

Action Plan on Food Promotions and Children's Diets

Full Regulatory Impact Assessment

Introduction

1. At its open meeting on 11 March, the FSA Board agreed an Action Plan on Food Promotions and Children's Diets. The Action Plan, along with a Partial Regulatory Impact Assessment was issued for formal public consultation. This Full Regulatory Impact Assessment takes account of the responses to that consultation.

Purpose and Intended Effect of Measure

Objective

2. The Action Plan contains a series of recommendations intended to encourage children to eat a more healthy diet. The recommendations, which are addressed to a number of stakeholder groups, seek to redress the current imbalance in food promotions towards foods high in fat, salt and sugar; to help children and their parents / carers make healthier choices through clear labelling information; and to increase the availability in certain outlets of healthier choices.

Background

3. *Children's Diet:* Many children have diets that contain too much fat, sugar and salt and too little starchy foods, fruit and vegetables. On average, the proportion of their food energy that children derive from fats is close to the recommended 35%. However, 12% of boys and 17% of girls derive more than 40% of their food energy from fats. In addition, 92% of children exceed recommended levels for the amount of their food energy derived from saturated fat. Most children eat too much salt and evidence from adults suggests that salt intakes have increased over the last 15 years. Among 4-6 year olds, salt intakes are 30-50% higher than recommended. Further, only around 15% of children are within the maximum recommendation of 11% food energy derived from Non-Milk Extrinsic Sugars (NMES). Around a quarter of children derive 20% of their food energy from NMES.¹
4. *Food Promotions:* A wide range of promotional channels and techniques are employed by the food industry to promote foods to children. Most visible are

¹ National Diet and Nutrition Survey: Young People, 1997

techniques such as broadcast slot advertising, and posters and other 'outdoor' media (often described as "above-the-line"). In addition, retailers and manufacturers make significant and increasing use of promotions such as labelling claims, pack design featuring cartoons or children's characters, in-store promotions (often described as "below-the-line"), as well as with specifically targeted children's ranges. Sainsbury's Blue Parrot range was the first of these children's ranges to be launched in March 2001, and by May 2003 was estimated to be worth £36m a year.²

5. Current Legislative Framework: Non-broadcast advertising is currently subject to a self-regulatory system administered by the Advertising Standards Authority (ASA)³. The detailed rules on which the system is based are the responsibility of the Committee of Advertising Practice (CAP) whose members are drawn from the advertising, sale promotions and similar industries. The CAP code also covers on-pack promotions, competitions and other similar sales promotions, as well as promotional activity through new media such as the internet and text messaging.
6. The regulation of broadcast advertising is the responsibility of the recently established regulator, the Office of Communications (Ofcom)⁴. Ofcom currently administers an Advertising Standards Code, with which broadcasters must comply as a condition of their licence. Following a public consultation in October 2003, Ofcom has recently announced that the existing system will be replaced by a new body operating under the banner of the ASA. It is anticipated that, subject to Parliamentary approval, the new system will be launched in late autumn.
7. In addition Ofcom is also currently reviewing the rules relating specifically to the advertising of foods to children. This follows a request from Tessa Jowell (Secretary of State for Culture, Media and Sport) in December last year. A consultation on proposed changes to the rules is expected in July.
8. Food labelling and claims on labels and in advertisements are currently subject to the requirements of the Food Safety Act 1990 and the Food Labelling Regulations 1996 (as amended). In addition, the Trade Descriptions Act 1968 makes it an offence to apply a false trade description to any product. While there is no legislation specifically covering the composition and presentation of foods aimed at children, such foods are subject to the general requirements of food law.

² The Grocer, 24 May 2003

³ For more information see www.asa.org.uk

⁴ Ofcom were established in December 2003, taking on the responsibilities previously discharged by five separate telecommunications regulators: The Independent Television Commission; the Radio Authority; The Office of Telecommunications; The Radiocommunications Agency and the Broadcasting Standards Commission. For more information see www.ofcom.org.uk

Risk Assessment

9. Diet and nutrition are key factors in increasing the risk of cancer, stroke and coronary heart disease, as well as a number of other serious diseases.⁵ Diet also plays a part in the rising levels of obesity in children. The 2002 Health Survey for England (published in December 2003) found that 16% of children between the ages of two and fifteen are obese and 30% are either overweight or obese.⁶ In 2002, cases of maturity onset diabetes in obese children were reported for the first time.⁷ In Scotland, the Chief Medical Officer's "Clinical Outcomes Indicators Report" (published in 2003) found that 21.3% of Scottish children born in 1998 were overweight by the time they reached 3.5 years of age, 8.8% were obese, and 4.5% were severely obese. For the 2001-2002 school year, older children had higher levels of obesity. By the time Scottish children were 12 years old, 33% were overweight, 18% obese and 10-11% severely obese. It is predicted that by 2010 obesity in England may cost the nation some £3.6 billion a year⁸. The report of the Health Select Committee in England (published in May 2004) estimates the cost to the country of overweight and obesity at £7.4 billion a year.⁹ The report estimates that "On present trends, obesity will soon surpass smoking as the greatest cause of premature loss of life. It will bring levels of sickness that will put enormous strains on the health service, perhaps even making a publicly funded health service unsustainable."
10. A report to the Treasury by Derek Wanless "Securing Good Health for the Whole Population", published in February 2004 cautions, "the lack of conclusive evidence for action should not, where there is a serious risk to the nation's health, block proportionate action to that risk".¹⁰ The Agency considers that the risk to public health posed by the current balance of children's diets is sufficient to warrant immediate action.

Definitions for Foods High in Fat, Salt or Sugar

11. The Action Plan distinguishes between 'foods high in fat, salt or sugar' and 'healthier options' in the context of promotion of foods to children. (Although it remains the Agency's view that it is the overall balance of the diet that is most important). Clear definitions of these two categories will therefore be required in order to enable the individual elements of the Action Plan to be taken forward. The Agency has commissioned consultancy work to identify and consider options for definitions of 'foods high in fat, salt or sugar' and 'healthier options'. An ad hoc

⁵ Chief Medical Officers Annual Report, 2002, p.40

⁶ The Health Survey for England 2002.

⁷ *National Centre for Social Research*.

⁸ *Tackling Obesity in England*, National Audit Office, 15 Feb 2001, HC220, 2000-2001 session.

