of Q1 2021. This shows that the digital industry – through UKOM and Ipsos – are dedicated to expanding and improving on the measurement of children’s behaviour online to give an accurate and consistent view.
- In H2 2021, Ipsos expect to develop within Ipsos iris the capability to measure and model the reach and frequency of online advertising campaigns that have tagged the necessary creative formats. It is expected that modelling will include the capability to extend to the children’s segment. The exact age range of under 15 audiences of online ad campaigns will be the same as above for under 15 audiences of content, as will the extent of the content available for modelling those audiences. Furthermore, a future-proof, privacy-safe solution for audience measurement of digital and cross media campaigns is in development. As noted above, ISBA’s Project Origin, an advertiser-led initiative, is in development. It plans to deliver accountable and audited measurement of digital and cross media campaigns, with a pilot early in 2021 and roll-out in 2022. *(As advertiser-led and in development, Project Origin is not yet cross-industry endorsed.)*

1.91 We therefore believe that a single, transparent set of data does exist upon which measurement of online consumption can be reported on accurately. From 2021 the measurement of children’s behaviour and online campaigns will improve this even further, and could therefore be used to create a more reliable understanding of the extent to which children are exposed to HFSS advertising online. Further improvements to measurement will continue to evolve, as demanded by the market.

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

- 1.92 No. TV is a linear medium where time of day dictates what content is viewed; online is an entirely different medium, where the vast majority of content is on demand. This includes BVOD. This proposal suffers from all of the issues that a watershed presents online, which the IAB articulated in detail in its response¹⁷ to the Government's 2019 consultation. Time-based restrictions are ill-fitted to online, on-demand media, whether they be partial or total as in this instance. Government needs to design digital-appropriate policy in collaboration with industry, that addresses its aims without inappropriately restricting advertising to adults.

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

- 1.93 The current ASA system provides comprehensive powers to enforce against any breaches of the HFSS advertising rules. Under this system, primary liability rests with the advertiser but the publisher and agency also bear responsibility for ensuring adherence to the CAP rules. Advertisers are held to be primarily responsible for complying with the Code because they exercise primary control over the creative content, media placement and audience targeting of their advertising; a natural apportioning of responsibility.
- 1.94 In terms of powers and sanctions, the ASA can direct the advertiser, including through published rulings, to amend or remove an ad if it is found to have breached the CAP Code. Published rulings support transparency in the ASA's regulation and serve the interests of the public and the ad industry by clarifying when and how the rules have been broken.
- 1.95 In almost all cases the advertiser complies with the ASA's direction. If the advertiser refuses, CAP can co-ordinate self-regulatory sanctions, including refusal of media space, to secure the advertiser's compliance. ASA sanctions have the effect of cutting off access to most 'push' and social media, limiting problematic content to media space with limited traffic. Rare cases of persistent non-compliance typically involve smaller advertisers - sole traders or small businesses - with very limited reach refusing to amend misleading claims made about their own product and communicated on their own website. Under these arrangements, which enjoy a high degree of cooperation from the sector, including online media-owners and advertising intermediaries, the ASA is able to achieve takedown of ads in paid-for space where necessary with no need to resort to further measures.
- 1.96 The ASA maintains formal agreements with a range of backstops, some exercising cross-sector powers and others exercising sector-specific powers. They include, but are not limited to: Trading Standards; the Gambling Commission; the Information Commissioners Office; the Medicines and Healthcare products Regulatory Agency; the Competition and Markets Authority, etc. The ASA can refer non-compliant, non-broadcast advertisers to these bodies for their consideration of statutory sanctions including legal undertakings, fines, website take-downs, prosecutions etc.
- 1.97 We are confident that the ASA is well able to regulate in this space, utilising its existing powers. There is no evidence that we are aware of in relation to

¹⁷ <https://www.iabuk.com/policy/iab-uk-responds-hfss-consultation>

enforcement of the existing HFSS advertising rules where the ASA has had resort to sanctions or statutory backstops. These rare cases of persistent non-compliance typically involve sole traders or small businesses refusing to amend misleading claims made about their own products and communicated on their own websites: the very sector less likely to have the resource/knowledge to comply with the proposal under consultation.

- 1.98 Ultimately, statutory enforcement is only effective when the enforcement body has the resources to pursue matters through the courts. It is difficult to envisage how it would be proportionate to have a dedicated regulatory backstop whose role would be to pursue, at most, a handful of small traders. At the same time, if the designated regulator was an existing public body, it is almost impossible to envisage them acting. Such a solution would add to complexity and cost and would be hugely out of proportion to the nature and scale of the issue, particularly because, as noted above, there is a wider holistic review under way of online advertising regulation. This wider review is the right place to consider the functioning and efficacy of the wider regulatory framework, including statutory backstops.

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

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

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

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

- 1.99 We would refer you to our answer to question 13. It is difficult to conceive of any plausible scenario in which the ASA would need additional statutory backstop support to uphold HFSS ad restrictions. There is already an effective relationship between the ASA and the digital advertising ecosystem in order to support compliance with the CAP Code, including:

Pre-publication

- Advertising credits: some platforms provide advertising credits to fund ASA advertising campaigns on the platform's network with the aim of improving awareness of the ASA and, separately, to fund CAP advertising campaigns to promote the CAP Code, and CAP Advice and Training events to marketers.
- Advertiser on-boarding: ASA partners within the wider digital advertising ecosystem to bring to advertisers' attention in a suitably prominent way, via the platform's advertiser on-boarding process, the requirement to comply with the CAP Code.

Post-publication

- Tackling persistent offenders: on a case-by-case basis, removing ads by, and sometimes the accounts of, advertisers that persistently refuse to comply with an ASA direction to amend or withdraw advertising that the ASA has found in breach of the CAP Code.
- Sector compliance: actively partnering with the ASA to ‘level the playing field’ where complaints or other regulatory intelligence suggest there are specific and high levels of non-compliance in a given advertising sector and removing, as necessary, ads by, and sometimes the accounts of, advertisers that persistently refuse to comply with an ASA or CAP direction to amend offending ads.
- Responding to ASA formal information requests: providing information e.g. anonymised data relating to advertisers’ selection of audience targeting options, to the ASA to aid the ASA’s investigations and inform any enforcement decisions.
- Advertising credits: provision of advertising credits to fund ASA SEO ad campaigns to highlight to web users the persistent non-compliance of a website, in circumstances where media ‘gatekeeper’ enforcement is not available to the ASA. These cases typically involve sole traders or small businesses refusing to amend misleading claims made about their own product on their own website. (Failure to comply, on the part of the website owner, can lead to a referral to Trading Standards for their consideration of statutory sanctions.)
- ASA Scam ad alert system: removing within 48 hours a particular category of scam advertisement. The ASA shares intelligence about the scam ad and, where available, the source account to support participating platforms and intermediaries to identify other scams, whether on the host platform or other platforms.

Other

- Funding: contributing directly to, and/or co-operating in, the arrangements for the funding of the self-regulatory system.
- Regulatory policy development: providing platform insight and expertise to help develop rules and guidance to support advertisers’ compliance with CAP Code rules on media placement and audience targeting of online ads. Forming part of the ASA & CAP Online Forum, bringing together the seven social media platforms most popular with children in the UK.
- Training: providing pro bono training opportunities for ASA employees to enhance their understanding of the platform and the online advertising eco-system, thereby supporting an ASA objective to keep pace with online ad tech and developments in online marketing.

2.1 Beyond co-operating directly with the ASA and the self-regulatory system, there are other ways in which platforms help to uphold compliance with the CAP Code, including:

- **Platform advertising policies:** platforms and intermediaries take steps to protect their own services from non-compliant advertising via policies and processes and in some cases technical tools. These also support advertisers' compliance with advertising rules.
- **Platform pre-publication ad review processes:** design and delivery of pre-publication ad review process to check advertisements' compliance with platforms' advertising policies. Ads may not be approved if they do not comply with the policies or if there are other reasons that breach the platforms' terms of use.

2.2 **Platform targeting tools:** platforms and intermediaries make audience targeting tools and data sources available to help advertisers target their campaigns away from child audiences, e.g. for gambling, alcohol, foods high in fat, salt or sugar etc. Further evidence to strengthen the view that this relationship is effective and strong is clear in the forthcoming Online Platforms and Ad Networks update to the CAP code, as referenced above in answer to question 1.

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

2.3 Prior to being able to answer this question, a key point of clarification is required on the potential costs of enforcement and how it would be funded. The Evidence Note states, in relation to regulatory costs: "At present, evidence of the likely costs is not available, and this consultation will look at ascertain (sic) where possible the likely extent of these costs". However, the consultation questions do not appear to explicitly address this question. We ask the Government to set out when and how these calculations will be done, and on what basis, and ensure that they are shared with stakeholders.

2.4 Given the scope of the potential ban and the likely increased workload deriving from having to adjudicate on factual vs promotion, brand synonymity, enforcement of exemptions, etc it is vital that a proper assessment is made. Only then would it be practicable for stakeholders to make an informed response. Government should also be aware of the risks of a new regime undermining the established ASA system; principally, through the introduction of a statutory backstop that is not necessary and the increased risk of the ASA being legally challenged when it comes to enforce the restrictions government proposes to put into law.

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

2.5 This is a consistent approach. We would therefore agree with this proposal. Further reasoning to support that position is set out in response to question 18.

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

a) Prohibited

b) Subject to appropriate measures

c) Neither

d) I don't know

2.6 We would refer to our answers to questions 6 and 15 and underline the fact that under the current system, advertisers are liable for compliance, with others involved in supporting advertisers' compliance with the rules. Rule 1.8 of the CAP Code states:

Rule 1.8

Marketing communications must comply with the Code. Primary responsibility for observing the Code falls on marketers. Others involved in preparing or publishing marketing communications, such as agencies, publishers and other service suppliers, also accept an obligation to abide by the Code.

2.7 In other words, to the extent that online service providers are involved in publishing advertisements, they are also committed to helping to uphold the Code. Indeed, the ASA already has a strong and effective relationship with the wider ecosystem – as detailed in question 15. It is unclear what evidence government has to suggest that this is not the case, or that it would be the case in the future. If it has such evidence, then it should present it.

2.8 This response highlights the very significant economic impact of a total restriction of HFSS advertising online, including on other actors termed "online service providers". Removing this revenue stream from all downstream players in the digital advertising ecosystem and also imposing on them the legal responsibility and cost of enforcing the restriction is disproportionate by any measure. We know no precedent for such an onerous and unreasonable obligation. It seems entirely self-defeating to introduce a ban that would remove the very revenue source that supports a sustainable compliance ecosystem for HFSS advertising.

2.9 To illustrate this point, data on ASA rulings shows that, since the new rules were introduced over 3 years ago, only 17 rulings have been made on compliance with the CAP Code rule 15.18 in online media. Of these, 8 were not upheld, 6 were upheld and 3 upheld in part. One case was informally resolved. Of course, this does not reflect the total number of cases that CAP may have investigated, and we recognise that more work needs to be done to reduce those instances further. However, it does demonstrate that the ASA is well able to enforce the existing rules using its existing powers, with the cooperation of all those involved.

- 2.10 The proposal for further policing of ads is unnecessary for such a stark and absolute restriction, whereby the only disputes that are likely to arise would be based on whether the content of the 'advertising' is permitted by law either because it is out of scope, or specifically exempted. These are nuanced questions that a regulator is best placed to examine, not third-party service providers.
- 2.11 Consequently, we do not agree that it is necessary for the statutory regulator to have powers in relation to the oversight of appropriate measures, as envisaged in the consultation document (under the 'Enforcement' section). In particular, the suggestion that online service providers should measure the number of 'illegal' ads being served or to 'report content in breach' are both unworkable and unnecessary, for the reasons given above. No such requirement applies to ads for other products that cannot be advertised, such as e-cigarettes. There does not seem to be any justification for it in this context either. Such an approach also risks conflicting with the UK's intermediary liability regime, by implying that intermediaries have a monitoring role, a regime which the consultation explicitly states, elsewhere, that it does not intend to affect.
- 2.12 Any future introduction of liability or 'appropriate measures' must, as a matter of principle, be subject to further consultation. Such interventions require careful design that engages all affected stakeholder groups in its development.
- 2.13 We note also that the regulatory, enforcement and compliance costs are entirely absent from the Government's evidence note and cost/benefit analysis. This gap must be addressed before further decisions are made.

