



Broadcasting Authority of Ireland

Statutory Report on the Effect of the BAI Children's Commercial Communications Code



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1 Introduction

The BAI Children's Commercial Communications Code ("the Code") sets down the rules applying to broadcasters in respect of commercial communications that promote products, services, or activities, that are deemed to be of particular interest to children, and/or broadcast during and between children's programmes. Commercial Communications include advertising, sponsorship, teleshopping and product placement. The Code was introduced in 2005, was updated in 2011 to give effect to the AVMS Directive introduced in 2010¹ and again in 2013 to introduce rules on High Fat, Salt, Sugar foods (HFSS).

The requirement for the Code is set out in Section 42 of the Broadcasting Act 2009 ("the Act"). Section 45(3) of the Act requires the Authority to review the effect of the Code and to submit a report to the Minister for Tourism, Culture, Arts, Gaeltacht, Sports and Media ("the Minister"). The Act requires the Minister to submit the report to be laid before the Houses of the Oireachtas. This report sets out the findings of the statutory review undertaken by the BAI.

The Report is set out in a number of sections: -

- **Section 2** provides a summary of the provisions of the BAI Children's Commercial Communications Code;
- **Section 3** outlines the findings of the review of effectiveness with reference to the activities undertaken;
- **Section 4** details the key policy issues emerging from the review;
- **Section 5** sets out the BAI's conclusions.

The report also includes five appendices. These are a copy of the Code and reports of research and stakeholder engagement activities undertaken as part of the statutory review.

¹ This European Directive sets down the minimum standards required of all television broadcasters in the EU.



2 Children's Commercial Communications Code

The Code sets out objectives, definitions, and other related operational elements as well as a series of rules under 10 headings.

The objectives of the Code are as follows: -

- To offer protection for children from inappropriate and/or harmful commercial communications;
- To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities;
- To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians, and children on the standards they can expect from commercial communications on Irish broadcasting services.

The Rules under the 10 headings deal with the following themes: -

- Social Values;
- Undue Pressure;
- Special Protection for Children in Advertising;
- General Safety;
- Violence;
- Diet and Nutrition;
- Parental Responsibility;
- Programme Characters;
- Children's Advertising, Sponsorship and Product Placement;
- Product Prohibitions and Restrictions.

In terms of the applicability of the rules, this is determined by whether the commercial communication that is broadcast, falls under the definition of a 'Children's Commercial Communication'.



This is defined as follows: -

- **Children's Commercial Communications** are commercial communications (including advertising, sponsorship and product placement) that promote products, services, or activities that are deemed to be of particular interest to children **and/or** broadcast during and between children's programmes.
- For the purpose of the Code, **Children's Programmes** are programmes that are commonly referred to as such **and/or** programmes where more than 50% of the audience watching the programme are under 18 years of age, regardless of whether the programme is one made specifically for children.

The definition uses both quantitative and qualitative elements. The quantitative element is the audience profile (50%), which is the percentage of children that make up the total viewing audience for a given programme. Where more than 50% are children, then the programme is considered a children's programme. The audience profiling threshold was introduced with a view to assisting broadcasters, especially television broadcasters, with forward sales planning. It enables them to look at audience data to see what parts of the day are likely to have more than 50% child audiences. In addition, the definition includes a qualitative element such that the Code also applies to '*programmes that are commonly referred to as* [children's programmes]'. This is to ensure that the Code includes commercial communications broadcast in programmes that are clearly children's programmes because of their content but might not have reached the 50% threshold.

In practice, the Code therefore applies to any commercial communications that are broadcast during or in/around children's programmes, regardless of the product or service being promoted (or its interest to children). The Code also applies to commercial communications for products and services of particular interest to children regardless of when they are broadcast. Commercial communications that do not constitute Children's Commercial Communications are regulated further to the BAI General Commercial Communications Code. This Code includes a broad range of rules and child-specific rules where appropriate. Taken together, both codes ensure that all commercial communications include rules intended to protect the interests of children. A copy of the Code and Explanatory guidance notes are attached in appendix 1.



3 Review Findings

In line with previous statutory reviews, the approach included work undertaken by both BAI staff and external consultants. The review involved: -

- **Jurisdictional review:** A review of practices and trends in other countries has been a consistent part of the process used by the BAI when developing and reviewing broadcasting codes and rules. It has allowed the BAI to benchmark its regulations against those in other EU countries but also internationally. A jurisdictional review also highlights best practice approaches to, and experiences of, regulation that the BAI can learn from or adapt in an Irish context, where appropriate.
- **Stakeholder engagement:** Consultation with stakeholders was undertaken in two separate reviews. Engagement with general stakeholders, including broadcasters, advertisers, public health bodies, and civil society organisations, and a separate stakeholder consultation with children and parent stakeholders and the public at large. The stakeholder engagement is intended to provide information regarding the satisfaction or otherwise with the provisions of the Code and highlight key issues for each of the relevant stakeholders.
- **Advertising trends analysis with specific focus on HFSS Foods:** This examined and provided detailed information about the types and volumes of advertising to children, including a breakdown of the volumes of food advertising. An advertising trends analysis provides general background information regarding current volumes and types of advertising aimed at children and/or featured during children's programming.
- **Operational review:** This examined how the Code and the provisions contained therein has functioned to date in practice. The purpose was to gather input from those with a direct operational experience of working with the Code, specifically compliance and complaints staff in the BAI and broadcasters.

The review findings are presented in the following sections.

3.1 Jurisdictional Review

The jurisdictional review was undertaken by Comm Sol Ltd. with the research being led by Deirdre Kevin. A copy of this report is provided at Appendix 2. This report provides an overview of regulations, codes, and guidelines regarding children's audiovisual commercial communications in European and non-European countries. The purpose of the report is to collate and analyse best practice in the area of children's commercial communications across these jurisdictions with a view to benchmarking the BAI's Code against other regulations. This benchmarking facilitates an assessment of areas of regulation that may need to be considered in any subsequent revision of the BAI's Code. The report is based on desk research of national and international laws, directives, regulations, policies, codes, guidelines and reports on a range of jurisdictions regarding the regulation of commercial communications relevant to children.



The European countries investigated in-depth included the UK, Austria, France and Germany. The non-European countries investigated in-depth included Australia, Canada, New Zealand, and the USA. Reference is also made to other countries where they are deemed relevant regarding specific policies or approaches.

The review identifies the BAI's Code as a regulatory leader regarding children's linear audiovisual commercial communications. The BAI Code is identified as one of the few remaining regulatory codes that addresses the issues in a single concise document, and the research identifies that a singular, child-focused, and comprehensive document is the most practical way to address these issues. Furthermore, the review has found that the BAI Code is one of the most comprehensive in terms of themes addressed and products that are prohibited or restricted.

The review outlined that the most significant development at EU level regarding consumer protection and data protection was the General Data Protection Regulation (GDPR). GDPR stresses the special protection of children's personal data, including in the context of collection of data for the purposes of marketing. The regulation establishes that a child must be at least 16 years old before they can themselves consent to the processing of data. Many jurisdictions have included this aspect of consent in rules on children's commercial communication therefore the BAI may need to consider this in any future revisions of the code.

The review also outlined that the new AVMS Directive includes on-demand audiovisual media in its definition of audiovisual media services. These media services have the same obligations to protect children with regard to content of, and exposure to, commercial communications as those of the linear media services. The revised Directive also includes rules for Video-sharing platforms. These also must meet obligations under article 9 about content of advertising. The Directive also stresses the need to develop co and/or self-regulatory codes to ensure that video-sharing platforms reduce the exposure of children to commercial communications for HFSS foods. The Directive is due to be transposed in 2020, and as such the BAI may need to consider this in any future revision of the code.

Finally, the review outlined that one of the main issues of concern emerging in current debates regarding children's commercial communications is the way in which new forms of advertising – in particular online – are posing new challenges for traditional models of regulation, and also requiring new approaches to issues of protecting children in the online world. Online regulation falls outside the scope of the role of the BAI, however it may impact on its regulatory approach in the future.



3.2 Stakeholder Engagement

Consultation with stakeholders was undertaken in two separate reviews. Engagement with general stakeholders, and a separate consultation with children and parent stakeholders and the public at large. The findings in respect of each element of the stakeholder engagement are now set out separately.

General Stakeholder Engagement

OCS Consulting Ltd. was appointed by the BAI to undertake the general engagement element. This included engagement with key stakeholders to provide information regarding satisfaction or otherwise with the provisions of the Code and to highlight any key issues. The report in respect of this stakeholder engagement is attached at Appendix 3.

In terms of the format of the engagement, four meetings were held with representatives from: Broadcasters; Advertisers & Advertising Agencies; Civil Society Organisations; and, Public Health Bodies.

The key objectives of these meetings were to identify: -

- Awareness and understanding of the Code;
- Satisfaction or dissatisfaction with any provisions of the Code;
- Recommendations or suggestions to address issues arising and/or perceived gaps in the Code;
- Implementation issues associated with the Code.

The key findings indicate that the current Code is understood to be broadly effective, is achieving its objectives, and is generally supported by stakeholders. Nevertheless, a number of issues emerged, and these are now set out.

i. Definition of a child and use of age groupings

There was an agreed level of support amongst stakeholders for the definition of a child as presented currently within the Code (a person under the age of 18). There was general support across the stakeholder groups for the principle of differentiation in respect of age. This principle reflects the fact that children of different ages have different levels of understanding and this is reflected in the inclusion in the Code of rules focused on under-18s, under-15's and under-6s. The majority of stakeholders agreed that it was important that the Code would include separate provisions for children of different ages, however there was a varied discussion on the current age groupings used. Some stakeholders suggested that there may be merit in considering alternative, and possibly additional, age categories. This included the possibility of using age groupings that closer aligned with age groupings already in place across the digital environment or aligning with commonly recognised child development and education milestones such as 'pre-school', 'primary', and 'post primary'.



ii. Scheduling

The rules under the scheduling section of the Code provide guidance on applying the 50% audience profile mechanism used in part by the BAI to define a children's programme. During this discussion, the BAI invited participants to provide views on the desirability or otherwise of additional or different regulation being applied during peak viewing times (6pm-11.30pm), including family viewing times (6pm-9pm).

Broadcasters and advertisers indicated that they are satisfied with the provisions in respect of scheduling set out under the Code. Regarding family viewing, these stakeholders presented the view that parental responsibility ought to apply in the first instance. In contrast, both civil society organisations and public health body representatives highlighted the high levels of children's viewing occurring after 6pm and requested the strengthening or augmenting of the Code to cover family viewing time.

Whilst they recognised the role of parental responsibility, these stakeholders suggested that additional support in the form of further regulation is required. They also commented that different approaches in this regard may be warranted depending on the product or service promoted e.g. HFSS foods.

iii. Diet and Nutrition Rules

On the subject of provisions relating to diet and nutrition, there were divided views across the stakeholder groups. Both broadcasting and advertising stakeholder groups felt that the current approach and associated nutrient profiling model work well and do not require changing.² Any changes, they felt, would lead to a lengthy and arduous learning curve as well as creating a lack of regulatory alignment with the recently agreed (but not implemented) non-broadcast code and with competitors in Britain and Northern Ireland and elsewhere selling opt-out advertising.³

There were, however, several concerns raised by some representatives of both civil society organisations and public health bodies stakeholders. This included the possibility of introducing a 9pm watershed for the advertising of HFSS products. These stakeholders indicated that the Code could benefit from extra provisions that ought to protect the health interests of children as long as possible, so as to promote life-long healthy eating behaviours. It is clear from the stakeholder review that the Diet and Nutrition Rules remains a pressing issue and will therefore require further examination in the context of any revisions to the Code.

Children and Parents Stakeholders and the General Public

Ipsos MRBI was appointed to undertake the review element involving engagement with children and parent stakeholders and with the wider public. The report is attached at Appendix 4.

² The BAI uses a simple-scoring nutrition model to define whether a food is, or is not, a HFSS food. This is set out in the appendix to the Children's Code attached to this document.

³ Non-broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement, Voluntary code, approved by the Department of Health December 2017.



The Ipsos MRBI research included a two-part process which involved qualitative focus group discussions and a quantitative survey undertaken via Omni-poll. The qualitative group discussion encompassed two focus groups – one group with participants aged 14-17 and the second group, parents of children aged up to 13.

The decision to hold a discussion group with children only aged 14-17, and not younger, was due to the fact that there was limited scope to make the Code more accessible for younger audiences whilst still being able to meet the requirements to review the Code. The quantitative survey via Omni-poll was conducted among 1,000 people aged 15+ with a focused questionnaire.

The objectives of the research were:

- To assess the extent to which children and parents of children participants in the research believe the Code is relevant in today's communications landscape;
- To assess the extent to which children and parents of children participants in the research believe the Code is comprehensive;
- To determine whether the Code is still appropriate and relevant or requires updating and amending to reflect features not currently relevant in the Code.

The research was also tasked to understand: -

- The perceived factors influencing the diet and health of children;
- Attitudes to commercial communications which children may be exposed to;
- Impact of taglines as promoted in the Code.

This review identified that, in an increasingly complex communications landscape, regulation of commercial communication towards children continues to be important and the Code is a valuable asset for parents. A number of focus points that arose in relation to the research are outlined below.

i. Use of age groupings

The Code's focus on adapted levels of protection for children of different ages was considered important to participants in both discussion groups. For parents, the age group between 6 and 9 years was considered a priority, and thus covered by the Code. Those aged 14-17 however believed that children in early teenage years were more vulnerable to inappropriate or harmful messages. Their responses highlighted the perception amongst the younger participants that children in younger teenage years are aware of advertising messages but may not have the maturity to be able to filter the messages. It was considered that children between the ages of 6 to 15 were the most vulnerable and therefore any revisions to the Code should reflect this.



ii. Diet and Nutrition Rules

The HFSS product area was identified as a key area of concern among participants of the focus group. Parents considered restricted advertising within the framework of the Code to be important. The prohibition of these products during children's programming, the prohibition on licenced characters, nutrition claims, and promotional offers was welcomed by parents.

Whilst respondents in the survey perceive that family and the home environment are the most influential factors in children's diet and health, advertising emerged as the next most significant factor, and this finding supported the reflections of focus group participants. While the survey did not specifically address HFSS foods, the results did highlight that commercials of concern to respondents predominantly included adverts for foods, many of which would fall under the HFSS heading, such as confectionary and fast food.

iii. Other Issues

As noted, the discussion groups indicate that participants were broadly satisfied with other aspects of the Code. However, a number of matters were highlighted that are worth highlighting. In this regard, the review identified that parents strongly felt that the regulation of factual presentations of toys was an important and effective part of the Code.

In relation to the section of the Code headed 'Special protection for Children', parents were of the view that this section was appropriate and effective, however there was some concern raised by parents about the role/appearance of children in commercial communications for charities. These can sometimes present children in distressing situations. This concern arose from the potential for some children to become upset when watching commercial communications portraying children in uncomfortable or dangerous situations. This concern related, in particular, to the broadcast of these advertisements during programming that would be less likely to have parental supervision i.e. children's programmes.

In similar terms, the airing of commercials with disturbing or violent content was highlighted in both elements of this research and again a distinction was by parents in the discussion group between broadcasts of this content in supervised versus unsupervised settings. These concerns touched more broadly on the role of parental responsibility and that of broadcaster responsibility. As with the general stakeholder engagement, the parents in the discussion group acknowledged their responsibility but also outlined the important role of broadcasters in supporting parents.

In terms of regulatory approaches to addressing commercial communications of concern as highlighted by respondents to the survey, this indicates a mix of favoured regulation, ranging from prohibition (partial or total) to restrictions on the broadcast of these commercial communications.



On the issue of taglines, the survey responses suggest a good deal of awareness amongst the public of the various on-air messages that are required by the Code. The format for these taglines was discussed as part of the qualitative element of this research and the requirement to speak these taglines in commercial communications for products or services for under-6s was supported.

3.3 Television Advertising Trends

The advertising trends analysis looked at trends in terms of the viewing by children to television programmes and to advertising, as well as having a specific focus on advertisements for HFSS foods. The aim of the analysis was to examine and provide detailed information about the types and volumes of advertising as seen by children aged 4-17 years old, including a breakdown of the volumes of food advertising. The analysis covered the period prior to, and for the years after, the introduction into the Code of HFSS rules (2011-2019). The intent was to get an update on viewing trends for children but also to assess changes, if any, in viewing of HFSS advertising by children. The information for the analysis was generated using TAM Ireland Ltd/Nielsen TAM data accessible via the Arianna interface. The report provides general background information regarding current volumes and types of advertising aimed at children and/or featured during children's programming. The collation of this report was supported by Empirica, a media research and consultancy company. A copy of the report is provided at Appendix 5.

In terms of viewing, the report looked at children's viewing trends across a number of areas, and examined: -

- the average daily minutes of viewing for adults over the age of 4 and amongst those under 18 years of age and associated age cohorts (e.g. 4-15, 4-12 years etc);
- how children's viewing broke out across dayparts (e.g. 6pm-9pm);
- audience profile information i.e. the percentage of viewing by children across a number of years and by different ages;
- the most popular programmes as seen by children, including the audience profile for these programmes and the number of children watching;
- how viewing related to Irish television services regulated by the BAI as well as the Total TV market;
- trends in advertising spend in general terms for food across different media. As TAM Ireland Ltd/Nielsen TAM does not categorise HFSS foods in their data, a proxy set of advertising food categories were identified and used as part of the research;
- data for the 2011-2019 period (the period of effectiveness of the current Code).



In terms of the analysis of advertising trends, the report includes references to spot advertising and to TVRs (TV ratings). The TVR is the percentage of a target audience viewing a programme, daypart, commercial break or advertisement. One TVR is equivalent to one percent of a target audience e.g. for Children, for example, if The Late Late Toy Show had a Children 4-17yrs TVR of 35, this means that, on average during the programme, 35% of Children 4-17yrs watched The Late Late Show Toy Show. In the case of an advertising spot i.e. a single advertisement, a Children 4-17yrs TVR of 15 for an advertising spot indicates that on average 15% of Children 4-17yrs watched that single advertisement.

In the case of advertisements, the Total TVR of an advertising campaign is calculated by adding up all of the TVRs for each individual advertising spot to get an aggregate figure. The higher the Total TVR, the more people who have seen the advertisement. Total TVR is of particular interest to advertisers as TVRs are the currency used between advertisers and broadcasters when buying and selling airtime for advertisements. In general, the higher the TVR for an advertising spot, the more expensive the airtime will be.

TV spots are the number of advertisements transmitted (each transmission is one advertising 'spot') regardless of the TVR. Numbers of spots are far less important than TVRs when measuring advertising exposure.

Having regard to the above, the key findings from the advertising trends analysis are outlined below:-

- When comparing 2016 to 2019, there has been decline in food advertising spend overall in Ireland, with declines in spend in Press, Digital and TV. Notwithstanding the overall decline, there was growth in advertising spend for food advertising in Outdoor and Radio. TV spend, remains the most popular medium for food advertising with Outdoor advertising a close second.
- In terms of specific categories of food, the top food categories in terms of Irish television advertising spending are Chain Restaurants, Confectionary & Snacks, Soft Drinks, Prepared & Convenience Foods, Dairy Products & Substitutes.
- Over the 2011-2019 period, there was an overall drop in average daily minutes of television viewing for all individuals, including in the case of children across a range of ages (4-5 year olds, 4-6 year olds and 4-14 year olds). Looking at children's watching, the average daily minutes was highest amongst those aged 4-5 & 4-6.
- While average daily viewing minutes has declined, the share of viewing of Irish channels that are watched by children aged 4-17 has remained relatively stable across the 2011-2019 period. However, a consistent and significant amount of the overall share of viewing of television by 4-17 year olds is to channels located and regulated outside of the Republic of Ireland.



- In terms of the Top TV programmes watched by children, when comparing 2011-2019, we see in the case of the programmes viewed by 4-17 year olds, all of the Top 20 Programmes were broadcast on Irish television services. The top programme in both years was The Late Late Toy Show on RTÉ, which increased its audience between the two years.
- Programmes viewed by 4-17 year olds were a mix of content created by Irish programme makers and content produced by programme makers outside of the State. Family movies, high rating entertainment programmes, soaps, and live sports programming are consistently present in both years, although 2019 saw a significant number of sports programming in the Top 20 list.
- Looking at Audience Profile and absolute numbers viewing Total TV, the percentage of children making up the audience watching Irish channels and television channels as a whole has declined and has declined across all parts of the day, including the evening and post-watershed periods.
- In line with falls in Children's TV viewing and falls in food TV advertising expenditure, there has been a fall in advertising weight for HFSS food products. On Irish Channels, over the 2011-2019 period there was a fall 60% in advertising exposure (TVRs), the largest fall being on RTÉ TV. When taking into account the Irish Channels and channels originating in the UK carrying specific advertising feeds to the Republic of Ireland, the fall overall was 52% over this period.
- Looking at HFSS advertising on the two largest Irish TV groups, RTÉ and Virgin Media Ireland, the information generated indicates that in terms of food categories, chain restaurants, soft drinks and confectionary are the predominant category of HFSS food advertising viewed by Children aged 4-17 years old in 2019.

3.4 Operational Review

The operational review aimed to examine how the Code and the provisions contained therein functioned to date in practice. This was undertaken by the BAI and included a review of monitoring outputs, complaint decisions and the views of staff in terms of the practical operation of the rules.

In respect of complaints, between 2014 and 2018, four complaints were adjudicated upon by the Compliance Committee or the Executive Complaints Forum. This low level of complaints is in line with the very low level received and considered since the Code was initially introduced in 2005. The four 2018 complaints related to broadcasts of RTÉ One televisions 'Big Big Movie' and were considered by the Compliance Committee. These complaints concerned in particular the sponsorship of this programme by McDonalds. The complaints were rejected by a majority decision. In reaching this decision, the Committee noted that the relevant commercial communications focused on family and depicted a range of family members of various ages.



The commercial communications also featured a range of products, which would be of interest to an entire family group. The Committee did not believe that undue prominence was given to any one product and, as such, the product being promoted was not of exclusive interest to children. The Committee did not find that the creative approach could be considered as clearly intended to target children. The Committee did not consider the programmes to be children's programmes as defined by the Code.

In the context of the review, the BAI also sought additional input from the Compliance Committee. In this regard, the Committee's view having reflected on its consideration of the above complaints was that the definition of a 'children's programme' as set out in the current Code was difficult to interpret and may not best meet the interests of children. Its view is that a review of the definition may therefore be warranted. Separately, the BAI Executive also expressed similar concerns in terms of practically applying the definition.

In the context of monitoring, no issues of apparent non-compliance arose over the 2014-2018 period and no compliance or warning notices were issued. The BAI also undertook monitoring of opt-out channels which include advertising targeting Irish audiences. These services were found to be broadly compliant with the provisions of the Code. One consistent issue arose, this related to compliance with the requirement to state orally any taglines included in commercial communications for products/services of particular interest to children under the age of 6. While the review overall highlighted effective use of taglines, the issue of the target audience for these taglines was raised, specifically, whether they are for the benefit of parents or children or both. This will require further consideration in the context of a revision of the Code.



4 Policy Issues Emerging from Review

The review has highlighted a number of policy issues that the Authority is of the view should be given further consideration in the context of any future revision of the Code. These are now set out.

i. Definitions and use of age groupings

In the case of the definition of a 'children's programme', this definition is of particular importance as it plays a significant role in determining when the rules will apply. The Authority has identified two distinct issues in this respect.

The first relates to the perceived suitability of the definition as a means of protecting children. The current definition defines children's programmes as 'programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age'. The review highlighted that there is a perceived gap between programmes that may have a high number of children watching, but where the audience profile of children is not over 50% (e.g. Eurovision, The X Factor, live sports programme) and where these programmes are not 'children's programmes as commonly understood'. The Authority noted that a number of stakeholders considered this to amount to a 'loophole' in the Code and were of the view that this issue may require further examination. The Authority also noted that the issue of the audience threshold was also highlighted in the jurisdictional review which stated that the 50% audience profile figure is high compared to other jurisdictions.

The second issue identified by the Authority relates to the ease of operating one element of this definition. As noted above, the operational review indicates that the application of the definition of a children's programme can present difficulties. Specifically, while the 50% threshold presented no operational issues, the qualitative element which describes children's programmes as those 'commonly referred to as such' presented challenges in certain circumstances. In that context, the Authority is of the view that future clarity in this respect is necessary.

Separately, while the review has found that the definition of a 'child' as a person under the age of 18 years is understood to be effective and whilst there was an agreement for the requirements of age differentiation within the Code, the Authority notes that the review has identified that further exploration of this will be necessary in the context of any revision to the Code in order to identify more appropriate age differentiations in the context of children's development. In the case of the definition of a 'children's commercial communications', there were mixed views about whether additional guidance/wording should be provided to define 'products of particular interest to children' and this may also require further consideration.

The review did not identify any significant issues with the remaining definitions and found them to be clear and effective in their purpose.



ii. Scheduling, Compliance and Assessment

In general, no significant issues arose from the consultation in respect of the rules and guidelines for scheduling, compliance, and assessment. Inputs to the review either highlighted support for the provisions or no comments were made. No operational issues have arisen in respect of these elements.

iii. Rules: Social Values, Inexperience & Credulity, Special Protection for Children, Violence

The jurisdictional review highlighted the need to update the rules under Special Protection for Children to reflect changes in privacy and data collection rules introduced under the GDPR. Some questions also arose in relation to the inclusion and representation of children in commercial communication for charities, and the scheduling of commercial content that may have violent content during unsupervised settings. The Authority noted that these issues require further examination in the context of any future revision. However, in broad terms, the review found that the rules under these headings were suitable and effective.

iv. Rules: Diet and Nutrition (including HFSS)

Rules surrounding Diet and Nutrition (including HFSS) continue to be a focus area, both in the context of this review, but also in relation to the wider public interest. It is clear from the review that the Diet and Nutrition rules will require further examination in the context of any revisions to the Code. The qualitative and quantitative elements of the research support this conclusion. The national survey highlighted the continued perceived role of advertising in the health of children (a view supported by a depth of research nationally and internationally). In addition, HFSS food advertising is the primary public health concern for a broad range of stakeholders who participated in the review, and is accepted as a key issue by broadcasters and advertisers. However, the adequacy of existing regulation and the extent of additional regulation to be applied remains a matter of dispute.

One important finding of the research is the apparent significant reduction in exposure (TVRs) of children to HFSS advertising for the 2011-2019 period, despite a significant increase in individual advertising spots for this category of advertising. One of the objectives of regulation of HFSS foods is to reduce both the exposure to and impact of advertising. The review did not investigate in detail the factors informing this reduction in TVRs and there is likely to be a number of factors. These include changing viewing patterns of children and changes in the advertising market, with a move to internet advertising (and a reduction in TV spend).