⁹ www.publications.parliament.uk/pa/cm200304/cmselect/cmhealth/23/23.pdf

¹⁰ www.hm-treasury.gov.uk/consultations_and_legislation/wanless/consult_wanless04_final.cfm

project management group, comprising independent nutritionists and dieticians will help to oversee the work.

12. The project will include an analysis of the proportion of products in various sectors (e.g., soft drinks, breakfast cereals etc.) likely to be caught by each classification.

The Options

Option 1 – Do nothing

13. In view of the public health cost of diet and nutrition related diseases (see “risk assessment” above) together with the current level concern among consumer and public health groups, it is clear that some action is required to address the issue of children’s diets. The Health Select Committee on Obesity expressed their view that “If immediate action is not taken, millions will suffer from an array of serious health disorders.”¹¹

14. In addition, major industry stakeholder groups recognise the problems caused by children’s diets, and have committed the industry to working with other stakeholders to address the issue¹².

- 15. There is therefore support on all sides for action, and accordingly, the option of doing nothing is rejected.**

Option 2 – Implement Action Plan on Food Promotions and Children’s Diets

16. Many factors influence children’s diets; the recommendations set out in the Action Plan therefore represent a balanced package of measures that are designed to complement each other, and should not be seen as a set of competing alternatives.

17. The Action Plan calls upon a variety of stakeholders to work with the Agency to address the way in which foods are currently promoted to children, and in doing so to encourage children to eat a more healthy diet. The Action Plan also includes details of how the Agency will examine and report on uptake and action by other stakeholders.

¹¹ www.publications.parliament.uk/pa/cm200304/cmselect/cmhealth/23/23.pdf

¹² Joint Press release 17 November 2003.

Overview of the Action Plan, and Business Sectors Affected

18. An overview of the Action Plan is given below, the Action Plan is reproduced in full at Annex B. **[Note – For the purposes of the open Board meeting of 6 July, Annex B is omitted, since the Action Plan appears elsewhere in the Board papers].** The proposals are addressed to the following parties:

- Schools: to offer and promote healthier options at mealtimes, and through drink and snack vending.
- Government: to continue to press for changes to EU labelling legislation to improve the provision of nutrition information and enable consumers to make healthier choices.
- Food manufacturers and retailers: to work with the Agency on the development of a range of best practice advice related to composition, labelling and promotion of foods aimed specifically at children. In particular addressing reduction of the amount of fat, salt and sugar in meals aimed specifically at children, and use of menu/notice sign-posting of ‘foods high in fat, salt and sugar’ and ‘healthier choices’.
- Ofcom: to note the Agency’s view that action to address the imbalance of TV advertising to children is justified, and to take account of this view in their current review of Regulation in this area.
- Broadcasters: to exploit programming and commercial opportunities to promote healthy eating for children.
- Celebrities, event organisers, character licensors (and others who participate in sponsorship arrangements with food manufacturers): to work only with brands associated with healthy eating.

Costs

19. The overall purpose of the Action Plan is to redress the current imbalance in the way foods are promoted and marketed to children. It is clear that at present the majority of advertising expenditure is directed towards promoting foods high in fat, salt and sugar, and that this is particularly the case in child-focussed promotional channels.¹³ These types of foods are also the focus of broader promotional activity.

20. The intended effect of the Action Plan is therefore to encourage consumers to switch their purchases and consumption away from certain categories of foods, towards healthier choices; and to encourage industry to switch advertising expenditure towards the promotion of healthier choices. Therefore, where potential costs may arise from certain elements of the Action Plan, these will be directly offset by opportunities for businesses to meet emerging demand

¹³ COI media research, Hastings review www.food.gov.uk/multimedia/pdfs/foodpromotiontochildren1.pdf

elsewhere. It is reasonable to assume that overall expenditure on food products, and on the promotion of food products will be sustained.

21. Costs have been identified in four main areas. It is likely that separate elements of the Action Plan will give rise to costs in similar areas. (e.g., costs for reformulating products are likely to arise as a result of Agency guidance on reducing levels of fat, salt and sugar in products; and as a result of new provisions on health and nutrition claims). *NB: The Agency is currently developing separate RIAs in relation to a forthcoming EU proposal to amend the provisions relating to nutritional labelling; and in relation to Commission proposal currently under negotiation in Brussels on health and nutrition claims. Further information on these RIAs is available from the contact point given at paragraph 75 below.*

22. Potential costs are discussed in the following areas:

- **Costs resulting from changes to product labelling, and the provision of further consumer information (paragraphs 23-27)**
 - Labelling of pre-packaged foods (paragraphs 23-26)
 - Provision of consumer information in catering establishments (paragraph 27)
- **Costs arising from changes to product composition (paragraphs 28-31)**
- **Costs arising from changes in promotional activity (paragraphs 32-38)**
 - Potential loss of marketing revenue – Television (paragraphs 33-35)
 - Potential loss of marketing revenue - Other promotional activity (paragraphs 36-37)
 - Potential reductions in demand for previously promoted products (paragraph 38)
- **Costs arising from activity in Schools (paragraphs 39-41)**
 - Vending (paragraphs 39-40)
 - Provision of School Meals (paragraph 41)

Costs resulting from changes to product labelling, and the provision of further consumer information

23. **Labelling of pre-packaged foods:** A number of the elements of the Action Plan are aimed at encouraging manufacturers and retailers to re-label a range of pre-packaged foods. (e.g., the development of Agency advice on the use of front of pack “signposting”, and on the use of nutrition and health claims; and forthcoming changes to EU rules on nutritional labelling).