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

2.14 N/A.

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

- 2.15 Yes. However, the question is inaccurate. The advertising codes are mandatory for all advertisers, not voluntary as the question suggests. The advertising codes reflect, and are underpinned by, the law and it is the ASA's role as the recognised UK regulator for advertising to administer those rules. The ASA can ask media owners to deny advertising space to those who fail to follow the rules. In the case of claims appearing on websites, they can highlight an advertiser's name and noncompliance in a dedicated section of the ASA website – something that is picked up in search results online. Further, they can have an advertiser's paid search links disabled and launch their own paid search campaign. Ultimately, they can refer advertisers to Trading Standards. This system commands global respect and is seen as setting a gold standard for advertising regulation.
- 2.16 In the five years between 2014 and 2018, the ASA has referred 68 cases to its Trading Standards backstop only when the ASA was unable, through self-regulatory means, to secure compliance with the CAP Code: each case involved a website owner; in almost all cases the website owner was an SME. None of the cases involved paid-for advertising.

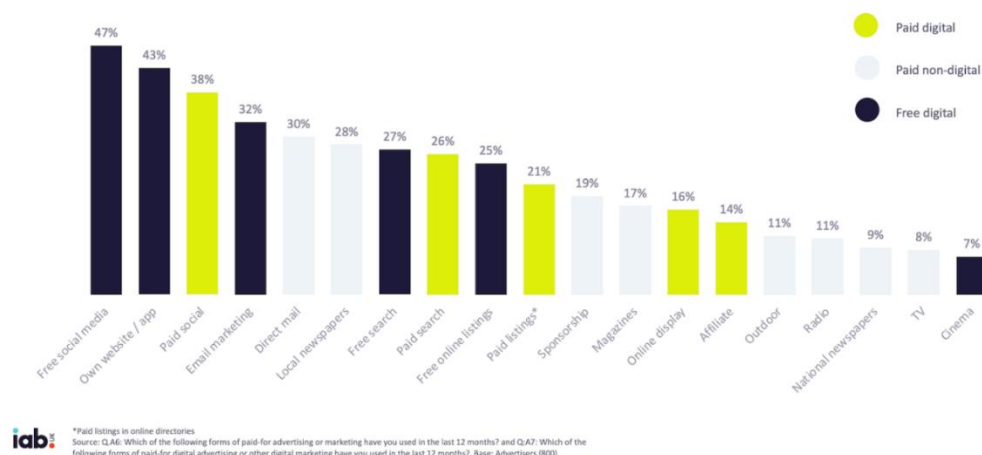
21. Do you consider that the imposition of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures/requirements?

2.17 No. We would refer you to our answers to questions 6 and 18 in which we set out our position on appropriate measures.

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

2.18 Yes. Advertising online can be far less costly than other forms of media and so can be more budget-friendly for SMEs, presenting lower barriers to entry. As a result, small businesses – wedding cake manufacturers, independent restaurants, etc. – are increasingly using digital advertising to establish themselves and grow their brand awareness as they are starting out. IAB research conducted in 2020 estimates that up to 45% of the UK's total digital ad spend comes from SMEs, equivalent to over £7bn. The research showed that eight of the ten most-used channels of advertising for SMEs, online or offline, are digital.

SME advertisers use a range of marketing channels



2.19 The same research suggests 60% of SMEs use paid digital advertising, with 69% using any form of digital advertising (including non-paid): SMEs use their own free social media more than any other type of advertising, online or offline.

2.20 Digital advertising is playing a crucial role for many SMEs, particularly in their efforts to recover from the economic effects of COVID-19, with 70% believing that communicating with customers is currently more important than ever according to the research. This restriction could represent to many a 'closed' sign for their business, when there are far better alternatives available.

2.21 However, SMEs are not alone in their use of digital advertising; the issues they would face if online HFSS advertising was banned are entirely mirrored by larger companies. The prospect of totally banning a substantial portion of advertising online presents an existential issue that would have significant impact across the industry, with businesses large and small, new and established, being impacted.

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

2.22 The issue is surely that compliance with this proposal brings with it existential impacts for all businesses. There is no reason to assume that compliance would be an issue in itself. Advertisers adhere to the CAP Code at overwhelmingly high levels and the platforms and the wider digital advertising ecosystem work effectively to ensure that compliance, as detailed in previous answers. Denying digital advertising to all companies, from the local Indian restaurant to the global multinational will lead to significant commercial impacts frankly unaccounted for by the Evidence Note. It will also set a global precedent of disproportionate, burdensome and costly regulation that says loud and clear, 'the UK is not a tech-friendly business-friendly nation'.

24. We note the challenges of applying statutory regulation to overseas persons. It is our intention to restrict the HFSS adverts seen by children in the UK. From your sector or from your perspective do you think any methods could be used to apply the restriction to non-UK online marketing communications served to children in the UK?

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

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

2.23 We have made our position on the proposal clear and would once again make the point that more proportionate measures have been ignored by government, which would address the points raised by questions 24, 25 and 26.

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

2.24 Please see our response to question 23, and question 1, where we detail the hostile regulatory environment that is being created for the digital advertising industry in the UK. In this particular example, an HFSS online ad ban would represent an approach for the UK that is more draconian than anywhere else in the world, erode revenue for the UK's digital media industry and disincentivise investment in reformulation. Manufacturers' ability to drive awareness will be severely limited should an online ban be introduced. If the product is unsuccessful owing to poor consumer awareness, they would need to consider the viability of launching similar healthier alternatives. This will clearly affect the attractiveness of the UK market for food and drink manufacturers, retailers, and digital advertising companies and is likely to discourage inward investment to the UK.

Evidence note consultation questions

2.25 We would draw the Government's attention to Appendix A, an expert report conducted by SLG Economics. This report was jointly commissioned by the Advertising Association, ISBA, IAB and IPA. It provides a full and detailed analysis of the Government's evidence base. Excerpts from that expert report supplement our answers to the questions below.

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

- 2.26 Our members have shared information privately with the Government. This information demonstrates that the costs assumed are grossly underestimated.
- 2.27 The Evidence Note makes no assessment of the transition costs for platforms or intermediaries despite noting that it would expect ‘an additional cost may arise in ensuring, for example, that clear complaints handling and takedown procedures are in place.’ The costs will necessarily depend on the final policy, but ensuring compliance with a statutory restriction will necessarily have cost implications, and these need to be understood in making decisions about the final policy.
- 2.28 As detailed above in answer to question 1, in his Expert Report (Appendix B) Professor Stephen points out that a solution based on precision targeting, compared to a total ban, would have the added benefit of not putting undue burdens on food companies and the rest of the advertising and media value chain. Under difficult economic conditions (as the UK economy enters into the post-Brexit period and emerges out of the COVID-19 pandemic), a total ban would create considerable compliance costs¹⁸ and burdens on both advertisers (i.e. companies in the food industry) and other companies in the advertising/media value chain, such as advertising agencies, media agencies, and digital advertising platforms/technology companies. For the food companies, a total online advertising ban would limit their ability to effectively compete with their peers and provide information of value to consumers by literally banning them from using online advertising channels, which are increasingly the predominant advertising channels in the UK.
- 2.29 On the other hand, precision targeting would have a much-lower burden of compliance on advertisers because age-restricting online ads for HFSS products will make sure that children are not exposed to these ads and the adults (for whom the ads are intended anyway) still have opportunities to see these ads.
- 2.30 A precision-targeting approach to this problem is an alternative that Professor Stephen strongly recommends. It would allow for food companies to still use online advertising as a way to build their brands and, critically, maintain robust and healthy competition between companies in this industry, whilst making it very likely that ads would *not* be shown to consumers who should not be seeing them and for whom they are in any case not intended, i.e., children.
- 2.31 The Government should, as a minimum, estimate the costs of its proposed approach set out in the ‘Enforcement’ section of the consultation, and referred to in question 18, in order to understand the implications. This is another gap in the analysis that needs to be addressed before further decisions are made.

¹⁸ Compliance costs could include, but not necessarily be limited to, the following: (a) ongoing processes for identifying which brands and products fit the HFSS definition, (b) processes for appealing government determinations of HFSS status for products when deemed appropriate, (c) self-auditing of HFSS products’ ads running in other places to ensure that they don’t “accidentally” appear as online ads, and (d) establishing liability for “mistakes” in a complex advertising ecosystem involving advertisers and multiple agencies in the value chain.

- 2.32 And in addition with regard to agencies, the Evidence Note explains that: “The transition costs for advertising agencies has [sic] been estimated to be between £756k and £2.27 million and are based on estimations of the amount of time each organisation will need to familiarise itself with the new regulations and to train the relevant staff accordingly.” These estimations are pure guesswork (and ignore job losses for agencies). The restrictions may also necessitate significant, additional work for agencies. For example, all data sets used for programmatic media buying or simple consumer re-targeting could need to be re-evaluated and possibly replaced or even deleted.

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

- 2.33 For advertisers, there will be a need for all marketing teams to understand the new regulations. The estimate assumptions of the time required to do so are unrealistic. We would refer you also to the answer to questions 1 and 31, which makes the case for a more sophisticated solution that would carry less cost to business directly and in terms of time.
- 2.34 For agencies, the Evidence Note suggests that only a small proportion of an agency’s employees will need to understand the new regulations, and makes the assumption that only 50% of employees in relevant teams would need to undertake between 1-3 hours of training. These estimates are unrealistic. All agency staff working on client business would need to familiarise themselves with any new regulations, and it would depend on the complexity of those regulations as to how long each individual would require in order to do so.

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

- 2.35 We do not recognise the costs, or the basis on which the Evidence Note has been calculated. Importantly, the evidence note provides no assessment for significant areas of impact and cost including compliance costs, enforcement/regulatory costs to advertisers and the regulator, costs to ad intermediaries and others in the advertising ecosystem and the ad revenue lost to digital media owners. The losses in terms of investment available to develop novel formats and other innovations is also not quantified.
- 2.36 As detailed elsewhere in our response, and in the SLG Economics expert report, the UK digital advertising industry is a huge success, and contributes significantly – both directly and indirectly – to the UK economy, and is essential to its growth. As the SLG Economics expert report highlights, reducing advertising spend would also reduce related economic impact. The Government’s proposals, if implemented, pose a threat to businesses and jobs in a wide range of sectors impacted by this policy, including SMEs. The Evidence Note (and the 2019 Impact Assessment) fail to take account of these potential impacts and costs. Again, we urge the Government to take the necessary time for more detailed consultation and evidence-gathering once the formal consultation period closes, before making any further decisions on this policy.
- 2.37 This proposal has in scope all online advertising (paid, non-paid etc), but the cost assumptions are based on a narrower basis – one type of paid-for advertising only.

Government has failed to take account or allow a consultation period long enough to enable them to take account, of the deficiencies in their analysis. It is therefore not possible for us – or the Government – to understand the actual impact of this policy on industry on the basis of this Evidence Note.