The advertising trend identifies a decline in HFSS TVRs for 4-17 year olds across the 2011-2019 period with a 28% reduction in 4-17 TVRs for Virgin Media Ireland, a 75% reduction in TVRs for RTÉ and 72% and 100% reductions for TG4 and Eir respectively. Only Virgin Media Ireland showed an increase in HFSS TVRs over the 2011-2019 period. This period covered the years prior to the introduction of the BAI's HFSS rules (2011-2013) and TVRs continued to decline following its introduction. A decrease in TVRs on opt-out channels over the 2011-2019 period was also evident in the case of Sky Media (down 32%). There was an increase in the case of Channel 4 Sales (up 8%), but this was an increase from a low starting point.

An important point to note is that the impact of declines in TVRs was proportionate to the audience share for a given channel. For example, a decline in TVRs for a service such as Eir would not have a significant impact on children's exposure to HFSS food advertising on account of the very low numbers of children watching this channel, but declines in the case of TVRs for RTÉ is significant given its strong audience share amongst children.

On specific regulation of HFSS food advertising, it must be noted that many public health bodies and a number of civic society groups favour a 9pm watershed ban on such advertising (akin to the one to be introduced in the coming year for alcohol advertising). This view is also reflected in a recommendation from a report of the Joint Oireachtas Committee on Children and Youth Affairs which called for a watershed ban. Unsurprisingly, broadcasters and advertisers do not favour such a restriction and argue that it is disproportionate and not supported by evidence.

On the issue of the nutrient profiling model used by the BAI to define HFSS foods, it was evident from the review that broadcasters and advertisers support the retention of this model. The review indicates that the model has worked well in practice and has presented no apparent implementation issues. This is very likely on account of the fact that it was developed specifically for use in a broadcast context, utilises a simple scoring model and is also used by opt-out channels targeting Irish audiences. A number of civic society and public health bodies favour the adoption of the WHO nutrient profile model as it takes in a wider range of foods that these stakeholders have identified as HFSS. The adoption of the WHO model is also favoured by the Joint Oireachtas Committee for Children and Youth Affairs.

The suitability of the current regulation of HFSS is one of the key issues that the Authority has identified as emerging from the review and will be a necessary element in any public consultation on revisions to the Code. A watershed ban would be a very significant regulatory intervention and would be the subject of detailed examination by the European Council and Parliament.



v. Rules: Parental Responsibility, Programme Characters, Advertising, Sponsorship and Product Placement

The Authority noted that there were no significant issues in respect of the rules under the headings of 'Parental Responsibility' and 'Programme Characters'. However, the rules on advertising, sponsorship and product placement will need updating.

While paid product placement is prohibited, the rules under this heading state that the provisions of the General Commercial Communications Code applying to the use of advertising, sponsorship and permitted product placement will apply. The current Children's Code refers to a prior version of the General Code and will need to be amended accordingly.

vi. Prohibitions and Restrictions

The review did not highlight any key issues within this section of the Code. Commercial communications for products/services of concern, highlighted by the qualitative and quantitative elements of the research did not reveal any specific products or services not already covered. As noted above, there are views that HFSS foods should be further restricted. Separately, gambling advertising was also highlighted as a matter of concern (and is also emphasised in the recently updated AVMS Directive). As such, the Authority noted that seeking views on gambling rules may need to be considered in any future revision of the Code.

vii. Family Viewing and other programming times

As noted in the jurisdictional review, regulation of commercial communications and the interest of children tends to have regard to: commercials that are likely to be seen by children; those that are targeted at children; and, more generally, all commercial communications regardless of whether they are likely to be seen or target children. In an Irish context, the Children's Code addresses adverts likely to be seen by children in terms of those broadcast during children's programming and those that target children regardless of when they are broadcast. All other commercials are regulated by the General Commercial Communications Code.

However, the Authority acknowledged that a range of stakeholders favour the extension of regulation to cover commercials that are likely to be seen by a significant number of children. Stakeholders in this regard highlighted family viewing times (6pm-9pm). The Authority identified that this will need to be given consideration in the context of any future revision of the Code.



viii. Awareness

Awareness of the Code was highlighted in two ways. Firstly, civil society groups highlighted what they considered to be lack of awareness of the Code amongst their stakeholders and also a lack of awareness about the outcomes of compliance. Secondly, broadcasters highlighted a lack of awareness amongst some advertising agency staff, much of which they attribute to the high turnover of staff in agencies.

These findings are relevant for the BAI in terms of its communications strategy and in terms of its stakeholder engagement and the Authority noted that it is clear that some measures will be necessary to address both issues.

ix. Online and related matters

The Authority noted that the final issue to be highlighted relates to the changes in the media landscape in recent years and its impact on regulation of children's commercial communications.

The jurisdictional review highlighted this change, and the advertising trends report identified changing patterns of consumption. While television remains an important viewing experience, non-broadcast viewing is increasing. While the scope of the review, and the BAI's current regulatory role is limited to linear radio and television content, regulating on-demand and video-sharing platforms is now provided for under European regulation. This includes the regulation of HFSS foods.

This updated regulatory framework will present opportunities to protect the interests of children as well as a new set of challenges which, while currently falling outside the scope of the BAI, will likely impact on its regulatory approach in the future.



5 Conclusion

Overall, the current Code is considered to be broadly effective and its principles respected and understood. The outcomes of the review process however indicate certain areas worthy of further consideration which will need to be examined in the context of a revision to the Code. Any such revisions will be the subject of public consultation. These can be summarised as follows: -

- Definition of a 'children's programme' and issues around the perceived suitability of the definition as a means of protecting children;
- Examination of age groupings in order to identify more appropriate age differentiations in the context of children's development;
- The requirement to update the rules under Special Protection for Children to reflect privacy and data collection rules introduced under GDPR;
- Diet and Nutrition rules will require further examination as HFSS food advertising is the primary public health concern for a broad range of stakeholders who participated in the review;
- Family viewing time and the exploration of a 'watershed ban' for HFSS food;
- The BAI may need to consider its communication of the Code as stakeholders suggested there is a lack of awareness amongst the public about the Code;
- Lastly, the review highlighted the changing patterns of consumption of media by younger audiences and the recent introduction of the revised Audiovisual Media Services Directive, both of which may impact on the BAI's regulatory approach to the protection of children in the future.

In line with the BAI's approach to the undertaking of reviews of its broadcasting codes, the Authority gives consideration to what steps need to be taken on foot of the findings of the review, in particular the approach to be taken to a revision of the relevant code, in this instance, the BAI Children's Commercial Communications. Before embarking on such a process in respect of this code, the Authority was of the view that there were a number of new relevant factors that needed to be taken into account when considering the timing and approach of any proposed revision process.

Firstly, in considering the approach to the revision of the Code, the Authority noted that the recently published Online Safety and Media Regulation Bill proposes the dissolution of the Broadcasting Authority of Ireland. Moreover, the new Programme for Government sets out a commitment to proceed with the development of the Media Commission which will replace the BAI. This is relevant insofar as the revised Audiovisual Media Services Directive ("AVMSD") extends regulations protecting the interests of children to video sharing platforms and widens the range of on-demand services that would be obliged to protect the interests of children.



This wide range of new services will, further to the AVMSD, be required to comply with requirements in respect of children's commercial communications, including advertising, arising from the directive. The nature of the requirements in this regard will be informed not only by the AVMSD but also by Irish legislation that gives effect to the directive.

Secondly, the review of the Children's Commercial Communications Code highlights broad satisfaction with the provisions of the current code. The key issues arising relate to the applicability of the Code during evening viewing periods and requests for the strengthening of rules pertaining to HFSS food advertising. At the same time, the review highlights a significant decline in the exposure of children to advertisements for HFSS foods. This does not mean that a strengthening of the rules for television does not require further consideration as part of a revision of the code. However, it does highlight that there has likely been a reduction in harm arising from HFSS advertising as this pertains to television in Ireland.

Thirdly, as the report findings indicate, exposure of children to HFSS marketing on media other than television is a reality. The jurisdictional review highlights the growing significance and dominance of online advertising whilst the advertising trends report highlights the decline in viewing of television programming and advertising. New forms of advertising are posing new challenges for traditional models of regulation and also requiring new approaches to the issue of the protection of children in the online world. In view of this, the Authority considers that it would be appropriate to consider the issues of children's advertising, including HFSS advertising, in a holistic manner having regard to the total regulatory environment that will emerge following the transposition of the AVMSD.

In view of these factors, the Authority has decided that a revision of the rules applying to children's commercial communications should be undertaken following the transposition of the AVMSD and it is likely that this work will be undertaken by the Media Commission provided for under the Online Safety and Media Regulation Bill and in the Programme for Government.

As per the requirements of the Broadcasting Act 2009, this report is being provided to the Minister with responsibility for media regulation. The Minister is obliged to lay the report before the Houses of the Oireachtas. Once the document is laid, the BAI will make it publicly available on its website.



Appendix 1 – Code and Explanatory Guidance Notes



Broadcasting Authority of Ireland Children's Commercial Communications Code

Guidance Notes & Direction in respect of product placement and commercial communications for food (including HFSS food)

The purpose of this document is to provide guidance (and direction in the case of product placement and HFSS food products and services) on the rules contained in the Children's Commercial Communications Code. The document should not be regarded as a complete or authoritative statement of law. These notes are, with the exception of direction in respect of the product placement and HFSS food rules, non-binding and are provided to assist broadcasters, advertisers and the general public to interpret and apply the Code.

The Broadcasting Authority of Ireland accepts no responsibility or liability in respect of any guidance/direction that may be given and reserves the right to revise and review any guidance/direction provided. Broadcasters should, as part of their own internal copy clearance procedures, make their own independent assessment after taking their own advice and making inquiries/research as appropriate. This document does not purport to explain all the relevant provisions of the Code or give an exhaustive list of possible applications. This is an organic document and will be added to from time to time as the need becomes apparent.

Comments on the guidance notes may be emailed to info@bai.ie or forwarded by post to:

**Guidance Notes,
Broadcasting Authority of Ireland,
2-5 Warrington Place, Dublin 2.**



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Introduction

Section 42 of the Broadcasting Act, 2009, provides that:

- (1) The Authority shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice ("broadcasting code") to be observed by broadcasters.
- (2) Broadcasting codes shall provide –
 - (g) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protects the interests of children having particular regard to the general public health interests of children.

The Children's Commercial Communications Code ("the Code") has been developed by the Broadcasting Authority of Ireland in accordance with its statutory obligations.

Scope

The Code shall apply specifically to commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes i.e. children's commercial communications.

Jurisdiction

Broadcasters within the jurisdiction of the Republic of Ireland must comply with the provisions of the Code. It shall not apply to other services commonly received in this State but licensed in the United Kingdom or in other jurisdictions.

Complaints

Any viewer or listener may make a complaint if they are dissatisfied with the manner in which a broadcaster is complying with this Code. Further information on the complaints process is available on www.bai.ie or by phoning 01 6441200.



Guidance

Further information on this Code is provided in Guidance Notes available on **www.bai.ie**. The Authority does not provide broadcasters, advertisers and the general public with a copy clearance service.

Guidance

Broadcasters are advised to introduce appropriate internal mechanisms to ensure that compliance with the Code is maintained. While suggestions in this regard are made in this document, broadcasters are best placed to decide the mechanisms that are most appropriate for their service and its audience. Broadcasters should also note that the General Commercial Communications Code will also apply, in relevant circumstances, to commercial communications broadcast on their radio and television services.

When requested, the BAI will provide general guidance regarding the provisions of this Code. However, the BAI only provides more specific guidance to broadcasters in relation to atypical commercial communications. This will only happen when such requests are accompanied by a script of the commercial communication. In the interest of clarity, the following guidelines apply:

- Requests for advice from broadcasters must be submitted in writing or email and include the complete text and, where relevant, audio/video copy of the commercial communication in question.*
- The submission should clearly state the section/s of the Code, which the broadcaster believes are relevant, and set out the specific question about which the broadcaster would like a view. Queries which are submitted without a text or comment will not be considered.*
- The BAI is mindful of the short timeframes under which broadcasters operate and will endeavour to provide an initial response to the query as soon as possible. However, broadcasters should note that this could take up to two working days or longer if the query requires more detailed consideration or in instances where additional information is required. Failure to provide a script and comment will delay this process.*
- The BAI will, following consideration of the script and comment, set out its guidance on the matter. In certain circumstances, interested parties may be invited to make follow-up submissions within an agreed timeframe. In such instances, the BAI will take a final view on the matter following consideration of any additional submissions.*
- In certain circumstances, broadcasters may be requested to refrain from airing the communication under consideration.*
- It has been the experience of the BAI that the answer to many requests from broadcasters for guidance have been provided in the Guidance Notes accompanying the Code. For this reason, broadcasters should only request guidance following a review of the relevant section of the Guidance Notes.*



- *Broadcasters are reminded that it is, in the large majority of instances, a matter for them as to whether or not to broadcast a commercial communication. Accordingly, the BAI accepts no liability for any decision (or consequences arising) made by broadcasters to defer the airing of a commercial communication pending receipt of guidance from the BAI.*

The effective date of this Code is September 2nd 2013.

1. Objectives

The objectives of the Code are:

- To offer protection for children from inappropriate and/or harmful commercial communications;
- To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities;
- To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial communications on Irish broadcasting services.



2. Definitions

Guidance

Key to this Code and any code or set of rules is a common understanding of the terms used within that code. For this reason, this Code contains a set of definitions of the types of commercial communications which the Code governs. Except where definitions are provided, the terms used in the Code should be interpreted in accordance with their natural and ordinary common meaning and/or their meaning in a broadcasting context.

- (a) **Child** refers to any person under 18 years of age and references to **Children** should be construed accordingly.

The Code recognises the principle that children of different ages require different levels of protection. In order to give this principle practical effect, the Code stipulates general principles that apply to children's commercial communications and also stipulates a number of protections that apply to children under 6 years of age, those under 13 years of age and those under 15 years of age. The provisions that apply to each of these age groups are clearly marked.

Guidance

For example, where it is indicated that a rule applies to those under 15 years of age (U/15) the rule will apply in the case of any commercial communication that is broadcast during a programme where the majority of those watching are under 15 years of age and/or where the target audience for the programme is this age group. The rule will also apply to any commercial communication for a product or services of particular interest to this age group, even where it is not broadcast during a children's programme.

- (b) For the purpose of this Code, the definitions for the following types of commercial communications contained in the **General Commercial Communications Code** will apply:-
- Advertising;
 - Sponsorship;
 - Misleading, Comparative, Surreptitious and Subliminal Commercial Communications;
 - Teleshopping;
 - Television Product Placement;
 - Virtual, Interactive and Split-screen Advertising.



- (c) **Commercial Communications** are images with or without sound and radio announcements which are designed to promote, directly or indirectly, the products, services or image of a natural or legal entity pursuing an economic activity. Such images and radio announcements accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement but do not include public service announcements and charity appeals broadcast free of charge.
- (d) **Children's Commercial Communications** are commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes.

Guidance

In determining whether a product/service is of particular interest to children, broadcasters are advised to consider, on a case-by case basis whether:-

- *The product/service being promoted is one that is of exclusive interest to children i.e. something that only under-18 years olds would be interested in e.g. a Fisher Price Toy, Barbie Dolls.*
- *The creative approach is such that the promotion is clearly intended to target children even in instances where the item promoted is not of exclusive interest to children.*

Broadcasters and advertisers should note that while the Code applies to communications for products, services, etc., of particular interest to children that are broadcast during children's programmes, it also applies to communications for products, services, etc., of particular interest to children broadcast in adult viewing times.

- (e) **Children's Advertising, Children's Sponsorship and Children's Product Placement** are advertising, sponsorship and product placement (as defined in the General Commercial Communications Code) that promote products, services or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes.



- (f) **Children's programmes** are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age. Where provisions of the Code are categorised as pertaining to those under 15 years, those under 13 years or those under 6 years of age, these provisions will apply to (i) commercial communications targeting these age groups, (ii) commercial communications broadcast during programmes where over 50% of the audience are of these age groups.
- (g) **HFSS foods** are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI.¹

Guidance

Technical guidance on how to assess foods for the purpose of this Code is provided in a separate document entitled 'Nutrient Profiling Model – Technical Guidance'. This is available on the BAI's website www.bai.ie. For the avoidance of doubt, HFSS foods include both food and drink products and services. Section 11 of the Code details the specific rules applying to the promotion to children of HFSS food via commercial communications. Broadcasters should note that the general rules of the Code also apply to commercial communications for these products/services. Cheese products e.g. block of cheddar, brie etc, are exempted and do not have to be scored using the model. Commercial communications for cheese products must comply with the Diet and Nutrition rules set out in section 11 (other than those applying to HFSS food) and with the general rules of this Code. This exemption does not apply to products where cheese is an ingredient e.g. pizza, sandwich.

- (h) **Programme characters** are characters and personalities from children's programmes currently broadcast on indigenous services and used to promote products or services in children's commercial communications. In this instance 'currently' means regular programming that is due for return in the next broadcast season.

Guidance

Broadcasters should noted that this definition and the rule on the use of programme characters set out in section 13 apply to programme characters included in programme produced in Ireland but also to programme characters included in programming acquired and broadcast.

¹ An overview of the Nutrient Profiling Model and how to apply it is provided in Appendix 2.



- (i) **Licensed characters** are characters and personalities that are licensed to feature in a commercial communication but which have no direct association with the product or service promoted. Licensed characters include characters and personalities from a cinema release, video game, amongst others.

Guidance

This definition does not apply to equity brand characters i.e. characters originally devised for marketing purposes, such as those associated with some breakfast cereals e.g. Tony the Tiger, Snap Crackle and Pop. Notwithstanding this, the use of such characters are governed by the Code and must be used responsibly in accordance with the Diet and Nutrition rules and the general rules of the Code.

3. Scheduling

A children's programme is defined with reference to the type of programme and/or the profile of those watching or listening to that programme i.e. programmes that have an audience profile of which over 50% are under 18 years of age. When scheduling children's commercial communications, broadcasters shall comply with guidelines issued by the BAI and updated from time to time.

Guidance

A children's programme is defined with reference to the profile of those watching or listening to that programme. Therefore, a children's programme is one commonly referred to as such and/or a programme where over 50% of those watching the programme are under 18 years of age. In the case of long running programmes, broadcasters should take an average of the audience figures over a reasonable period of time in determining whether the programme is a children's programme or not.

There may be exceptional circumstances where regular programmes, which are not ordinarily classified as children's programmes, might attract an audience of which over 50% of those watching are children. Broadcasters are expected to anticipate the likelihood of this happening in view of the content of the programme, the previous history of the programme, the impact of upcoming storylines or cameo appearances that may attract over 50% viewership by children, and apply the provisions of the Code accordingly.

Audience profiling will be the primary means of implementing the provisions of the Code. In the case, however, of once-off programming or short series, it may not always be possible to predict the audience profile of those watching the programme. In these instances, broadcasters should refer to the indicative scheduling guidelines below. These are indicative times during which particular age groups most usually watch television.



In scheduling commercial communications and making an assessment as to their appropriateness, broadcasters are requested to assess this in light of the likely age group watching at that time.

Indicative scheduling guidelines

When audience profiling is not possible, broadcasters should use the following guidelines:

- *If broadcasters, using reasonable judgement, consider, that a particular commercial communications is inappropriate for children under 6 years of age, having regard in particular to the provisions of this Code, then it should not be broadcast during and between children's programmes which target that age group.*
- *If broadcasters, using reasonable judgement, consider, that a particular commercial communications is inappropriate for children under 13 years of age, having regard in particular to the provisions of this Code, then it should not be broadcast during and between children's programmes which target that age group.*
- *If broadcasters, using reasonable judgement, consider that a particular commercial communication is inappropriate for or likely to cause distress to children under 15 years of age, having regard in particular to the provisions of this Code, then it should be broadcast after 9pm.*
- *If broadcasters, using reasonable judgment, consider that a particular commercial communication contains material of a sexual or violent nature not suitable for children under 18, having regard in particular to the provisions of this Code, then a post 11pm restriction must be considered.*

This Code predominantly impacts on television rather than radio broadcasters by virtue of the predominance of children's consumption of television over radio and the adult appeal of much of radio content. Nevertheless, the Code applies to radio broadcasters. While radio broadcasters have access to JNLR results, they do not currently have access to the range of audience profiling currently available to television broadcasters. In this context, radio broadcasters should at a minimum ensure that commercial communications that are of particular interest to children and communications broadcast during children's programmes as commonly referred to, comply with the Code. Radio broadcasters should also review any additional audience information available to them in determining if a commercial communication comes within the scope of this Code.

4. Compliance and Assessment

1. Broadcasters shall observe the provisions of the Code.



2. Children's commercial communications shall be considered in whole and in context against the provisions contained in this Code. The following contextual factors shall apply: -
 - Time of broadcast;
 - Type of programme;
 - Channel/service type;
 - Nature of the product or service;
 - Target audience of the product or service;
 - Likely composition of the audience listening to, or watching, the programme.
3. Broadcasters shall comply with the spirit as well as the letter of the Code.

Guidance

Broadcasters should be mindful of all the provisions of this Code, as a commercial communication may be required to comply with one or more applicable provision. For example, while Section 11 specifically addresses the area of Diet and Nutrition, communications of this nature will also have to comply with a range of other rules in the Code depending on the specifics of the promotion.

5. Social Values

1. Children's commercial communications shall not cause moral, mental or physical detriment to children.
2. Children's commercial communications shall not reflect a range of values which are inconsistent with the moral or ethical standards or diversity of contemporary Irish society. They shall respect human dignity and not discriminate on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. Nor shall they be offensive to religious or political beliefs or encourage behaviour which is damaging to the environment. They shall respect the principle of equality and avoid gender stereotyping and any exploitation or the demeaning of men, women or children. **U/18**



3. Except where indicated otherwise, children's commercial communications coming within the scope of this Code must comply with Sections 3.1, 3.2 and 3.3 of the General Commercial Communications Code. **U/18**

Guidance

Broadcasters are advised to review the guidance notes on the General Code on Commercial Communications for more information on the requirements of this rule. This guidance addresses the principles of Protection the Individual and Society (Section 3.1), Offence Harm and Human Dignity (Section 3.2) and Transparency (Section 3.3). The application of these rules in the General Code to communications covered by the Children's Code is intended to ensure consistency in the application of rules to commercial communications in general.

6. Inexperience and Credulity

1. Children's commercial communications shall not take advantage of the natural credulity and sense of loyalty of children. They must not by implication, omission, ambiguity or exaggerated claim, mislead or deceive or be likely to mislead or deceive children, abuse their trust or exploit the lack of knowledge of children. They shall not exploit or, without justifiable reason, play on fear. **U/18**

Factual Presentation

Children's commercial communications shall:

2. Clearly indicate what parts, elements or accessories are included as part of the normal purchase of the product or service and differentiate between those which are only available at extra cost. **U/18**
3. Ensure that on-screen messages and 'small print' are clear, simple and legible and remain on screen for a sufficient length of time to enable a child to read it. **U/15**

Guidance

It is not the BAI's current practice to prescribe standards in respect of the placement and size of on-screen taglines or other information included as part of commercial communications on radio and television. Nevertheless, broadcasters are advised to take steps to develop internal guidelines suitable to meet the objective of this rule. It is anticipated that adverts produced by agencies will conform to internal guidelines developed.



The development of internal guidelines will assist in the consistent application of standards necessary to ensure compliance and will also demonstrate broadcaster commitment to the requirements of this rule in the context of any assessment of compliance undertaken by the BAI.

The BAI reserves the right to introduce specific requirements on factual presentation of on-screen information should it reach the view that the measures implemented by broadcasters are not in line with the requirements of the Code.

4. Give children an indication of the actual size of the product. **U/15**
5. Clearly indicate when batteries are required for the operation of the product and whether these are supplied with the product. **U/15**
6. Clearly indicate when a product has to be assembled and what age level is generally required to assemble the product. **U/15**
7. Avoid the use of language, special effects or imaginative scenes which could confuse the child or have them believe that the product or service has capabilities or characteristics that it does not have in reality. **U/15**
8. Children's commercial communications shall not, in the case of toys or children's possessions, make direct comparisons between existing and 'improved' versions/models of the product, even when the statements or claims are valid.² **U/15**
9. State orally any on-screen messages or small print in order to ensure that children of this age understand the message. **U/6**

Guidance

The BAI's review of this Code indicated that this requirement was not implemented consistently. Accordingly, broadcasters are asked to review any relevant output to ensure compliance.

² These are products that persons under 15 years of age could ordinarily be expected to possess.



Price of product/service

With regard to how the price of a product or service is presented in children's commercial communications, the following rules shall apply:

10. The price, when given, shall be in euro and be inclusive of VAT or any other extra or related charges. **U/18**
11. If the price is dependent on the purchase of another item, then this must be made clear in the commercial communication. **U/18**
12. If there are a number of products or services in the children's commercial communication and the price of an item/or items is highlighted, then it must be made clear that the price refers to this item/items only. **U/18**
13. Children's commercial communications that refer to 'free gifts' or offers must specify any and all qualifying terms and conditions, e.g. any time limit, how many products need to be bought, how many wrappers need to be collected etc. Children's commercial communications must not offer prizes or rewards to children for attracting new purchasers for the product or service. **U/18**
14. The price shall be presented in clear, simple and legible font and where appropriate be voiced as part of the audio. **U/15**
15. The language used in presenting the price shall not minimise its cost, e.g. through the use of words such as 'only' or 'just'. **U/15**
16. Expensive toys shall state the price in the children's commercial communication. A toy will not be regarded as expensive if it, plus any essential accessories, are generally available at a retail price below a figure specified by the Authority from time to time. This figure is currently €30 but is subject to review. **U/15**

7. Undue Pressure

1. Children's commercial communications shall not directly encourage or exhort children to ask adults to buy them the products or services being promoted. **U/18**



2. Children's commercial communications should not imply that possession or use of a product or service will make the child or his/her family superior, either physically, socially or psychologically. **U/18**
3. Children's commercial communications shall not imply that the child or his/her family will be inferior or open to ridicule or contempt if they do not possess a particular product or service. They should not imply that the product or service is affordable to all families. **U/18**
4. Children's commercial communications must be particularly careful to avoid the implication that possession or use of a product or service will contribute to or detract from the child's popularity or acquisition of friends. **U/18**
5. Children's commercial communications should not make the child feel inferior, disloyal or doubtful about their self-image. **U/18**

8. Special Protection for Children

Children Endorsing Products/Services

1. The use of children to comment on or endorse products or services in children's commercial communications is only permitted for products and services that they could reasonably be expected to use and would usually be interested in themselves.