24. Industry compliance with best practice advice on front of pack 'signposting' would be on a voluntary basis. Costs may arise for those manufacturers and retailers that choose to re-label products in order to follow the best practice guidance.
25. The British Retail Consortium has estimated the costs of re-labelling at approximately £1000 per product. If retailers were to re-label all relevant products within one year, solely as a response to the Action Plan, BRC estimate the total cost to retailers at £50m.¹⁴ However, appropriate transitional periods will be included in both Agency best practice advice, and in any domestic Regulations arising from changes to EU labelling rules. It is therefore anticipated that changes to labelling can be made within manufacturers' existing product development cycles. Any costs arising should therefore be minimal. For example, Heinz estimate that where labelling changes can be accommodated within planned artwork changes, the cost would be around £50k a year over their portfolio of 800 products.¹⁵ It is conceivable that manufacturers will face cost in respect of product analysis in order to supply accurate nutritional information. This will only arise however for products that currently carry no nutritional information at all, and will therefore not be significant. The Agency estimates that 80% of pre-packaged foods currently carry some nutritional labelling.¹⁶
26. The intended effect of signpost labelling is to encourage consumers to choose alternative, healthier options. If this is realised, costs will arise for manufacturers and retailers from a drop in sales of foods signposted as being high in fat, salt or sugar, although this cost is difficult to quantify. There is clear potential however for an increase in sales of foods labelled as low in these nutrients. Costs arising for individual manufacturers and retailers may be more significant if their competitors choose not to follow the guidance (and as a result do not incur similar costs).
27. ***Provision of consumer information in catering establishments, and foods sold loose at retail.*** The Action Plan seeks to encourage caterers to provide additional nutritional information about the foods they sell. The issues faced by catering establishments will be similar to those faced by manufacturers and retailers (described above). However, costs for caterers arising from the provision of signposting and other consumer information are likely to be lower, because of the greater flexibility enjoyed by catering outlets (e.g., consumer information is frequently provided by menus and notices, including temporary media such as chalkboards and handwritten ticketing). It is unlikely that catering establishments will face significant costs in respect of product analysis, because

¹⁴ Consultation Response from BRC, 10 June 2004.

¹⁵ Consultation Response from Heinz, 10 June 2004

¹⁶ Based on discussions at official level with food industry representatives.

the majority of the foods they buy are covered by existing rules on the provision of nutritional information.

Costs arising from changes to product composition

28. The Action Plan includes a proposal for Industry to work with the Agency to reduce the amounts of fat, salt and sugar contained in food products popular with children. In addition, manufacturers may decide to reformulate products as a result of anticipated changes to EU rules on nutrition and health claims (and pending such changes, Agency advice on this issue).
29. BRC estimate that the cost of developing a new product is approximately £25,000 for each product line. Cadbury Schweppes estimate costs for reasonably simple re-formulations at £35-50k. These estimates also represent test marketing, labelling redesign and market competitiveness analysis. Consultation by Scottish Executive as part of the “Hungry for Success” project included substantial numbers of manufacturers in a range of product categories, (including meat, fish vegetable and potato products). Manufacturers noted that with some product types it was not practicable for technological or costs efficiency reasons to formulate products (e.g., crisps and savoury snacks). However, where there was scope to make reductions in fat, salt or sugar content, minor amendments could be made at relatively low costs.¹⁷ Heinz estimate that to operate an ongoing project for salt, fat and sugar reductions across their range of 800 products would cost around £200K a year. Many of the major retailers who currently offer targeted children’s ranges operate criteria for the composition of the products in the range.¹⁸ It can be assumed therefore that the necessary in-house technical support for this option is already in place.
30. Fears have also been expressed by industry bodies that further costs may arise to individual manufacturers, if they re-formulate products unilaterally (thus affecting the organoleptic qualities of the product) with the result of losing sales to their competitors. However, if the market moves multilaterally, and makes incremental reductions, such costs should not arise. In any case, a recent report by the Consumers Association¹⁹ examined processed ready meal products such as pizzas, lasagnes and pies, and concluded that products of the same type made by different manufacturers can vary widely in the amounts of fat and salt they contain. These findings are consistent with the results of a number of “mini-surveys” conducted by the Agency on sausages and ready meals (further

¹⁷ Responses to Scottish Executive consultation on “Hungry for Success”

¹⁸ Information provided by British Retail Consortium

¹⁹ Consumers Association, *Recipe for Disaster*, May 2004

surveys are due for publication shortly).²⁰ This implies that there is considerable scope for reduction of fat and salt content, without losing customer appeal.

31. The Agency has already made significant progress in this area, for example by working with manufacturers, who have reduced sodium levels in bread by up to 21% since 1997. There are no indications that this exercise has created distortions in the market. Some responses to the public consultation suggested that criteria for the reduction of fat, salt and sugar will act as a disincentive to innovation if it is not practicable for products to reach the relevant cut off points. This view was balanced however by the recognition by other stakeholders that innovation may increase where businesses wish to produce and promote products meeting the criteria for “healthier choices”.

Costs arising from changes in promotional activity

32. *NB – The Action Plan recommends that Ofcom, in reviewing the broadcast advertising of foods to children, should note the Agency’s view that action to address the current imbalance in TV advertising of food to children is justified. The ASA is recommended to keep under review the regulation of food advertising aimed at children via new media. It is difficult to quantify the costs of these recommendations pending proposals from Ofcom and ASA for possible changes to existing provisions. In the event of such proposals, the responsibility for full Regulatory Impact Assessment will fall to Ofcom or ASA as appropriate.*

33. **Potential loss of marketing revenue – Television:** Current expenditure on food advertising aimed at children is dominated by television. In 2003, 72% of food advertising spend was on TV advertising. It is clear that the balance of brands and food categories advertised lies in favour of those with high amounts of fat, salt and sugar. Except during the pre-Christmas period (when toy advertising dominates) during children’s programming about 40% of advertisements are for foods, of which about 70% are for “the big five” (confectionery, fast food restaurants, pre-sugared breakfast cereals, savoury snacks or soft drinks). It is estimated that the big five’s share of all food advertising on TV is around 55%, equating to around £285m.²¹

34. Measures that limit the amount of permitted advertising for particular categories or products may have the effect of reducing advertising revenue for commercial broadcasters. This cost is difficult to quantify, and it is likely that additional revenue from advertisers of non-food commodities will reduce this shortfall. It is also likely that if the advertising time allowed for particular categories of food were restricted, the price of those food “time slots” would increase, offsetting

²⁰ Details of completed and forthcoming surveys can be viewed at www.food.gov.uk/science/surveillance/foodsurvprog

²¹ COI Media Research, Not yet published.

some of the revenue losses for broadcasters. It is also anticipated that manufacturers would channel the money they would otherwise have spent on TV advertising, into other promotional activities, thus offsetting potential costs to advertising agencies.

35. In 2003, estimated expenditure on sponsorship of programmes was £150m, of which 10-30% was associated with “the big five”.²² Restrictions on programme sponsorship by food brands high in fat, salt or sugar could therefore create a potential revenue shortfall of £15-45m. However, the increasing use of programme sponsorship as a marketing strategy means it is reasonable to assume that this shortfall will be addressed, at least in part, from manufacturers of other child related products (e.g., toys, fashion etc).