- 2.38 With regard to agencies, the Evidence Note acknowledges that there is only limited evidence on how advertising agencies, and others, would be impacted by the restriction. It rightly assumes, though, that agencies would lose revenue if advertising spend was retained by HFSS manufacturers and retailers and reinvested into other parts of their businesses.
- 2.39 The Evidence Note suggests that agencies would forego a 7.5% commission on lost advertising spend, resulting in approximately £3.9 million per annum or £66 million over the appraisal period. However, this does not reflect how agencies are remunerated for their services. Agencies operate in different ways and with different business models, which will vary from agency to agency and, of course, will depend on the requirements of their clients.
- 2.40 The IPA has provided some data from agencies to DCMS, separately, by way of anecdotal evidence as to the very real financial and personal (job losses) impact the restriction would have. ISBA members have provided their own analysis on the same basis.
- 2.41 Given these disparities, it is essential that the Government takes the time to fully understand and quantify the potential costs of its proposals in their entirety, and reflects these in its impact assessment.
- 2.42 Separately, we have identified issues with the basis for the calculations of cost in the Evidence Note. On a base level, as the SLG Economics expert report demonstrates at Appendix B, the Government has repeated the error¹⁹ that it made in the March 2019 IA of using mitigation factors and backfill and mitigation separately²⁰ when the mitigation estimates (based on Ofcom estimates²¹) already include backfill. The government has also assumed that HFSS advertisers would be able to retain 11% of their advertising online in the event of a total ban.²² While it is possible to retain some HFSS advertising online under a 9pm watershed option (by moving the adverts to after 9pm), we do not understand how the government expects advertisers to retain any HFSS adverts under the total online ban scenario. The evidence note assumes that even when no HFSS adverts are allowed online, online platforms would still receive 11% of the advertising revenue.
- 2.43 In the below Table 1 (Table 2 of Appendix A), is a more realistic assumption of no mitigation and half of the Ofcom estimates for backfill for the total online ban. This would increase the central estimate of the costs to business to £343m (£5,849m

¹⁹ See Paragraph 7.4 of Appendix A.

²⁰ Evidence Note Table 9.

²¹ 2006 Ofcom analysis. The author of this report directed the Ofcom analysis and drafted the Ofcom report from which this figure is taken.

²² Evidence Note Table 9.

NPV) under a total online ban compared to the government estimate of £271m (£4,626 NPV).

Table 1: Calculation of cost to platforms

	Evidence Note			SLG Economics		
	Option 1: Total Ban Online					
	Mid	Low	High	Mid	Low	High
Total value of HFSS online ads	437.9	437.9	437.9	437.9	437.9	437.9
Percentage NPM selected	87%	87%	87%	87%	87%	87%
Mitigation	89%	85%	95%	-	-	-
Backfill	80%	70%	90%	90%	85%	92.5%
Cost to platforms	271.3	226.7	325.7	342.9	323.8	352.4

2.44 As the SLG Economics report concludes, in summary:

- The Government has underestimated the costs of the proposals. It uses incorrect estimates of mitigation, fails to account for manufacturers switching to other forms of marketing and does not take account of the wider impacts of a reduction in advertising on the economy.
- Taking account of the revised benefits and costs, an online advertising ban would have a negative net benefit of £2,355m, while a 9pm online watershed would have a negative net benefit of £2,273m.
- The evidence note does not include any sensitivity analysis. Quoting a single figure for the costs and benefits of the policy is disingenuous and misleading.
- The evidence note does not consider the impacts of the advertising restrictions on competition, yet it would create a huge market distortion between media channels as well as distorting competition in other markets.

2.45 We have noted critical gaps in the evidence and analysis in our response to the main consultation questions (questions 16,18, and 31, for example). It is essential that these are addressed in order for the Government to have a comprehensive evidence base to inform its decision-making.

2.46 The Evidence Note states that it “captures” the “loss in sales revenue for ... online platforms and intermediaries”. However, all of the figures provided refer to the lost revenue in terms of ‘platforms’, i.e. lost revenue for media owners (we assume that is what ‘platforms’ is intended to mean, although it is not defined) selling advertising space. We can see no evidence of the lost revenue that would result for advertising intermediaries under a ban (and they are absent from Table 14 entirely). This is a serious gap.

- 2.47 We remind the Government that the IAB UK/PwC Adspend study measures advertising spend based on media owners' revenues, i.e. budget spent on buying advertising space. It does not measure money spent with intermediary service providers, so any calculations of lost revenue that have been based on that data necessarily only account for lost media revenue and not other lost revenue, or other costs.
- 2.48 We note also that the regulatory, enforcement and compliance costs are entirely absent from the Government's evidence note and cost/benefit analysis. These gaps must be all be addressed before further decisions are made.
- 2.49 We are also concerned that the cost/benefit analysis has been limited because it draws on one type of marketing communication, i.e. paid-for display advertising. The scope of the proposal, however, affects all online advertising, including that not paid for. The ramifications of this for businesses, both direct and indirect, are huge. We cannot see how the Government can take forward such a proposal with no assessment made of its complete impact or cost.
- 2.50 These points all emphasise the need for further work and repeat our ask from question 1, that the Government allows more time following the consultation deadline to gather and analyse robust and comprehensive evidence.

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

- 2.51 The evidence note suggests that 13.9% of internet advertising expenditure is for food and drink advertising.²³ As well as an arithmetic error in calculating the size of the food and drink advertising market – as referenced in answer to question 33 – the evidence note uses data for online display advertising,²⁴ rather than total online advertising spend and includes advertising for household goods in the consumer goods category. As a result, it overestimates the size of the food and drink advertising market.
- 2.52 However, ISBA analysis based on 2019 ASBOF data from Nielson for 1,700 leading advertisers (covering £4.3bn of display spend and £5.2bn broadcast) shows that food advertisers' spend (from 90 FMCG/grocery/restaurant spenders) accounts for 7.5% of digital display spend (compared to 16.5% for broadcast spend). This analysis suggests that the size of the online food and drink advertising market is 7.5% of £5.9 billion, or £442.5 million rather than the £743m²⁵ suggested in the evidence note.
- 2.53 However, even 7.5% may be an overestimate for the proportion of food and drink advertising. Nielsen AdDynamix provides an industry-wide single source estimation of online advertising spend. The 2019 Nielsen AdDynamix digital ad spend data by mid-category level for the food, drink and restaurant category is 3.5% which would imply an online food and drink advertising market of £207m rather than £743m. The analysis in this report uses a market size of £442.5m based on the ISBA research;

²³ Evidence Note, Table 5.

²⁴ Evidence Note Table 5 uses numbers from Evidence Note Figure 2: Share of online display advertising in the UK by industrial sector (which is sourced from IAB annual report).

²⁵ Although note the arithmetic error in the calculation of this number referenced in Section 7.1 of Appendix A.

however, we believe that the Government should also consider the Nielsen AdDynamix evidence in their analysis of the impacts of the proposals.

- 2.54 The evidence note assumes a cost per thousand of £0.50 cost per thousand (CPT) for Native advertising. Input from the two leading native companies in the UK market state that average CPT for native campaigns is typically \$3 to \$4 (£2.25 to £3); this varies depending on factors such as demand and targeting requirements (both of which would increase the cost). This figure has been validated by agencies involved in buying such advertising. Given that Native is 24% of the market by adspend and 83% of the estimated impacts, using a value of £0.50 CPT significantly skews the results. We have therefore used a conservative CPT for Native of £2.50. Table 3 (Table 1 from Appendix A) shows that this (together with the lower size of the food and drink advertising market) implies about 86.5bn food and drink impacts rather than the 433bn in the evidence note. This reduces the estimated calorie reduction per child per day to 0.22kcal (80 calories per child per year).
- 2.55 The Evidence Note also ignores the effect of the CAP restrictions on HFSS advertising, since they are based on 2017 figures. Even if the CAP restrictions have not prevented all viewing of HFSS adverts by children, they will still have had a significant impact in reducing the number of HFSS adverts viewed by children. We have used a conservative estimate from ISBA of CAP restrictions preventing 37.5% of child HFSS impressions. This reduces the estimated calorie reduction per child per day to 0.14kcal (50 calories per child per year).

Table 2: Estimate of food and drink online advertising impacts, 2017

		Evidence Note			SLG Economics		
Ad Category	Proportion of Adspend	Cost per thousand (£)	Split of Adspend - £743m F&D ad mkt (£m)	Estimated Impacts (bn)	CPT (£) Revised cost of Native	Split of Adspend - £442.5m F&D ad mkt (£m)	Estimated Impacts (bn)
Display banner desktop	21.0%	8	156.0	19.5	8	92.9	11.6
Display banner mobile	9.8%	8	72.8	9.1	8	43.4	5.4
Display video - pre roll	15.7%	22	116.7	5.3	22	69.5	3.2
Display video outstream	21.1%	5	156.8	31.4	5	93.4	18.7
Other display video	0.9%	10	6.7	0.7	10	4.0	0.4
Native	24.2%	0.5	179.8	359.6	2.5	107.1	42.8
Other display	2.4%	4	17.8	4.5	4	10.6	2.7
Other	2.0%	5	14.9	3.0	5	8.9	1.8
TOTAL	97.1%*			433			86.5

* The percentages in Table 6 of the Evidence Note do not sum to 100%

Source: Evidence Note, Table 6 and SLG Economics analysis

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

2.56 The assumptions presented demonstrate, yet again, a fundamental misunderstanding of advertising. Advertisers select the media channel for their advertising based on the needs of the campaign. In basic terms those calculations will take account of their ability to reach the desired audience at the desired level, the comparative cost of advertising available and the environment in which they wish to appear. Additional factors will also play a role. When applying this fact to the displacement assumption – defined as a key benefit of the policy – it raises fundamental questions.

- 2.57 The levels of displacement suggested in the Evidence Note are not realistic, as the redeployment of advertising spend to media where advertising is already optimised would result in excess frequency rather than compensating for lost campaign reach. Therefore, there would be no benefit in moving advertising spend from online to other media where the relevant advertiser is already active. It is also impractical to believe that there would be enough available inventory on other media to accept the advertising budgets from both TV and online from prohibited HFSS products.
- 2.58 However, it is worth noting, as Professor Stephen has described in his expert report (Appendix B), that some displacement will of course occur because advertisers of HFSS foods would otherwise be foreclosed from communicating with consumers. Though we do not necessarily agree with the Government's assumed levels of displacement, the very existence of this displacement is one reason that the government should have considered alternative approaches to a total online ban.
- 2.59 For example, as Professor Stephen points out, the government assumes that 22% of the "eliminated" child HFSS ad exposures online will be displaced to other media such that the total ban will reduce child exposures by 78%--not 100%. By contrast, a more tailored and proportionate approach that does not preclude advertisers from reaching adult consumers online, but which instead relies on mandatory precision targeting of ads away from children, would likely result in virtually no displacement because HFSS advertisers would remain fully able to reach their target audience (adults) online and would therefore not need to "displace" their advertising to other media. In this way, regardless of the degree to which the Government's estimates of displacement are overstated, the fact remains that the Government could have considered an alternative that would have eliminated this problem, and therefore more effectively reduced child exposure to HFSS advertising, and without the disproportionate costs and distortive effects of the proposed total ban.
- 2.60 We note some confusion and an error in the section of the Evidence Note headed 'Adjusting for displacement' which states: 'In the short-term this shift is likely to be into video advertising in other sections of the media. However, in the long-term advertisers might decide not to invest in video advertising at all and switch their campaigns to different sections of the media, such as radio, out-of-home (for example billboards), newspapers, direct mail, online display and radio advertising'.
- 2.61 Video advertising is within the scope of the proposed restrictions so it is unclear how displacement would occur there, unless the reference is intended to be to BVOD, in which case, it would still be severely limited under the proposed watershed (which we do not support). And clearly, advertisers will not be able to "switch their campaigns to ... online display".

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

- 2.62 No. As set out above and throughout this response, estimates of displacement, like the rest of the Evidence Note are based on a series of flawed assumptions.