Children may appear in children's commercial communications for adult products if their appearance is as a natural element in the depicted environment or necessary to explain or demonstrate the use of the product or service. **U/18**

Sexualisation of Children

2. Children's commercial communications shall not portray a child in a sexually provocative manner or provoke anxiety in children over their bodily appearance. **U/18**



Privacy and Provision of Information

3. Children's commercial communications shall not ask children to submit private information or details regarding themselves, their family or friends, unless the commercial communication is as part of a campaign that relates to their safety, health or wellbeing. When this practice is used, children's commercial communications should state, where reasonable, that children must seek adult approval before sending the information. **U/18**

Adults pretending to be Children

4. The use of adults pretending to be children in children's commercial communications must not be offensive to the dignity of children. **U/18**

9. General Safety

1. Children's commercial communications shall not encourage children to enter into unsafe situations or strange places or to talk to strangers. **U/18**
2. Children's commercial communications shall not show children in morally or physically dangerous situations or behaving dangerously in the home or outside, including street and road scenes, except when the sole purpose of the commercial communication is to promote safety. **U/18**
3. Children's commercial communications shall show children using appropriate safety equipment and respecting all applicable safety rules, when engaged in activities that require such and with adult supervision where appropriate, for example, as passengers in vehicles, pedestrians, cyclists, when rollerblading, skateboarding, swimming, watersports or horse riding. **U/18**
4. Children's commercial communications should not show children using the internet without appropriate adult supervision. **U/18**



5. Children's commercial communications should not unreasonably show children using or close to dangerous substances or dangerous equipment, for example, matches, gas appliances, petrol, certain household substances or in possession of, or administering medicines unless under appropriate adult supervision. **U/15**

Behaviour

6. Children's commercial communications shall not encourage children to engage in, or be portrayed engaging in, anti-social behaviour, in particular bullying, taunting or teasing other children, unless the sole purpose of the commercial communication is to discourage such behaviour. **U/18**
7. Children's commercial communications should not disparage education or condone aggression or greed as admirable qualities. **U/18**

10. Violence

1. Children's commercial communications should not generally, as a principle, include violence or include scenes that will cause distress to children. **U/18**
2. In instances where the inclusion of violent scenes may be necessary as part of a public service message or in order to demonstrate the product or service, broadcasters must schedule responsibly so as to ensure that such children's commercial communications do not cause distress to children of this age group. **U/6**

11. Diet and Nutrition

1. Children's commercial communications shall be responsible in the manner in which food is portrayed. They should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption, excessive or compulsive eating. **U/18**
2. Children's commercial communications representing mealtimes should clearly and adequately depict the role of the product or service within the framework of a balanced diet. **U/18**

**Guidance**

The rule only applies in the case of mealtimes. Mealtime should be interpreted in its common-sense meaning, namely, the hour at which a meal is habitually or customarily eaten and the foods generally associated with these periods of the day i.e. breakfast, lunch and dinner times. It is a matter for the advertisers/broadcasters to determine whether the commercial communication includes a representation of mealtime. This is because they are familiar with and responsible for producing and/or clearing the communication and the content.

Content that would indicate mealtime includes: the presence of family; the setting for the meal e.g. at home and at a dining, kitchen table; the type of food and its association with mealtime e.g. breakfast cereal; the time of day (where evident); whether the food promoted is substantial and would constitute a meal; etc. Clearly, food and drink not intended to constitute a meal are not covered by this rule i.e. snacks.

3. Children's commercial communications must not contain any misleading or incorrect information about the nutritional value of a product. They must not make misleading or incorrect comparisons between foods. They must not imply that particular foods are a substitute or replacement for fruit and/or vegetables. **U/18**

Children's commercial communications for HFSS food products and/or services.

The following rules shall apply to children's commercial communications for HFSS food products and/or services.

Guidance

These rules apply to commercial communications for HFSS food products and/or services. HFSS foods are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI. The rules prohibit the promotion of such foods in children's programming as defined by this Code. In addition, children's communications for HFSS food products and/or services that are broadcast outside of children's programme and which are of particular interest to children must comply with a number of content rules. Specifically, the Code restricts the use of celebrities, licensed or programme characters in such commercial communications. Health and nutrition claims and promotional offers are also restricted. The rules apply to food products and services. This includes commercial communications promoting brands.

In terms of assessing whether a commercial communications is for a HFSS food product and/or service broadcasters are advised to take into account the following additional considerations:-



- *Whether the commercial communication refers to or prominently features an identifiable HFSS food product and/or service. In the case of commercial communications where a HFSS product is included as a recipe or presented in a basket of goods, broadcasters should assess whether the presence of the product in the communication is predominant.*
- *Whether the commercial communications encourages the purchase of a specific HFSS food product and/or service.*
- *Whether the commercial communication refers to or features a brand name that is synonymous with a specific HFSS product and/or service. That name could be featured on other products or product variants but is inextricably linked to a specific HFSS product.*

Broadcaster should note that commercial communications for cheese products are exempted from the rules pertaining to HFSS food products and services e.g. a block of cheddar. As such, they may be promoted during children's programmes. Such commercial communications must nevertheless comply with the Diet and Nutrition rules and with the general rules of the Code. The exemption does not apply in the case of products where cheese is a recipe.

Direction in respect of Children's commercial communications for cheese

Children's Commercial communications for cheese products must be accompanied by the following on-screen message:-

"Children should consume no more than a small matchbox size piece of cheese a day and lower fat choices are more suitable."

Broadcasters should also note that, subject to Rule 6(9), all taglines must be spoken where the commercial communication is broadcast during a programme for those under-6 years of age or where the product/service is likely to be of particular interest to this age group on account of the product/service promoted or by virtue of the content of the communication.

4. Commercial communications for HFSS food products and/or services shall not be permitted in children's programmes as defined by this Code. **U/18**

Direction in respect of HFSS food products/services during children's programmes

*Further to rule 4, children's commercial communication promoting a food or drink product and/or service assessed as HFSS further to the Nutrient Profiling Model (as adopted by the BAI) should not be aired during children's programmes as defined by this Code. In this regard, broadcasters are required to ensure the appropriate scheduling of any script supplied to it for a food product/service where it is intended to be broadcast during children's programming as defined by the Code. Specifically, broadcasters must receive from advertisers a Nutrition Profile Certificate. This will certify that the food or drink commercial communication being broadcast during the children's programme **is not for a HFSS food product and/or service** and it therefore appropriate for scheduling during such programming.*



A template certificate is provided on the BAI's website. Broadcasters can tailor the certificate to meet their procedures. However, any amended form must include information contained on the template. In the event of a complaint, a broadcaster will be required to provide a copy of the certificate in its response to the BAI to the complaint made.

Guidance

The remainder of the HFSS food rules contained in section 11 apply to children's commercial communications that are broadcast outside of children's programmes i.e. commercials for a HFSS food product and/or service that are deemed to be of particular interest to children. In determining whether a product is of particular interest to children, broadcasters are advised to consider, on a case-by case basis whether:-

- *The food product and/or service being promoted is one that is of exclusive interest to children.*
- *The creative approach is such that the promotion is clearly intended to target children via content such as the theme, visuals and language used, even in instance where the item promoted is not of exclusive interest to children.*

Direction in respect of HFSS food products/services outside of children's programmes

*In order to meet the content rules pertaining to requirement for HFSS food, broadcasters must be in a position to determine whether the food product and /or service being promoted to children is a HFSS food and therefore subject to content restrictions. For this reason, a Nutrition Profile Certificate should be requested from advertisers who wish to promote food to children outside of children's programming. This will certify that the children's commercial communication for food broadcast outside of children's programmes **is not for a HFSS food product and/or service** and it therefore not subject to the HFSS content rules.*

5. Children's commercial communications for HFSS food products and/or services shall not include licensed characters. **U/18**

Guidance

A licensed character is defined in section 2 of the Code. Such characters may not be included in children's commercial communications assessed by the Nutrient Profiling Model as a HFSS food. This rule does not apply to equity brand characters i.e. characters originally devised for marketing purposes, such as those associated with some breakfast cereals e.g. Tony the Tiger, Snap Crackle and Pop. Notwithstanding this, the use of such characters are governed by the Code and must be used responsibly in accordance with the Diet and Nutrition rules and the general rules of the Code.



6. Children's commercial communications for HFSS food products and/or services shall not include health and nutrition claims. **U/13**

Guidance

The BAI General and Commercial Communications Codes include rules in respect of health and nutrition claims. Broadcasters should familiarise themselves with the relevant Irish and European legislation governing this type of commercial communication, in particular, Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (the EU regulation) and related legislation.

The EU Regulation is mandatory and seeks to protect consumers from misleading or false claims. Specific conditions of use associated with authorised health and nutrition claims are determined at a European level. The EU Register of health and nutrition claims (the EU Register) lists all authorised health and nutrition claims as well as non-authorised health claims that have been rejected. It is available at: <http://ec.europa.eu/nuhclaims/>.

Further to rule 6, where a product/service is assessed as an HFSS food and where it is a children's commercial communication of particular interest to primary and pre-school children (i.e. those under the age of 13), it may not include a health or nutrition claims.

In determining whether a product is of particular interest to children of this age, broadcasters are advised to consider, on a case-by case basis whether:-

- *The food product and/or service being promoted is one that is of exclusive interest to these children i.e. something that only under-13 years olds would be interested in.*
- *The creative approach is such that the promotion is clearly intended to target children of this age group via content such as the themes, visuals and language used, even in instance where the item promoted is not of exclusive interest to children.*

Further to the EU regulation, a 'nutrition claim' means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to: -

(a) the energy (calorific value) it:-

- (i) provides,*
- (ii) provides at a reduced or increased rate, or*
- (iii) does not provide; and/or*

(b) the nutrients or other substances it:-

- (i) contains,*
- (ii) contains in reduced or increased proportions, or*
- (iii) does not contain;*



A 'health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health (for example, "aids digestion").

Broadcasters should also note the definition of a 'Reduction of disease risk claim' included in EU regulation. This means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

Further information on nutrition claims is available on the website of the Food Safety Authority of Ireland (www.fsai.ie).

7. Children's commercial communications for HFSS food products and/or services shall not include promotional offers. **U/13**

Guidance

A promotional offer is a marketing technique used to encourage the sale of a product or service. Promotional offers include gifts, collectibles and prizes that can be attained directly via the purchase of the product or service or an offer that can be attained via the collection of tokens or coupons following more than one purchase of a food product and/or service.

This rule prohibits the inclusion of promotional offers in children's commercial communications for HFSS food products and/or services where the commercial is for a product and/or service that is of particular interest to pre-school or primary school children i.e. those under 13 years of age. In determining whether a product/service is of particular interest to children of this age, broadcasters are advised to consider, on a case-by case basis whether:-

- The food product and/or service being promoted is one that is of exclusive interest to these children i.e. something that only under-13 years olds would be interested in.
- The creative approach is such that the promotion is clearly intended to target children of this age group via content such as the themes, visuals and language used, even in instance where the item promoted is not of exclusive interest to children.

Fast Food and Confectionery

8. All children's commercial communications for fast food products, outlets and/or brands must display an acoustic or visual message stating 'should be eaten in moderation and as part of a balanced diet'. 'Fast food' is defined as 'food coming under the recognised character of fast food and/or inexpensive cooked food which is prepared and served quickly and is readily accessible for purchase by children'.



It is not the intention of the definition to include prepared and convenience foods or food which is purchased for preparation and cooking in the home. Fast food in this instance does not refer to the actual amount of time required to cook the food but rather the speed and ease with which the food can be procured and consumed. **U/18**

9. Children's commercial communications for confectionery products must display an acoustic or visual message stating that 'snacking on sugary foods and drinks can damage teeth.' 'Confectionery' in this instance includes sugar, honey, preserves, chocolate covered bars (excluding biscuits), non-chocolate confectionery – e.g. cereal bars – and artificial sweeteners³. Carbonated drinks are included, with the exception of water. **U/18**

Guidance

Broadcasters should note that, further to section 15, the promotion of slimming products or services is prohibited by this Code. Therefore, commercial communications for slimming food products and/or services (including diet drinks) cannot be included in children's programming, or promoted to children outside of children's programming. This does not prohibit the promotion of such drinks to adults outside of children's programmes. Children's commercial communications for fast food and confectionary that are assessed by the Nutrient Profiling Model (as adopted by the BAI) as HFSS will not be permitted in children's programming.

Celebrities

10. Children's commercial communications shall not portray or refer to celebrities or sports stars to promote food or drink products (including HFSS food products and/or services), unless the commercial communication is part of a public health or education campaign. Celebrities in this instance are defined as persons who are widely acclaimed, or honoured and/or known to children. It does not include those persons or characters that become known to children solely as a result of their participation in commercial communications. **U/15**
11. Broadcasters shall comply with directions, issued from time-to-time by the Authority, in respect of this section of the Code. **U/18**

³ This definition of 'confectionery' is in accordance with the Food Safety Authority of Ireland. Samples are classified by EU category as defined by the European Communities. See Food Safety Authority of Ireland (2001), Guidance Note on the EU Classification of Food No. 2, p.15. For further clarification on the foodstuffs identified, see FSAI (2001) - Appendix 1, p.44. A copy of the FSAI, Guidance Note on EU classification of foods is available here: http://www.fsai.ie/resources_and_publications/guidance_notes.html



12. Parental Responsibility

Parents and guardians have primary responsibility for children but those responsible for commercial communications (including broadcasters) should support the parent/guardian relationship with children by scheduling responsibly and by not undermining the authority, responsibility or judgement of parents or guardians in the content of children's commercial communications. This includes the use of plot lines that encourage children to deceive or manipulate adults into purchasing or providing the product or service promoted.

Children's commercial communications shall not suggest that a parent, guardian or adult who purchases or provides a product or service for the child, is better, more intelligent or more generous than one who does not. **U/18**

13. Programme Characters

Characters and personalities from children's programmes which are currently broadcast on indigenous services shall not be used to promote products or services (including HFSS food products and/or services) in children's commercial communications. In this instance 'currently' means regular programming that is due for return in the next broadcast season.

This provision does not apply to children's commercial communications for products, events or services, directly associated with programmes in which the characters or personalities normally appear.

In the case of children's commercial communications for products, events or services directly associated with the children's programme, these must not be broadcast for two hours prior to the beginning and following the end of the programme in question. **U/18**

Guidance

This rule means that characters and personalities from children's programmes currently broadcast on indigenous services cannot promote products, services, etc that are not directly associated with the programme in which the characters feature e.g. DVDs, books, Dolls etc.



14. Children's Advertising, Children's Sponsorship and Children's Product Placement

1. Except where otherwise indicated, children's advertising, children's sponsorship and children's product placement falling within the scope of this Code shall comply with Section 4 (Rules pertaining to Advertising & Teleshopping) Section 6 (Rules pertaining to Sponsorship) and Section 7 (Television Product Placement) of the General Commercial Communications Code. **U/18**

Guidance

Broadcasters should note that the rules and direction provided in the General Code on Commercial Communications in respect of permitted television product placement also applies to placement coming within the scope of this Code. Further details are provided in the Guidance Notes accompanying the General Code on Commercial Communications, to which broadcasters should refer. Broadcasters should note that paid product placement is prohibited by the BAI Children's Commercial Communications Code.

2. Children's Advertising shall be clearly separate from programme content and must not include excerpts from children's programmes that might blur the distinction between advertising and programme content. **U/18**
3. Christmas themed children's advertising may not be broadcast prior to November 1st each year. Christmas themed children's advertising refers to advertising that contains references, either visual or acoustic, to Christmas. **U/18**
4. A children's programme of less than 30 minutes scheduled duration may not be interrupted by advertising. Programmes with a scheduled duration of 30 minutes or greater may be interrupted by advertising once for each scheduled period of 30 minutes. **U/18**
5. Sponsor logos may not be shown during the editorial segments of Children's Programmes. **U/18**
6. Sponsors of Children's Programmes may not place their product and/or services in the sponsored programme. **U/18**



15. Prohibitions and Restrictions

1. Sections 8 and 9 of the General Commercial Communications Code detail prohibitions and restrictions on a range of products and services. Except where otherwise indicated, these prohibitions and restrictions shall apply to commercial communications falling within the scope of this Code. **U/18**
2. In addition to the prohibitions and restrictions listed in the General Commercial Communications Code, children's commercial communications containing the following are prohibited:-
 - Betting and Gaming services or products (except the National Lottery as permitted by the National Lottery Act 1986).
 - Slimming products and services (slimming being defined as weight reduction, limitation or control).
 - Introduction and dating services.
 - Services of a sexual nature.
 - Teleshopping.
 - Split-screen, interactive and virtual advertising.
 - Paid product placement.
 - Surgical and non-surgical cosmetic procedures.
 - Fortune Tellers, psychics etc.

Broadcasters should be aware that other classes of commercial communication are prohibited, limited or otherwise restricted by legislative or regulatory provisions. A guide to these provisions is contained in the Appendix to this Code and this guide should not be deemed to be exhaustive. **U/18**

Guidance

The General Code on Commercial Communications prohibits the promotion of: products, service and treatments only available on prescription; cigarettes and tobacco, infant formula; advertisements prohibited further to sub-sections 41(3) & (4) of the Broadcasting Act 2009. This General Code also includes rules restricting the promotion of: medicines, medical treatments, products and services; foods (including beverages); financial services and products, and; premium-rate telecommunication services. Broadcasters are also reminded of the requirement to comply with the Alcohol, Marketing, Communications and Sponsorship Code of Practice. A copy of this Code is available to view at www.iapi.ie. Further information on alcohol advertising for radio broadcasters is available at www.ibireland.ie. Broadcasters are advised to review the guidance notes on the General Code on Commercial Communications for more information on the restrictions contained under this heading.



**APPENDICES TO CHILDREN'S
COMMERCIAL COMMUNICATIONS CODE**



1. Related Legislation

The following is a non-exhaustive guide to the principal legislation which may restrict, control or otherwise affect commercial communications in Ireland. This list is for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case as well as any updates, repeals or amendments made to the relevant legislation.

Broadcasting Legislation:

Broadcasting Authority Act, 1960
Broadcasting Authority (Amendment) Act, 1976
Broadcasting and Wireless Telegraphy Act, 1988
Broadcasting Act, 1990
Broadcasting Act, 2009

Other National Legislation:

Adoption Acts 1952 to 1998.

Animal Remedies Act 1993.

Animal Remedies (Control of Sale) Regulations 1985-1991 (S.I. 258/1985, S.I. 244/1991).

Betting Act 1931.

Building Societies Act 1989 as amended by 2006 Act.

Central Bank and Financial Services Authority of Ireland Acts 2003 and 2004.

Central Bank Acts 1942-1998.

Censorship of Films Acts 1923-1992.

Censorship of Publications Acts 1929 to 1967.

Censorship of Publications Regulations 1980 (S.I. 292/1980).



Child Trafficking and Pornography Act 1998.

Child Trafficking and Pornography (Amendment) Act, 2004.

Companies Acts 1963-2009.

Consumer Credit Act 1995.

Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996).

Consumer Protection Act, 2007.

Consumer Information (Advertisement for Concert or Theatre Performances) Order 1997 (S.I. 103/1997).

Consumer Information (Advertisements)(Disclosure of Business Interest) Order 1984 (S.I. 168/1984).

Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000).

Consumer Information (Miscellaneous Goods)(Marking) Order, 1984 (S.I. 178/1984).

Copyright Act 1963.

Copyright and Related Rights Acts 2000 and 2004.

Credit Union Act 1997.

Criminal Justice (Theft and Fraud Offences) Act 2001.

Data Protection Acts 1988 and 2003.

Dairy Products Acts 1924 to 1947.

Defamation Act 2009.

Defence Acts 1954 to 2007.



Employment Agency Act 1971.

Employment Agency Regulations 1972 to 1993 (S.I. 27/1971, S.I. 255/1972, S.I. 49/1993).

Employment Equality Acts 1998 and 2004.

Gaming and Lotteries Acts 1956 to 1979.

Hallmarking Act 1981.

Health (Foods for Particular Nutritional Uses) Regulations 1991 (S.I. 331/1991).

Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961).

Industrial and Commercial Property (Protection) Acts 1927 to 1958.

Industrial Research and Standard Acts 1961 and 1979.

Insurance Acts 1909 to 2000.

Investment Intermediaries Act 1995.

Licensing Acts 1833 to 2008.

Investor Compensation Act 1998.

Medicinal Products (Control of Advertising) Regulations 2007 (S.I. 541/2007).

Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993, S.I. 440/1994, 187/1999).

Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984, S.I. 347/1989, S.I. 70/1993, S.I. 439/1994).

Medicinal Products (Prescription and Control of Supply) Regulations 2003 as amended (S.I. 540/2003).

Medicinal Products (Licensing and Sale) Regulations 1998 (S.I. 142/1998) and 2001.



Merchandise Marks Act 1970.

Metrology Act 1996.

Milk and Dairies Acts 1935 and 1956.

Occasional Trading Act 1979 as amended by the Casual Trading Act 1995.

Official Languages Act 2003.

Opticians Acts 1956 and 2003.

Package Holidays and Travel Trade Act 1995.

Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973).

Public Health (Tobacco) Acts 2002 to 2009.

Red Cross Acts 1938 to 1954.

Sale of Goods and Supply of Services Act 1980.

Solicitors Acts 1954 to 2002 Solicitors (Advertising) Regulations 2002 (S.I. 518/2002).

Solicitors Acts 1954-2002.

Stock Exchange Act 1995.

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991-2009 (S.I. 326/1991, S.I. 215/2000, S.I. 243/2009).

Tourist Traffic Acts 1939 to 1988.

Trade Marks Acts 1996.

Trustee Savings Banks Acts 1989 and 2001.

Unit Trusts Act 1990.



Rights

Equal Status Acts 2000 to 2004.

Equality Act 2004.

European Convention on Human Rights Act 2003.

Prohibition on Incitement to Hatred Act 1989.

European-Based Legislation

Council Directive 2010/13/EU (Audiovisual Media Services Directive)

S.I. No. 258/2010 (European Communities (Audiovisual Media Services) Regulations 2010).

Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European Communities (Fruit and Vegetables) Regulations 1997 (S.I. 122/1997).

European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 as amended (S.I. 83/2003).

Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003).

European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations 1995 (S.I. 300/1995).

European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998).

European Communities (Classification, Packaging and Labelling of Pesticides) Regulations 1994 (S.I. 138/1994).

European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001).

European Communities (Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. 290/2006).

European Communities (Cosmetic Products) Regulations 1997-2006 (S.I. 87/1997, S.I. 213/1998, S.I. 150/2000, S.I. 203/200, S.I. 373/2006).



European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. 853/2004).

European Communities (Distance Marketing) of Consumer Financial Services) (Amendment) Regulations 2005 (S.I. 63/2005).

European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003).

European Communities (Infant Formulae and Follow-on Formulae) Regulations 1998 to 2000 (S.I. 243/1998, S.I.446/2000).

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000 and 2002 (S.I. 92/2000, S.I. 483/2002).

European Communities (Life Assurance) Framework Regulations 1994 (S.I. 360/1994).

European Communities (Misleading Advertising) Regulations 1988 (S.I. 134/1988).

Directives on Misleading and Comparative Advertising – 84/450/EEC, 97/55/EC, 05/29/EC.

European Communities (Names and Labelling of Textile Products) Regulations 1998 (S.I. 245/1998).

European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. 359/1994).

European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. 639/2002).

European Communities (Pesticides Residues) (Feeding Stuffs) Regulations 1992 (S.I. 40/1992).

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 (S.I. 207/2001).

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) (Amendment) Regulations 2005 (S.I. 71/2005).



European Communities (Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs) Regulations 1995 and 1999 (S.I. 148/1995, S.I. 275/1999).

European Communities (Supply of Information on the Origin Identification and Destination of Bovine Animals) Regulation 1999 (S.I. 258/1999).

European Communities (Television Broadcasting) Regulations 1999 (S.I. 313/1999).

European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 (S.I. 211/2003) (as amended).

Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005).

Means of Distance Communications (Amendment) Regulations 2005 (S.I. 71/2005).

Poisons (Control of Residues in Foods of Animal Origin) Regulations 1985 and 1986 (S.I. 257/85, S.I. 236/86).

Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/2005).

European Communities (Directive 1924/2006) on Nutrition and Health Claims Made on Foods.



2. Nutrient Profiling Model

For the purpose of this Code, the Nutrient Profiling Model developed by the UK Food Standards Agency should be used to assess whether commercial communications is for a product or service that is high in fat, salt or sugar and therefore subject to restrictions and regulation. There are three steps to working out the overall score of a food or drink.

i) Work out total 'A' points

A maximum of ten points can be awarded for each nutrient.

Total 'A' points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The following table indicates the points scored, depending on the amount of each nutrient in 100g of the food or drink:

Points Allocation 'A' Nutrients

Points	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more 'A' points then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.



ii) Work out total 'C' points

A maximum of five points can be awarded for each nutrient/food component.

Total 'C' points = (points for % fruit, vegetable & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the amount of each nutrient/food component in 100g of the food or drink:-

Points Allocation 'C' Nutrients:

Points	Fruit, Veg and Nuts (%)	N&P Fibre (g)	Or AOAC Fibre ⁴ (g)	Protein (g)
0	≤40	≤0.7	≤0.9	≤1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

iii) Work out overall score

- If a food scores **less than 11 'A' points** then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

- If a food scores **11 or more 'A' points** but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

⁴ One or other of the dietary fibre columns should be chosen to how the fibre content of the food or beverage was calculated by the manufacturer.



- If a food scores **11 or more 'A' points, and less than 5 points for fruit, vegetables and nuts**, then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total points for fibre + points for fruit, vegetables and nuts (not allowed to score for protein)

A **food** is classified as 'less healthy' where it scores **4 points or more and is subject to the restrictions in the Code.**

A **drink** is classified as 'less healthy' where it scores **1 point or more and is subject to the restrictions in the Code.**

For further detail on the application of this model, please refer to separate guidance provided by the BAI and published on www.bai.ie.



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Appendix 2 – Jurisdictional Review

Jurisdictional Review of the Broadcasting Authority of Ireland's Children's Commercial Communications Code

Prepared on behalf of the Broadcasting Authority of Ireland (BAI)

Deirdre Kevin, Commsol Ltd

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1. Executive Summary

This review examines the regulations, codes and guidelines regarding children's audiovisual commercial communications (ACC)¹ in a range of European and non-European Jurisdictions. The purpose is to provide an overview of recent trends and developments in the regulation of this field. In-depth reports are provided on Austria, Australia, Canada, France, Germany, New Zealand, the UK and the USA. Reference is also made to a range of other European countries such as Norway, Poland, Slovenia, Spain and Sweden where relevant approaches or policies where noted.