36. **Potential loss of marketing revenue - Other promotional activity:** The Action Plan recommends that bodies holding the marketing rights to children’s characters should introduce nutritional criteria for the foods on which they appear. Costs may arise for license holders in terms of lost revenue. However, this marketing technique is attractive to manufacturers, and it is reasonable to assume that demand will be sustained. Manufacturers may also change product composition, to enable them to continue being marketed in this way. The costs to license holders of establishing criteria would be small, as they could make use of the definitions agreed by the FSA (see paragraph 11 above). The FSA has already published advice on the amounts that constitute a lot or a little of fat, salt and sugar, and issued guideline daily amounts for salt intake for children. The FSA will also offer advice to broadcasters on an *ad hoc* basis.

37. The Action Plan also recommends that organisers of sporting and other events should use sponsorship only for brands associated with healthy eating. Costs arising from this recommendation could be significant. McDonald’s is currently the “official community partner” to the four Football Associations throughout the UK. This partnership includes coaching provision, and other community-based activities.²³

38. **Potential reductions in demand for previously promoted products:** It is anticipated that where manufacturers and retailers reduce the level of promotional activity for foods high in fat, salt and sugar, costs will arise from a reduction in sales. However, it is anticipated that opportunities will arise to meet demand for healthier options, and that this will be in direct proportion to any reduction in sales.

²² COI Media Research, Not yet published.

²³ Football Association Website – www.thefa.com

Costs arising from activity in Schools

39. **Vending:** Vending is an important source of revenue for schools. A medium sized secondary school can expect to make around £10-15k a year from vending machines²⁴. A pilot study published by the Agency in April 2004²⁵ concluded that where vending machines are appropriately supported (i.e., by good stock management, location, marketing etc.) it is possible to achieve financial returns from machines selling milk and juice based drinks and water comparable to those from machines selling soft drinks. The Agency plans to publish a practical toolkit for schools to help them to deliver a successful, commercially sound healthier drink vending service. It is reasonable to assume that the issues relating to drinks vending will be directly applicable for the vending of snack foods.
40. It is anticipated that costs to some businesses may arise from the consequential reduction in sales of certain products via school vending. It is estimated for example that sales in schools account for 1% of sales by Coca-Cola and Pepsi²⁶. However, businesses would benefit by meeting the anticipated increased demand for healthier drinks such as milk and fruit based drinks and water; and healthier snack options. This increased demand is likely to be significant (see paragraphs 46-48 below).
41. **Provision of School Meals:** Statutory guidelines already in place in England and Wales set out nutritional standards for school lunches. In November 2002, the Scottish Executive published nutritional criteria for meals provided in Scottish schools, with an assessment of the likely costs of implementing them. In addition to a likely increase in food costs of 5-15%, further costs were anticipated in relation to training and staff costs.

Benefits

42. Potential benefits have been identified in four main areas. These are discussed below. It is clear that many factors influence children's diets, and as such, the benefits likely to arise from the implementation of the Action Plan will be brought about by a combination of the individual elements. The following benefits are discussed:
- **Increased consumer information (paragraphs 43-45)**
 - **Changes in product composition, and an increase in availability of healthier choices (paragraphs 46-47)**

²⁴ Department of Health Press release 19 December 2003

²⁵ <http://www.foodstandards.gov.uk/multimedia/pdfs/fsa040302annex15.pdf>

²⁶ Financial Times, 5 August 2003, p18

- Reductions in the amount of fat, salt and sugar in processed food (paragraph 46)
- Increased availability of healthier choices in catering outlets (paragraph 47)
- **Changes in the balance of promotional activity directed at children (paragraphs 48-55)**
 - Reductions in children’s exposure to promotional activity for foods high in fat, salt and sugar (paragraphs 48-51)
 - Potential increase in children’s exposure to positive diet and nutrition messages; and promotional activity for of healthier options (paragraphs 52-55)
- **Changes in foods consumed in schools (paragraphs 56-59)**
 - Vending (paragraphs 56-58)
 - School Meals (paragraph 59)

Increased consumer information

43. The increased provision of consumer information about the quantity of key health-related nutrients in food products will help consumers make informed choices about the nutritional quality of the pre-packaged foods that they buy. The provision of high / medium / low descriptors will help consumers relate the nutrition information to daily intakes.

44. It is also likely that manufacturers will chose to reformulate products, for example in order to move from a “high” classification to a “medium”. Such action would yield benefits similar to those described below under “Changes in product composition”.

45. Nutrition and Health claims are increasingly common, and FSA surveys indicate that consumers find claims useful in forming purchasing decisions. It is estimated that “healthy eating” ranges include some 4,250 products with a market value of over £1bn²⁷. Qualitative consumer research indicates that parents are concerned where foods which they consider to be “unhealthy” are promoted as being “healthy”²⁸. For example a food carrying a claim that it is a source of a particular vitamin, when the food is also high in fat, salt or sugar.

²⁷ Information from the British Retail Consortium.

²⁸ www.foodstandards.gov.uk/multimedia/pdfs/report_qua.pdf

Changes in product composition, and an increase in availability of healthier choices

46. **Reductions in the amount of fat, salt and sugar in processed food:** Reducing the amount of these macro nutrients in processed foods will lead directly to a reduction in consumers' intakes. In the case of salt for example, it is estimated that 75% of salt intake comes from processed foods (the remainder being added during cooking, or at the table)²⁹. Reducing the amount of salt in processed foods will therefore have a direct and significant effect on intake.
47. **Increased availability of healthier choices in catering outlets:** It is clear that meals eaten outside the home (not including those from school canteens etc.) account for a significant and growing part of children's diets. It is estimated that in 2000 the average child aged 5-14 ate a midday meal in a catering outlet (other than a school canteen etc) once a fortnight, and that this frequency increased over the previous three years.³⁰ It appears that the market for some types of fast food has also grown over a similar period: between 1997-2001 market value for burger bars increased by 57.8%, while fried chicken restaurants saw an increase in value of 37.4%.³¹ An increase in the availability of healthier choices, coupled with effective promotion of those foods, will have a clear benefit for the balance of children's diets.