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

2.63 First and foremost, the evidence remains clear that child advertising restrictions have had no success in impacting child obesity rates, presumably because they do not address the core driver of the problem. The UK instituted one of world's strictest restrictions on food advertising to children over a decade ago with no apparent impact on obesity rates. According to an ASA report, child exposure to food ads in the UK was cut nearly in half between 2008 and 2017²⁶ and yet obesity rates have remained essentially constant.²⁷ Perhaps the most compelling evidence, though, comes from Canada, where the closest possible thing to a true "controlled experiment" on this topic has played out over the past four decades. In 1980, the province of Quebec began to ban all advertising to children whilst the rest of Canada did not. When Quebec first imposed its ad ban, Quebec children had essentially the same likelihood of being obese or overweight as Canadian children in general.²⁸ But Quebec children have fared significantly worse than other Canadian children during the lifespan of the Quebec ban. Indeed, in the first 15 full years of the Quebec ad ban, the prevalence of overweight and obesity amongst Quebec children grew by 140% - a faster increase than in numerous provinces where no advertising ban was in place, including Ontario.²⁹ In more recent years, Quebec's childhood obesity problem has continued to worsen and has now far surpassed that of the rest of Canada (where the problem is actually in decline).³⁰

2.64 Setting aside for now the lack of likely efficacy of this policy, the Evidence Note also fails to consider the impact of an online ban on competition.

2.65 The consultation says that "Measures to enable compliance [of time based targeting] would have to be universally accessible and compatible in order to minimise potential risks of market distortion and competitive advantage"; and yet, as noted above, proposes a policy that would create a huge risk of market distortion and

²⁶ Advertising Standards Authority, *Children's exposure to age-restricted TV ads*, Feb. 2019, at 33, available at <https://www.asa.org.uk/uploads/assets/26985e23-5277-471a-b069965eda51afa4/asa-exposure-feb-19.pdf>.

²⁷ Public Health England, *Patterns and trends in child obesity: A presentation of the latest data on child obesity*, Feb. 2018, at 8, available at <https://files.datapress.com/sport/dataset/patterns-and-trends-in-child-obesity/2018-02-13T10:40:24.59/LSR344%20Public%20Health%20England%20-%20Patterns%20and%20Trends%20in%20Childhood%20Obesity.pdf>.

²⁸ See J.D. Willms et al., *Geographical and Demographic Variation in the Prevalence of Overweight Canadian Children*, *Obesity Research*, May 2003, 11(5):668-673, at 670, available at <https://onlinelibrary.wiley.com/doi/epdf/10.1038/oby.2003.95>.

²⁹ Ibid

³⁰ Indeed, Quebec's rate of childhood obesity and overweight rose substantially between 2004 and 2015, measuring at 23.2% amongst children 2-11 by 2015, whereas the rate in the rest of Canada (where no ad ban is in place) declined over that same period to 18.7%. See Statistics Canada, *Table 13-10-0797-01: Measured children and youth body mass index (BMI) (Cole classification), by age group and sex, Canada and provinces, Canadian Community Health Survey – Nutrition*, <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1310079701> (last modified 3 June 2019). Canadian exposure data sourced from: <https://www.acaweb.ca/en/wp-content/uploads/sites/2/2017/08/ACAfullcommentsforHealthCanadaconsultation.pdf>, at Table 3, Line I (indicating that Canadian child exposure to food advertising is 191 seconds per child per day (using 2017 data) Based on analysis commissioned from Group M/Mindshare (using Kantar and Nielsen data), U.S. children were exposed to 152 seconds of food advertising (per child per day) on television alone (not even counting online advertising. Though we do not have online data for the U.S., if the ratio between online and television exposure in the U.S. is comparable to the UK (where online represents 13/23 of the exposure), the total exposure in the U.S. is likely around 236 seconds. Both the Canadian numbers and the U.S. numbers reflect total food ad exposure by children—not "HFSS" food ad exposure specifically—but applying the Evidence Note's estimate that 59% of food ads are for HFSS foods (which would likely be conservative in the U.S. and Canada where such ads are not regulated) exposure levels in Canada and the U.S. are at least around 3-4 times those in the UK.

distortion of competitive advantage between media channels – this is absolutely clear from the assumption in the evidence note that over 80% of online HFSS adverts would move to other media channels.

2.66 There are complex questions to be considered relating to distortions of competition between manufacturers of food and drink products, between media owners and between media platforms. The consultation suggests that a policy relying on the ability to target advertisements away from children may engage issues of competition and suggests that effective and widespread targeting tools and methods would be necessary to ensure a level playing field; however it ignores the un-levelling of the playing field between online/TV and other media platforms that a media-channel focussed advertising ban would cause, or the barrier to entry that a manufacturer not being able to effectively advertise a new brand of cooking oil, soy sauce or mustard would face.

2.67 We have highlighted our concerns about the competition-related risks of the Government's proposals throughout our response (for example, the section 'Displacement of advertising activity' in response to question 1, and our response to question 9). We reiterate our concern that it appears that no competition analysis has been done to support the development of the Government's policy in relation to HFSS advertising generally. There is also no analysis provided specifically to support the implicit conclusion that the possibility of there being "effective and widespread targeting tools and methods ... to ensure a level playing field" has been ruled out due to competition issues, a position that we do not accept.

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

- a) our understanding of children's exposure to online adverts?**
- b) how different types of online advert (for example static display and video adverts) can have different effects on children's calorie consumption?**
- c) the estimates for additional calorie consumption caused by HFSS product advertising online?**
- d) the long-term impact of HFSS advertising exposure during childhood (for example on food behaviours and preferences later in life)?**
- e) the health benefits of either option in the evidence note?**
- f) how consumer spending habits will change as a result of these restrictions?**
- g) how advertisers might adapt their marketing strategies in response to further restrictions in HFSS advertising?**
- h) the impacts on the price of advertising slots, and how this might vary under both options?**

2.68 The consultation inappropriately assumes that children are exposed to such a meaningful volume of HFSS food advertising that further regulatory intervention is

necessary to control this; and that reducing children's exposure to HFSS food advertising is an effective approach to reducing childhood obesity. None of this is supported by reliable evidence.

2.69 In fact, UK children are already exposed to very little HFSS product advertising, and this minimal exposure will continue to drop without any additional regulation.

- The evidence presented in this consultation and the previous consultation in 2019 suggests that UK children are exposed to around **36 seconds** of HFSS food advertising per day (around **13 seconds online** and around **23 seconds on television**).
- This is minimal, both in absolute and relative terms (by comparison, Canadian children are exposed to at least three to four times this amount).
- The Evidence Note accompanying the current consultation also suggests that as children shift more of their media consumption to online media, their television exposure is expected to decline by 11% per year going forward while only 3.4 percentage points of that decline will be offset by an increase in online exposure. Thus, without any additional regulatory intervention at all, one would expect child exposure to HFSS food advertising to continue to drop substantially.

2.70 The consultation also ignores evidence indicating that the rise in obesity, far from being fuelled by increased caloric intake, has actually occurred during a period of declining food consumption. Indeed, caloric intake has trended downward for decades, including during the period of the greatest rise in overweight/obesity rates (roughly, the 20-year period from 1984 to 2004³¹). For the UK population as a whole, research indicates that average daily caloric intake per person dropped from 2560 calories per day in 1970 to 1750 calories per day in 2000.³² Other research indicates similar declines in calories purchased by households with children, showing a decline of 17.5% between 1985 and 2005 (almost exactly the 20-year period that represented the largest spike in obesity/overweight rates).³³ This points to increasingly sedentary lifestyles as a dominant driver of the problem – not some assumed advertising-driven increase in food consumption. As noted by Aston (2004): “[T]he decisive contribution to today's obesity epidemic has been a reduction in physical activity. Today, children expend approximately 600 kcal/day less than their counterparts 50 years ago, and contemporary British children, even in the preschool years, spend much of their time seated. Television-watching and computer games

³¹ The rise in childhood obesity and overweight rates in the UK occurred most markedly over a roughly 20-year period before reaching its peak in around 2004. Between 1984 and 1994, research indicates that the combined obesity and overweight rate amongst English and Scottish children ages 4-11 rose dramatically (increasing by 82% for boys and 54% for girls). S. Chinn & R.J. Rona, *Prevalence and trends in overweight and obesity in three cross sectional studies of British children, 1974-94*, British Medical Journal, Jan. 2001, 322:24-26, available at

<https://www.bmj.com/content/bmj/322/7277/24.full.pdf> (last visited 4 April 2019). The combined rate amongst UK children 2-15 (boys and girls combined) rose similarly in the decade that followed as well, increasing from 25% in 1995 to 34% in 2004. Health and Social Care Information Centre, *Explore England's health trends: WeiCanadianght*, <http://healthsurvey.hscic.gov.uk/data-visualisation/data-visualisation/explore-the-trends/weight.aspx?type=child> (last visited 4 April 2019). Since 2004, the combined rate has been flat to declining, dipping to 30% in 2017. Ibid.

³² R. Foster & J. Lunn, British Nutrition Foundation, *40th Anniversary Briefing Paper: Food availability and our changing diet*, Nutrition Bulletin, 2007, 32:187-249, at Table 8, available at https://www.nutrition.org.uk/attachments/144_Food%20availability%20and%20our%20changing%20diet.pdf (last visited 4 April 2019).

³³ R. Griffith et al., Institute for Fiscal Studies, *Gluttony in England? Long-term change in diet*, IFS Briefing Note BN142, Nov. 2013, at Table 1, available at <https://www.ifs.org.uk/bns/bn142.pdf> (last visited 4 April 2019).

contribute, and there has been a large increase in car journeys on behalf of children”.³⁴

- 2.71 The food and drink industry can and must play a role in public health, but no one should be deluded into assuming that the obesity epidemic has been “caused” by food advertising. The evidence presented, or wider evidence, do not support such a conclusion.
- 2.72 The Evidence Note’s estimate of a 2.84 calorie reduction per child per day is founded entirely on an unjustified extrapolation from a single meta-analysis by the NIHR Obesity Policy Research Unit (OPRU) that investigates the impact of HFSS TV advertising.³⁵ Beyond the fact that this meta-analysis does not address online advertising at all, the reliance on this meta-analysis is flawed (and does not support the proposed intervention) for several reasons:

1. In calculating the purported benefits of the Proposal, the Evidence Note assumes that (a) the meta-analysis was scientifically valid for calculating an effect of food advertising on calorie consumption per unit of time in UK children, and (b) the relationship between calories and advertising exposure is linear. Neither of these assumptions is supported by the evidence.

- The Evidence Note’s only source of quantitative data for the relationship between the amount of time children are exposed to food advertising and the calories they consume is the OPRU meta-analysis. That meta-analysis, however, did not calculate a relationship between calories and advertising exposure and did not even require that, in order to be included in the meta-analysis, that the underlying studies report advertising duration. Indeed, over a quarter of the small number of studies (11) in the meta-analysis³⁶ did not include data on the duration that subjects were exposed to advertising.³⁷ For the studies that did report duration, there is no indication the meta-analysis accounted for the length of advertising exposure in calculating the results.
- Reflecting these limitations, the OPRU authors acknowledged their meta-analysis was “**unable to identify a ‘dose’ relationship between unit of advertising exposure and resulting excess calorie consumption**”.³⁸ The Evidence Note’s statement, then, that “[u]sing the weighted averages, the meta-analysis shows 4.4 minutes of food advertising results in an additional 62.5kcal of consumption” is incorrect. There is no basis to treat the meta-

³⁴ Ashton D. *Food Advertising and Childhood Obesity*. Journal of the Royal Society of Medicine. 2004; 97(2): 52.

³⁵ HM Government, *Introducing a 2100-0530 watershed on TV advertising of HFSS (food and drink that are High in Fat, Salt and Sugar) products and similar protection for children viewing adverts online*, Impact Assessment (IA) No. 13013, Mar. 2019, ¶ 31.

³⁶ Seven studies screened for inclusion based on title and/or abstract could not be located, creating the possibility that the data actually analysed accounts for only 61% (11/18) of eligible studies. See S.J. Russell et al., *The effect of screen advertising on children’s dietary intake: A systematic review and meta-analysis*, Obesity Reviews, Apr. 2019, 20(4):554-568, at 555, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019).

³⁷ *Id.* at 563 (“The average time children were exposed to television advertising (data available in n = 8 studies) was 4.4 minutes (range 45 seconds to 8 minutes[.]”).

³⁸ *Id.* at 565 (emphasis added).

analysis results as having any relationship to a specific advertising duration, and the Evidence Note's calculations that make this assumption are methodologically unsound.