The main issues of concern which emerged in the review and in current debates regarding children's commercial communications are: firstly, the ongoing concerns regarding health and obesity and the extent to which children continue to be exposed to marketing for food and beverages that can contribute to unhealthy diets: and secondly, the way in which new forms of advertising – in particular online – are posing new challenges for traditional modes of regulation, and also requiring new approaches to issues of protection of children in the online world.

The global regulatory approach and the rights of the child

The report first focuses on the global regulatory approach to protecting children in the digital world, and in particular with regard to commercial communications. The regulation of commercial communications forms part of the overall protection of minors in relation to preventing physical and moral harm. In addition, there is an increasing focus on a rights-based approach to protecting children as they are a more vulnerable section of the community. There are several international treaties and conventions that outline the range of children's rights that must be protected. These rights form the basis of regulations and recommendations of the United Nations, the Council of Europe and the European Union. A central tenet is the principle that in the context of policy decisions, the best interests of the child shall be a primary consideration. Chapter three provides more detail on these issues.

Rights considered in the children's rights-based approach include (among others): freedom of expression and access to information alongside protection in the digital world; the right to the enjoyment of the highest attainable standards of health: and the right to protection from the impact of business activities. Several of the legislative approaches reviewed in this report emanate from health policies and legislation (Canada, France) and others from consumer protection law (Canada) or data protection law (USA). Hence, it is not only audiovisual law and the protection of minors that provides a source for the regulation of audiovisual commercial communications in relation to children.

An area of particular significance with regard to children's commercial communications is the right of the child to the enjoyment of the highest attainable standards of health. The World Health Organisation in its strategy on childhood obesity has issued recommendations regarding the marketing of food and non-alcoholic beverages to children, and in particular called on governments to ensure that policies developed to this end should include a monitoring system to ensure compliance and should include a system to evaluate the impact and effectiveness of policies.

Consumer protection and data protection

Respecting the rights of the child in the digital environment is an issue addressed both at the Council of Europe and the EU level, in particular in relation to data protection and privacy. The

¹ While this report reviews "audiovisual commercial communications", these are frequently also referred to as "advertisements" as this reflects the language in non-EU jurisdictions and often the language used in English translations of several EU regulations and codes.

Council of Europe's Council of Ministers' Recommendation on children's rights in the digital environment recommends that States should take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing. This includes ensuring that business enterprises do not engage in unfair commercial practices towards children, requiring that digital advertising and marketing towards children is clearly distinguishable to them as such, and requiring all relevant stakeholders to limit the processing of children's personal data for commercial purposes. Children's personal data should be processed fairly, lawfully, accurately and securely. The recommendation also stresses that profiling of children should be prohibited.

The European Union General Data Protection Regulation (GDPR) stresses the special protection of children's personal data, including in the context of collection of data for the purposes of marketing. The regulation establishes that a child must be at least 16 before they can themselves consent to the processing of data (while an exception to this rule allow for Member States to provide by law for a lower age for those purposes provided that such a lower age is not below 13 years). Many jurisdictions have included this aspect of consent in the rules on children's commercial communications (Australia, France, Ireland, New Zealand, the UK and USA), although not necessarily with the age specification. The revised Audiovisual Media Services Directive requires that age verification tools are used for protecting minors from harmful content and prohibits the data used in these systems to be used for marketing to children.

Revision of the AVMS Directive

The new revised AVMS Directive has introduced some changes with regard to types of advertising, duration of advertising and placement of advertising: teleshopping is now prohibited in children's programming; product placement is still prohibited; and states may choose whether to prohibit sponsorship. Audiovisual commercial communications have been re-defined to include, alongside that in programming, advertising in user-generated videos.

One significant change with regard to commercial communications is the inclusion of video-sharing-platforms (VSPs) in the Directive and the requirement that they respect the obligations with regard to the content of audiovisual commercial communications targeting children.

Hence, a major challenge for EU Member States and for regulators is the regulation of commercial communications in on-demand services, and particularly those that appear in programmes and user-generated-videos on VSPs. Several examples of approaches to this issue are already emerging and will be summarised below.

There is a strong encouragement to use co-regulation and self-regulation to enhance protection of minors and to reduce the exposure of children to certain kinds of advertising such as alcohol and gambling, and also unhealthy food marketing. These regimes are also encouraged for the regulation of advertising on video-sharing platforms. The Directive stresses that self-regulation should be a complement to, rather than a substitute for, regulation on this issue. It also recognises the importance of having regulatory back-stops as in the case of co-regulatory regimes.

Definitions and understanding of children's commercial communications

It is necessary at the outset to note that the regulation of advertising and commercial communications with regard to children is complex and frequently considered from several perspectives. The age of the audience plays an important role with regard to the levels of protection. Research confirms the fact that children have phases of development with regards to their comprehension of advertising and its purpose. Growing levels of understanding appear

to develop at ages 5-6, and at ages 8-9, and 12-13. This is illustrated in the range of age distinctions in the definition of children – often with distinctions between children (usually up to 12, 13 or 14) and youth (12 or 13 to 18), or in the case of the BAI code using 4 different age groupings for various rules.

Firstly, there is general advertising, which is subject to a range of regulations and rules regarding its content in order to prevent “moral physical or mental detriment to minors”. Hence, all advertising is in some way regulated in order to protect children and/minors. This is achieved either by banning the advertisement of certain products (tobacco products is the most obvious example), or by regulating the way in which others are advertised, or using scheduling rules to limit the exposure of children and minors to particular types of advertising content (alcohol and programmes, films services for adults is an example).

Second, there is a category of advertising which can be considered as “likely to be seen” by children, or advertising “that appeals to children”. This type of advertising does not target children per se, or may not feature products or services that are primarily of interest to children. It can be that it is broadcast around other programme “likely to be seen” such as family programming or programming for older siblings. Third, there is the category of advertising that specifically targets children, in that: it promotes products or services that are primarily of interest to children; or by its design (images, music, language) it is clear that it is targeting children; or by its placement in the schedule around children's programming.

The report (chapter four) looks in detail at the various definitions in different jurisdictions, which help to create an understanding of what are “children's commercial communications”, what are commercial communications “likely to be seen by children”, and highly relevant to this the question of what is “children's programming”, and what is “programming of particular appeal to children”.

Establishing when the rules for children's commercial communications are triggered

Linked to the issue above regarding identification of children's programming or programming of appeal to children, is the range of criteria that determine when the rules for children's commercial communications are triggered. In some jurisdictions, this is not very clear, except where commercial communications should not interrupt children's programming (Germany for all types of TV channels, and Austria for public service broadcasters), or where they should not be placed adjacent to, or directly before or after children's programmes (Austria).

In Australia, the presence of programme time slots targeting pre-school children and older children clarify the time blocks where advertising should not be shown (around and during pre-school children programming periods).

Many jurisdictions use either an audience assessment model, or a more quantitative approach looking at a range of factors relevant to the programme and its scheduling, or a combination of both. The trigger for the implementation of child protection rules relates to the proportion of the audience that are children (as defined according to age, which in this study ranges from 12 - 18). A significant proportion of children in the audience (or expected in the audience) ranges from 15% in Canada, to 25% in New Zealand to 50% in Ireland. This would suggest that rules on commercial communications are triggered far more often in programming in Canada and New Zealand than in Ireland. In the UK a more complicated assessment is used to assess where a programme is of particular appeal to children. For example, if a programme is viewed by 10% of the total entire potential viewing population, and at the same time is viewed by 12% of the entire potential 10-15-year-old age group, then this programme is considered to be of particular appeal to children between 10 and 15.

Qualitative assessments are often used, and sometimes are used in conjunction with the audience measurement. In most cases, note needs to be taken of several criteria. Broadly speaking, they cover labelling of programmes (Australia, Ireland, Canada), programmes targeting an age group (Canada, France, Norway, UK), characteristics and content of programmes (Australia, Germany, New Zealand, Norway, USA), audiences of programmes (Canada, Ireland, Norway, UK, USA) and time scheduling of programmes (Australia, Germany, Ireland, New Zealand, Norway).

Principles and themes

Chapter 5 looks at the content of the various codes relevant to children's commercial communications. The key legal instrument in this context is the Audiovisual Media Services Directive. The main principles underlying rules on audiovisual commercial communications contained in the Directive, which apply to all ACC at the EU level are that they should be readily recognisable; should not use subliminal techniques; should not prejudice respect for human dignity; should be non-discriminatory; should not encourage behaviour prejudicial to health or safety; and should not encourage behaviour grossly prejudicial to the protection of the environment.

In particular, the Directive requires that children's commercial communications should not cause physical, mental or moral detriment to minors; in particular by directly exhorting minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encouraging them to persuade their parents or others to purchase the goods or services being advertised, exploiting the special trust minors place in parents, teachers or other persons, or unreasonably showing minors in dangerous situations.

These issues are addressed in a wide range of rules outlined in chapter five, and illustrated in comparative tables. These tables look at the ways in which children can be protected from exploitation and also focus on a wide range of products and services which are banned, limited or restricted from advertising directed at children, or likely to be seen by children. One table also summarises a significant collection of rules with regard to the types of behaviour, lifestyles, attitudes that should not be depicted in commercial communications directed at children, or likely to be seen by children, in order to prevent physical, mental or moral detriment.

National approaches: bans, restrictions and limitations

There are a significant number of bans (outright or partial) on audiovisual commercial communications that target children or that can potentially be seen by children in a wide range of countries. Approaches to this issue are explored in chapter three (and in table 4.3).

Commercial communications in children's television are completely banned in Norway, Sweden and in the Quebec province in Canada. In those countries where there is no outright ban, it is frequently the case that public service broadcasters may be subject to more stringent regulation than private broadcasters. The public broadcasters in Sweden and the BBC channels in the UK do not have any advertising. In Germany and France advertising on public television is strongly restricted, while the French introduced a complete ban on commercial communications around children's programming in 2016. German public thematic channels including the children's channel Kika and German regional public broadcasters are not permitted to show advertising. In Austria, advertising on public television may neither interrupt children's programmes nor place advertising specifically aimed at minors directly before or after children's programmes. No other particular distinctions were noted with respect to different types of audiovisual media or types of channels. The most important developments concern the growing development of regulation of on-demand services, which is dealt with in more detail below.

A final and growing trend regarding prohibiting or restricting types of commercial communications targeting, or likely to be seen by, children are those for HFSS foods. These may not be shown around programmes for children (under 18) in Ireland and in the (under 16) in the UK. Details are provided on this in chapter seven. The self-regulatory system in New Zealand has also banned this type of advertising and a Canadian federal law on this issue is pending. Given the stronger focus in the new Directive aiming to reduce exposure of children to marketing of these foods, the trend towards bans or restrictions is likely to continue.

On-demand audiovisual services and online advertising

Chapter six focuses on developments with regard to audiovisual on-demand services, new types of online advertising and also regarding approaches to video-sharing-platforms (VSPs), which are now part of the scope of the revised Audiovisual Media Services Directive. It is apparent that a significant portion of advertising revenue has moved online, and also that audiences and in particular young audiences are also moving towards online and on-demand audiovisual media. Initiatives such as media literacy and advertising literacy (some of which are noted in the report) are also an important element in approaches to the protection of children and the general public for online commercial communications.

The Directive's advertising rules now apply to user-generated content on video-sharing platforms. This will present a challenge for regulators. Self- and co-regulatory schemes are recommended to help deal with these platforms. However, as noted above, the Directive stresses that self-regulation should be a complement to, rather than a substitute for, regulation on this issue. It also recognises the importance of having regulatory back-stops as in the case of co-regulatory regimes.

Media literacy and advertising literacy are becoming increasingly important as a tool to improve to deal with new types of advertising, including in relation to children's advertising. There have also been several examples of the provision of guidance to Youtubers and Video Bloggers about labelling advertisements: from the Norwegian Media; the German DLM (Directors Conference of the State Media Authorities); and from several advertising industry standards authorities (notable in Ireland and the UK).

The rules and where to find them: regulation, co-regulation and self-regulation

On the question of whether child-focused rules are incorporated into or could be regarded as separate from rules of a more general nature relating to commercial communications within the relevant jurisdictions, there was a wide variety of ways in which this regulation is addressed. Approximately thirty codes from eight countries were reviewed for this report, which shows the complexity of assessing the entire systems of rules on commercial communications targeting, or likely to be seen by, children.

In the United Kingdom, a singular document (BCAP) is provided by the Advertising Standards Authority for all rules related to the content of advertising in broadcasting (144 pages), while a second document (CAP) relates to all rules on the content of advertising in all other media except broadcasting but including the Internet (and hence on-demand audiovisual media services).

The Irish example of having a separate but consolidated document focusing on only children's commercial communications is not typical. There are several countries with self-regulatory codes regarding children and commercial communications. But many of these are minimal and require reference to several other codes in order to have the full picture of the relevant rules.

For example, in France and Germany, it is necessary to review the general codes, the codes on children and young people, and a range of other codes covering, for example alcohol, gambling, food, digital advertising. It is often the case that codes on marketing of HFSS food are self-regulatory and separate to the general rules on advertising to children (Austria, Australia, France, Germany).

The prevailing approach to the regulation of advertising, marketing and commercial communications is largely self-regulatory approach – particularly in European countries such as Austria, France and Germany, and in the US. The use of stronger regimes such as regulatory or co-regulatory systems is less common but evident in Canada (broadly in relation to children’s television standards), Ireland and the UK.

It is worth noting that the concept of “self-regulation” encompasses a wide range of systems that are generally managed by the industry. A deeper analysis of the self-regulatory systems, which was not the purpose of this remit, would be required in order to assess how they operate. Self-regulatory systems are generally operated by the advertising industry, while other codes or regulations may be established by broadcasters or by the food industry itself. The systems established by the advertising industry may specifically concern advertising standards. Some organisations may have a system of mandatory clearance of advertising or a service providing pre-broadcast advice on advertising content. Some systems work on a complaint only basis while others just provide guidance on how not to fall foul of the law.

The AVMS Directive describes self-regulation as a complementary system, and stresses that it should not constitute a substitute for the obligations of the national legislator. The preamble also states that the existence of a legislative backstop was considered an important success factor in promoting compliance with a self- or co-regulatory code. The recommendations of the WHO organisation also state that all policy frameworks (with regard to reducing exposure of children to commercial communications for HFSS foods) should include a monitoring system to ensure compliance and should include a system to evaluate the impact and effectiveness of the policy.

Commercial Communications for food and beverages

Regulatory regimes introduced to regulate certain categories of food typically comprise general rules relating to the presentation of food and specific rules for certain types of food that are considered to be of less nutritional value and which may fall to be prohibited entirely: various terms such as ‘snack foods’, or foods high in energy, saturated fats, trans fats, sugar or salt (HFSS foods) are utilised. Several countries have outright bans on advertising for HFSS foods around children’s programming. This includes Ireland (children U18); the UK (children U16); and pending legislation in Canada (children U13). In New Zealand, the regulation of audiovisual commercial communications (and advertising in general) is entirely self-regulatory and managed by the industry itself, which has instituted a voluntary ban on advertising for HFSS foods in children’s programming (U14). In Poland, the industry has opted to voluntarily reduce such advertising in co-operation with the media regulator (children U12). Details are provided in chapter seven.

The revised AVMS requires Member States to encourage the use of co-and self-regulatory systems to reduce exposure of minors to commercial communications for unhealthy food. This echoes the World Health Organisation recommendation to reduce exposure to, and the impact of such commercial communications. It would appear that voluntary, self-regulatory, co-regulatory or legislative bans or restrictions are likely to become more widespread in the future.

The main challenge for regulators is extending these rules online audiovisual media. This was achieved in the UK, in relation to the ban on ACC for HFSS foods, by extending the ban via the co-regulatory system established with the Advertising Standards Authority.

Overview of the BAI Code on Children's Commercial Communications

In comparing the BAI code to those in eight other jurisdictions, and placing it in the context of global regulations and recommendations and particularly EU regulations, the following conclusions were reached.

One area that needs close consideration with regard to the BAI Children's Commercial Communications Code concerns the audience threshold criteria as a trigger for the application of rules. The BAI threshold of children making up 50% of the viewing audience is very high in comparison to that of other jurisdictions and codes, where for example the thresholds are: 15% of audiences under 13 (Canada) and 25% of audiences under 14 (New Zealand). Additionally, in the UK with regard to non-broadcast media (Internet, cinema, outdoor, magazines etc.) no medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries (Advertising Standards Authority UK, non-broadcast code). A further example is the approach taken in the self-regulation of the food industry – the EU Pledge - where the threshold is 35% or more of the audience under 12 years of age (recently reduced from 50%).

While noting that the BAI does not have authority to introduce regulation in respect of on-demand services, there would appear to be a need to consider broadening the scope of the application of rules to on-demand services. Were a legislative extension of the BAI's authority not envisioned, this could potentially be facilitated by closer co-operation with self-regulatory bodies or by the establishment of a co-regulatory system.

Regarding the themes addressed in the regulation of commercial communications relevant to children, an extensive range of comparative tables have been provided. It is apparent that the BAI code is one of the more comprehensive codes in terms of the range of issues covered in the rules provided. It should be noted that the rule on privacy (and data collection), may need to be updated according to the GDPR, requiring consent for under 16s.

In addition, as a single comprehensive code, it has become apparent through conducting this research the BAI Children's Commercial Communications Code is one of the more practical and accessible ways of facilitating the understanding of the application of child-focused rules.

2. Introduction, outline of report and methodology

The purpose of this report is to provide a jurisdictional review of regulations codes and guidelines regarding children's audiovisual commercial communications (ACC) in support of the current activities being carried out by the Broadcasting Authority of Ireland in the context of the review of its Children's Commercial Communications Code.

The study initially provides a brief overview of the European and global policy context – indicating current and future obligations of EU member States, of Council of Europe Members, and of relevant conventions and recommendations at the level of the United Nations and the World Health Organisation.

Chapter four examines a range of relevant definitions in relation to children's programming and children's audiovisual commercial communications. It also outlines legislative bans and restrictions in relation to children's audiovisual commercial communications. The various principles, themes and issues addressed in regulatory, co-regulatory and self-regulatory codes will be examined in chapter five.

Chapter six provides a thematic focus on developments in relation to ACC and on-demand audiovisual media services, and other online services relevant to children's commercial communications. Chapter seven provides a thematic focus on the regulation, co-regulation and self-regulation of ACC in relation to food high in fats, sugar and salts (HFSS codes). Chapter eight is a comparative review, on the basis of the previous chapters, of the BAI Children's Commercial Communications Code. An annex provides nine national reports with relevant legislative and regulatory documents, codes, guidance and charters.

Note on Methodology

This report was based on desk research of national and international laws, directives, regulations, policies, codes, guidelines and reports in a range of jurisdictions regarding the regulation of commercial communications relevant to children.

The European countries investigated in-depth were Austria, France, Germany and the UK. The non-European countries investigated in-depth were Australia, Canada, New Zealand and the USA. Reference is also made to other countries (for example Norway, Poland, Slovenia, Spain, Sweden, Chile, Mexico) where they were deemed relevant with regard to specific policies or approaches.

Resources used included a range of reports, research and policy recommendations at national and European level, and also relevant information from the European Platform of Regulatory Authorities (EPRA) such as background working papers, presentations and news items from EPRA members. Resources also included the websites, reports and codes of a range of self-regulatory bodies and advertising standards agencies.

The author would like to thank the following people for assistance in interpreting information: Maria Donde, Ofcom UK, Susanne Lackner, Communications Authority Austria, and Joanna Fell, BLM, Germany.

3. European and international obligations and guidelines

This chapter reviews international obligations and standards on the protection of children and minors in the context of commercial communications, by first examining UN and WHO obligations and guidelines, and then looking at Council of Europe recommendations and guidelines. This will be followed by a detailed look at the current regulatory regime of the EU and the changes introduced by the revision of the AVMS Directive.

3.1. United Nations and the rights of the child

Several reviews of the regulation of commercial communications focus on a rights-based approach to the protection of children.² The United Nations' Convention on the Rights of the Child (CRC) in article 3 stresses that: *in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration* (Article 3, 1).³

Articles of the Convention that are significant regarding the mass media, the digital environment, advertising and privacy are the following: article 12 (the right to express an opinion and to have that opinion taken into account), 13 (the right to freedom of expression and to obtain and impart information), 14 (the right to freedom of conscience, thought and religion), 16 (the right to protection from interference with privacy, family, home and correspondence), 17 (access to information and material from a diversity of national and international sources), and 31 (the right to participate in leisure, cultural and artistic activities).

Under Article 17:

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall: (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;... (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Privacy and data protection

In providing guidance on the CRC, the Committee on the Rights of the Child have frequently referred to the audiovisual media, including the importance of privacy and confidentiality in correspondence and communications, and with regard to access to information.⁴

² For example, the AdLit research group and: Verdoodt, V., E. Lievens and L. Hellemans (2015). *Mapping and analysis of the current legal framework of advertising aimed at minors*. Report from the AdLit research project. Document accessible at www.AdLit.be. See also WHO (2016): Tackling food marketing to children in a digital world: trans-disciplinary perspectives. [Available here](#)

³ United Nations Convention on the Rights of the Child. [Available here](#)

⁴ Committee on the Rights of the Child- General comment No. 20 (2016) on the implementation of the rights of the child during adolescence

In this context, the committee has also stressed that:

States are encouraged to require businesses to undertake child-rights due diligence with a view to identifying, preventing and mitigating the impact of risks on children's rights when using digital media and information and communications technology.⁵

Health issues and obesity

Regarding the right of the child to the enjoyment of the highest attainable standard of health, the Committee has stated that:

Article 24 paragraph 2 c ... (b) States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children's exposure to "fast foods" that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled⁶

Also, with regard to a range of products that should be considered in developing preventative health care, guidance for parents and family planning education and services:

States should protect children from solvents, alcohol, tobacco and illicit substances, increase the collection of relevant evidence and take appropriate measures to reduce the use of such substances among children. Regulation of the advertising and sale of substances harmful to children's health and of the promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children are recommended.⁷

The impact of business on children's rights

A further example concerns state obligations regarding the impact of the business sector on children's rights. In this context the Committee has stressed that:

Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.⁸

Hence, the children's rights approach incorporates (among others) freedom of expression and access to information alongside protection in the digital world, the right to the enjoyment of the highest attainable standards of health and the right to protection from the impact of business activities.

⁵ Ibid

⁶ Committee on the Rights of the Child - General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health

⁷ Ibid

⁸ Committee on the Rights of the Child - General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights

Several of the legislative approaches that will be reviewed in this report emanate from health policies and others from consumer protection law. Therefore, it is not only audiovisual law and the protection of minors that provides a source for the regulation of audiovisual commercial communications in relation to children.

Supporting the role of parents

The AdLit research (mentioned above)⁹ also looks at other aspects of the Convention on the Rights of the Child and the potential links to regulation of commercial communications. These include Article 5 that addresses the responsibilities, rights and obligations of parents (or legal guardians) to offer appropriate direction and guidance to children (in a manner consistent with the evolving capacities of the child) when exercising their rights. According to the Committee, States must “*render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities*”.

Right to engage in cultural life

Finally, the AdLit study refers to the right to participate in leisure, culture and art (Article 31), which requires States to “*recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts*”. While the digital world provides great opportunities for increased participation of children, the Committee on the Rights of the Child also expresses concern that global marketing can serve to weaken children’s participation in the traditional cultural and artistic life of their community.¹⁰

3.2. World Health Organisation

The World Health Organisation (WHO) plays a prominent role as an agency of the United Nations in promoting world health and gathering statistics on world health trends. In the context of non-communicable diseases and in particular obesity, there is a strong emphasis on the marketing of foods. The WHO 2016 report on childhood obesity stated that:

*School-age children and adolescents, whether in formal education or out of school, face particular challenges. They are highly susceptible to the marketing of unhealthy foods and sugar-sweetened beverages, to peer pressure and perceptions of ideal body image.*¹¹

The report urges states to implement the set of recommendations on the marketing of foods and non-alcoholic beverages to children (resolution WHA63.14) endorsed by the WHO Member States at the Sixty-third World Health Assembly in May 2010.¹² These recommendations stress the dual aims of reducing both the exposure to, and impact of, marketing of foods high in saturated fats, trans -fatty acids, free sugars, or salt.

WHO Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children

The WHO Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children calls for global action to reduce the impact on children of marketing of foods high in

⁹ Verdoodt, V., E. Lievens and L. Hellemans (2015). *Mapping and analysis of the current legal framework of advertising aimed at minors*. A report in the framework of the AdLit research project. Document accessible at www.AdLit.be

¹⁰ Committee on the Rights of the Child (2013). General comment No.17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31), 15.

¹¹ WHO (2016): Report of the commission on ending childhood obesity. [Available here](#)

¹² WHO Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children. [Available here](#)

saturated fats, trans-fatty acids, free sugars, or salt. It proposes a set of recommendations on the marketing of foods and non-alcoholic beverages to children and the resolution endorsing the set of recommendations.

Table 3.1 WHO Recommendations on Marketing of Food and Non-Alcoholic Beverages to Children

<p>WHO Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children</p> <ol style="list-style-type: none"> 1. The policy aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans -fatty acids, free sugars, or salt. 2. Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans -fatty acids, free sugars, or salt. 3. To achieve the policy aim and objective, Member States should consider different approaches, i.e. stepwise or comprehensive, to reduce marketing of foods high in saturated fats, trans -fatty acids, free sugars, or salt, to children. 4. Governments should set clear definitions for the key components of the policy, thereby allowing for a standard implementation process. The setting of clear definitions would facilitate uniform implementation, irrespective of the implementing body. When setting the key definitions Member States need to identify and address any specific national challenges so as to derive the maximal impact of the policy. 5. Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Such settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises. 6. Governments should be the key stakeholders in the development of policy and provide leadership, through a multi-stakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest. 7. Considering resources, benefits and burdens of all stakeholders involved, Member States should consider the most effective approach to reduce marketing to children of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Any approach selected should be set within a framework developed to achieve the policy objective. 8. Member States should cooperate to put in place the means necessary to reduce the impact of cross-border marketing (in-flowing and out-flowing) of foods high in saturated fats, trans-fatty acids, free sugars, or salt to children in order to achieve the highest possible impact of any national policy. 9. The policy framework should specify enforcement mechanisms and establish systems for their implementation. In this respect, the framework should include clear definitions of sanctions and could include a system for reporting complaints. 10. All policy frameworks should include a monitoring system to ensure compliance with the objectives set out in the national policy, using clearly defined indicators. 11. The policy frameworks should also include a system to evaluate the impact and effectiveness of the policy on the overall aim, using clearly defined indicators. 12. Member States are encouraged to identify existing information on the extent, nature and effects of food marketing to children in their country. They are also encouraged to support further research in this area, especially research focused on implementation and evaluation of policies to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
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3.3. The Council of Europe

The Council of Europe has recently developed a Strategy for the Rights of the Child (2016-2021).¹³ This was adopted by the Committee of Ministers of the Council of Europe on 2 March 2016 and launched at a high-level conference in Sofia, Bulgaria, on 5-6 April 2016. One of the key challenges addressed in the strategy is the participation of, and the protection of, children in the digital environment.