Changes in the balance of promotional activity directed at children

48. **Reductions in children's exposure to promotional activity for foods high in fat, salt and sugar:** In September 2003 the FSA published an independent academic review of the available evidence on the impact of promotional activity on children's food related behaviour (the 'Hastings Review'³²). The Review concluded that promotional activity aimed at children does have an effect on their preferences, purchase behaviour and consumption, and these effects are apparent not just for different brands but also for different types of food.
49. While the evidence does not allow conclusions to be drawn as to the size of the effect relative to other influences (such as family or peers) it is clear that the direct effects of advertising will be amplified by further indirect effects (e.g., those mediated via peers, parents and carers).

²⁹ FSA Salt Leaflet, 2002

³⁰ Mintel, Children's Snacks, July 2003

³¹ Lunchtime Eating Habits, Mintel, 2003

³² www.food.gov.uk/multimedia/pdfs/foodpromotiontochildren1.pdf

50. It is reasonable to assume therefore, that a reduction in the quantity of advertising for foods high in fat, salt and sugar to which children are exposed will lead children to consume less of those products. It is also likely that an increase in promotional activity healthier choices will have a positive effect on the balance of children's diets. There is a high level of support among certain stakeholders for action in this area.
51. The Action Plan includes recommendations that Government Departments, and organisers of sporting and other events should not associate with promotional activity for foods high in fat, salt or sugar. By doing so, these parties will avoid providing mixed messages to children and other consumers in relation to diet and physical activity.
52. **Potential increase in children's exposure to positive diet and nutrition messages; and promotional activity for of healthier options:** Indications are that broadcasters consider the greatest potential for getting positive messages across lies in the editorial content rather than commercial advertising. Broadcasters believe that this type of programming can be particularly effective because of the relationships they have built with their audience.³³
53. The average child in the UK watches 17 hours of television each week (commercial and public sector).³⁴ In addition, there are now almost 12 million multi-channel households (i.e., subscribing to channels in addition to BBC, ITV, C4 and Five).³⁵ It is clear therefore that children's programming communicating positive diet and health messages has the potential to reach a wide audience. A number of public sector and commercial broadcasters have existing programming strands devoted to communicating personal, social and lifestyle messages to children of various ages (on subjects such as bullying, current affairs etc, as well as diet and health).³⁶ This implies that broadcasters consider such programming to be an appropriate use of their production budgets. It is reasonable to assume therefore that further programming could be developed within existing production budgets, and with few implications for the quality of non-related programming
54. The Action Plan recommends that food manufacturers and retailers make use of a number of promotional channels (including new media, and celebrity and character endorsement) to promote healthier choices. It is clear that if healthier foods are promoted through new media channels, there is the potential to reach a significant proportion of children. It is estimated that 91% of 15-19 year olds, and 33% of 10-14 year olds own a mobile phone,³⁷ while KP, the first major snack

³³ Meetings at official level with commercial broadcasters.

³⁴ Information from Ofcom

³⁵ Independent Television Commission Annual Report and Accounts for 2002

³⁶ E.g., Nickelodeon's "Nick News" for 7-12 yr olds; Children's ITV "UP2U"

³⁷ Information from www.mobileyouth.org

brand to invest substantially in a dedicated website, now claims that over 50,000 teenagers log on each month.³⁸ Similarly, the use of children's characters to promote healthier options has a powerful potential effect. Grocer magazine reports that "in a difficult climate, character merchandising is booming", and that there has been 4% growth in royalties paid to licence holders since 2001.³⁹ FSA research carried out among low-income consumers in February 2004 indicated that parents regarded such promotions as highly effective in attracting small children⁴⁰. There is evidence that use of celebrities to promote healthier options can work effectively. Yummy apples, based in New Zealand, are linked with Wynton Rufer, the biggest football star in New Zealand. Since the scheme started, more than NZ\$650,000 (£250,000) worth of sports equipment has been donated to primary and intermediate schools throughout New Zealand.

55. It must be recognised however that the potential benefit of any type of promotions for healthier options is dependent on persuading manufacturers of healthier foods that promotional activity of this type can be cost effective.

Changes in foods consumed in schools

56. **Vending:** There is increasing concern that children need access to fluid during the school day, which is currently lacking for a variety of reasons. The FSA pilot study concluded that if one in five schools in England and Wales installed a healthier drinks vending machine, approximately 14 million additional units of milk, milk products, pure juices and waters would be consumed by children every year.

57. Carbonated soft drinks are consumed regularly by around 90% of those aged up to 19 years⁴¹. A US study published in *The Lancet* found that the odds of obesity among children increased 1.6 times for each extra can of sugar-sweetened drink they consumed daily.⁴² Further, increased consumption of carbonated drinks among teenage children has been shown to increase the likelihood of dental erosion.⁴³ Reducing the amount of sugar-sweetened carbonated drinks consumed by children will therefore have a clear benefit for the balance of children's diets.

58. In addition, there is significant stakeholder support for action in this area. A ten minute rule bill intended to prohibit the sale of high fat and high sugar content foods in vending machines in schools was introduced in the House of Commons

³⁸ Mintel: Children's Snacking Habits, May 2003

³⁹ The Grocer, October 11 2003, p51

⁴⁰ Food Promotion and Marketing to Children: Views of Low Income Consumers, COI Communications / RWL March 2004

⁴¹ Mintel, Carbonates 2003

⁴² Reported in Financial Times, 5 August 2003, p.18

⁴³ British Dental Journal

in February this year⁴⁴. A Guardian / ICM poll published in October 2003 found that 68% of adults were in favour of removing vending machines selling crisps, chocolate and carbonated drinks from schools⁴⁵.

59. **School Meals:** It is estimated that in 2000, children aged 5-14 ate an average of 1.6 school meals per week, and that this figure has increased over the previous 3 years⁴⁶. (This would equate to around a third of children eating a school meal each day at school). The Scottish Executive's annual census for 2003 found that just over half of Scottish schoolchildren ate a school meal on the day of the census⁴⁷. It is clear therefore that improving the nutritional balance of meals eaten at school will have a positive impact for a large proportion of children.

Costs to Small Businesses

60. The Cabinet Office Guide to Regulatory Impact Assessment describes the impact on small businesses as "significant" where the costs are high, or where there are disproportionate costs for small businesses relative to other sized businesses.⁴⁸

61. In order to consider whether the likely costs for small businesses will be "significant", an initial assessment was conducted. This involved contacting a range of small businesses throughout the UK by telephone, to discuss the likely implications of some of those elements of the Action Plan that would affect them. The initial assessment also took into account responses to consultation exercise; particularly significant was the response from the Association of Convenience Stores. The results of this initial assessment are set out in the table in Annex A, followed by a summary of the telephone interviews conducted. Potential costs were considered in each of the four principle areas discussed under "costs" above, for each of the three types of small business identified as being affected by the Action Plan.