- The OPRU meta-analysis also did not screen studies for inclusion based on the target population of the pending Proposal. In addition to being unlimited in geographic scope, studies were eligible for inclusion in the meta-analysis if participants were between the ages of 2 and 18 years.³⁹ The proposed intervention, on the other hand, targets a narrower subset of the population ranging from four to 15 years.⁴⁰ The Evidence Note does not attempt to reconcile this conflict in age ranges, offering no explanation why a study designed to gauge an effect across a wider population is an accurate measure for the purported impact on a different target group in a different geography.
- In addition, the usefulness of the calorie reduction combined effect size reported in the OPRU meta-analysis is undermined by the dissimilar subject populations and varying research objectives of the underlying studies. The 11 studies in the TV meta-analysis represent populations from five different countries, eight unique age ranges, and varying body compositions (i.e., normal weight, overweight, obese). The presence of such differences, and the failure to control for them when analysing the data, create unreliable results.
- For example, multiple studies in the meta-analysis hypothesized that overweight and obese children would consume more calories in response to TV food advertisements than normal weight children. In one such study by Halford et al. (2008), the express objective was to test "whether childhood obesity is related to a greater susceptibility to food promotion".⁴¹ To increase sensitivity to the stated objective, rather than use randomised population sampling, this study purposefully sought to enrol a greater proportion of overweight and obese children.⁴² The resulting data is not accurately extrapolated to a general population and represents an outlier among the analysed studies, with mean caloric intake nearly two hundred calories greater than the next highest value.⁴³ Incorporating the results from this outlier has improperly inflated the resulting combined effect.

³⁹ S.J. Russell et al., *The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis*, Obesity Reviews, Apr. 2019, 20(4):554-568, at 555, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019).

⁴⁰ See HM Government, *Introducing further advertising restrictions on TV and online for products high in fat, sugar, and salt (HFSS)*, Mar. 2019, at 6.

⁴¹ J.C. Halford et al., *Beyond-brand effect of television food advertisements on food choice in children: the effects of weight status*, Public Health Nutrition, Sept. 2008, 11(9):897-904, at 897.

⁴² *Id.* at 898 ("[W]e decided to reexamine the effects of food adverts in a sample of children including a far greater number of obese and overweight individuals in order to determine the effects of weight status on the response.").

⁴³ S.J. Russell et al., *The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis*, Obesity Reviews, Apr. 2019, 20(4):554-568, at Fig. 2, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019).

- As the OPRU authors acknowledged, the consequence of these differences in study populations and objectives was high study heterogeneity⁴⁴ - an indication that the overall results contain different population types each with their own effect size.⁴⁵ In such cases, the combined effect size – the precise data point relied upon by the Evidence Note – “is not a useful outcome”.⁴⁶ Indeed, the meta-analysis authors themselves warned that “[s]tudy heterogeneity was high ... indicating that caution should be taken with these results overall”.⁴⁷ The authors further noted that “rigorous appraisal” of the underlying studies’ quality “was not possible owing to the variety of research objectives between studies”,⁴⁸ conceding that the “number of studies included for meta-analyses was relatively small, variability was high and effects due to error cannot be discounted”.⁴⁹ This unreliable data cannot justify the sweeping restrictions on advertising that are under consideration.
- We would question the inclusion of research that is not relevant to the UK market or to online advertising as a valid basis for this policy proposal. Specifically:
 - Consultation document, footnote 9: this cites research not undertaken in the UK looking at ‘exposure to soda commercials while watching a movie’ and its influence on ‘sugar-sweetened soda consumption in young women.’ It is not appropriate to include this research from a different market, looking at different media, to make the case that ‘it’s possible that restricting HFSS advertising exposure could also influence adult purchases and consumption’ - notwithstanding our position that indirect and unproven benefits for adults cannot be used to justify a ban when the policy goal is to reduce children’s exposure.
 - Consultation document, footnote 10: the consultation document states ‘Studies suggest that children from the most deprived households spend more time online than those from the most affluent, and that HFSS adverts have a greater impact on those children who are already overweight or obese than non-overweight children.’ The evidence cited does not relate to online advertising exposure – it is narrowly focused on a non-representative sample of TV and ‘advergaming’ – and its findings are not relevant evidence for this policy.
 - Evidence note, footnotes 1 and 2. The document states: ‘The evidence suggests that exposure to HFSS advertising can shape children’s food choices, affecting what they eat and when they eat both immediately after being exposed to an advert [footnote 1],[footnote 2].’ Both of

⁴⁴ *Id.* at 566.

⁴⁵ See, e.g., T. Hak et al., *How to interpret results of meta-analysis (Version 1.4)*, July 2018, at 9, available at https://www.ericim.nl/fileadmin/ericim_content/images/meta-essentials/How_to_interpret_results_of_meta-analysis_1.4.pdf (last visited 4 June 2019).

⁴⁶ See *id.*

⁴⁷ S.J. Russell et al., *The effect of screen advertising on children’s dietary intake: A systematic review and meta-analysis*, *Obesity Reviews*, Apr. 2019, 20(4):554-568, at 566, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019) (emphasis added).

⁴⁸ *Id.* at 556.

⁴⁹ *Id.* at 566.

these studies cited in the footnotes relate to TV advertising and cannot be assumed to apply to online advertising. They are not relevant evidence for this policy.

2. No data supports using a linear relationship between calories consumed and the number of seconds of food advertising exposure.

- Not only does the science not support a correlation between 4.4 minutes of TV food advertising and an extra 62.5 kcal in consumption, but there also is no basis for extrapolating this number to estimate calorie consumption at other units of time (i.e., per minute, per second, etc.). Nonetheless, the first step in the Evidence Note's benefit calculation is to divide 62.5 kcal by 4.4 minutes (the mean advertising time from the subset of studies that reported duration) to calculate calories per minute.⁵⁰ This step assumes, without evidence, a linear relationship between calorie consumption and duration of advertising exposure. This assumption lacks any support and undermines the entire calculation of the estimated health benefits from the Proposal.
- The OPRU meta-analysis results did not attempt to calculate, much less establish, any quantifiable trend between duration of advertising exposure and calories consumed. This fact is not lost on the authors of the Evidence Note, who acknowledge that it "[...] it is assumed that the relationship between exposure and calorie consumption is linear, however it is not possible to conclusively say what effect a single minute of exposure, or multiples, would have on kcal consumption based on their findings." The decision to nonetheless assume a linear relationship is essentially an unsupported guess and does not withstand the level of scrutiny necessary to justify the Proposal.

3. The Evidence Note's data also does not evaluate the effect of food advertising, if any, on calorie consumption among the target population under real world conditions.

- There is no reason to expect the study results reported by the OPRU to be observed under real world conditions among children the UK.
- The Government acknowledged, at paragraph 191 of the IA for the previous consultation, that "we cannot say with certainty how comparable [laboratory studies] are to the real-world environment". The meta-analysis authors similarly concluded that "**extrapolation of these findings to real world population is limited**"⁵¹ as did authors of the underlying studies.⁵² There are multiple reasons for this:

⁵⁰See *id.* at Table 9. This number is then multiplied by 0.18 minutes of estimated daily TV advertising exposure and adjusted by an arbitrary 30% for advertising displacement on other media to arrive at the 1.74 kcal per child per day estimate. *Id.* pp.299, 305.

⁵¹S.J. Russell et al., *The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis*, *Obesity Reviews*, Apr. 2019, 20(4):554-568, at 566, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019) (emphasis added).

⁵²See, e.g., J.A. Emond et al., *Randomized Exposure to Food Advertisements and Eating in the Absence of Hunger Among Preschoolers*, *Pediatrics*, Dec. 2016, 138(6):e20162361, at 6, available at <https://pediatrics.aappublications.org/content/pediatrics/138/6/e20162361.full.pdf> (last visited 4 June 2019)

- First, as discussed above, the high heterogeneity reported in the meta-analysis means that the estimated effect size is a result of combining dissimilar subject populations having different true effects. Without further analysis to determine effect size by homogenous subgroups, the resulting data points are not a useful measure for any group's true effect size, much less for the Proposal's target population of UK children ages 4-15 years.⁵³ Indeed, more than half the underlying studies were conducted in populations outside the UK.⁵⁴ Other studies manipulated the subject population to have an increased number of overweight and obese.⁵⁵ Relying on such populations that do not reflect the target population is not a reliable measure of expected outcomes.
- Moreover, the unreliability of using a combined effect size from measurably distinct populations is underscored by the fact that several underlying studies found either no difference or **less** calorie consumption among children exposed to food advertising compared with non-food advertising. For example:
 - Anderson *et al.* (2015) determined that boys in the calorie preload group consumed significantly **fewer** total calories when exposed to food ads than when exposed to non-food ads.⁵⁶
 - Similarly, Anschutz *et al.* (2009) found that girls' food intake was "**lower** when they watched the food commercials than when they watched the neutral commercials".⁵⁷
 - Anschutz *et al.* (2010) found that "children who perceived no maternal encouragement to be thin **ate more when exposed to neutral commercials** than when exposed to either energy-dense food commercials or light food commercials",⁵⁸ and concluded overall that "there was no main effect of exposure to the food commercials on food intake".⁵⁹

In addition, every study included in the meta-analysis was conducted in artificial conditions, unrepresentative of reality. For example:

(acknowledging its "external validity is limited and epidemiologic studies are needed to assess generalizability to a real-world setting").

⁵³ See T. Hak *et al.*, *How to interpret results of meta-analysis (Version 1.4)*, July 2018, at 14, available at https://www.erim.eur.nl/fileadmin/erim_content/images/meta-essentials/How_to_interpret_results_of_meta-analysis_1.4.pdf (last visited 4 June 2019) ("[S]ubgroup BB . . . is very heterogeneous and hence cannot be meta-analysed as if it is one single population. This implies that it is not useful to interpret the combined effect in subgroup BB . . .").

⁵⁴ S.J. Russell *et al.*, *The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis*, *Obesity Reviews*, Apr. 2019, 20(4):554-568, at Table 1, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019).

⁵⁵ J.C. Halford *et al.*, *Beyond-brand effect of television food advertisements on food choice in children: the effects of weight status*, *Public Health Nutrition*, Sept. 2008, 11(9):897-904, at 898.

⁵⁶ G.H. Anderson *et al.*, *Mealtime exposure to food advertisements while watching television increases food intake in overweight and obese girls but has a paradoxical effect in boys*, *Applied Physiology, Nutrition, and Metabolism*, Feb. 2015, 40(2):162-167, at 164 ("[C]umulative food intake was higher following glucose compared with control with nonfood ads ($p = 0.03$), but not with food ads ($p = 0.08$).").

⁵⁷ D.J. Anschutz *et al.*, *Side effects of television food commercials on concurrent nonadvertised sweet snack food intakes in young children*, *American Journal of Clinical Nutrition*, May 2009, 89(5):1328-1333, at 1328, available at <https://academic.oup.com/ajcn/article/89/5/1328/4596782> (last visited 5 June 2019) (emphasis added).

⁵⁸ D.J. Anschutz *et al.*, *Maternal encouragement to be thin moderates the effect of commercials on children's snack food intake*, *Appetite*, Aug. 2010, 55(1):117-123, at 117 (emphasis added).

⁵⁹ *Id.* at 122.

- The children were exposed to TV advertising outside the home and contemporaneously offered snacks (either while watching TV or immediately thereafter).
- The children were entirely in charge of the decision of whether and how much to snack on during the experiment.
- The food was immediately available to the children and almost all studies provided a choice of food, giving the children control over what to eat.

By contrast, in the real world, adults usually purchase and provide specific foods to their children, which often may not be readily available to the children during or immediately after TV viewing. The IA in fact acknowledged these facts, stating that effect size “will depend on a child’s autonomy over their food choices, and the duration of an advertising effect, and how much the short-term effect captured in the experiments is influenced by advertised foods being immediately available for consumption”.⁶⁰ Yet the Proposal is based entirely on data that does not account for these important real-world influences.