¹³ Council of Europe Strategy for the Rights of the Child (2016-2021). Available [here](#)

Children's rights in the digital environment

As part of this strategy, in the framework of human rights and freedom of expression, the Council of Europe's Committee of Ministers adopted in June 2018, a Recommendation on children's rights in the digital environment.¹⁴ The recommendations are mainly concerned with the safety of children online but also emphasise the importance of ensuring access to the digital environment for children and that this access should not be "*unduly restricted by commercial interests or filters.*"

Table 3.2 Council of Europe's CM Recommendation on children's rights in the digital environment

Excerpts from the Recommendation

3.1. Access to the digital environment

10. Access to and use of the digital environment is important for the realisation of children's rights and fundamental freedoms, for their inclusion, education, participation and for maintaining family and social relationships. Where children do not have access to the digital environment or where this access is limited as a result of poor connectivity, their ability to fully exercise their human rights may be affected.

.....

13. Connectivity and access to devices, services and content should be accompanied by appropriate education and literacy measures, including those which address gender stereotypes or social norms that could limit children's access and use of technology.

14. States should ensure that terms and conditions that are associated with the use of a device which can connect to the internet or that apply to the provision of online services or content are accessible, fair, transparent, intelligible, available in the child's language and formulated in clear, child-friendly and age-appropriate language where relevant.

15. States should ensure a plurality of sources of high-quality information and educational digital content and services for children. Children's rights should be taken into account in related public procurement procedures, for instance for educational tools, so that access to and use of digital services and content is not unduly restricted by commercial interests or filters.

3.4. Privacy and data protection

.....

26. Children have a right to private and family life in the digital environment, which includes the protection of their personal data and respect for the confidentiality of their correspondence and private communications.

27. States must respect, protect and fulfil the right of the child to privacy and data protection. States should ensure that relevant stakeholders, in particular those processing personal data, but also the child's peers, parents or carers, and educators, are made aware of and respect the child's right to privacy and data protection.

28. States and other stakeholders should ensure that children are made aware of how to exercise their right to privacy and data protection, taking into account their age and maturity and, where appropriate, with the direction and guidance of their parents, carers, legal guardians or other persons legally responsible for the child in a manner consistent with the evolving capacities of the child.

29. Recognising that personal data can be processed to the benefit of children, States should take measures to ensure that children's personal data is processed fairly, lawfully, accurately and securely, for specific purposes and with the free, explicit, informed and unambiguous consent of the children and/or their parents, carer or legal representative, or in accordance with another legitimate basis laid down by law. The data minimisation principle should be respected, meaning that the personal data processing should be adequate, relevant and not excessive in relation to the purposes for which they are processed.

30. Where States take measures to decide upon an age at which children are considered to be capable of consenting to the processing of personal data, their rights, views, best interests and evolving capacities must be taken into consideration. This should be monitored and evaluated while taking into account children's actual understanding of data collection practices and

¹⁴ Council of Europe's Committee of Ministers (2018): Recommendation on children's rights in the digital environment. Available [here](#)

technological developments. When children are below that age and parental consent is required, States should require that reasonable efforts are made to verify that consent is given by the parent or legal representative of the child.

31. States should ensure that the likely impact of intended data processing on the rights of the child is assessed and that the data processing is designed to prevent or minimise the risk of interference with those rights.

.....

35. In relation to the processing of children's personal data, States should implement, or require relevant stakeholders to implement, privacy-by-default settings and privacy-by-design measures, taking into account the best interests of the child. Such measures should integrate strong safeguards for the right to privacy and data protection into devices and services.

36. With respect to connected or smart devices, including those incorporated in toys and clothes, States should take particular care to ensure that data-protection principles, rules and rights are also respected when such products are directed principally at children or are likely to be regularly used by or in physical proximity to children.

37. Profiling of children, which is any form of automated processing of personal data which consists of applying a "profile" to a child, particularly in order to take decisions concerning the child or to analyse or predict his or her personal preferences, behaviour and attitudes, should be prohibited by law. In exceptional circumstances, States may lift this restriction when it is in the best interests of the child or if there is an overriding public interest, on the condition that appropriate safeguards are provided for by law.

38. Children shall not be subjected to arbitrary or unlawful interference with their privacy in the digital environment. Measures which may restrict children's right to privacy must be carried out in accordance with the law, pursue a legitimate aim, be necessary in a democratic society and be proportionate to the legitimate aim pursued. Surveillance or interception measures in particular must comply with these conditions and should be subject to effective, independent and impartial oversight.

39. States should not prohibit in law or practice anonymity, pseudonymity or the usage of encryption technologies for children.

3.6. The right to protection and safety

Protection and awareness-raising measures

57. States should take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing. This includes ensuring that business enterprises do not engage in unfair commercial practices towards children, requiring that digital advertising and marketing towards children is clearly distinguishable to them as such, and requiring all relevant stakeholders to limit the processing of children's personal data for commercial purposes.

58. States are encouraged to co-operate with the media, with due respect for media freedom, with educational institutions and other relevant stakeholders, to develop awareness-raising programmes aimed at protecting children from harmful content as well as preventing their involvement in illegal online activities.

Privacy and protection of data and protection from commercial exploitation

As is apparent in the table above, there are several strong recommendations with regard to privacy and the protection of data, for example under 3.4 (paragraph 37): *Profiling of children, which is any form of automated processing of personal data which consists of applying a "profile" to a child, particularly in order to take decisions concerning the child or to analyse or predict his or her personal preferences, behaviour and attitudes, should be prohibited by law.*

On the right to protection and safety, the document also stresses the need for states to take measures to protect children from commercial exploitation (paragraph 57):

States should take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing. This includes ensuring that business enterprises do not engage in unfair commercial practices towards children, requiring that digital advertising and marketing towards children is clearly distinguishable to them as such,

and requiring all relevant stakeholders to limit the processing of children's personal data for commercial purposes.

3.4. European Union: fundamental rights, and data protection

The role of EU law in the regulation of children's audiovisual commercial communications can now be sourced from several areas of policy: these include human rights, consumer law and data protection, and the protection of minors/children in the context of audiovisual media and of the digital world.

Charter of fundamental rights of the European Union

The Charter of Fundamental Rights of the European Union under Article 24 defines the protection of children as a fundamental right and provides that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. This echoes the UNCRC as outlined above.

The Charter also establishes the rights to privacy and the right to data protection.

Article 7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8 Protection of personal data

- 1. Everyone has the right to the protection of personal data concerning him or her.*
- 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
- 3. Compliance with these rules shall be subject to control by an independent authority.*

Consumer protection and data protection

The most significant development at EU level regarding consumer protection and data protection was the General Data Protection Regulation (GDPR) which came into force in 2016. The recital 38 in the regulation stresses the special protection of children's personal data, including in the context of collection of data for the purposes of marketing.

1 Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.

2 Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.

3 The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.¹⁵

Article 8 has a specific focus on the *Conditions applicable to child's consent in relation to information society services*.¹⁶ This establishes issues of consent and requirements of adult consent with regard to the processing of data. It requires that a child must be at least 16 before they can themselves consent to the processing of data.

¹⁵ General Data Protection Regulation (GDPR), Recital 38. Available [here](#)

¹⁶ General Data Protection Regulation (GDPR), Article 8. Available [here](#)

In the broader context of protecting children in the online digital world, the European Parliament (Committee on Culture and Education) has, in 2012, urged the Commission to include in its main priorities the protection of children from aggressive or misleading TV and online advertising¹⁷

3.5. European Union Audiovisual Media Services Directive

The revision of the AVMS was completed on November 6th 2018 following its adoption by the Council of the European Union, with the revised Directive published on November 28th.¹⁸ It will officially enter into force on 19th December 2018. The transposition period of 21 months will end on 19 September 2020.

Types of advertising, duration of advertising and placement of advertising

First, with regard to types of advertising, duration of advertising and placement of advertising, there are been several changes in the Directive. Those relevant to children's commercial communications will be dealt with here. Article 20 dealing with the interruption of children's programmes has been enhanced by the prohibition of teleshopping in children's programming.

*The transmission of children's programmes may be interrupted by television advertising ___once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. **The transmission of teleshopping shall be prohibited during children's programmes.***

In addition, under Article 10: *Member states may prohibit the sponsorship of children's programmes.* The article previously stated that Member States may choose to prohibit the showing of a sponsorship logo during children's programmes. Product placement continues to be prohibited in children's programmes (Article 11).

There are several issues of relevance to the regulation of children's commercial communications under the new Directive. The first concerns the changes relating to the content of advertising and the regulation of advertising for HFSS foods. A second issue is the strong encouragement of the use of co-regulatory and self-regulatory regimes to implement the regulation of the content of advertising.

A further area of importance is the scope of the Directive and the advertising rules in relation to non-linear services, such as video-on demand services (VOD) and to video-sharing-platforms (VSPs). In addition, privacy and data protection with relation to children has been emphasised within the text with regard to the gathering of information in order to implement age verification tools.

Protection of minors

The Directive addresses the broad issue of protection of minors in the audiovisual world under Article 6a regarding harmful content in general.

1. Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme. The

¹⁷ European Parliament (Committee on Culture and Education) (2012). Report on protecting children in the digital world. [Available here](#)

¹⁸ The final revised Directive as published in the Official Journal of the European Union is [here](#)

most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

2. Personal data of minors collected or otherwise generated by media service providers pursuant to paragraph 1 shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

3. Member States shall ensure that media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, media service providers shall use a system describing the potentially harmful nature of the content of an audiovisual media service.

And in relation to harm in commercial communications:

Article 9 (1) (g) audiovisual commercial communications shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

Expansion of scope and definition of audiovisual commercial communications

The Directive has re-defined the concept of audiovisual commercial communications to include those appearing in user-generated videos.

In Article 1, paragraph 1 (h)

'audiovisual commercial communication 'means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;'

Content of commercial communications

In the AVMSD, article 9 addresses the broad issues of format and content of advertising.

Table 3.3 AVMSD Article 9 and content requirements for audiovisual commercial communications

"Article 9 (paragraph 1)

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:
 - (a) audiovisual commercial communications shall be readily recognisable as such; surreptitious audiovisual commercial communication shall be prohibited;
 - (b) audiovisual commercial communications shall not use subliminal techniques;
 - (c) audiovisual commercial communications shall not:
 - (i) prejudice respect for human dignity;
 - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (iii) encourage behaviour prejudicial to health or safety;
 - (iv) encourage behaviour grossly prejudicial to the protection of the environment;
 - (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers shall be prohibited;
 - (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;

(f) audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;

(g) audiovisual commercial communications shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

2. Audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services, with the exception of sponsorship and product placement, shall comply with the criteria set out in Article 22.

3. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes shall aim to effectively reduce the exposure of minors to audiovisual commercial communications for alcoholic beverages.

4. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications accompanying or included in children's programmes, for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended.

Those codes shall aim to effectively reduce the exposure of children to audiovisual commercial communications for such foods and beverages. They shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

The changes of significance from the former Directive include the following:

- the general ban on all types of audiovisual commercial communications for cigarettes and tobacco products now **also includes electronic cigarettes and refill containers**. (Article 9(1d)).
- Reference is again made to the prohibition of advertising for alcohol aimed specifically at minors (reiterating Article 22 of the Directive on the criteria of compliance for Television advertising and teleshopping for alcoholic beverages)
- Several new paragraphs have been introduced (paragraphs 2-5) which are particularly important for the protection of minors with regard to the content of advertising and address the use of self-and co-regulatory regimes.

Article 22 of the Directive remains unchanged with regard to the advertising of alcohol;

Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria: (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages; (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving; (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success; (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts; (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

Focus on self-regulation and co-regulation

The revised AVMS Directive places a stronger emphasis on the role of self-regulation and co-regulation in the implementation of the Directive. As outlined above, the Directive has required that Member States shall encourage the use of co-regulation and the fostering of self-

regulation through codes of conduct in order to reduce the exposure of children to certain types of commercial communications.

Paragraph 14 of the preamble to the Directive outlines the EU understanding of the concepts of self-regulation and co-regulation, and stresses that self-regulation should be complementary to, and not a substitute for, the obligations of the national legislator. In addition, it stresses the fact that a co-regulatory approach is stronger as *the regulatory role is shared between stakeholders and the government or the national regulatory authorities or bodies*. In addition, with co-regulation there should be *the possibility of state intervention in the event of its objectives not being met*. The existence of a legislative backstop was considered an important success factor in promoting compliance with a self- or co-regulatory code.

Table 3.4 AVMSD Preamble paragraphs 12- 14: self and co-regulation

12. In its Communication to the European Parliament and to the Council on Better Regulation for Better Results – an EU Agenda, the Commission stressed that, when considering policy solutions, it would consider both regulatory and non-regulatory means, modelled on the Community of practice and the Principles for Better Self- and Co-regulation. A number of codes of conduct set up in the fields coordinated by Directive 2010/13/EU have proved to be well designed, in line with the Principles for Better Self- and Co-regulation. The existence of a legislative backstop was considered an important success factor in promoting compliance with a self- or co-regulatory code. It is equally important that such codes establish specific targets and objectives allowing for the regular, transparent and independent monitoring and evaluation of the objectives aimed at by the codes of conduct. The codes of conduct should also provide for effective enforcement. These principles should be followed by the self- and co-regulatory codes adopted in the fields coordinated by Directive 2010/13/EU.

(13) Experience has shown that both self- and co-regulatory instruments, implemented in accordance with the different legal traditions of the Member States, can play an important role in delivering a high level of consumer protection. Measures aimed at achieving general public interest objectives in the emerging audiovisual media services sector are more effective if they are taken with the active support of the service providers themselves.

(14) Self-regulation constitutes a type of voluntary initiative which enables economic operators, social partners, non- governmental organisations and associations to adopt common guidelines amongst themselves and for themselves. They are responsible for developing, monitoring and enforcing compliance with those guidelines. Member States should, in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the legislative, judicial and administrative mechanisms in place and its useful contribution to the achievement of the objectives of Directive 2010/13/EU. However, while self-regulation might be a complementary method of implementing certain provisions of Directive 2010/13/EU, it should not constitute a substitute for the obligations of the national legislator. Co-regulation provides, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. In co-regulation, the regulatory role is shared between stakeholders and the government or the national regulatory authorities or bodies. The role of the relevant public authorities includes recognition of the co-regulatory scheme, auditing of its processes and funding of the scheme. Co-regulation should allow for the possibility of state intervention in the event of its objectives not being met. Without prejudice to the formal obligations of the Member States regarding transposition, Directive 2010/13/EU encourages the use of self- and co-regulation. This should neither oblige Member States to set up self- or co- regulation regimes, or both, nor disrupt or jeopardise current co-regulation initiatives which are already in place in Member States and which are functioning effectively

Two approaches have been put forward under the Directive with regard to the establishment of self- and co-regulatory regimes. One concerns the adoption of national self- or co-regulatory regimes which should meet certain criteria such as acceptance of stake-holders, a transparent and independent monitoring and evaluation, and effective enforcement. These systems are those which the Member States should encourage. This system is described under Article

4a(1). The second system concerns Union codes which may be used by Member States. They would also need to comply with the criteria outlined above and such codes would be developed by the Member States in co-operation with the European Commission.

Table 3.5 AVMSD Article 4a on self and co-regulation

<p>Article 4a</p> <p>1. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall :</p> <p>(a) be such that they are broadly accepted by the main stakeholders in the Member States concerned;</p> <p>(b) clearly and unambiguously set out their objectives;</p> <p>(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and</p> <p>(d) provide for effective enforcement including effective and proportionate sanctions.</p> <p>2. Member States and the Commission may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. Those codes shall be such that they are broadly accepted by the main stakeholders at Union level and shall comply with points (b) to (d) of paragraph 1. The Union codes of conduct shall be without prejudice to the national codes of conduct.</p> <p>In cooperation with the Member States, the Commission shall facilitate the development of Union codes of conduct, where appropriate, in accordance with the principles of subsidiarity and proportionality. The signatories of Union codes of conduct shall submit the drafts of those codes and amendments thereto to the Commission. The Commission shall consult the Contact Committee on those draft codes or amendments thereto. The Commission shall make the Union codes of conduct publicly available and may give them appropriate publicity.</p> <p>3. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in compliance with this Directive and Union law, including where their national independent regulatory authorities or bodies conclude that any code of conduct or parts thereof have proven not to be sufficiently effective. Member States shall report such rules to the Commission without undue delay.";</p>

In the course of this study, more than 20 codes and regulations have been reviewed, from a wide range of regulatory, co-regulatory and self-regulatory systems. It is worth noting that the concept of “self-regulation” encompasses a wide range of systems that are generally managed by the industry. A deeper analysis of the self-regulatory systems, which was not the purpose of this remit, would be required in order to assess how they operate.¹⁹ Self-regulatory systems are generally operated by the advertising industry, while other codes or regulations may be established by broadcasters or by the food industry itself. The systems established by the advertising industry may specifically concern advertising standards. These organisations may have a system of mandatory clearance of advertising, or a service providing pre-broadcast advice on advertising content. Some systems work on a complaint only basis, while others just provide guidance on how not to fall foul of the law.

As noted above, the AVMS describes self-regulation as a complementary system, and stresses that it should not constitute a substitute for the obligations of the national legislator. The preamble also states that the existence of a legislative backstop was considered an important success factor in promoting compliance with a self- or co-regulatory code, and that such codes establish specific targets and objectives allowing for the regular, transparent and independent monitoring and evaluation of the objectives aimed at by the codes of conduct. The recommendations of the WHO organisation also state that all policy frameworks (with

¹⁹ For an in-depth analysis see: Ramboll Management Consulting / EMR (2016): Defining a framework for the monitoring of advertising rules under the Audiovisual Media Services Directive. A study prepared for the European Commission DG Communications Networks, Content & Technology. [Available here](#)

regard to reducing exposure of children to commercial communications for HFSS foods) should include a monitoring system to ensure compliance and should include a system to evaluate the impact and effectiveness of the policy.

Other advertising directives

The EU Directive on unfair commercial practices²⁰ includes a section on children:

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

²⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive') [Available here](#)

4. Definitions: children, children's programming, relevant ACC

The purpose of this chapter is to explore the range of definitions relevant to the regulations, guidelines and codes that deal with children's commercial communications. In this context, the chapter will also indicate where complete prohibitions of audiovisual commercial communications (ACC) exist in relation to children, children's programming, commercial communications targeting children, and those "likely to be seen" by children.

As outlined in the previous chapter the new AVMSD addresses commercial communications and the protection of children in several ways:

- General principles regarding commercial communications: that they should not cause physical, mental or moral detriment to minors: they should not exploit the inexperience or incredulity of children; they should not directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.
- Limits on the interruption of programmes and the types of commercial communications
- Calls for Member States to reduce/ limit the exposure of children to certain kinds of advertising: alcohol, HFSS foods and gambling
- The use of co- and self-regulatory codes to achieve this reduction of exposure
- The protection of data for children
- The inclusion of video-sharing-platforms VSPs in the scope of regulating ACC

Several of these issues will be addressed in more detail in later chapters, while this chapter focuses on broad definitions and restrictions. The Directive provides no definitions of children or children's programming and no guidelines on what a sufficient reduction or limitation of exposure might be. This chapter looks at some key issues around defining children, children's programming, and programming "likely to be viewed" by children and how these concepts are addressed in various national and international legislation, regulations and codes.

4.1. Children, minors, youth and adolescents

The regulation of advertising contains a range of principles and product specific limitations that can be considered to address minors (understood as people under the age of 18 – the age of majority in all EU Member States, except in Scotland in the UK).²¹ In the context of the AVMS, the text refers frequently to the protection of minors (with regard to content), and on several occasions to the protection of children (with regard to data protection and privacy²², and audiovisual commercial communications). However, neither are defined in terms of age, presumably leaving this to the discretion of the member States, where there are distinctions particularly with regard to the upper limits of the definition of child. The UN Convention on the Rights of the Child (CRC) defines children as people "below the age of 18 years". This may also be considered as the accepted understanding of a minor for the purposes of protection from certain audiovisual content.²³ With regard to data protection in the EU Data protection regulation, the age of consent has been established as being at least 16.²⁴

21 According to the EU Fundamental Rights Agency: [Mapping Minimum Age Requirements](#)

22 With reference to the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

23 For a detailed discussion on definitions of "child" or "minor", see Verdoodt, Lievens and Hellemans (2015). *Mapping and analysis of the current legal framework of advertising aimed at minors*.

24 General Data Protection Regulation (GDPR), Article 8. Available [here](#)

The AVMS provides for a minimum harmonisation approach which allows Member States to develop a higher degree of protection for content which may impair the physical, mental or moral development of minors:

Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them (Article 6a).

*With regard to audiovisual commercial communications, these:
shall not cause physical, mental or moral detriment to minors (article 9g).*

As will be seen in table 4.1, in most jurisdictions a minor will be considered as under 18, while the definition of child can vary between 12 and 18 years. Several countries provide different categories of definition of children by age. Examples include Austria and Germany where children are under 12, while young people/adolescents are aged 12-18. At the same time, Germany defines children's programming as that which is destined for those under 14 years. In Ireland, children are considered as being under 18 but rules regarding audiovisual commercial communications are most stringent for younger children with distinctions between those under 6, under 13 and under 15. In those countries where total (or partial) advertising bans around children's programming have been introduced the cut-off age is frequently 12 or 13 years: for example 12 years in Sweden, and France (on PSB); and 13 years in Canada (Québec) and Norway. In Australia advertising is banned in programming that targets pre-school children (up to age 5).

The different age categorisations are a logical reflection of the stages of development of children and adolescents. A variety of age classifications across Europe for children with regard to audiovisual content is also apparent in the rating of content to be shown on television. The Austrian public broadcaster rates programmes under at least 6 age categories (6+, 8+, 10+, 12+, 14+ and 16+), while in the Netherlands 4 ratings are used 6+, 9+, 12+ and 16+).²⁵ This indicates that in all jurisdictions there is an understanding of differences in the developmental progress of children and their ability to deal with and comprehend different types of content. There may also be cultural nuances that influence the categorisation of these ages of reason.

For very young children, the issues of comprehension of advertising are relevant, and this provides an explanation for the distinctions in age groups between children and adolescents (Austria and Germany), children and minors (in most jurisdictions), and sub-categorisations of children according to age that reflects levels of comprehension of children (as is the case with the BAI code). The AVMS Directive emphasises that audiovisual commercial communications *must not exploit the inexperience or credulity of minors* (Article 9g). Research findings with regard to children's comprehension of (traditional) advertising confirm the need to consider children of different ages in a different way. The following is a brief summary of a range of research and research reviews on the issue.

It is claimed that from 0-2 years, children cannot tell the difference between advertising and actual programmes, and that from 3-6 years, children can identify advertisements and distinguish them from programmes, but they do not understand that ads are trying to sell something. They tend to think of advertisements as being entertaining or helpful announcements and will not generally be critical of the claims advertisers are making.²⁶

25 See more detail: **Analysis of the implementation of the provisions contained in the AVMSD concerning the protection of minors**, European Audiovisual Observatory, Strasbourg, 2015.
<https://rm.coe.int/analysis-of-the-implementation-of-the-provisions-contained-in-the-avms/16807898a5>

²⁶ American Psychological Association Taskforce on advertising to children (2004)

Similarly it is asserted that children below the age of 5 have a low level of advertising literacy and are mostly unable to differentiate between commercials and programming.²⁷ A review of studies revealed that those below the ages of 4–5 years do not consistently distinguish programmes from commercial content, even when programme/commercial separation devices are used. As children reach the age of 4–5 years, they typically perceive a categorical distinction between commercials and programming, but primarily on the basis of affective (“commercials are funnier”) or perceptual (“commercials are shorter”) cues only.²⁸

From ages 5 to 6 onwards, children are able to make a differentiation. However, it is only at the age of 7 to 8 that a basic understanding starts to emerge and children understand the purpose to sell.²⁹ Most children younger than 7–8 years of age do not recognize the persuasive intent of commercial appeals. A key conclusion of research is that young children below 7–8 years of age clearly lack an understanding of the persuasive intent of television advertising.³⁰

At 7-11 years, children: can understand that advertisements are trying to sell them something and can remember advertising messages, can recognise some advertising techniques such as exaggerations, cannot always defend themselves by questioning what advertisements are doing and might not always understand that products are not as good as advertisements say they are, or that advertisers might not be telling them any of the bad points.³¹

Research also looks at the changes in comprehension as children reach teenage years. Awareness of increasing one’s desire for an advertised product is even more difficult for children to comprehend. This more developed understanding starts to emerge around the age of 12. Older children (age +12) also seem to be more critical than younger children (age 8-9) and more frequently apply resistance strategies.³² At 12-13 years, children: can usually understand the purpose of advertising, and can use advertised information to decide what they want, but might not understand how advertising makes things more expensive or might not recognise tricky product placement strategies. Over 14 years, children can understand how the marketplace works and can be sceptical about advertisers’ claims.³³

Table 4.1 overleaf provides an overview of definitions of programming and programmes of interest, of ACC targeting children, or ACC likely to be seen.