62. As a result of this initial assessment, it was concluded that:

- Although it is likely that small businesses will incur costs as a result of the implementation of the Action Plan, these are not expected to be high.
- In those areas where costs are likely to arise, these costs are unlikely to be disproportionate in comparison to larger businesses.

It was concluded therefore, that no "significant" impact on small businesses is likely from the implementation of the Action Plan.

⁴⁴ Hansard 24 February 2004, Column 155

⁴⁵ Guardian, 22 October 2003

⁴⁶ Mintel, Children's Snacks, July 2003

⁴⁷ Scottish Executive Press Release, 30 June 2003

⁴⁸ Better Policy Making: A Guide to Regulatory Impact Assessment, Cabinet Office, p.28

Competition Assessment

63. The proposed action plan looks to encourage children to adopt a more healthy diet, substituting away from foods high in fat, salt and sugar and towards healthier choices. It is clear therefore that by restricting the available promotional activities for foods high in fat, salt and sugar, places firms producing these types of foods at a competitive disadvantage. However, the aim of the proposed set of policies is to improve the balance of children's diets. It can therefore be argued that the positive welfare effects associated with allowing such firms to be competitive, will be outweighed by the negative welfare effects associated with consuming those products. Much of the impact on competition is dependent upon the definition of the relevant market. The food industry is a huge industry with many producers and suppliers. Restrictions on a small sub-set of these producers (i.e. those producing foods high in fat, salt and sugar) is therefore unlikely to lead to any significant increase in concentration of the market and so effects on competition are likely to be minimal. Alternatively, if the market for foods high in fat, salt and sugar is considered as distinct from that for healthier choices (implying that promotional activities aim to simply encourage brand switching between these types of products) then all of these types of firms are subject to the same restrictions. The impact on competition in this instance is likely therefore, to be minimal.
64. Currently, there is an imbalance of TV advertising of food to children, with the "big five" estimated to account for a 55% share. Effectively, by addressing this imbalance, there is a potential for other types of food to increase promotional activities and therefore actually improve competition in the food industry. Furthermore, the proposed action plan could lead to greater innovation in the food industry as firms look to develop their products, reducing the fat, salt and sugar content, to increase the promotional channels available to them.
65. Overall, the potential impact on competition from the proposed action plan is at best ambiguous. Firms producing foods high in fat, salt and sugar may be placed at a competitive disadvantage. However, it is the aim of the proposal to improve the balance of children's diets, which may well include a reduced consumption of those foods. However, given the size of the food industry, the measures are unlikely to lead to any significant increase in concentration of the market and it is unlikely to raise any significant barriers to entry. Innovation may also be encouraged as firms strive to meet the standards required to allow them to continue their promotional activities.

Consultation

Formal Public Consultation

66. The Action Plan, together with a partial Regulatory Impact Assessment was issued for a 12-week public consultation in England in March 2004. Separate, equivalent consultation exercises were held in Scotland, Wales and Northern Ireland. The consultation package was sent to around 1000 interested parties, and was available on the Agency website.

67. Around ninety consultation responses were received from a wide range of interests, including consumer groups, individual consumers, public health and education groups, public health professionals, food manufacturers, food retailers, trade associations and advertising industry representatives. The results of the consultation have been taken into account in developing this Regulatory Impact Assessment. A general overview of the responses to the consultation is given below. A more detailed summary will be posted on the Agency's website at www.food.gov.uk within one month of the close of the consultation.

68. Many responses were supportive, and many strongly so, of the proposed scope and nature of the Action Plan, which they considered would make an important contribution to improving children's diets and were likely to yield long term health benefits. Some, including consumer organisations, individual consumers, public health groups and public health professionals, doubted that voluntary initiatives would be effective, arguing that the severity of the likely public health consequences justified legislative action.

69. Others, particularly food and advertising industry interests, argued that although it was clear action of some sort was needed the specific proposals were not backed up by evidence that they would be effective. A number of trade association responses strongly opposed the proposed initiatives as over-interventionist, arguing that the focus should be on public education rather than changes in industry practice.

70. **Further Consultation with Stakeholders**: In addition to the formal consultation process described above, the Agency has undertaken a range of consultation activity with stakeholders. This includes:

- A formal stakeholder meeting in December 2003
- Various activities in Scotland, Wales and Northern Ireland
- Focus group discussions involving low income consumers, including teenagers
- *Defusing the Diet Time Bomb* public debates in London and Edinburgh
- A variety of other surveys and correspondence

- Focus group discussions among secondary school aged children
- A forum for members of the National Federation of Women's Institutes

71. Within Government: In addition to the informal activity described above, the Agency has been maintaining contact with officials in Health Departments, Sports and Culture Departments, Education Departments and Ofcom throughout the development of the Action Plan, and the consultation period. OGD's are also included in the current public consultation.

72. Consultation with Small Businesses: In addition to the informal activity described above, comment was sought on the partial Regulatory Impact Assessment as part of the formal public consultation. The Small Business Service (SBS) was also included in this consultation, and the draft Small Business Impact Test was discussed and agreed with SBS at official level.

Summary and Recommendations

73. The current levels of childhood and adult obesity, and the rate at which the prevalence of obesity is increasing, present a serious public health risk. The National Audit office estimates that overweight and obesity in England currently costs the nation £2.4 billion a year, and that by 2010, this costs will rise to £3.6 billion. The Health Select Committee estimates the costs to the UK of overweight and obesity even higher at £7.4 billion a year. Diet, along with physical activity, is a major contributory factor in the development of overweight and obesity. In this context, the costs likely to arise from the implementation of the Action Plan are proportionate to the risk presented by the current balance of children's diets.

74. In this context, the option of doing nothing (option 1) cannot be supported. It is therefore recommended that the Agency's Action Plan on Food Promotions and Children's Diets is implemented (option 2). The Action Plan represents a balanced package of measures designed to improve the balance of children's diets, the costs and benefits of which are discussed above.