- The studies in the commissioned meta-analysis also exposed participants to exponentially greater amounts of advertising than children see in the real world. Exposure was anywhere from 45 seconds to 8 minutes of advertising – and generally in one sitting.⁶¹ This overrepresents child ad exposure by 3.4-36 times the 13.2 seconds of HFSS advertising exposure per day the Evidence Note is using to calculate the supposed 2.84-calorie benefit of the total ban on online advertising.
- And many of these studies accompanied their long advertising exposures with relatively short periods of TV viewing. For example, each study by Halford *et al.* exposed children to 8 or 10 food advertisements—which Halford *et al.* (2008) indicated were approximately 30 seconds each⁶²—followed by a ten-minute cartoon. In other words, study participants spent up to 1/3 of their total screen time viewing food advertisements. This is not

⁶⁰ HM Government, *Introducing a 2100-0530 watershed on TV advertising of HFSS (food and drink that are High in Fat, Salt and Sugar) products and similar protection for children viewing adverts online*, Impact Assessment (IA) No. 13013, Mar. 2019, ¶ 176; see also D.J. Anschutz *et al.*, *Side effects of television food commercials on concurrent nonadvertised sweet snack food intakes in young children*, *American Journal of Clinical Nutrition*, May 2009, 89(5):1328-1333, at 1332, available at <https://academic.oup.com/ajcn/article/89/5/1328/4596782> (last visited 5 June 2019) (citing as a study limitation that “not all children have unlimited access to snack food when they watch television at home[and t]he amount of snack food they normally eat in front of the television at home might be largely controlled by their parents”); D.J. Anschutz *et al.*, *Maternal encouragement to be thin moderates the effect of commercials on children’s snack food intake*, *Appetite*, Aug. 2010, 55(1):117-123, at 122 (recognizing that despite trying to normalize the laboratory setting, it was “possible that children still behaved in a different manner than when watching television at their homes[because, f]or example, their parents might control their access to snack food at home”); T.M. Dovey *et al.*, *Responsiveness to healthy television (TV) food advertisements/commercials is only evident in children under the age of seven with low food neophobia*, *Appetite*, Apr. 2011, 56(2):440-446, at 445 (“As it was necessary to limit the children’s food choice to uncover quantitative differences in responsiveness to the food adverts, we cannot conclude how children would respond to food adverts within their home environment and thus cannot infer their potential impact on a child’s habitual diet.”).

⁶¹ S.J. Russell *et al.*, *The effect of screen advertising on children’s dietary intake: A systematic review and meta-analysis*, *Obesity Reviews*, Apr. 2019, 20(4):554-568, at 563, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 08 December 2020).

⁶² J.C. Halford *et al.*, *Beyond-brand effect of television food advertisements on food choice in children: the effects of weight status*, *Public Health Nutrition*, Sept. 2008, 11(9):897-904, at 899.

representative of the minuscule fraction of children's actual total screen time that includes food ads.⁶³ Accordingly, it is unreasonable to expect that these studies' results can be extrapolated reliably to estimate any effect in the real world.

- The studies by Halford *et al.* and others also failed to approximate real world conditions in their choice to use food ads directed specifically at children. The authors of Anschutz *et al.* (2010) expressly acknowledged the use of child-targeted ads as an explanation why previous studies (including Halford *et al.* 2004, 2007, & 2008) might have found an increase in calorie intake following food ad exposure when Anschutz *et al.* (2010), which used adult ads, did not.⁶⁴ This important distinction underscores why it is unreasonable to use the Evidence Note's caloric reduction estimate as the only quantitative support for the proposed intervention, **as that estimate is based on HFSS advertisements directed to children, which have already been banned in the UK for over a decade.**
- Other shortcomings of the underlying studies include protocols that failed to examine whether children who ate more snacks during the experiment compensated by consuming fewer calories later in the day, and protocols that measured consumption concurrent with screen time. Indeed, the lack of compensation data in these studies makes it impossible to determine if the effect size truly reflects an increase in total calorie consumption, or if children simply changed the time of day during which they ate the calories that they eventually would have consumed anyway.
- With respect to screen time, nearly half of the underlying studies measured children's calorie consumption while they were watching TV. Evidence suggests, however, that it is the act of watching TV itself and not food advertising shown on TV that impacts food intake and obesity levels.⁶⁵ Indeed, one study in the meta-analysis produced results to "contradict the suggestion that the effect of TV [viewing] on increasing food intake is due to

⁶³ E.g., G.H. Anderson et al., *Mealtime exposure to food advertisements while watching television increases food intake in overweight and obese girls but has a paradoxical effect in boys*, *Applied Physiology, Nutrition, and Metabolism*, Feb. 2015, 40(2):162-167, at 167 (noting the study limitation that "to isolate the effect of food ads, level of exposure to food ads was 11 times that of what children are usually exposed to in a 30-min period").

⁶⁴ D.J. Anschutz et al., *Maternal encouragement to be thin moderates the effect of commercials on children's snack food intake*, *Appetite*, Aug. 2010, 55(1):117-123, at 122 ("Previous studies found that exposure to food commercials was related to increased food intake in children (Buijzen et al., 2008; Halford et al., 2004, 2007, 2008). The fact that the commercials used in earlier studies were directed at children whereas the commercials used in the present study were aimed at adults might explain the difference between previous findings and our results. Perhaps food commercials aimed at adults use different techniques. For example, they often feature adult actors that children may not identify with, use 'love' or even 'sex' cues, or provide nutritional facts that children do not yet understand or process adequately. Adult commercials are designed to get adults to purchase and consume promoted products, which might explain why children were generally not affected by the food commercials used in the present study.").

⁶⁵ See, e.g., G.H. Anderson et al., *Mealtime exposure to food advertisements while watching television increases food intake in overweight and obese girls but has a paradoxical effect in boys*, *Applied Physiology, Nutrition, and Metabolism*, Feb. 2015, 40(2):162-167, at 162 (citing studies); J.C. Halford et al., *Beyond-brand effect of television food advertisements on food choice in children: the effects of weight status*, *Public Health Nutrition*, Sept. 2008, 11(9):897-904, at 898 ("Generally it is TV viewing and not advert exposure that has been linked to childhood obesity.").

higher exposure to food ads alone and not because of TV [viewing] per se.”⁶⁶ Accordingly, increased calories in those studies that measured intake during TV viewing cannot fairly be attributed to food advertising and not the effect of TV per se, and their inclusion in the meta-analysis undermines the validity of the calculated effect size.

4. The Evidence Note also overstates the purported benefits of the proposal by relying on imprecise data and including a calculation error.

- Even if the Evidence Note’s assumptions about the relationship between advertising duration and calories consumed were scientifically valid, the underlying data is too imprecise to support sweeping advertising restrictions. This lack of precision is evidenced by the enormous confidence interval reported for the estimated effect size. The 95% confidence interval around the estimate of 62.5 kcal is approximately 3.2kcal to 121.7kcal (applying the confidence levels stated by the OPRU authors) – i.e. the upper estimate is 38 times the size of the lower estimate, and the central estimate is nearly 20 times the size of the lower estimate. The OPRU authors note that “[confidence intervals] were large for television advertising meta-analysis, indicating that caution should be taken with these results overall”.⁶⁷
- Because the data is unable to predict true effect with any real accuracy, academic literature indicates that it is the lower end of the confidence interval that should be used to guide any policy decisions.⁶⁸ Applying the Evidence Note’s calculations to this end of the confidence interval spectrum, the resulting effect of the proposed total ban on online advertising drops from the Evidence Note’s estimate of 2.84 calories per child per day to a mere 0.145 calories per child per day—a number that is far too small to justify the proposal’s significant costs.
- Moreover, the Evidence Note also includes an error in calculating additional calorie consumption due to online HFSS advertising. After noting that children are exposed to 0.22 minutes of HFSS advertising online, the Evidence Note multiplies 0.22 by 14.2 and gets 3.64 calories. The correct result of that multiplication is 3.12. The Evidence Note then adjusts 3.64 downward by 22%—to account for displacement of HFSS ads to other media—and arrives at a total caloric reduction of 2.84 calories per child per day. But if the multiplication error is corrected, this would be 2.44 calories per child per day.

⁶⁶ G.H. Anderson et al., *Mealtime exposure to food advertisements while watching television increases food intake in overweight and obese girls but has a paradoxical effect in boys*, *Applied Physiology, Nutrition, and Metabolism*, Feb. 2015, 40(2):162-167, at 165.

⁶⁷ S.J. Russell et al., *The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis*, *Obesity Reviews*, Apr. 2019, 20(4):554-568, at 566, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446725/pdf/OBR-20-554.pdf> (last visited 4 June 2019).

⁶⁸ See, e.g., T. Hak et al., *How to interpret results of meta-analysis (Version 1.4)*, July 2018, at 7-9, available at https://www.erim.eur.nl/fileadmin/erim_content/images/meta-essentials/How_to_interpret_results_of_meta-analysis_1.4.pdf (last visited 4 June 2019) (instructing that where meta-analysis results “lack [precision] as indicated by the width of the confidence interval . . . policy makers should decide whether . . . the lower bound of the confidence interval of the estimate of the combined effect is large enough for deciding in favour of the intervention”).

5. Ignoring the fact that some adverts are not actually viewed.

- The Evidence Note quotes research from Lumen using eye tracking technology to estimate the average time that different types of advert are viewed on different interfaces. This research demonstrated that even if an advert is delivered, it is not always viewable or looked at. They also state that similar research by Inskin Media corroborates this finding. The research shows that 25% of adverts defined as viewable⁶⁹ are never looked at. The evidence note ignores this finding because it relates to adults and not children, it uses the unrealistic assumption that 100% of adverts viewable by children are actually viewed (compared to 75% for adults). In the absence of evidence to the contrary, it seems far more realistic to use a similar figure for the proportion of children actually viewing the advert as for adults. This reduces the estimated calorie reduction to 1.83kcal/child per day (667 calories per child per year).
- The commentary on Table 7 of the Evidence Note, relating to online viewing time, acknowledges: “This means that our estimate is likely to overstate the volume of adverts that are viewed”. The Government should make a reasonable adjustment to its calculations to compensate for this known issue.

6. The 2.84kcal/day calorie reduction assumption also fails to consider “compensation” behaviour.

- In the Government’s consultations on restricting locational promotions and volume promotions of HFSS foods at retail, the Impact Assessments supporting both of those proposals recognised that “compensating” behaviours would limit the assumed calorie-reduction impacts of those regulatory interventions. In both of those Impact Assessments, DHSC assumed that 40% of any caloric reduction initially caused by these HFSS food promotion restrictions would ultimately be negated by “compensation” by consumers, whereby consumers would replace the calories from the foods they were no longer buying and consuming (due to the promotional restrictions) with calories from other foods.⁷⁰
- If that same 40% compensation rate had been applied here, the estimated 2.84-calorie reduction impact in the Evidence Note would be reduced by 40% to 1.1 calories. No explanation has been offered for its omission here. But there is no reason to assume that consumers would “compensate” only when calories are reduced by promotional restrictions but not when calories are reduced by advertising restrictions.
- Moreover, we believe that even the 40% compensation rate assumed in the other Impact Assessments was far too low based on a review of the academic literature and the work of outside experts.⁷¹ Indeed, several studies suggest that the compensation rate may be the full 100%.⁷²

⁶⁹ Viewable adverts are defined as ones where 50% of the pixels are on the screen for at least 1 second.

⁷⁰ See, e.g., HM Government, Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar (HFSS), Impact Assessment (IA) No. 13012, Nov. 2018, ¶ 9.

⁷¹ See discussion in Annex D at 9-10, attached hereto.

⁷² *Id.*

- Thus, even absent the myriad other reasons (discussed elsewhere in this response) that the assumed calorie reduction will not occur, we see from the above that the Proposal's assumed caloric reduction of 2.84 calories per day from a total ban on online advertising would still be overstated substantially, and possibly even by 100%.