²⁷ AdLit SBO project- Minors’ advertising literacy in relation to new advertising formats.
<http://www.adlit.be/adlit-risicoanalyse.pdf>

²⁸ American Psychological Association Taskforce on advertising to children (2004)

²⁹ AdLit SBO project- Minors’ advertising literacy in relation to new advertising formats.
<http://www.adlit.be/adlit-risicoanalyse.pdf>

³⁰ American Psychological Association Taskforce on advertising to children (2004)

³¹ Australian Raising Children Organisation (raisingchildren.net.au)³¹

³² AdLit SBO project- Minors’ advertising literacy in relation to new advertising formats.
<http://www.adlit.be/adlit-risicoanalyse.pdf>

³³ Australian Raising Children Organisation (raisingchildren.net.au)³³

Table 4.1: Programming and programmes of interest, ACC targeting children, or likely to be seen

	Children	Children's programming	Programming of interest	ACC targeting children	ACC likely to be seen
AVMS	No definition of child. Minor (assumed to be U18)			"accompanying or included in children's programmes"	reduce exposure to certain types of advertising
Austria	Children: under 12 years. Youth/ adolescents: 12-18			Directed exclusively or predominantly to U12s	
France	Children under 12 (PSB ban)	Primarily aimed at U12			
Germany	Children: under 12 years. Youth/ adolescents: 12-18 U-14 years (programming)	Where content, form or airtime, are more likely to attract under-14s. Individual broadcasts which by design look like a complete children's programme.			
Ireland	Child: person under 18 Further distinctions: under 6, under 13 and under 15.	Programmes referred to as such and/or have an audience profile where over 50% are under 18 years / or U15 / or U13 / or U 6		promotes products, services etc. deemed to be of particular interest to children and/or broadcast during and between children's programmes	
Norway	Under 13 (ban TV, ODAS)			Products or services of special interest to U13	
Sweden	Under 12 (ban TV, ODAS)	Primarily directed to U12			
United Kingdom	Child: under 16 Reference also to protection of minors U18	a programme made for persons below the age of 16.	With particular appeal to people under 16	"Children's products and services" : those of more or less exclusive interest to children. "Products and services of interest" those likely to appeal to children but not of exclusive interest to them.	- where "significant" child audience of relevant age group (broadcast code) - where audience >25% of relevant age group (non-broadcast code)
Australia	Children U14 Child (U 15) for commercial TV code of practice	C- programming: under 14 P-Programming: pre-school		having regard to: theme, visuals and language used: directed primarily to children: for products targeted toward and have principal appeal to Children	
Canada	Children: under 12	Programme directed to under 12 audience		Paid commercial communication carried in or adjacent to children's programme/ broadcaster may also determine CCC	
Canada - Québec	Children: under 13 (all media)	Any programme/ media where 15% of audience is under 13 years			
New Zealand	Children: under 14 Young People: 14 to 18	25% or more of the expected audience will be children. Child viewing time zones. Content with significant appeal to children.		The product appeals to a child; the presentation of the ad appeals to a child; the expected average audience has significant proportion of children	
USA	Children: under 12 U-13 for data protection	Directed to U12 Content, format, subject, audience		Primarily directed to U12	

4.2. Children's programming and content "likely to be seen"

To some extent, the concept of children's programming is also quite varied and not always clear. In many cases, no clear definitions could be found (Austria). Where there are complete bans on advertising during children's programming the cut-off age is frequently 12 or 13 years: for example 12 in Sweden, and France (on PSB), and 13 years in Canada (Québec) and Norway. Hence, children's programming is defined by the age group that is targeted. It could be assumed that producers, production companies and broadcasters assess and label the target age groups of television programmes that are broadcast. In the UK, for example a children's programme is defined as a programme made for persons below the age of 16.

The question of scheduling of programming is also significant in this regard. In Australia, programming is labelled according to age: P- programming and C-Programming (pre-school and children respectively). Parts of the daily schedule are designated according to age: the P-period and the C-Period (and older). This makes identification of programming that targets particular age groups even more clear.

It is also well accepted that there is a range of programming that appeals to or is attractive to children. This includes a range of content that may be considered as family viewing, and as programmes not conceived as primarily of interest to children, or programmes conceived for older children but 'likely to be seen' by younger siblings.

In the case of the BAI Children's Commercial Communications Code, children's programmes are defined in relation to the 4 age groups that are referenced in the rules: programmes that are commonly referred to as such and/or have an audience profile of which

- over 50% are under 18 years of age.
- over 50% are under 15 years of age.
- over 50% are under 13 years of age.
- over 50% are under 6 years of age.

In the UK, the co-regulatory approach adopted by the Advertising Standards Authority with regard to Age Restricted Products (in the CAP non-broadcast code) uses audience measurement of media to limit advertising of certain products: *Generally, no medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries and not more than 25% under 18 for alcohol, gambling and electronic cigarettes.* Note that this guidance is provided in relation to non-broadcast media, including online content.

For broadcast media in the UK, an audience indexing method is used. Audience Indexing determines what proportion of a particular category of viewers are watching a programme relative to the proportion of the audience as a whole (all viewers aged 4 and over) watching the same programme. The process allows broadcasters to identify programmes that appeal disproportionately to particular groups, either various age groups of children or all children and young people. Additionally, broadcasters may rely on other immediate factors to supplement their analysis of audience data:

- Subjective analysis of the content of the programming;
 - Channel profile (e.g. general interest or with a specific focus);
 - Time of day and day of the week (e.g. weekends); and
 - Time of year (e.g. school holidays or Christmas).
- (see also section 4.4 below).

Under the Quebec Consumer Protection Act, television shows with an audience made up of at least 15% of children (defined as under 13 years) cannot air child-targeted ads. In Canada, the self-regulatory model defines children's programming as a programme that is directed to

the under-12 audience, as defined by the broadcaster. New law that is pending regarding HFSS foods refers to relevant programming as that where at least 15% of the audience are under 13 years (the original proposal was under 17 years).

In New Zealand, in order to identify children's programming or programming likely to appeal to children, several criteria are proposed by the self-regulatory model. A relevant programme is where 25% or more of the expected audience will be children (under 14 years). A programme is relevant where it is scheduled in child viewing time zones, and a programme is relevant where it has content with significant appeal to children.

The Norwegian law³⁴ states that a programme is to be regarded as a children's programme when children are deemed to be the primary target group for the programme. In the assessment of whether a programme is to be regarded as a children's programme, importance shall be attached, inter alia, to the following factors:

- the content and format of the programme,
- whether children under the age of 13 are participants,
- when the programme is broadcast,
- who are potential viewers in relation to the time of broadcast,
- actual viewers,
- the use of language in the programme.

These varying audience thresholds are further discussed below in chapter eight with regard to the thresholds used in the BAI code.

4.3. Commercial communications targeting children

In the field of self-regulation, there are also examples of using audience shares to delineate what defines children's commercial communications. An example is the EU Pledge taken by a range of food producing companies. The EU Pledge: *"is a voluntary initiative by leading food and beverage companies to change the way they advertise to children. This is a response from industry leaders to calls made by the EU institutions for the food industry to use commercial communications to support parents in making the right diet and lifestyle choices for their children."*

The Pledge defines children as under 12 and its members commit to either: *only* advertise products to children under the age of 12 years that meet the common EU Pledge Nutrition Criteria; or *not* to advertise their products at all to children under the age of 12 years. The policy covers marketing communications for food and beverage products that are primarily directed to children under 12. The definition of communications primarily directed to children under 12 is: advertising in measured media where 35% or more of the audience is under 12 years of age.³⁵ According to the information on the EU Pledge website, this threshold was reduced from 50% to 35% in 2012.

The code established via self-regulation in New Zealand defines "targeting" as being determined by the context of the advertisement and the relationship between the following three criteria;

-Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.

³⁴ Norwegian Regulation relating to broadcasting and audiovisual on-demand services. Last amended 1 January 2018. Available in English [here](#)

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³⁵ The EU Pledge, available [here](#)

- *Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.*
- *Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people.*

4.4. Commercial communications “likely to be seen”

The regulation of commercial communications and the protection of children by ensuring that ACC *shall not cause physical, mental or moral detriment to minors* is relevant not just to advertisements that specifically target children but to all advertisements that are likely to be seen by children. This also relates to advertising placed around the “programming likely to be seen”, which was discussed above.

In the AVMS Directive, the preamble in certain paragraphs emphasises that Member States should be encouraged to ensure the reduction of: exposure of children to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars, fat, saturated fats or trans-fatty acids or that otherwise do not fit those national or international nutritional guidelines (paragraph 28); and exposure of children and minors to audiovisual commercial communications for alcoholic beverages (paragraph 29). In addition: It is important that minors are effectively protected from exposure to audiovisual commercial communications relating to the promotion of gambling (paragraph 30).

Article 9 (paragraph 3) of the AVMS Directive states that Member States shall encourage the use of co-regulation and the fostering of the use of self-regulation, the aim of which is to *effectively reduce the exposure of minors to audiovisual commercial communications for alcoholic beverages*.

Similarly, Article 9 (paragraph 4) states that Member States shall encourage the use of co-regulation and the fostering of the use of self-regulation, the aim of which is to *effectively reduce the exposure of children to audiovisual commercial communications for such foods and beverages*.

The above indicates the intention of the legislators that appropriate regulation, codes or guidelines should also address the protection of children in the context of advertising that does not target them.

Hence the scheduling of various types of commercial communications needs to be assessed on the basis of whether they are likely to be seen by children. There are some examples of regulatory or co-regulatory or self-regulatory approaches to making this assessment. And the assessment of when to schedule advertising is of course linked to the assessment of what are the programmes of particular appeal to children and those likely to be seen. For example, if a programme is viewed by 10% of the total entire potential viewing population, and at the same time is viewed by 12% of the entire potential 10-15-year-old age group, then this programme is considered to be of particular appeal to children between 10 and 15.

Time slots where certain advertising is banned

In several jurisdictions, the scheduling of certain types of advertising is regulated according to time slots. For example, in Spain, the audiovisual media law contains strict restrictions on the advertising of alcohol. Commercial communications for alcoholic beverages above 20% alcohol by volume are prohibited, and commercial communications for beverages having an alcoholic strength of less than 20% vol. cannot be broadcast outside the period between 20.30

and 06.00 the following day, except where such advertising is inseparable from the acquisition of rights and the production of the signal to be broadcast.³⁶

Likewise, in Slovenia under health laws, the advertising of alcoholic beverages, containing more than 15 % of alcohol by volume is prohibited, and it is forbidden to advertise alcoholic beverages on radio and television between 7 a.m. and 9.30 p.m. It is forbidden to advertise alcoholic beverages in cinemas before 10 p.m.³⁷

Regarding food that is high in Fat, salt and sugar (HFSS foods), there are several countries where such advertising is banned during particular time-slots. In Mexico, this is banned in the schedule between 2.30-7.30pm weekdays and 7am-7.30pm weekends, where the audience is >35% children. In Chile, such advertising is banned between 6am-10pm on TV and film.³⁸

The UK government its action plan on childhood obesity published in June 2018 committed to consult on introducing a 9pm television watershed for HFSS advertising as well as similar protection for children viewing adverts online. The Government aims to explore "options to ensure that any restrictions are proportionate and to consider a focus on those products that children consume and most contribute to the problem of childhood obesity".³⁹

Audience data as an indicator of whether commercials are likely to be seen

As outlined above, the regulatory code in Ireland (BAI) includes in the definition of children's programming that programming where more than 50% of the audience is under 18. In the UK, the co-regulatory approach adopted by the Advertising Standards Authority uses audience measurements with regard to Age Restricted Products, in the non-broadcast code which covers online content: generally, no medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries and not more than 25% under 18 for alcohol, gambling and electronic cigarettes.⁴⁰ The code for broadcast media BCAP uses the concept of programming of "particular appeal" which is relevant to indexing on TV. A guidance note is provided on this by the ASA.⁴¹

According to feedback from the Ofcom (UK) and the Advertising Standards Authority - ASA, in all media the burden of proof falls on the advertiser, and in the event of an investigation the ASA will expect the advertiser to be able to show that they took advantage of the means at their disposal to ensure their advertising was responsibly targeted.

The index is rather complex and an index of 120 implies that the programme is of particular appeal for children. For example, if a programme is viewed by 10% of the total entire potential viewing population, and at the same time is viewed by 12% of the entire potential 10-15-year-old age group, then this programme is considered to be of particular appeal to children between 10 and 15. The graphic below shows examples of the index formula.

Table 4.2: Advertising Standards Authority UK: audience indexing for programmes of particular appeal

³⁶ General Law No 7/2010 of 31 March on Audiovisual Media - consolidated 1 May 2015 - Article 18 3. c), d) and e)

³⁷ Act Regulating the Health Suitability of Foodstuff, Products and Materials Coming into Contact with Foodstuffs Art. 15

³⁸ From: Obesity Policy Coalition (2018): Policy Brief: Restrictions on Marketing Unhealthy Food to Children – Jan 2018

³⁹ UK Government (2018): Childhood obesity: a plan for action. [Available here](#)

⁴⁰ Advertising Standards Authority Website- [Guidance on Children Targeting](#):

⁴¹ Identifying TV programmes likely to appeal to children Advertising Guidance (broadcast). Available [here](#)

% of 10-15 age category watching	TVR	% of total viewing population watching	TVR	Calculation of Index	Index score	Appeal
8	8	10	10	8/10 x100	80	Lower
10	10	10	10	10/10 x100	100	General
12	12	10	10	12/10 x100	120	Particular

The Australian regulatory code – the Children’s Television Standards – illustrates that advertisements are classified in a similar way to programmes as regards their content. In addition, any cross-promotion or self-promotion of programming also must comply with these classifications regarding trailers and content clips. Only G (general programming) classified advertisements may be broadcast during children’s programming periods. These may not necessarily address children as consumers but can be cleared for broadcast during the periods of children’s programming. They obviously must conform to the content rules related to children’s advertising.

Appropriately targeting an adult audience

On the other hand, there are a range of rules with regard to ensuring that certain advertisements appropriately target an adult audience. These have been noted, for example, in New Zealand, Australia and in France. With regard to alcohol, the New Zealand Advertising Standards Authority code on advertising of alcohol defines appropriately targeted advertising as where an adult audience of at least 75% would be expected in such cases. The Australian Responsible alcohol marketing code of the industry also updated its standards with a requirement to use available age restriction controls in digital media to exclude minors from an audience, to only use media platforms with a 75%+ adult audience, verification of ages as 18+ for electronic direct mail and no placement with content or programs primarily aimed at minors. In the French ARPP self-regulatory code it is expected that alcohol is only advertised in media where at least 70% of the audience are 18 years of age and older

4.5. An overview of bans, restrictions and limitations

One way to address the concerns regarding protection of children from the negative effects of advertising is to limit the advertising to which they are exposed. This may be facilitated by the fact that advertising of any description may be prohibited or limited on public service broadcasters.

The BBC public channels and the Swedish public channels show no advertising whatsoever and hence provide potential commercial free zones for children’s TV viewing. Advertising is strongly restricted on the German public service channels ARD and ZDF with a total of 20 minutes per day and no advertising after 8pm, or on Sundays or public holidays. In addition, their other services including the children’s channel KIKI and all of the regional public service channels are prohibited from having any advertising. Advertising has also been limited in general on the French public service channels, and more recently prohibited in relation to children’s programming (see below). In Austria, programmes on the public service broadcaster cannot be *interrupted* by advertising.

Several jurisdictions have completely banned advertising and marketing to children in the media. These include Sweden and Norway, for children under 12 and 13 respectively, and on both television and on-demand audiovisual services. In Canada, the province of Québec banned all advertising and marketing to children in all media as far back as the 1980s. These are legislative restrictions emerging from media law or consumer protection law. Australia has a ban on all advertising during programming and programme time blocks that are dedicated to pre-school children (under 5).

In Sweden, the rules on advertising are addressed in the Radio and Television Act⁴² where advertising is prohibited during programmes primarily aimed at children below 12 years of age. Also in on-demand TV, programmes primarily aimed at children below 12 years of age cannot be interrupted by advertising. Commercial advertising in television broadcasts and on-demand TV may not appear immediately before or after a programme or part of a programme that is primarily directed to children below 12 years of age. In Norway, the rules on advertising are addressed in the Act relating to broadcasting and audiovisual on-demand services (the Broadcasting Act).⁴³ No advertising is allowed in connection with children's programmes and no advertisements on television or on-demand services may specifically target children.

A certain number of nuances emerge when looking at a range of jurisdictions. The legislation or regulation may focus only on commercial communications that *directly target children*. This is the case with regard to the legislative ban on such advertising during children's programmes on the Austrian public service broadcaster. According to feedback from the Austrian regulator, this prohibits the broadcasting of advertising specifically aimed at minors directly before or after children's programmes. In this context, "directly" means the first or the last advertising spot before the start or after the end of the children's programme. Therefore, the first or the last advertising spot before or after a children's programme cannot be an advertising spot that is aimed specifically at children.

In 2017, a French law came into force banning advertising on public television during programming that targets children under 12 (including 15 minutes before and 15 minutes after the programme). Here the programming is targeting the children and no specification has been given to the type of advertising, hence we can assume all advertising around such programming is blocked. This appears to present a clearer limitation that produces advertising free blocks of broadcasts for children. However, children's programming is not clearly defined.

The German law states that children's programmes (and defines them as targeting U14) should not be *interrupted* by advertising. This would suggest that advertising can be placed around and between programmes. According to feedback from the German regulator, there may be advertising breaks before and after programmes but not during programmes. This applies to all broadcasters: public, private, local etc.

Finally, there are a range of countries in which restrictions have been created with regard to the advertising of HFSS foods around children's programming. This is the case in Ireland, the UK and New Zealand (and such legislation is pending in Canada). Chapter seven will provide a more in-depth review of the situation with regard to regulating the commercial communications of HFSS food in a range of jurisdictions.

Table 4.3 overleaf provides an overview of bans, restrictions and limitations on advertising that targets children, or is likely to be seen by children. This table is mainly based on legislative or regulatory restrictions and not on voluntary actions, or pledges.

Exceptions are in New Zealand where the ban concerning HFSS is under a self-regulatory approach, and in the UK where the ban concerning HFSS is under a co-regulatory approach.

It can also be noted on the table that it has been made clear where restrictions and bans have been extended to the area of on-demand audiovisual services, or other Internet based media. This is the case with regards to the French legislation on public service media, and to the bans in Sweden and Norway. It also applies to the ban concerning advertising of HFSS foods in the UK which was extended to on-demand audiovisual services. The issue of developments

⁴² Swedish Radio and Television Act - consolidated 17 June 2010 - Chapter 8. 7,8§§. Available in English [here](#)

⁴³ Norwegian Act relating to broadcasting and audiovisual on-demand services (the Broadcasting Act). Available in English [here](#)

regarding children's commercial communications in the on-demand audiovisual services sector will be the focus of a more in-depth review in Chapter six.

Table 4.3: Types of bans or restrictions on commercial communications in a range of countries

	Children, adolescents, youth	General rules for PSB	Bans or restrictions: Children	Extended to on-demand?
Austria	Children: people under 12 years. Youth/ adolescents: ages 12 to 18		Ban on advertising that directly targets children - directly before, during and directly after children's programming on PSB	
France	Children under 12 (ban on PSB)	No advertising after 8pm on public channels	BAN on advertising on public television during programming targeting children under 12, including 15 mins before and 15 mins after.	Yes for PSB applies to all messages on the websites of the national television services
Germany	Children: people under 12 years. Youth/ adolescents: ages 12 to 18	No advertising after 8pm, on Sundays/Public Holidays on public channels ARD and ZDF.	Children's programmes (all channels) (U 14) may not be INTERRUPTED by advertising (all channels)	
Ireland	Child: under 18 years of age. Plus rules for: under 6 years of age; under 13 years of age; under 15 years.		BAN on advertising for HFSS Foods in children's programming U18	
Norway	Children under 13 (ban)		BAN on advertising during children's programming	Yes
Sweden	Children under 12 (ban)	No advertising on public channels SVT1, SVT2.	BAN on commercial advertising on TV and on-demand immediately before or after a programme or part of a programme primarily directed to U12s	Ban also on on-demand media in context of programming primarily directed at children
United Kingdom	Children: below the age of 16.	No advertising on BBC PSB channels	BAN on advertising for HFSS Foods in programmes targeting or likely to appeal particularly to under 16s	Yes, HFSS foods ban extended to on-demand
Non-European				
Australia	People under the age of 14 years. Subdivision between "children" and "pre-school" children		BAN on advertising during programming targeting pre-school children.	
Canada	Children under 12		Legislative measure in progress on banning HFSS Foods advertising for U13 programming	
Canada - Québec	Children under 13 (ban all media)		BAN on all advertising and marketing to children	Yes , all media including Internet
New Zealand	Children: under 14 Young People: 14 to 18		BAN on advertising for HFSS Foods in children's programming	
USA	Children: under 12 Data protection: U13			

5. Themes addressed in the regulation of ACC audiovisual targeting children

5.1. General Principles and aims

The main aims of regulatory, co-regulatory and self-regulatory codes regarding children and commercial communications are to protect children, to help parents to protect children, and to clarify rules for the industry.

These protections apply (as discussed in the last section):

- on some levels to all commercial communications; and
- specifically to commercial communications that are targeting children;
- but often also to commercial communications that children are likely to see.

Different rules for different audiences

Audiovisual commercial communications in general have to abide by certain principles such as respect for human dignity and for non-discrimination. Audiovisual commercial communications for certain products such as cigarettes and other tobacco related products including e-cigarettes are completely banned in the EU. Hence, there are some protection measures for all consumers as regards content of advertising. In line with the aim of protecting minors from advertising that may cause *physical, mental or moral detriment to minors*, there are a range of rules concerning particular products and particular types of behaviour that are of relevance to all people under the age of consent: for example regarding alcohol consumption; regarding specific behaviours that may be dangerous; regarding the promotion of other lifestyle aspects that may be unhealthy – such as unhealthy food or slimming products.

General principles which apply to all commercial communications include the following from the AVMS Directive:

Article 9 (paragraph 1)

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:

*(a) audiovisual commercial communications shall be **readily recognisable** as such; surreptitious audiovisual commercial communication shall be prohibited;*

*(b) audiovisual commercial communications **shall not use subliminal techniques**;*

*(c) audiovisual commercial communications **shall not**:*

*(i) prejudice respect for **human dignity**;*

*(ii) include or promote any **discrimination** based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;*

(iii) encourage behaviour prejudicial to health or safety;

(iv) encourage behaviour grossly prejudicial to the protection of the environment;

Regarding the protection of minors the AVMS Directive is based on the principles outlined in Article 9(g):

*g) audiovisual commercial communications shall not cause **physical, mental or moral detriment** to minors; therefore, they shall **not directly exhort minors to buy** or hire a product or service by **exploiting their inexperience or credulity**, directly **encourage them to persuade their parents or others** to purchase the goods or services being advertised, **exploit the special trust** minors place in parents, teachers or other persons, or unreasonably **show minors in dangerous situations**.*

These basic principles are enshrined in the legislation of all EU member states in the context of the transposition of the (former) Audiovisual Media Services Directive. The table below outlines the range of issues that have been addressed in regulations, codes and guidelines

that relate to the issues of credulity and inexperience, parental authority, dangerous situations, and the requirement that audiovisual commercial communications do not cause physical, mental and moral detriment to minors.

Table 5.1 Themes that apply to general principles of AVMSD

Credulity, immaturity	Parental authority	Dangerous situations	Physical detriment	Mental detriment	Moral detriment
Issues of presentation and clarity	Undue pressure and pester power	Violent, aggressive or anti-social behaviour	Violent, aggressive or anti-social behaviour	Bullying	Ads for 18+ games, films, DVDs etc
Misleading or deception	Premium offers	Dangerous, unhealthy, reckless behaviour	Dangerous, unhealthy, reckless behaviour	Frightening or distressing content	promotion of unsuitable content
Promotions using popular characters	Superiority and generosity	Unlawful practices	Bullying	Superiority and generosity	Sex services
use of fantasy/ imagination/ special effects to enhance characteristics of product		Guns	Body image	Body image	Sexualisation of children
Premium offers			Slimming products	Slimming products	
Competitions	Competitions		HFSS Foods	Sexualisation of children	Intimate products
Data protection and privacy	Data protection and privacy		Tobacco	Intimate products (AUS)	Unlawful practices
Accurate representation of product	Accurate representation of product		Alcohol		
			Gambling	Gambling	
			Guns	Horoscopes/ psychics	

In New Zealand the general advertising code is based on two main principles: **social responsibility and truthful presentation**. The first covers the issues of privacy, consent, decency and offensiveness, exploitation of children and young people, safety, violence and anti-social behaviour, fear and distress, health and well-being, protecting the environment. The second incorporates identification, truthful presentation, use of data, comparative advertising, advocacy advertising, use of testimonials and endorsements, food and beverage claims, environmental claims. Regarding children's commercial communication, the principles outlined in relation to children are similar to the EU principles: *Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility: and Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.*

5.2. Clarity and presentation of ACC, inexperience and credulity

These issues, while incorporating general principles of clarity applying to all audiovisual commercial communications under the requirement that *audiovisual commercial communications shall be **readily recognisable** as such* (Article 9 1(a)), also touch on the

issues of ensuring that scheduling of advertisements, interruption of programmes and presentation of products do *not exploit the inexperience or credulity of minors* (Article 9g). The table overleaf provides an overview of the broad range of issues that are linked to the requirements that advertising be readily recognisable as such, and that the presentation of products does not exploit the inexperience or credulity of minors. These issues have been grouped together in order to show the commonalities in a range of countries. Table 5.2 first clarifies the codes that were examined and are referred to in the table.