Contact Details for Further Information

75. For more information on this Regulatory Impact Assessment, or in the case of any other queries on the policy in this area, please contact:

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Annex A – Small Firms Impact Test: Initial Assessment

Area of Potential Cost	Retailers	Manufacturers	Caterers
<p>Labelling and consumer information</p>	<p>No anticipated costs: Re-labelling costs will only arise for larger retailers in relation to “own brand” product ranges, and for manufacturers. Small retailers will not be producing own brand ranges, and will therefore not incur costs.</p>	<p>Some moderate costs anticipated: Similar issues will arise as in the case of larger manufacturers. Although small businesses identified costs in this area, it was noted that these could be minimised with appropriate transition periods (one manufacturer said he would need 4 months) and by co-ordinating changes with other regulatory requirements for labelling changes (i.e., changes to EU food labelling rules) will reduce costs. <u>Manufacturing businesses of all sizes are likely to incur costs broadly in relation to their size / turnover, and will therefore be affected equally.</u></p>	<p>Some small costs anticipated: Similar issues will arise as in the case of larger caterers. Two of the catering businesses approached estimated costs at £250 and £500. One of these caterers usually changed menus regularly (2 years); the other made use of chalk boards offering more flexibility. <u>It is possible that many small caterers will in fact incur lower relative costs than larger caterers,</u> because it is likely that smaller caterers will make extensive use of temporary media (such as hand-written notices and chalkboards) to convey consumer information, thus minimising costs.</p>
<p>Product re-formulation</p>	<p>No anticipated costs: costs to retailers will only arise in relation to “own brand” produce, which will not be part of small retailers’ business.</p>	<p>Some costs anticipated: Similar issues will arise for manufacturers of all sizes. In addition to the telephone interviews, the consultation by Scottish Executive as part of the “Hungry for Success” project included small manufacturers in a range of product categories,</p>	<p>No significant costs anticipated: Where caterers serve processed products (as opposed to dishes made in-house from basic ingredients) it is not anticipated that any costs will arise (i.e., costs of re-formulation, if any, will be borne by manufacturers). Where caterers</p>

		<p>(including meat, fish vegetable and potato products). Manufacturers noted that with some product types it was not practicable for technological or costs efficiency reasons to formulate products (e.g., crisps and savoury snacks, and milk-based drinks). However, where there was scope to make reductions in fat, salt or sugar content, minor amendments could be made at relatively low costs.</p>	<p>make the majority of their dishes from basic ingredients, there is more scope to substitute ingredients (e.g., changing to a different type of cooking oil with a lower saturated fat content). Caterers commented that this may give rise to costs, but this need not necessarily be the case. It was also clear that changing some ingredients needed to be seen in the context of the overall ingredient budget.</p> <p>Where recipes are substantively changed, or where new dishes are added to the “menu”, ingredient costs could be reflected in pricing (especially where dishes could be promoted as “healthier choices”) – in the same way as caterers set prices generically. <u>Such costs would be likely to affect caterers of all sizes equally.</u></p>
<p>Promotional activity</p>	<p>No significant costs anticipated: No costs are anticipated in relation to promotional activity driven by suppliers or manufacturers (e.g., broadcast advertising for branded products, and on-pack promotions).</p>	<p>No significant costs anticipated: The relatively high cost of broadcast advertising means that small businesses are very unlikely to make use of this promotional channel. In relation to possible changes in</p>	<p>No anticipated costs: The relatively high cost of broadcast advertising means that small businesses are very unlikely to make use of this promotional channel.</p>

	<p>Small retailers do not have an influence over this type of activity, and in addition all <u>retail businesses of all sizes will be affected equally</u> by any influence (positive or negative) on product sales derived from this type of promotional activity.</p> <p>The Association of Convenience Stores has commented that proposals relating to in-store promotions (and in particular placing sweets and snacks near checkouts) will cause particular difficulties for small retailers because of limited shop space, and the business need to stock certain key categories. In recognition of this point, the Action Plan has been amended (at item 6.4) to refer to “supermarkets” instead of “retailers”, thereby excluding smaller retailers from the scope of that recommendation.</p>	<p>broadcast advertising therefore, no costs are anticipated. Some of the businesses approached use advertising in the trade press. It is not anticipated that the Action Plan would seek to restrict this type of advertising. In relation to smaller scale print advertising and ‘below the line’ promotional activity aimed at consumers, some costs are possible where a reduction in promotional activity translates to a loss of sales. However, this could be balanced by the opportunities that will arise through the promotion of healthier choices. <u>Manufacturing businesses of all sizes will be affected equally.</u></p>	<p>It is likely however that small caterers will make use of smaller scale promotional activity (e.g., advertising in local press). It is not anticipated that this will fall within the scope of the Action Plan, because this type of marketing activity is likely to promote the establishment rather than specific food products.</p>
<p>Schools</p>	<p>No anticipated costs: Small retailers do not operate in schools in relation to vending or meal provision.</p>	<p>No significant costs anticipated: It is conceivable that if school meal providers were to make changes to school menus, to reduce the provision of certain food categories,</p>	<p>No significant costs anticipated: Some school meals provisions are supplied by small catering businesses. It is anticipated that where schools or local education</p>

		<p>manufacturers of those foods would incur costs. However, this can be offset by the provision of healthier options (including the reformulation of existing products) to meet the emerging demand.</p>	<p>authorities wish to meet Agency or Education Department guidance on school meals, they will negotiate contracts on that basis, and businesses will tender to a given specification at an appropriate price. If it were the case therefore that costs were incurred by making changes to the dishes provided for school lunches, this would be accommodated within the tendering process. <u>It is unlikely that any attendant costs will affect smaller caterers disproportionately.</u></p>
<p>Summary of Likely Costs</p>	<p>In the one area where potential costs have been identified, retailers of all sizes will be equally affected. There is therefore no significant impact on small retailers arising from the Action Plan.</p>	<p>Potential costs have been identified in relation to product re-labelling and reformulation. However, it is not anticipated that smaller manufacturers will incur disproportionate costs in comparison to larger businesses. There is therefore no significant impact on small manufacturers arising from the Action Plan.</p>	<p>Potential small costs have been identified in respect of consumer information, changes to recipes, and school meals provisions. However, it is not anticipated that these costs will affect smaller caterers disproportionately. There is therefore no significant impact on small caterers arising from the Action Plan.</p>

Results of Telephone Interviews

Small Catering Businesses

Caterer 1: Is a 30-cover café and restaurant based in West London, employing 10 staff, most of whom are part-time waiting staff. The restaurant uses printed menus on each table, which are usually re-printed every six months at a cost of around £250. Menu design is done in house. It is anticipated that menus could be re-printed to accommodate sign-posting information, as well as additions to the dishes offered, as part of this routine exercise.