APPENDIX A: Expert Report by SLG Economics – attached by e-mail separately**APPENDIX B: Expert Report by Professor Andrew Stephen – attached by e-mail separately****APPENDIX C : UKOM and audience measurement****1. About UKOM**

- UKOM is the industry body set up to identify, define and govern a common UK industry standard for online audience measurement.^[1]
- UKOM's purpose is to endorse robust UK industry standard online audience data for media owners, platforms, advertising agencies, advertisers and other businesses and organisations with an interest in observing and acting upon audience usage of, and behaviour on, websites and apps across PC, smartphone and tablet. UKOM provides online audience data in a similar way to which BARB and RAJAR provide audience data for TV and radio respectively.
- UKOM-endorsed data measures online media audience (i.e. where people are spending time, on what device and for how long) – it does not measure advertising effectiveness or other, soft, metrics.

2. What data UKOM provides

- UKOM's contracted provider generates independently-verified audience demographic data^[2], both browser and in-app, for web (desktop/laptop) and mobile (smartphone/tablet).
- Data is collected from the online activity of a demographically-representative panel of users and from visitors to 'tagged' media properties. This is used to produce reconciled data for unique visitors – i.e. the number of visits to a site from distinct individuals – and total page views (which includes repeat visits).
- Data is available at the site/app level and, if the audience size is sufficiently large or the section is correctly tagged (see below), for sections of a site/app (e.g. the 'sport' section of a news site). Data is released monthly, usually around two to three weeks after the month has finished.
- A broad range of companies subscribe to UKOM data. UKOM also publishes quarterly Digital Market Overviews that are freely available: <http://www.ukom.uk.net/data-and-insights/market-overview/> and regular 'Insights', providing data, analysis and commentary on the behaviour of the UK's online population: <http://www.ukom.uk.net/data-and-insights/latest-insights/>^[3]

3. How UKOM audience measurement works

- UKOM-endorsed data uses a combination of a people panel and a census network (or 'tagged' media).
- In the case of the **people panel** a piece of software is downloaded to the device and works as a 'meter', tracking sites visited and reporting engagement and duration metrics. The benefits of people meters (also used in other media measurement – television, radio, print etc.) is that they deliver demographic information as well as measurement. There are limitations of panel measurement for smaller, more niche websites and apps and the longer tail of the internet.
- To address this meter limitation a further methodology - **tagging** - is implemented whereby website and app owners install a 'tag' on their website, app or video player/content. This tag

returns visit data to the data provider from all devices. The census network is supplemented by server-to-server inputs from certain platforms where tagging is not possible.

- The combination of both methodologies - a hybrid approach - delivers the necessary breadth and depth of online audience measurement.

^[1] UKOM is co-owned by the Internet Advertising Bureau (IAB) and the Association of Online Publishers (AOP). The Institute of Practitioners of Advertising (IPA) and the Incorporated Society of British Advertisers (ISBA) are represented on UKOM's executive board in advisory roles.

^[2] UKOM contract a third-party specialist audience measurement company to supply the audience data under a contractual agreement and under the oversight and governance of UKOM. UKOM's third party data provider switches from Comscore to Ipsos MORI on 1st January 2021

^[3] Note: these arrangements are under review by UKOM and Ipsos

4. UKOM audience measurement and child audiences

In the consultation document, it is stated twice that there is an *"absence of any independent, comprehensive, gold-standard and publicly available means of audience measurement online"*.

That statement is factually incorrect.

The statement in the consultation would be correct if it was amended to *"current absence of any independent, comprehensive, gold-standard and publicly available means of measuring the [children's] audience of online advertising campaigns."*

UK Online Measurement (UKOM) was formed in 2009 and has been, for more than ten years, the body that sets and governs the UK industry standard for online audience measurement. UKOM is jointly and equally owned by the Internet Advertising Bureau, the Association of Online Publishers and the Incorporated Society of British Advertisers. The Institute of Practitioners in Advertising also sit on the UKOM Executive Board.

UKOM contract a third-party specialist audience measurement company to supply the audience data under a contractual agreement and under the oversight and governance of UKOM. From January 2021, this will be Ipsos iris. For the past three years UKOM has endorsed online audience data from Comscore which has been fused with print readership to generate audience data across print and online for PAMCo, the Joint Industry Committee (JIC) for the newsbrand and magazine industries.

From January 1st 2021

Following an open and rigorous selection process that started nearly two years ago, UKOM will exclusively endorse, from January 2021, Ipsos iris, a new online audience measurement proposition which centres around a regionally and socio-demographically representative single source panel of 10,000 individuals aged 15+, each with single or multiple PC, tablet and smartphone devices (total number of devices c.25,000). The panel data, covering England, Scotland, Wales and Northern Ireland will be fused with census (tagging or SDK) data generated by many hundreds of participating websites and mobile applications, owned by a broad range of UK organisations, media owners and companies providing business-to-consumer services (such as a bank or a retailer). The relevant Ipsos iris data will form the online element of PAMCo combined print and online audience data due to be released from June 2021.

Up until December 2020 UKOM-endorsed data has modelled audiences for children 6+ on PCs only. For tablets and smartphones the audience is currently modelled for ages 13 to 17. UKOM

and Ipsos are keen to help the industry where possible and appropriate in the consistent measurement of children's consumption of online content and advertising.

In Q1 2021 Ipsos iris will model content audience data for children under the age of 15 across all three device types. It is expected that the modelled data will cover children aged 4 to 14 but, until panel and census data has been available for several weeks, Ipsos will not be able to confirm to UKOM the exact age range for, the extent of the content, and detail of the methodology for, the data modelling*. UKOM and Ipsos expect to announce that decision before the end of Q1 2021.

Up until December 2020 UKOM endorsed data has measured the audiences of online content only, to the exclusion of any advertising campaign measurement.

In H2 2021 Ipsos expect to develop within Ipsos iris the capability to measure and model the reach and frequency of online advertising campaigns that have tagged the necessary creative formats. It is expected that modelling will include the capability to extend to the children's segment. The exact age range of under 15 audiences of online ad campaigns will be the same as above for audiences of content.

*The modelling approach as currently planned for 2021 goes broadly as follows:

Ipsos know from the iris registration questionnaire which panellists have children in home and which have shared devices, and so can create a sub-set of those devices. The usage patterns (i.e. sites & apps visited) from those devices can be reviewed and classified as highly likely to be viewed by children, with reasonable assumptions being applied re the site classification, e.g. CBBC, Cartoon Network etc., time of day visited, frequency visited. This allows a 'flag/label' to be applied to the sites to feed the model which produces adult or children usage probabilities for everything that is being tracked. Ipsos can then subtract the data labelled as children from the overall dataset.

That 'new' children's sub-set needs to be weighted. That weighting will be based on behavioural benchmarks and, potentially, other research data sets. That weighted children's data would then be processed with the hybrid approach to create the 'synthetic' panel to add the 4-14 (or whatever the age break is determined to be) data for usage in the Ipsos iris system.

Table 1: UKOM measurement and modelling of child audiences

	2020 Comscore	2021 Ipsos
PC & Desktop	Model age 6-14 on site visitation and user behaviour patterns. Measure 15+	
Tablet	Model age 13-17 but only tagged sites & apps (i.e. no Facebook etc). Measure all usage 18+	Model ages 4-14 all usage (tbc*). Measure all usage 15+
Smartphone		

* Data received by Ipsos from platforms providing server-to-server connections may be limited by age range. Where that is the case no data will be generated in Ipsos iris for those platforms for audiences outside of the age range provided by each platform.

NOTES

- Measuring the online behaviour of children is extremely complex with many sensitivities to consider including, legal, privacy and technical issues.
- Installation of metering software on devices used primarily or exclusively by children requires parental permission. The measurement of even 15-year-olds for Ipsos iris requires explicit parental authorisation.
- The measurement of children aged 15 results from a legacy of age bands that existed in the National Readership Survey (NRS) which is now PAMCo.
- Ipsos follow all guidelines provided by Market Research Society (MRS) and ESOMAR
<https://www.mrs.org.uk/pdf/MRS-Code-of-Conduct-2019.pdf>
<https://www.mrs.org.uk/pdf/MRS-Guideline-conducting-data-collection-activities-with-children.pdf>
https://www.esomar.org/uploads/private/professional-standards/ESOMAR-GRBN_Cheatsheet_Children-Young-People-and-Other-Vulnerable-Individuals.pdf
- Outside of the UKOM endorsed Ipsos iris, there exist a number of projects that research online media consumption by children specifically. Ipsos themselves carry out children-focused research projects for the BBC and Disney among others, although these projects are not UKOM-endorsed. Other companies also regularly carry out research into children's online behaviour. UKOM and Ipsos are always open to exploring further research into children's audiences online and it is a planned workstream for 2021.
 - UKOM is in frequent communication with the Project Origin team. As noted above, ISBA's Project Origin, an advertiser-led initiative, is in development. It plans to deliver accountable and audited measurement of digital and cross media campaigns, with a pilot early in 2021 and roll-out in 2022. *(As advertiser-led and in development, Project Origin is not yet cross-industry endorsed.)*
- In the consultation document there is an implied criticism by comparison of online measurement vs that for traditional media and the capacity for traditional JICs to measure children's exposure to advertising. BARB's Project Dovetail was established c.8 years ago to deliver total reach of programme and commercial audiences across multiple screens i.e TV, PC and tablet. While BARB currently has a campaign planner in beta, Project Dovetail still does not yet measure any advertising on PC and tablets, let alone that consumed specifically by children, although there may be something in pipeline soon: "[BARB] are working with our stakeholders to see if there's another way to best meet the industry need for post-campaign evaluation across multiple screens. We expect to announce more detail on this in early 2021."
<https://www.barb.co.uk/project-dovetail/>

APPENDIX D - Available methods of targeting digital adverts away from children, at each stage of the digital advertising supply chain

Advertisers are keen to comply with existing advertising regulations, fully aware that they will be held ultimately liable for any non-compliance by the regulator. They are therefore clear in highlighting any age-restricted ad campaign must be targeted away from children when dealing with their agencies, trade desks or directly with publishers or platforms. Regular advertisers of age-restricted products will often approach agencies with their own recommendations for how to best reach their target audience and how to avoid their ads being served to children.

Agencies and trade desks work closely with Demand Side Platforms (DSPs) to ensure ad campaigns are targeted effectively to reach their desired audience. Agencies gain a thorough understanding of their clients' needs and products being advertised, including whether or not age-restricted advertising is required to target the product away from children. Agencies routinely highlight available options to target away from children using DSPs or content verification tools, and recommend or require the use of these options when setting up an age-restricted campaign for their clients. These options typically err on the side of caution; targeting users aged 18 or above when regulations require avoiding users under the age of 16, for instance.

Agencies also offer inclusion lists to their advertiser clients, made up of publishers that have been specifically categorised as not containing content intended for child audiences. These lists are collated using data from content verification tools, but are subject to ongoing optimisation, with the publishers on the list being constantly updated.

Demand side platforms (DSPs) provide advertisers the ability to target specific audience segments when setting up an ad campaign, and a campaign can be set up to either specifically target or exclude these audience segments.

DSPs have processes and tools in place for brands/agencies/trading desks to follow if/when they are setting up campaigns with age-restricted ads. Additionally, the DSPs have account managers who provide human support to aid advertisers' compliance with advertising rules.

The data DSPs use for targeting can be drawn from first party data (collected directly by publishers or advertisers themselves, including things like a user's purchase history or logged-in data), or third party data supplied by a Data Management Platform (or 'DMP' which collects and aggregates user data from multiple websites, and makes it available for targeting through DSPs). This can include using industry standard data sources such as Comscore CVE or Nielsen DAR. Advertisers are also able to supplement this with whitelists and blocklists to select supply that also helps direct HFSS ads away from children.