Table 5.2 Codes examined in comparative tables

This chapter (and the preceding chapter) is based on the review of a wide range of legislation, regulatory codes, co-regulatory codes, self-regulatory codes, guidelines and charters. N.B. Some of these are official acronyms and some created by the author for convenience. As many of these laws, regulations and codes are indicated in a range of comparative tables in this chapter, the complete list is provided here:

Australia

CTI C: Australian Commercial Television Industry Code of Practice

CTS: Children's Televisions Standards (Australian Regulator)

AIC SR: Australian Advertising industry code Self-regulation

AANA Food and beverages Advertising and Marketing Communications Code

Austria

AMD-G: Audiovisual Media Services Act (Austria)

OWR-K: Code of Ethics of the Austrian Advertising Council

ORF-G : Public Service Media (ORF) Law (Austria)

Canada

ASC -C: Advertising Standards Canada Broadcast code for advertising to children

ASC -GC: Advertising Standards Canada Code of Advertising Standards

France

ARPP- E: Autorité de Régulation Professionnelle de la Publicité – Recommandation Enfant

ARPP- O: Autorité de Régulation Professionnelle de la Publicité (other Codes)

ARPP– J: Autorité de Régulation Professionnelle de la Publicité – Recommandation Jouet (toys)

Germany

WR-K: Code of Conduct of the German Advertising Council for the promotion of children and young people in television, radio and telemedia

WR-O: German Advertising Council (other codes)

JMStV: Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia

Ireland

CCC: Children's Commercial Communications code (Ireland, regulator)

GCC: General Commercial Communications code (Ireland, regulator)

New Zealand

ASACC: Advertising Authority's Children and Young People's Advertising Code (SR)

United Kingdom

BCAP : UK Advertising Standards Authority BCAP Broadcast Advertising Code

CAP: UK Advertising Standards Authority CAP Non-broadcast Advertising Code

USA

CARU: USA: Children's Advertising Review Unit Self-Regulatory Program for Children's Advertising

Table 5.3 Exploiting credulity and inexperience

Themes	AVMS	Austria	France	Germany	Ireland	United Kingdom	Australia	Canada	New Zealand	USA
must not exploit credulity and inexperience	AVMS	ORF-G (LEG) AMD -G (LEG)	ARPP– E (SR)	JMStV (LEG)	CCC (REG)	BCAP (CR)			ASACC (SR)	CARU (SR)
direct calls to purchase/ sense of urgency	AVMS	ORF-G (LEG) AMD -G (LEG)	ARPP– E (SR)	JMStV (LEG) WR-K (SR)		BCAP (CR)		ASC-C (SR)	ASACC (SR)	CARU (SR)
pester power/ undue pressure	AVMS	ORF-G (LEG) AMD -G (LEG)	ARPP– E (SR)	JMStV (LEG) WR-K (SR)	CCC (REG)	BCAP (CR)	CTS (REG) CTI C (CR) AIC (SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)
undermine parents / exploit trust in parents	AVMS	OWR-K (SR)	ARPP– E (SR)	JMStV (LEG) WR-K (SR)	CCC (REG)	BCAP (CR)	AIC (SR)			CARU (SR)
provide clear simple information		OWR-K (SR)	ARPP– E (SR)		CCC (REG)		CTS (REG) CTI C (CR)		ASACC (SR)	
should not mislead or deceive			ARPP– E (SR)		CCC (REG)	BCAP (CR)	CTS (REG) AIC SR		ASACC (SR)	CARU (SR)
factual presentation of product					CCC (REG)	BCAP (CR)	CTS (REG) AIC SR	ASC-C (SR)		CARU (SR)
characteristics: size, price etc			ARPP– E (SR)		CCC (REG)	BCAP (CR)	AIC SR	ASC-C (SR)	ASACC (SR)	CARU (SR)
ownership and superiority		OWR-K (SR)	ARPP– E (SR)		CCC (REG)	BCAP (CR)	CTS (REG) AIC (SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)
ownership and popularity			ARPP– E (SR)		CCC (REG)	BCAP (CR)				CARU (SR)
use of fantasy/ imagination/ special effects to enhance characteristics of product		OWR-K (SR)	ARPP– E (SR)		CCC (REG)	BCAP (CR)				CARU (SR)
promotions using popular characters					CCC (REG)	BCAP (CR)	CTS (REG) AIC (SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)
Presentation of toys			ARPP– J (SR)		CCC (REG)		CTS (REG) AIC SR			CARU (SR)
programme characters			ARPP– E (SR)		CCC (REG)	BCAP (CR)	CTS (REG)	ASC-C (SR)	ASACC (SR)	CARU (SR)
children endorsing products		OWR-K (SR)		WR-K (SR)	CCC (REG)					
children in advertisements		OWR-K (SR)		JMStV (LEG)	CCC (REG)	BCAP (CR)	CTS (REG)			
data protection/ privacy	AVMS		ARPP (SR)		CCC (REG)		AIC (SR)		ASACC (SR)	CARU (SR)
promotions / premiums							CTS (REG) AIC (SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)
competitions						BCAP (CR)	CTS (REG) AIC (SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)

LEG= legislation; REG= regulation; CR= co-regulation; SR= self-regulation

5.3. Products and services that are banned or limited

The advertising of cigarettes and tobacco products are completely banned throughout the EU, and e-cigarettes will be added with the entry into force of the new revised Directive (AVMS, Article 9d). Table 5.4 outlines a range of products and services that should be limited or restricted, in the context of children's programming, programming likely to be viewed, and in some cases all relevant advertising (for example for alcohol or gambling). The AVMS requires that Member States work towards limiting the exposure of children and minors to certain types of advertising: alcohol, HFSS foods, and gambling. The Directive states that Member States shall encourage the use of co-regulation and foster the use of self-regulation.

In many jurisdictions such products that are considered to be detrimental to the physical health of children and minors should not be targeting these age groups in commercial communications: for example alcohol, HFSS foods, medicines, slimming products. However, there is quite a variation in the approach to protection of health in particular in relation to HFSS foods (banned from children's programming in just three jurisdictions: Ireland, the UK and New Zealand). This does not mean that such advertising does not exist in countries where it is banned from children's programming (i.e. it may be scheduled at later times in the day or during programming less likely to appeal to children). Therefore, in these jurisdictions as well as in most others, there are codes and rules indicating how such products should be presented and ways in which a balanced diet should be promoted (this is dealt with in more detail in chapter seven).

Other products may be considered as potentially causing mental or moral detriment or impairment. Examples include the advertising of content such as films, games or DVDs that are rated 18+ during the periods where children are likely to see such advertising. Advertisements for dating services, sex services and 'intimate products' (for example condoms) may also be considered as unsuitable for broadcast at times where they are likely to be viewed by children.

Mental or moral detriment may also include content that may undermine the self-confidence or self-image of children and young people. Several jurisdictions include rules that concern commercials that promote a particular or ideal body image, commercials for slimming products and for cosmetic procedures.

A further range of services which could be considered to exploit inexperience and credulity include fortune tellers, psychics and horoscopes.

Again, these products have been grouped together in order to show the commonalities in a range of countries. (The same codes are referred to as those outlined in Table 5.2).

Table 5.4 Prohibited, limited, and regulated/ self-regulated items, products and services

Products	AVMS /EU	Austria	France	Germany	Ireland	United Kingdom	Australia	Canada	New Zealand	USA
Tobacco	General ban	General ban	General ban	General ban	General ban	General ban				
Alcohol	AVMS	ORF-G (LEG) OWR-K (SR)		JMStV (LEG) WR-K (SR)	GCC (REG)	BCAP (CR)	CTS (REG) CTI C (CR) AIC (SR)		ASACC (SR)	CARU (SR)
Medicines		ORF-G (LEG) OWR-K (SR)			GCC (REG)	BCAP (CR)		ASC -C (SR)		CARU (SR)
Slimming products		OWR-K (SR)			CCC (REG)	BCAP (CR)				CARU (SR)
HFSS foods	AVMS	KOR (SR)	ARPP–(SR)		CCC (REG)	BCAP (CR)			ASACC (SR)	
Guns/ weapons		OWR-K (SR)								
Gambling	AVMS	OWR-K (SR)	ARPP– (SR)	WR-K (SR)	CCC (REG)	BCAP (CR)	CTI C (CR)		ASACC (SR)	
Sex services					CCC (REG)		CTS (REG)			
Dating services					CCC (REG)					
Ads for 18+ games, films			ARPP– (SR)			BCAP (CR)	CTS (REG) CTI C (CR)			CARU (SR)
Intimate products						BCAP (CR)	CTS (REG) CTI C (CR)			
Advice, horoscopes						BCAP (CR)				
Fortune tellers, psychics					CCC (REG)					
Cosmetic procedures		OWR-K (SR)			CCC (REG)					

LEG= legislation; REG= regulation; CR= co-regulation; SR= self-regulation

5.4. Presenting or depicting types of behaviour, activities, attitudes and lifestyles

Audiovisual commercial communications whether they target children or not, and whether they advertise products of interest to children or not, can by virtue of their content show behaviour, activities and lifestyles which may cause physical, mental or moral detriment or impairment.

The most obvious concern is that of dangerous situations and dangerous behaviour. Also of concern is anti-social or violent behaviour and in some jurisdictions (Ireland, New Zealand and the UK) also bullying. Such behaviour may be shown when it is in the context of campaigns to prevent such behaviour with the aim of protecting children. In several jurisdictions reference is made to illustrating the correct use of safety equipment such as, for example, cycling helmets. Commercial communications should not portray situations where children talk to or go off with strangers. Advertisers should also take care not to include content which may be frightening or distressing to children.

As noted above, mental or moral detriment may also include content that may undermine the self-confidence or self-image of children and young people. Several jurisdictions include rules that concern commercials that promote a particular or ideal body image (and also commercials for slimming products and for cosmetic procedures).

Content and behaviour that may cause moral detriment also include sexual imagery in general and the sexualization of children, in particular.

The above is also linked to rules that frequently emerge in the review regarding the portrayal of children in the advertisements. In particular, the content should not demean children and should not sexualize children.

The table overleaf presents the broad range of themes addressed with regard to behaviour, activities and lifestyles which may cause physical, mental or moral detriment or impairment. Again, these themes have been grouped together in order to show the commonalities in a range of countries. (The same codes are referred to as those outlined in Table 5.2).

Table 5.5 Encouraging or depicting particular behaviour, activities, lifestyles, attitudes, images etc.

Themes addressed	AVMS	Austria	France	Germany	Ireland	United Kingdom	Australia	Canada	New Zealand	USA
moral, mental or physical detriment	AVMS	AMD- G (LEG) ORF-G (LEG)	ARPP-E (SR)	JMStV (LEG)	CCC (REG)	BCAP (CR)	CTS (REG)	ASC-GC (SR)	ASACC (SR)	
violent, anti-social or aggressive behaviour		OWR-K (SR)	ARPP-E (SR)		CCC (REG)				ASACC (SR)	CARU (SR)
bullying					CCC (REG)	BCAP (CR)			ASACC (SR)	
Disparaging education					CCC (REG)					
dangerous, unhealthy, reckless behaviour	AVMS	AMD-G (LEG) ORF-G (LEG) OWR-K (SR)	ARPP-E (SR)	JMStV (LEG) WR-K (SR)	CCC (REG)	BCAP (CR)	CTS (REG)		ASACC (SR)	
unsafe situations/ strangers			ARPP-E (SR)		CCC (REG)	BCAP (CR)	CTS (REG) AIC (SR)	ASC-GC (SR)	ASACC (SR)	CARU (SR)
demeaning children/ undermine self-image		OWR-K (SR)	ARPP-E (SR)						ASACC (SR)	
unsupervised internet use					CCC (REG)					
safety equipment / guidelines			ARPP-E (SR)		CCC (REG)	BCAP (CR)	AIC (SR)			CARU (SR)
dangerous substances/ equipment					CCC (REG)		AIC (SR)	ASC-GC (SR)	ASACC (SR)	CARU (SR)
criminal acts		OWR-K (SR)	ARPP-E (SR)	WR-K (SR)						
frightening or distressing content		OWR-K (SR)	ARPP-E (SR)	WR-K (SR)	CCC (REG)	BCAP (CR)	CTS (REG) AIC (SR)			CARU (SR)
sexualisation of children/ nudity		OWR-K (SR)	ARPP-E (SR)	WR-K (SR)	CCC (REG)	BCAP (CR)	AIC (SR)	?	ASACC (SR)	CARU (SR)
sexual imagery									ASACC (SR)	CARU (SR)
body image		OWR-K (SR)			CCC (REG)				ASACC (SR)	

LEG= legislation; REG= regulation; CR= co-regulation; SR= self-regulation

6. Thematic focus: on demand, online and new advertising techniques

6.1. Introduction and overview of commercial communications online

As is well known, the nature of online advertising is completely different to that of commercial communications on linear television. The old regimes that ensure issues such as placement, scheduling, length and most importantly the concept of recognition are no longer adequate for the online world. As was noted earlier (chapter three), for traditional advertising there is considerable consensus on the lack of ability of younger children to recognise and understand the purpose of advertising and the fact that this develops over time. However, the new advertising world has created a situation where everyone (and not just children) has to re-learn how to recognise and deal with advertising online.

A particular concern is the new type of personalised and targeted advertising based on the monitoring of people's online behaviour, which is referred to as "online behavioural advertising" (OBA). OBA uses cookies and other technologies to collect data on users, allowing companies to collect detailed information on users based on their web browsing data, search histories, media consumption data (such as videos watched), app use data, purchases, click-through responses to ads, and communication content, such as what people write in e-mails or post on social networking sites.⁴⁴

For the purposes of the Directive, it includes video-sharing-platforms in the scope of the Directive, and both programming and user-generated content as spaces for commercial communications that fall within its regulatory scope. Hence, a major challenge for EU Member States and hence for regulators is the regulation of commercial communications in on-demand services, and particularly those that appear in programmes and user-generated-videos on VSPs.

6.1. Review of the AVMS

Re-defining audiovisual commercial communications in the AVMS

The new AVMS⁴⁵ Directive has re-defined the concept of audiovisual commercial communications to include those communications included in user-generated videos (on video-sharing-platforms).

In Article 1, paragraph 1 (h)

*'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or **user-generated video** in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;"*

Video-sharing platforms

Video-sharing-platforms (VSP) have been included in the regulation of audiovisual media services, while defined separately. VSPs are services *where the principle purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing* (In Article 1, paragraph 1 (aa)).

⁴⁴ See: European Audiovisual Observatory (2018): *The Legal Framework for Video-Sharing Platforms*

⁴⁵ The final revised Directive can be found [here](#)

Chapter IXa focuses on the provisions applicable to video-sharing platform services, while Article 28b focuses on the obligations of Member States with regard to audiovisual commercial communications on VSPs.

1. Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect:

(a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1); (b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter; (c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

Video-sharing platforms will have to comply with AVMS the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are marketed, ***sold or arranged by*** those video-sharing platform providers, and with respect to audiovisual commercial communications ***that are not marketed, sold or arranged by*** those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications. This implies a responsibility for all advertising appearing on the platforms. Video-sharing platforms will have to clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under point (c) of the third subparagraph of paragraph 3 or the provider has knowledge of that fact.

VSPs are also covered in the Directive in relation to HFSS foods with Member States required to encourage the use of co-regulation and the fostering of self-regulation through codes of conduct aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended (see chapter seven).

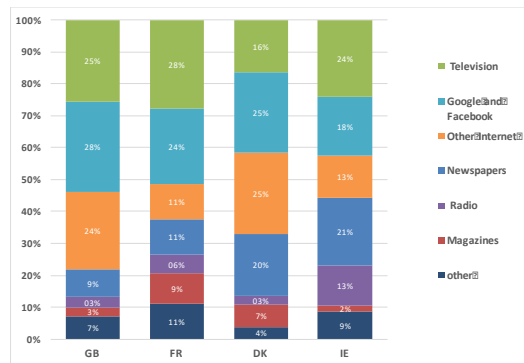
Data collection and privacy

With regard to the collection of data on children the revised AVMSD prohibits the use of data on children for *commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising* (article 6a(2)). However, this is only in relation to the data collected in the context of technical measures designed to protect minors from access to harmful content (Article 6a (1)). Section 6.3 below looks in more detail at national rules on this issue.

The economic significance and growing dominance of online advertising

There is plenty of evidence that online advertising has become a significant source of market revenue, in particular for new players in the field. With regard to the Irish market, the figure below also shows the dramatic shift in advertising revenue to the Internet between 2011 and 2016.

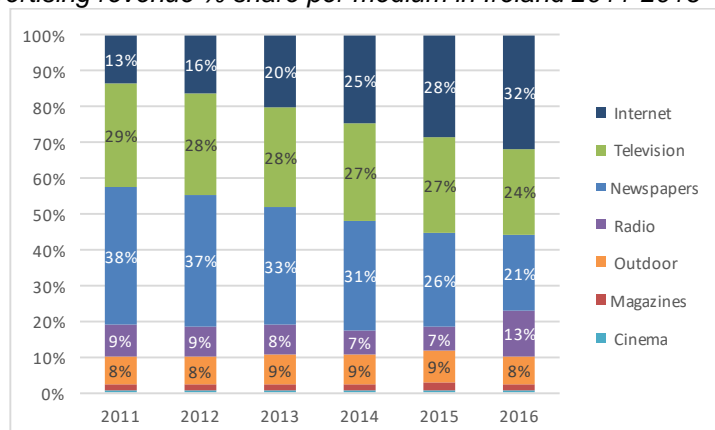
Fig. 6.1 Estimated share of Google and Facebook of advertising revenues in four countries



Source: European Audiovisual Observatory, and other sources (see footnotes)

Recent data for the UK suggests that in 2017 Google and Facebook were expected to account for 54% of all digital ad revenues in the UK, taking home £6.3bn between them.⁴⁶ Irish market experts estimate that online advertising revenues in Ireland are dominated by Google and Facebook with a combined share of 58%.⁴⁷ Data from research in Denmark in 2016 shows that the proportion of online advertising revenue for Google and Facebook is more than 50%.⁴⁸ According to the French press, in 2017, Google and Facebook share 68% of the online advertising market.⁴⁹ Fig 6.1 estimates the role of the two big players in national markets (estimations based on different sources).

Fig 6.2. Advertising revenue % share per medium in Ireland 2011-2016



Based on data from the Yearbook Online Service 2017 of the European Audiovisual Observatory

The shift of the young consumer and viewer to the online world

There is also clear evidence of a general move towards viewing content on an on-demand basis and via VSPs. Younger generations are particularly showing these trends. Research in Norway shows that in the age group of 12-17, media use on a daily basis is as follows: 99% are using the Internet; 96% Social Media ; 61% Television; 88% Net-TV; and 94% use online videos.⁵⁰

⁴⁶ The Drum: (18.09.2017) [Google and Facebook digital ad dominance grows in latest survey](#).

⁴⁷ Irish Independent (04.03.2018): [Time to reassess Ireland's digital advertising market](#)

⁴⁸ Danish Agency for Culture and Palaces (Slots- og Kulturstyrelsen) (2016): [Media Development in Denmark 2016](#). English summary

⁴⁹ Le Monde (3.07.17) Publicité : [face à Facebook et Google, les éditeurs de presse regroupent leurs forces](#)

⁵⁰ Source Kantar TNS (June 2017), cited in an EPRA presentation: by Mari Velsand, NMA (NO), for the Plenary Session 2 "Minors' advertising literacy in the digital age". October 2017 in Vienna. Available [here](#)

French research from June 2015 showed that 81% of 12-17-year olds are equipped with a smartphone, compared to 58% of the average population. In addition, 60% of 12-17-year olds watched live TV on the Internet or via catch-up, compared to 37% of the total population on average. 81% of 12-17-year olds use a mobile phone to download applications, free or paid, against 44% of the total population on average. And 79% of 12-17-year olds participated in social networks like Facebook, MySpace or Linked in, compared to 52% of the total population on average.⁵¹

Ofcom research in 2017 showed that half (53%) of 3-4s are now online, as are 79% of 5-7s and 94% of 8-11s. Ninety-nine per cent of 12-15s are also online. The TV set is still the most widely used device for watching content. More than nine in ten children in all age groups ever watch TV on a TV set, and the TV set is also the device children are most likely to 'mostly' use to watch content. However, there are differences by age: while 88% of 3-4s mostly watch TV on a TV set, this decreases with age to 62% of 12-15s, and 12-15s are less likely than in 2016 to say they 'ever' or 'mostly' watch on a TV set. Also Use of YouTube has increased by 11 percentage points since 2016, to 48% for 3-4s, by 17 percentage points to 71% for 5-7s and by eight percentage points to 81% for 8-11s.

Ninety per cent of 12-15s use YouTube, unchanged since last year. Half of YouTube users aged 3-4 and a quarter aged 5-7 only use the YouTube Kids app rather than the main YouTube website or app. The research also showed that Children aged 3-4 and 5-7 are most likely to watch cartoons, animations, mini-movies or songs on YouTube, while 8-11 and 12-15s are most likely to watch music videos and funny videos/ jokes/ pranks/ challenges. Thirteen per cent of 3-4s watch whole programmes on YouTube, increasing with age to 27% of 12-15s.⁵²

Media literacy, traditionally considered as a tool for the protection of minors, has recently become an important element in educating people (children and adults) on the nature of advertising online. Significant research on the area of advertising literacy has been carried out by the Belgian Adlit project. They define advertising literacy as being "the personal knowledge people have about advertising, its persuasive intent, and the advertising techniques that are used to target them"

The work has reviewed a range of research that looks at children's engagement online and noted for example that: *research has shown that children enter the digital world at a very young age, with 70% of the 3-4-year-olds already being active online. Their favourite activities include playing games and watching videos online. This explains the increasingly successful 'advergames', i.e. short, fun and interactive games fully integrating the product or brand to be advertised, offering children an enjoyable experience and connection with the brand.*⁵³

The Ofcom research cited above also looked at children's understanding of advertising and noted that: 8-11s and 12-15s are more likely to say TV adverts mostly tell the truth about what they are selling than they are to say this about online adverts; around six in ten 12-15s are aware of personalised advertising and vlogger endorsements but only a minority of 8-11s and 12-15s can identify advertising on Google; a quarter of 8-15s believe that if a website is listed by a search engine it can be trusted.⁵⁴

⁵¹ Credoc research 2015

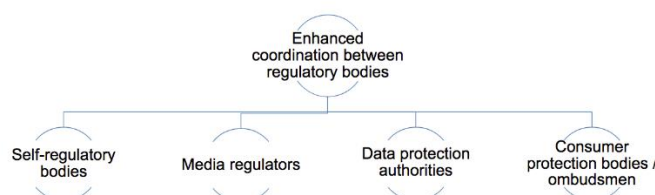
⁵² Ofcom (2017): Children and Parents: Media Use and Attitudes Report. [Available here](#)

⁵³ Verdoodt, V., Lambrecht I., and E. Lievens (2016). Mapping and analysis of the current self-and co-regulatory framework of commercial communication aimed at minors..

⁵⁴ Ofcom (2017): Children and Parents: Media Use and Attitudes Report. [Available here](#)

Recent research from the AdLit research group⁵⁵ (focused on 9-11-year old children) showed that on the issue of new media and online advertising, children have a limited understanding of new ad formats/tactics. They are able to understand how these work but only when made aware of these issues. The study also found that the advertising literacy of adolescents is not yet fully developed in the context of advertising on Social Networks (compared to adults as a benchmark). Overall, they recommend enhanced coordination between regulatory bodies to deal with these new challenges.

Fig 6.3: Recommendations of AdLit study on enhanced co-operation



6.2. National regulations applying to on-demand and other online services

The two complete bans on audiovisual commercial communications in programmes targeting children in Sweden and Norway also apply to on-demand audiovisual services. In the case of Québec, all forms of marketing and advertising in all media are included.

In the UK, the Advertising Authority introduced new rules, which banned HFSS food advertising in children's online media, mirroring the standards already in place for TV. In the non-broadcast code, the CAP, the limits of this advertising are more clearly defined: no medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries.

In the many jurisdictions, the regulations do not yet specifically cover all the new forms of advertising online (see table 6.1). However, the self-regulatory codes of the advertising industry tend to cover all types of audiovisual communications and marketing on all media. As the Directive now incorporates video-sharing platforms (VSPs), it is anticipated that regulators will have find new approaches to dealing with these new forms of advertising on platforms such as Youtube and Daily Motion.

Clarity, presentation, identification and external links

The French ARPP code on children states that interactive advertising must be clearly recognizable and must not allow direct access to a site with foreign content to the original advertisement.

The US code also includes rules that advertisers must clearly identify sponsorships of websites and indicate the name of the sponsors. In addition, if an advertiser integrates an advertisement into the content of a game or activity, then the advertiser should make clear, in a manner that will be easily understood by the intended audience, that it is an advertisement. In addition, Advertisers should not advertise products directly to children that pose safety risks to them, i.e., drugs and dietary supplements, alcohol, products labelled, 'Keep out of the reach of children;' nor should advertisers targeting children display or knowingly link to pages of websites or online services that advertise such products.

⁵⁵ Presentation by Eva Lievens, Ghent University, for the Plenary Session 2 "Minors' advertising literacy in the digital age". October 2017 in Vienna. [Available here](#)

Data protection and parental consent

Commercial communications codes that directly address the issue of data collection and the requirement for parental consent include the following. The Australian self-regulatory code on advertising to children states that if an Advertising or Marketing Communications indicates that personal information in relation to a Child will be collected, or, if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain a parent or guardian's express consent prior to engaging in any activity that will result in the collection or disclosure of such personal information. The ARPP Digital Advertising Code also states that it is essential that children are encouraged to ask the permission of the parents or their legal persons before providing personal information, and not to collect through a child the personal data of a third party. The code in New Zealand also stresses that extreme care must be taken when requesting or recording the names, addresses and other personal details of children or young people to ensure their privacy rights are fully protected and the information is not used in an inappropriate manner. Also, if advertising indicates that personal information about a child will be collected, or is likely to be collected, then it must include a statement that a parent or guardian's verifiable consent is required.

In Ireland, the BAI code states that Children's commercial communications shall not ask children to submit private information or details regarding themselves, their family or friends, unless the commercial communication is as part of a campaign that relates to their safety, health or wellbeing. When this practice is used, children's commercial communications should state, where reasonable, that children must seek adult approval before sending the information.

6.3. Dealing with new forms of advertising and marketing to children

Examples of approaches from regulatory authorities

Given the practical difficulties of regulating commercial communications on the Internet In a recent presentation at the EPRA,⁵⁶ the Norwegian authority outlined approaches to dealing with commercial communications on video-sharing-platforms such as Youtube. They created a mapping of Youtube channels and also reviews the "influencers" and "vloggers" that were promoting or advertising products to children and young people, in order to assess which services came within the scope of the new Directive. The Norwegian Authority and the Consumer Ombudsman established, via discussions, who had responsibility for which kind of online services. They concluded that the Norwegian Media Authority was responsible for Videobloggers and YouTubers. The Consumer Ombudsman will be responsible for other social media, such as Facebook, Instagram and Snapchat. The Norwegian Authority has created a Guide for Youtubers and Video Bloggers about labelling Advertisements.⁵⁷ The Media Authority plans to focus more on dialogue and guidance, which includes increasing the media literacy level in the population; providing guidelines on advertising for children who watch YouTube - and their parents; providing guidance towards children and youth on safe use of digital tools; providing counselling on age ratings on videogames towards youth clubs and LAN gatherings.

Other regulatory authorities have produced guidelines regarding the identification of commercial communications online. In Germany, the DLM (Directors Conference of the State Media Authorities) published guidelines in November 2018 for online services regarding the

⁵⁶ Velsand, M (2017), NMA (NO), for the EPRA Plenary Session 2: "Minors' advertising literacy in the digital age." 13 October 2017, Vienna. Available [here](#)

⁵⁷ Norwegian Regulatory Authority Guide for Youtubers and Video Bloggers about Labelling of Advertisements. [Available here in English](#)

identification of advertising.⁵⁸ It includes a complete Matrix as to how the rules on advertising can be applied properly by the service with regard to Youtube videos, pictures, blogs etc. The UK Advertising Standards Authority, which operates a co-regulatory regime in co-operation with the UK regulator Ofcom, also launched a guidance in September 2018 for social “influencers”. The Influencer’s Guide is an online resource that aims to help all parties involved in influencer marketing to follow the rules. It includes: what the rules are; what the ASA considers to be an ad; how to make clear ads are ads; what the Competition and Market Authority requirements are; and what happens if someone makes a complaint about a post to the ASA.⁵⁹

The Irish Advertising Standards Authority (self-regulatory) also produced in April 2018, a guide to advertising and blogging in order to clarify what was advertising, issues surrounding payment and control, and the need for disclosure.⁶⁰

Industry self-regulatory initiatives

There are vast range of industry self-regulatory initiatives dealing with on-line advertising. These are the organisation descriptions in their own words.⁶¹ A quick search of their websites revealed few specific codes on children. The EASA co-operates with the food industry on the EU Pledge regarding advertising of HFSS foods.