The restaurateur makes the majority of his dishes from basic ingredients. As such, he considers the cost of changes recipes to be minimal in terms of staff time, because he believes his chef can adapt recipes to suit the ingredients available. It was noted that substantive changes to recipes, or the addition of new healthier options to the menu, need not necessarily increase ingredient costs, although this was possible. He would not be overly concerned about reflecting increased costs in his prices, especially if he could describe the dishes on the menu as being “healthier choices” or similar.

Finally, the restaurant does not make use of any advertising (not even local press or flyers etc.) They have recently started a lunchtime price promotion. This applies across the menu rather than to particular dishes (i.e., “any two courses for ten pounds”). It is not anticipated that the Action Plan would discourage this type of promotion.

Caterer 2: Is a franchise caterer in Central London. Menu information is supplied by point of sale displays (i.e., above the serving counter) using computer printed notices. These can be changed as often as required, for the price only of ink and paper. Re-designing the notices (e.g., to include sign-post labelling) would incur some staff costs, although these would be minimal (based on staff costs at an hourly pay rate of around £5).

The chef-manager makes most of the dishes from basic ingredients, while buying in some more processed products (boullion, stock, frozen sausages, vegetables etc.) The chef is confident that relatively minor changes (the example of reducing salt in a soup was mentioned) would be easy to control, and to achieve. The chef also gave the example of making a chilli dish with a leaner mince. He noted that while some ingredients would be more expensive, this need not be the case (for example, he noted that one might wish to replace salt in a soup with herbs or spices to maintain flavour, and that this would not be particularly costly). He commented that at the scale of business he was operating ingredient costs tended to fluctuate from week-

to-week anyway, depending on availability, and because of the need to offer something slightly different each week. Ultimately, he felt that these costs could be absorbed, and that his weekly food order was usually “a bit of a mix and match”.

Finally, the restaurant has recently operated a promotion offering a free confectionery bar for transactions over a certain amount. The chef felt this had been successful in encouraging existing customers to spend more. He mentioned coincidentally that his fruit and vegetable supplier was offering to run a “fruit tasting” promotion in the restaurant the following week.

Caterer 3 is a large pub in Middlesex, offering lunchtime and evening meals from the bar. Consumer information is currently provided by laminated menus on the tables, as well as a number of chalkboards throughout the pub. The pub usually offers a range of “specials”, changing around every second week, and uses the chalkboards to promote these (the only costs of changing the chalkboards being a small amount of staff time). Laminated menus are changed less frequently, with no regular planned re-printing as such. Re-printing these menus would therefore give rise to costs. The publican was unsure as to what this would be, but estimated around £500 for printing.

The kitchen staff use a large proportion of fresh ingredients (i.e., vegetables, salads, breads, steaks etc.) as well as more processed foods such as meat products and frozen fries. The publican noted that there may be limited scope to reduced levels of fat in the dishes; since much of the food is grilled, fat content would already be minimised. There may be more scope on terms of salt content, although he noted that he was not in a position to control the level of salt in the fries or meat products. The publican viewed the likely costs of adding new dishes to the menu (i.e., healthier choices) as minimal, noting that he was already doing so on an ongoing basis with his “specials” (although these were not designed as healthier choices as such).

The publican has not made use of what he described as “promotional gimmicks” such as price promotions or special menus (e.g., for valentine’s day etc). The pub does however advertise occasionally in the local press or other similar media. The publican felt that he was really advertising the pub side of the business rather than the food side. It is not anticipated that the Action Plan would seek to limit this type of promotion.

Small manufacturers

Manufacturer 1: Is a producer of Fruit Puddings based in Milton Keynes. Their product labelling currently includes full nutritional labelling, and as such they do not anticipate costs in relation to nutritional analysis to provide front of pack sign-posting. Costs would arise however in terms of re-printing labels, because they would not

usually change labels unless a change was necessary as a result of changes to the product, or new labelling Regulations. The manufacturer was not able to give a specific cost, as it would vary depending on the supplier, although did consider that it could be a “sizeable” cost.

The manufacturer was confident that some product re-formulation to reduce sugar content would be feasible technologically. In house technical support is already in place, which should help to reduce costs. Although it was anticipated that ongoing costs could arise from using different ingredients, these were not felt to be prohibitive, and would probably not need to be passed on to consumers.

The manufacturer currently makes use of advertising in the trade press, as well as price promotions. The manufacturer clearly felt these to be a useful promotional tool (and by implication cost-effective). It is possible therefore that costs might arise were the manufacturer to stop promoting the product in this way.

Manufacturer 2: is based In Dumfries, making breaded poultry products and cooked sliced meats. The manufacturer sells directly to caterers and catering suppliers, rather than through cash and carry or direct to the consumer. For this reason, the packaging is printed up on a daily basis in a plain format (i.e., because the “look” of the packaging is not important in attracting customers as it would be in consumer-facing retail). Costs of changing any packaging would therefore be minimal, with no write-off costs. Packaging does not however carry nutritional labelling information at present. It is likely that costs would therefore arise for product analysis.

The manufacturer considered that there was little scope for reducing the amounts of salt and fat in the product, since the majority of products were simply cooked meat, with the breaded coating a relatively small part of the whole product.

The manufacturer currently advertises with a brochure and in the trade press. Price promotions are also used (an example was given of a reduction of £1 per kilo). As is the case for manufacturer 2, it is possible that some costs might be incurred if these promotional tools were no longer used.

Manufacturer 3: is a manufacturer of milk-based drinks from Aberdeen. Their current product labelling includes nutritional information. They anticipate changing labelling every 2-3 years, at a one off costs of £1400. This cost is kept down by planning changes ahead to minimise write-off costs. When asked what length of transitional period he would need to minimise costs as much as possible, he commented that he keeps only around 4 months stock of packaging, because the type of packaging he uses needs to be used within that time. He did not anticipate costs for analysis to enable sign-posting, since this could be based on their current nutritional labelling.

The manufacturer does not consider reformulation of products to be feasible, and therefore makes no estimate of the costs of doing so. The manufacturer currently makes use of local newspaper and local radio advertising, as well as the branding on their delivery vans. They do not employ other price promotions.