DSPs integrate **content verification tools** to help determine the subject matter of website content, allowing advertisers to avoid serving their ads next to inappropriate content. This process enables advertisers with age-restricted adverts to avoid serving them on websites that can be identified as appealing to children. As part of this process, the content verification providers can identify websites that are carrying content aimed at children, categorise them as such, and provide inclusion lists which exclude them to DSPs that the content verification providers are integrating with. This allows the advertiser, through the DSP, to only bid for advertising impressions on websites that have not been identified as appealing to children. **Publishers** can choose to block either specific brands, or categories of brands (e.g. 'alcohol'), from advertising on their websites. A publisher that hosts content appealing primarily to children might thereby choose to block all alcohol advertising, for

example. Publishers routinely use these capabilities to prevent adverts for competitor publishers appearing on their sites.

Owned and operated media environments operate very differently, with different platforms having different processes for targeting away from children, and most operating with logged-in users that have declared their age when signing up. However, most provide clear guidance on which settings to select in order to avoid targeting children through their platforms. For instance, Facebook provides free online learning tools called [Blueprint](#), where marketers and agencies can learn how to select audiences and target their advertising etc (including specific guidance for [alcohol ads](#)), and Google provides clear [guidance for advertisers](#) on content exclusions and site category options in its ad management Help Centre. **Content verification tools** that specialise in analysing owned and operated media are also available on the market, providing advertisers with additional checks that their advertising is not being placed alongside content that appeals to children.

APPENDIX E – Case studies of HFSS campaigns delivered in 2020

Case study 1:

1. Background: A well-known food and drinks brand ran a campaign for a confectionery product, across Unruly publishers and Amazon, 23rd November – 1st December 2020.
2. Target audience: adults 18-45
3. The following controls were put in place to ensure the correct audiences were targeted and that children were excluded:
 - Specific 18-45 age targets were imposed by the agency partner
 - The agency provided Amazon and Unruly with a list of topics and keywords that the brand wanted to exclude. This is in line with the agency's brand suitability approach to ensure limited exposure on child or teen content
 - These additional brand safety measures were imposed by a third party content verification provider to ensure exclusion of over 100 content terms related to children and teenagers. Examples of such terms included Peppa Pig, Disney, Zoella, nursery rhymes, GTA, PewDiePie and hundreds of other terms related to content or influencers that children might be interested in. These exclusions were made at the key word level, ensuring ads were blocked from appearing on pages that feature these terms
 - Further brand safety measures imposed by the content verification provider ensured exclusion of sensitive topics (such as alcohol; gambling; violence) - these were not specific to children but ensured a safe environment for the campaign. Any ads which were due to appear on these sites and contained this content were blocked by their third party ad server
 - The brand also blocked ads from appearing on sites which their third party brand safety partner could not track, to ensure they did not appear on content that hadn't been approved
4. Campaign report data showed that very low levels of children were exposed to the advertising:
 - On both Amazon and Unruly, the campaign over-indexed on impressions delivered to the 18+ audiences, when compared to the UK average (using Nielsen data as extra verification). See below table.
 - On both Amazon and Unruly, the campaign under-indexed on 13-17 and Unknown age categories, when compared to the UK average (using Nielsen data as extra verification). This ensured that children were well protected from exposure to the campaign. See below table.
 - The brand used Nielsen data as an impartial third party. Nielsen was able to measure the actual age groups that campaigns reach, using their panel data and accounting for dual screening through content type. Nielsen's benchmark for targeting in-market users over the age of 18 is 92%.

	18+ audience		13-17 audience		Unknown	
	% impressions delivered	% of UK population – Nielsen	% impressions delivered	% of UK population – Nielsen	% impressions delivered	% of UK population – Nielsen
Amazon	94.05%	80.57%	2.41%	5.70%	3.52%	13.7%
Unruly	98.40%	80.57%	0.97%	5.70%	1.11%	13.7%

- In addition, the top publishers that the Unruly campaign delivered to were not those used by children (top ten shown):

1. <https://www.dailymail.co.uk>
2. <https://www.thesun.co.uk>
3. <https://www.sporcle.com>
4. <https://www.factinate.com>
5. <http://www.express.co.uk>
6. <https://www.express.co.uk>
7. <https://clockks.com>
8. <https://a.honesttopaws.com>
9. <https://www.skysports.com>
10. <https://a.moneyversed.com>

Case Study 2:

1. Background: An online campaign for a dairy product ran on YouTube, 9th March 2020 – 12th April 2020.
2. Target audience: adults 18-65+, all genders.
3. The following controls were put in place to ensure the correct audiences were targeted and that children were excluded:
 - Users must be logged into an adult (18+) YouTube account
 - Specific targeting of age range 18-65+ was implemented
 - 'Unknown' age demographics were excluded as an additional layer of brand safety
 - Detailed audience personas were created based on interests such as 30 Minute Chefs, Business Professionals
 - A UK channel exclusion list with 45k+ channels was implemented, based on channels children may be interested in (see below for examples). The campaign did not run on these channels
 - A global channel exclusion list with 35k+ channels was implemented, based on channels children may be interested in. (see below for examples). The campaign did not run on these channels

- Content and channels that included any 'sensitive' categories were excluded from the campaign. These categories were not specific to children but provided a safer environment for the campaign. Examples of such categories included violence, alcohol, gambling
- Content categories that included labels 'Content not yet rated' or 'Content suitable for Families' was excluded to avoid uncertainty. This added an extra layer to protect against delivering to under 18s who may be watching with parents
- Live streaming and embedded YouTube videos were excluded from the campaign to avoid uncertainty about what the content is, and the audience watching
- 1677 brand safety keywords were excluded from the campaign, based on terms that children may be interested in. Keywords included 'Teens', 'Teenager', 'Kids', 'Toys', 'Pokemon'
- Entire content categories were excluded where children may be part of the audience. These were Comics & animation, TV Family-Orientated Shows, Toys, Family-Orientated Games & Activities, Family Films, Educational Games

Examples of channel exclusion list:

- THE MOST FUN FOR KIDS - <http://youtube.com/channel/UCZV-HJ0IOScLX7-ROXAJZrA>
 - Kid Crazy - <http://youtube.com/channel/UCzvlzIB-KfD2Cv5JpsZ6Jxw>
 - Toons Kids TV- <http://youtube.com/channel/UCZvOzhGC4oV3tt5OXtbZPNw>
 - Mykel Badkid - http://youtube.com/channel/UCzW6xLMls_RmlgP2SQsqcCw
 - Musicalsongs6 - <http://youtube.com/channel/UCZwANvf1BQwMrWKBKpMJY4Q>
 - Taiwan Songs - <http://youtube.com/channel/UCzWqZ9eA9pp0eMX679JTDpw>
 - KONDOSAN English - Fairy Tales & Stories for Kids - <http://youtube.com/channel/UCZx0o4Prt79SOdFKfGcAjlQ>
 - ArcadeToon - <http://youtube.com/channel/UCZXk2kphKdvJmfxANM15mXA>
 - Kid Dragon Batson - http://youtube.com/channel/UCzXpGqi6rwPxeH4v_xvsm2Q
 - Elena and Clara - <http://youtube.com/channel/UC5ql99d3dDMuRQDJkZHUNaA>
 - Like Nastya Show - <http://youtube.com/channel/UCS94J1s6-qc8v7btCdS2pNg>
 - VanossGaming http://youtube.com/channel/UCKqH_9mk1waLgBiL2vT5b9g
 - Technologyguru77 - <https://www.youtube.com/user/Technologyguru77>
 - Echidnut - https://www.youtube.com/channel/UCL6eyRegOUQdBoUuMZSb_mQ
 - Nosniy @ YouTube - <https://www.youtube.com/channel/UCUoWjn6yYtdMgl7mDLRTLfQ>
 - thereelwarman101 - <https://www.youtube.com/user/thereelwarman101>
 - Christopher Bratt - <https://www.youtube.com/people/makegames>
 - Cxlvx - <https://www.youtube.com/channel/UC73HkfiZt0RasDkpWINVg2g>
4. Campaign report data showed that children were not exposed to the advertising:
- 100% audience were 18+, with biggest sub-groups within this being 18-24 males (18.2% of impressions), 25-34 males (14.38%), 35-44 males (12.38%) and 18-24 females (12.17%).

Case study 3

1. Background: A major retailer launched a tactical campaign relevant to Valentine's Day, which ran in a tightly-controlled, high-spending burst on Facebook. Campaign dates 6th February 2020 - 15th February 2020.
2. Target audience: adults 18-54. This comprised of three targeting segments:
 - Demographic: Parents 35-54
 - Demographic: Couples 18-34
 - Location: Those close to certain geographical locations 35-54
3. The following controls were put in place to ensure the correct audiences were targeted and that children were excluded:
 - The advertising agency worked directly with Facebook's self-serve platform, to manage the above demographic targeting – parents 35-54; couples 18-34; those close to geographical locations 35-43.
 - Mindshare worked directly with Facebook's self-serve platform to exclude users outside the age group 18-54.
 - The campaign was exclusive to logged-in users of Facebook to ensure no children were targeted.
4. Campaign report data showed that children were not exposed to the advertising:
 - 99.99% of impressions were delivered to 18+ audiences, with the biggest sub-group being delivered to 25-34 year olds.
 - No impressions were delivered to children under the age of 13
 - 28 impressions were delivered against the 13-17 age group, but at 0.0001% of total campaign impression delivery, it is an extremely small number. These impressions led to 0 website purchases, 0 video plays, and 0 clicks.

Age Segment	Impressions Delivered	Website Purchases	3-second Video Plays	Clicks
13-17	28	0	0	0
18-24	8,447,203	3,186	607,518	17,160
25-34	8,666,594	4,050	683,282	24,866
35-44	7,088,334	3,912	1,031,386	40,606
45-54	5,750,063	4,130	1,186,564	54,657
Total	29,952,222	15,278	3,508,750	137,289

Case study 4

1. Background: A major retailer launched a YouTube campaign for food products from 29th January to 25th February 2020, with a pause in activity 10th February to 14th February 2020 to avoid the Valentine's Day period. Rather than being booked directly in Google Ads, this activity was managed via a data-powered trade desk.
2. Target audience: parents 18+
3. The following controls were put in place to ensure the correct audiences were targeted and that children were excluded:
 - The trade desk worked with the agency's data technology provider to build out a target audience profile based on interests and habits. These profiles were created using a blend of:
 - 1,000+ proprietary real time audience segments, based on recent online browsing behaviour and predicted future behaviour
 - [m]insights's own first party audience data
 - Third party audience data from industry-standard planning tools and primary research partners, such as TGI, YouGov and Kantar
 - In addition to interests and behaviours, these targeting segments were limited to parents of children 4-11; parents of teens; parents of toddlers
 - Only logged-in YouTube users were targeted to avoid targeting audiences under 18 years
 - 'Unknown' age groups were excluded from the target to ensure children were not inadvertently targeted
 - Additional technology was overlayed using Openslate – the agency's third party content verification company. Openslate created inclusion and exclusions lists in order to filter out YouTube channels that contain content targeted at children.
4. Campaign report data showed that children were not exposed to the advertising:
 - No impressions were delivered to 'Unknown' age categories, therefore ensuring no one under 18 was targeted.

Age Segment	Impressions delivered	Clicks	Complete Views	Completed View Rate %
Unknown	0	0	0	n/a
18-24	962,342	1,245	697,645	72.49%
25-34	521,930	713	359,174	68.82%
35-44	493,847	615	326,208	66.05%
45-54	369,603	518	235,700	63.77%
55-64	231,580	348	135,615	58.56%
65+	168,691	303	98,406	58.34%
Total	2,747,993	3,742	1,852,748	67.42%

- In addition, the top ten YouTube channels that the campaign delivered to were not those relevant to children:

Channel Name	Category	Views
BT Sport	Sports	70,373
NBA on ESPN	Sports	45,269
Sky Sports Football	Sports	30,909
This Morning	Entertainment	29,608
F2Freestyles - Ultimate Soccer Skills	Sports	10,669
Miniminter	Gaming	7,922
ScoutNation	Sports	7,194
5-Minute Crafts	How To & Style	6,359
Car Throttle	Autos & Vehicles	5,966
ChrisMD	Gaming	5,038