Interactive Advertising Bureau (IAB)

Member organisation for media and marketing industries active in the digital economy. Its members are responsible for buying, selling, optimising, and analysing digital advertising and marketing campaigns. Develops technical standards, best practices, and research, with emphasis on education and awareness raising among brands, agencies, and the general business community regarding the value of digital advertising.

IAB Europe’s Online Behavioural Advertising (OBA) Framework: Structure for codifying industry good practices and principles to increase transparency and choice for web users within the EU/EEA, which are binding upon members (for example, ad reporting, control, icon, explicit consent, OBA user choice site, etc.).

Your Online Choice: Consumer-focused website and education portal in all EU languages, providing a mechanism for web users to exercise their choice with respect to the collection and use of data for OBA purposes.

European Advertising Standards Alliance (EASA)

The EASA brings together 34 national advertising SROs and 16 organisations representing the advertising industry (including IAB Europe) in Europe and beyond to promote high ethical standards in commercial communications, through EASA’s Advertising Self-Regulatory Charter and EASA’s Best Practices Recommendations. *EASA’s Best Practices Recommendations on OBA:* (adopted on 7 April 2011 and implemented by national SROs in Europe and EASA industry members). Sets out a European advertising industry-wide self-regulatory standard and a compliance mechanism for consumer controls in OBA.

European Interactive Digital Advertising Alliance (EDAA)

Leading alliance of digital advertising organisations in the EU, with the goal of introducing EU-wide standards to “enhance transparency and user control for online behavioural advertising”.

⁵⁸ DLM (2018): Guidelines for advertising social media offers: Advertising Tag Matrix with Tips for Offers on YouTube, Facebook, Instagram and Co. [Available here](#)

⁵⁹ UK Advertising Standards Authority: An Influencer’s Guide to making clear that ads are ads. [Available here](#)

⁶⁰ Irish Advertising Standards Authority(2018): ASAI FAQs on blogging. [Available here](#)

⁶¹ General data on these initiatives taken from

Bases its objectives on IAB Europe's Online Behavioural Advertising (OBA) Framework and the European Advertising Standards Alliance's Best Practices for online behavioural advertising.

[Network Advertising Initiative \(NAI\)](#)

Non-profit SRO focused on responsible data collection and use in online advertising, with emphasis on third-party advertising technology companies. *Code of conduct*: (last updated in 2018): Assesses the types of data that member companies can use for advertising purposes, and imposes restrictions on the member companies' collection, use, and transfer of data used for personalised advertising. *Consumer Opt-out page*: Website where Internet users can opt out of receiving online advertising from NAI members who use HTTP cookies on computer browsers.

[Digital Advertising Alliance \(DAA\)](#)

Online advertising industry association made up of other member organisations, focusing on ethical self-regulation in the online advertising and ad tech industries, whose purpose is to expand self-regulation for interest-based advertising to the entire ecosystem.

They have developed the Advertising Option Icon ("Ad Choices" icon), which publishers can place on their pages offering users options about what happens when they encounter advertising on their page and how they interact with that advertising. They provide a self-regulatory programme, recommendations, and misconduct reporting resources for Internet users and companies involved with digital advertising.

Themes addressed in rules relating to on-demand and other online audiovisual services

Table 6.1 overleaf provides an overview of where the rules examined in earlier chapters already include online services, and where specific codes and rules exist for online audiovisual services in relation to protection of children and minors, labelling of advertising, and data protection.

Table 6.1: Themes addressed regarding online and on-demand audiovisual media services

	AUS	AT	CAN	CAN-Q	FR	DE	IE	NZ	GB	USA
Principles on advertising: linear and non-linear		LEG		LEG	LEG	LEG	LEG		LEG	
Principles on advertising cover all media									BCAP/CAP	CARU (SR)
Rules on advertising cover linear media							CCC (REG)		BCAP (CR)	
Rules on advertising: on-demand							ODAS (SR)		CAP (CR)	
Rules on advertising cover linear and non-linear							IASA(SR)		BCAP/CAP	
Rules on advertising: all media				LEG		WRK (SR)	IASA(SR)	ASACC (SR)	BCAP/CAP	CARU (SR)
Rules on children cover all media	AIC (SR)							ASACC (SR)	BCAP/CAP	
Rules on food cover all media	AFGC(SR)		LEG		ARPP-F (SR)	WRF (SR)			BCAP/CAP	
Interactive advertising					ARPP-E (SR)					
recognition (labelling) of ads on websites for children						ZAW VCP				
clear signals ("words") that content is advertising						ZAW VCP				CARU (SR)
functions for closing advertising windows or pop ups: visible to children and easy to use.						ZAW VCP				
Advertisers that create or sponsor an area in online service or a website, must prominently identify sponsoring company										CARU (SR)
forbidden to encourage appointments, online or offline, with strangers or to go to unknown or dangerous places					ARPP- E SR					
Pledge to not target U12 with behavioural advertising						DDOW VCP				
Links in advertising to other sites					ARPP- E (SR)					CARU (SR)
Data collection on children requires parental consent	AIC (SR)				ARPP- D (SR)			ASACC (SR)	CAP	CARU (SR)
Not create user profiles of children									CAP	
Data collection follows data law					ARPP- E (SR)					
Videogames/ recreation software					ARPP- E (SR)					CARU (SR)
Online sales and parental consent										CARU (SR)
not advertise unsafe products or knowingly link to such products.										CARU (SR)

REG= regulatory; CR= co-regulation; SR= self-regulation; VCP = voluntary actions, charters and pledges

7. Thematic focus on audiovisual commercial communications for HFSS foods

7.1. Introduction to commercial communications for food and beverages

The regulation of audiovisual commercial communications for food and beverages covers three broad overlapping areas:

- ACC covering all food and beverage items
- ACC covering food which is classified as HFSS and its relation to children's programming
- ACC covering food which is classified as HFSS (which may be prohibited in children's viewing times)

As noted in earlier sections of this report, this implies distinctions between the way in which ACC are regulated when they target children, when they are placed in and around programming that targets children, when they are placed around programming likely to be seen by children, and how they are regulated in general with regard to the entire viewing population. These distinctions have an influence on the nature of overall bans and limitations on the exposure of children to commercial communications for HFSS foods, as will be seen below. The vast majority of approaches to this issue have been via self-regulation and these practices have been promoted at EU level through the EU Platform for Action on Diet, Physical Activity and Health.⁶²

7.2. Debates and research on commercial communications for HFSS foods

There is a vast amount of literature and policy documents that: a) address the issue of obesity and its relationship with HFSS foods (scientific and health publications); b) address the links between exposure to advertising for HFSS foods and children's food choices and/or brand loyalty (health, psychology, media studies, social science and policy documents); c) address the extent to which various statutory or non-statutory regulations (including self-regulation) has served to reduce the exposure of children to this type of commercial communication (health, policy, media studies); and d) investigate links between reduced exposure and reduced levels of obesity (policy documents, media studies etc.). In the context of this research, it was not possible to provide any kind of comprehensive overview of this body of work. Instead reference will be made here to some articles which themselves provided major reviews of the pertinent research.

In its final report presented on January 25, 2016, the World Health Organization's Commission on Ending Childhood Obesity found that there is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages has a negative impact on childhood obesity, and recommended that any attempt to tackle childhood obesity should include a reduction in the exposure of children to marketing. Specifically the report noted that state parties should: create healthy food and drink environments, and; adopt strong measures that reduce the overall impact on children of all forms of marketing of foods high in energy, saturated fats, trans fats, sugar or salt; ensure adequate provision for independent monitoring and evaluation to assess whether they achieve this objective; use common tools in the context of policies to reduce marketing to children of foods high in energy, saturated fats, trans fats, sugar or salt, such as nutrient profiling.⁶³

The UK Food Foundation in its 2017 report also stated that there was: strong evidence from systematic reviews showing that the marketing of high fat, sugar and/or salt (HFSS) foods

⁶² EU Platform for Action on Diet, Physical Activity and Health: [Website](#)

⁶³ WHO (2016): Report of the commission on ending childhood obesity. [Available here](#)

contributes to children's preferences, purchase requests and consumption patterns.⁶⁴ In addition, a 2015 Public Health England report also provided findings from several research projects.⁶⁵

Findings from the reviews in the research showed that: both old (e.g. TV, press, radio) and new (online advertising, advergames, social media) marketing methods are effective in influencing food preference, choice and consumption in children. Among others, the research concluded that:

- advergames can play an important role in increasing preference for, or consumption of, high sugar foods
- the use of characters or 'spokes characters' can increase preference for, or choice or consumption of, high sugar foods in young children (aged 3 to 7 years)
- current, limited research also suggests an effect for marketing strategies such as sponsorship, integrated digital and online marketing influences on preferences, purchasing and/or consumption
- price discounting can have a significant impact on increasing sales of high sugar products
- end of aisle displays can significantly increase purchases of carbonated soft drinks

In 2013, researchers⁶⁶ reviewed 60 academic papers and policy documents regarding the extent to which various statutory or non-statutory regulations (including self-regulation) has served to reduce the exposure of children to this type of commercial communication. Their findings revealed varying results:

- Surveys reported in papers in peer-reviewed journals provide evidence of continuing high levels of promotion of less healthy food products and high levels of exposure of children to this promotion, with small or no reductions over recent years in many locations except in response to statutory regulation.

- Reviews of other reports show a distinct division between industry-sponsored reports which indicate a remarkable reduction in the promotion of unhealthy products and children's exposure, and reports from a variety of other authoritative sources which show weak or absent reductions, or insufficient evidence of change as a result of the self-regulation, but some reduction following statutory regulation.

- Differences between results may also be dependent on methodologies regarding the programming that was monitored.⁶⁷

- These latter reports imply that statutory regulation may have the potential to reduce children's exposure significantly, but are currently insufficient to cover the full range of opportunities for marketing to children.

The European Consumer Organisation – BEUC- has also called for a range of changes to the current approach to regulating marketing of food to children. They claim that Self-regulation is falling short of expectations: HFFS food is still marketed to children: Healthy food items (fruits, vegetables, healthy proteins, whole grains etc.) represent a very low share of food marketed to kids: New marketing techniques (advergames, social media) are increasingly used; Self-regulation and voluntary codes of conduct are not bringing the expected results. They present a range of recommendations including:

Government led actions based on strict criteria and applied across the board

⁶⁴ UK Food Foundation (2017): UK's restrictions on junk food advertising to children. [Available here](#)

⁶⁵ Public Health England (2015): Sugar Reduction: the evidence for action. [Available here](#)

⁶⁶ Galbraith-Emami, S. and T. Lobstein (2013): The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review. In Obesity Reviews

⁶⁷ Most of the scientific papers used times of day when children are likely to be watching television, whereas the pledges have specified 'children's TV' to be only those TV programmes watched by an audience of which over 35% (or in some cases over 50%) are children under age 12 years. An analysis of Australian free-to-air TV watching found no time in weekdays and only a short period at weekends when the proportion of the audience aged under 14 years exceeded 35%.

Broadening the scope of the EU pledge and other voluntary codes to cover new media and family programmes broadcasted between 6pm and 10:30 pm

Reshaping the age definition of a child in the EU pledge and other voluntary codes, from 12 to 16

Establishing independent criteria for the types of foods submitted to marketing restrictions⁶⁸

7.3. Audiovisual Media Services Directive: new Directive and HFSS foods

In the newly revised Directive, the obligations with regard to protecting children from commercial communications have been somewhat strengthened. Now the requirement is that Member States (Preamble 28) should be encouraged to ensure that self- and co-regulation, including through codes of conduct, is used to **effectively reduce the exposure** of children to audiovisual commercial communications for these types of food. And (article 9(4)) those codes shall aim to **effectively reduce the exposure** of children to audiovisual commercial communications for such foods and beverages. They shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages. One main change is the obligation to **effectively reduce** the exposure of children to audiovisual commercial communications for such beverages.

Table 7.1 AVMSD and HFSS foods

Audiovisual Media Services Directive (Revised 2018)

Preamble (28)

Certain widely recognised nutritional guidelines exist at national and international level, such as the World Health Organization Regional Office for Europe's nutrient profile model, in order to differentiate foods on the basis of their nutritional composition in the context of television advertising of foods to children. Member States should be encouraged to ensure that self- and co-regulation, including through codes of conduct, is used to effectively reduce the exposure of children to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars, fat, saturated fats or trans-fatty acids or that otherwise do not fit those national or international nutritional guidelines.

Article 9 (4)

4. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended.

Those codes shall aim to effectively reduce the exposure of children to audiovisual commercial communications for such foods and beverages. They shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

Changes in the scope

However, the overall scope of these obligations has also changed. As outlined in chapter three, the revised Directive has re-defined the concept of audiovisual commercial communications to include those communications included in user-generated videos. In addition, video-sharing-platforms (VSP) have been included in the regulation of audiovisual media services, while defined separately. Under Chapter IXa Article 28b (2): video-sharing platforms also need encouragement to reduce the exposure of children to such products.

⁶⁸ BEUC (2014): Marketing to children and HFFS food. By Ilaria Passarani, Head of Food and Health Department. Presentation art: EU Platform on diet, physical activity and health. Brussels 2014.

Table 7.2: Video-sharing platforms and audiovisual commercial communications for HFSS foods

<p>Chapter IXa Provisions applicable to video-sharing platform services Article 28b 2 (paragraph 3) Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended. Those codes shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.</p>

7.4. National rules limiting the amount of ACC of HFSS foods viewed by children

As noted in chapter three, there are several countries where *all* advertising and marketing to children is banned, namely in Sweden, Norway (for both on all audiovisual media services) and Canada (Quebec, on most media).

Bans on the advertising of HFSS foods in children's programming

In several jurisdictions, the advertising of HFSS Foods has been banned during children's programming: Ireland and the United Kingdom. In New Zealand there is a voluntary ban under the self-regulatory system. In Ireland, commercial communications for HFSS food products and/or services shall not be permitted in children's programmes, which are defined as programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age. In the UK, these products may not be advertised in or adjacent to programmes commissioned for, principally directed at, or likely to appeal particularly to audiences below the age of 16. In 2017, the Advertising Authority introduced new rules, which banned HFSS food advertising in children's online media, mirroring the standards already in place for TV.

The rules in the UK may also in the future move one step further. In its action plan on childhood obesity published in June 2018 the Government committed to consult on introducing a 9pm television watershed for HFSS advertising as well as similar protection for children viewing adverts online. The Government aims to explore "options to ensure that any restrictions are proportionate ... and consider a focus on those products that children consume and most contribute to the problem of childhood obesity".⁶⁹ In the BAI General Commercial Communications Code, there is also a general restriction on the total amount of HFSS advertising: maximum of 25% of sold advertising time and only one in four advertisements for High Fat Salt Sugar (HFSS) food products and/or services products are permissible across the broadcast day. This is a rather novel approach.

Legislation is in process (status December 2018) in Canada to also ban the advertising of such products and this would bring the Canadian Federal rules somewhat more in line with the provincial law in Quebec (at least regarding HFSS foods). Research from the non-profit organisation Food Tank claims that while the rest of Canada has seen a drastic increase in obesity among children, Quebec maintains the lowest child obesity rate.⁷⁰

The Canadian Bill proposed implementing regulations include the following:

- Subject to the regulations, no advertising unhealthy food in a manner that is directed primarily at children (children are defined as under 13 years of age).⁷¹

⁶⁹ UK Government (2018): Childhood obesity: a plan for action. [Available here](#)

⁷⁰ Food Tank: non-profit think tank on food: [Website](#)

⁷¹ The initial proposal for the Bill was a definition of children as being U17 but was amended,

- Marketing to children prohibited when the portion in the viewing audience is over 15%.
- where the proportion of children in the viewing audience is less than 15%, the marketing will be restricted only if the advertisement is found to have clear "child appeal".

As noted earlier (chapter four) the advertising of such food stuffs in Chile and Mexico is limited to certain scheduling time zones which are outside those zones where children may be watching television. Overall, this indicates a significant trend towards reducing the extent to which children are exposed to commercial communications for HFSS foods. Two further examples are addressed below where: in France an entirely different approach was taken in order to prevent the banning of commercial communications for HFSS around children's programming; and in Poland, the audiovisual regulator has established an agreement similar to a co-regulation on the issue. Table 7.4 overleaf outlines the main approaches and themes relevant to the regulation of audiovisual commercial communications for food and beverages. These issues have been grouped together in order to show the commonalities in a range of countries. Table 7.3 first clarifies the codes that were examined and are referred to in the table.

Table 7.3 Codes relevant to food advertising

This chapter is based on the review of a wide range of legislation, regulatory codes, co-regulatory codes, self-regulatory codes, guidelines and charters relevant to HFSS foods.

N.B. Some of these are official acronyms and some created by author for convenience.

The complete list is provided here:

Australia

CTS: Children's Televisions Standards (Australian Regulator)

AANAF: Food and beverages Advertising and Marketing Communications Code Australia

AIC SR: Australian Advertising industry code Self-regulation

Austria

CCAB (SR): Code of Conduct of Austrian Broadcasters regarding ACC and Food

Canada

ASC -C: Advertising Standards Canada Broadcast Code for advertising to children

France

ARPP- E: Autorité de Régulation Professionnelle de la Publicité – Recommandation Enfant (child code)

ARPP-F : Autorité de Régulation Professionnelle de la Publicité - Recommandation Comportements Alimentaires V2 (Food code)

ARPP-FE : Autorité de Régulation Professionnelle de la Publicité Recommandation Alimentation des enfants de moins de trois ans (Food for children under three years)

Germany

WR-F: Code of Conduct of the German Advertising Council (Werberat) on Food

Ireland

CCC: Children's Commercial Communications code (Ireland, regulator)

New Zealand

ASACC: New Zealand Advertising Authority's Children and Young People's Advertising Code (SR)

United Kingdom

BCAP : UK Advertising Standards Authority Broadcast Code of Advertising Practice

USA: CARU: Children's Advertising Review Unit Self-Regulatory Program for Children's Advertising

Table 7.4 Issues and approaches to food and beverage advertising and advertising for HFSS foods

	Austria	France	Germany	Ireland	United Kingdom	Australia	Canada	New Zealand	USA
Food advertising in general									
Excessive or irresponsible consumption	CCAB (SR)	ARPP-F (SR)	WR-F (SR)	CCC (REG)	BCAP (CR)	AANAF(SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)
Not counteract healthy active lifestyle	CCAB (SR)	ARPP-F (SR)	WR-F (SR)	CCC (REG)	BCAP (CR)	AIC (SR) AANAF(SR)	ASC-C (SR)		CARU (SR)
Present in context of balanced healthy diet	CCAB (SR)	ARPP-F (SR)		CCC (REG)	BCAP (CR)	AANAF(SR)	ASC-C (SR)	ASACC (SR)	CARU (SR)
Not mislead understanding of quality /nutritional value of food	CCAB (SR)			CCC (REG)	BCAP (CR)	CTS (REG) AANAF(SR)		ASACC (SR)	
Foods as substitute for fruit and veg				CCC (REG)			ASC-C (SR)		
Not disparage selection of healthy foods		ARPP-F (SR)			BCAP (CR)		ASC-C (SR)		CARU (SR)
Undermine choices to give up certain foods	CCAB (SR)		WR-F (SR)				ASC-C (SR)		
Undermine role of parents / Pester Power		ARPP-F (SR)			BCAP (CR)	AANA (SR)			
Promotional offers and food products					BCAP (CR)	AANAF(SR)		ASACC (SR)	
Eating in front of screens		ARPP-F (SR)							
Depicting wasting of food		ARPP-F (SR)							
Food advertising for HFSS food products									
Bans on HFSS food advertising to children				CCC (REG)	BCAP (CR)		Pending	ASACC (SR)	
Social success/ popularity/superiority	CCAB (SR)				BCAP (CR)	AANAF(SR)			
Snack food substitute for fruit and veg	CCAB (SR)								
Snack food replacing a meal	CCAB (SR)	ARPP-F (SR)	WR-F (SR)			AANAF(SR)	ASC-C (SR)		CARU (SR)
Improving school performance	CCAB (SR)								
Undermine role of parents/ Pester Power	CCAB (SR)	ARPP-F (SR)			BCAP (CR)	AANAF(SR)			
Direct exhortations to buy	CCAB (SR)		WR-F (SR)			AANA (SR)			
Health and Nutritional claims HFSS	CCAB (SR)	ARPP-F (SR)		CCC (REG)	BCAP (CR)	AANAF(SR)		ASACC (SR)	
Calorie reduced versions of HFSS	CCAB (SR)								
Foods related to children's programmes (licensed products)	CCAB (SR)								
Promotional offers and HFSS				CCC (REG)	BCAP (CR)			ASACC (SR)	
Collection based promotions					BCAP (CR)			ASACC (SR)	
Licensed characters popular with children				CCC (REG)	BCAP (CR)			ASACC (SR)	
Fantasy/ imagination re. value of food		ARPP-F (SR)				AANAF(SR)			
Celebrities popular with children				CCC (REG)		AANAF(SR)			
Restriction on advertising of HFSS all day				CCC (REG)					
Food advertising for fast food and confectionary									
Acoustic or visual messages		LEG		CCC (REG)					

7.5. Other industry agreements and charters

There were several regulatory changes in France regarding food advertising between 2004 and 2007. In the context of a new law on public health policy introduced in August 2004, the issue of advertising of food and beverages was addressed. Advertising messages promoting drinks with added sugar, salt or artificial colouring, and processed foods, broadcast in the territory of France, must include health information. A further decree was published in February 2007 outlining in more detail how this system should work, and that the focus of the campaign concerned advertising messages surrounding and interrupting children's programming. On television, the prescribed health messages are: "eat at least five fruits and vegetables per day"; "take regular physical exercise"; "avoid eating too much fat, too much sugar, too much salt"; "avoid snacking between meals."

French Charter to promote healthy eating and physical activity

In 2009, the French government was moving towards a ban on HFSS food advertising in children's programming. However, a different agreement was reached with stakeholders. The Charter to promote healthy eating and physical activity in programs and advertisements broadcast on television consists of 14 commitments from the industry. It was first signed in 2009 and updated in 2014. Co-signatories include the regulator – the CSA -, broadcasters, advertising associations, food industry associations, audiovisual producers, and animation film producers, relevant public bodies and ministries. The 14 commitments are summarised in the table below.

Table 7.5 French Charter to promote healthy eating and physical activity

<ol style="list-style-type: none">1. Advertisers are committed to strengthening the responsible approach to advertising concerning the content of food advertising, including overseas.2. TV channels and advertising companies provide discounted airtime to organisations with campaigns promoting healthy food (fruits, vegetables etc), and to organisations promoting healthy lifestyles and physical activity.3. TV channels commit to broadcasting programs promoting a healthy lifestyle, including: a diversified and balanced diet: regular practice of physical and / or sporting activities; sleep necessary for the balance and proper functioning of the metabolism.4. The Charter specifies exactly how many hours of such programmes should be broadcast on each type of channel (youth channels, private channels, public channels, local channels, DTT channels).5. Any program that the channels will produce under this charter must systematically refer to the site www.mangerbouger.fr (eatmove.fr) or to any another site dealing specifically with health emanating from concerned public bodies that have signed this Charter and the institutions under their supervision providing information relating to the health.6. The channels strive to cover each year the European Day of obesity. They can also provide special programming or further relevant campaigns7. All relevant programming should as far as possible also be offered on the websites of channels.8. Overseas public channels and local channels should offer programmes locally, and adapted to the specificities of each territory.9. Channels should strive to include the health messages in oral and visual form connected to advertising in programmes intended for the youth.10. The Society of Producers of French animation films agreed to produce a video clip featuring various animation characters that would promote exercise and a healthy lifestyle. This clip would be provided for free to all signatories of this charter. A similar initiative will be carried out by audiovisual producers producing programmes aimed at a young audience and highlighting healthy lifestyles11. Advertisers or groups of advertisers in the agri-food industries undertake to finance short programmes educating young people and promoting good behaviour, diet and physical activity.12. The CSA is in charge of the follow-up of the implementation of this charter for the editorial aspects of programmes as well as for the legal content of advertisements in accordance with the provisions of Article 14 of the Law of 30 September 1986 as amended.13. The CSA in co-operation with various ministries established a Committee of Experts. The CSA can seek the opinion of this Committee on the programming reported under this charter.

14. The advertising self-regulatory body, the ARPP, in accordance with its mission, exercises a systematic control before broadcasting on television and on the audiovisual media services at the request of each advertiser. The ARPP carries out in consultation with the stakeholders of the CSA (consumer associations, family associations, NGOs), an annual review of the application of the ethical rules concerned by this charter. This report is sent to the signatory public bodies for the purpose of evaluating the good application thereof.

Polish Broadcasters Agreement to exclude advertisements for junk food aimed at children

The Polish media legislation⁷² stipulates (Article 16b):

3a that Children's programmes shall not be accompanied by commercial communications for foods or beverages containing ingredients, excessive intakes of which in the everyday diet are not recommended.

3b. After seeking opinion of the minister in charge of health, the National Council may define, by a regulation:

1) the types of foods or beverages containing ingredients, excessive intakes of which in the everyday diet are not recommended,

2) the manner of inserting commercial communications for these products in programme services so that they do not accompany children's programmes - in an effort to encourage broadcasters to counteract promotion of unhealthy diet among children and taking into account the nature of programme services, their impact on public opinion and interests of viewers/listeners, without imposing unjustified obligations on broadcasters

In 2014, an agreement was signed between the regulatory authority and seven major broadcasters concerning the advertising of junk food (food and beverages containing components which are not advisable in excessive amounts in the diet of children) to children. The Broadcasters' Agreement is described as an initiative of a self-regulatory nature. This might however, be considered co-regulation given the major role of the regulatory authority in monitoring the implementation of the agreement. In essence, it encourages broadcasters to follow the recommendations of the Nutritional Criteria developed by the Polish Federation of Food Producers and the Polish Employers' Union, as confirmed by the Institute of Hygiene and Nutrition, effective as of the 1st of January 2015. Under the terms of the agreement, broadcasters are obliged to exclude advertisements of so-called junk food from broadcasts aimed at children. The National Broadcasting Council (NBC) monitors the success of the agreement on both channels catering to children and on universal appeal channels during broadcasts aimed at children. There have been two rounds of monitoring, and they have indicated a reduction in such advertising. The second monitoring also examined the presence of advertisements for junk food on channels of universal appeal in broadcasts directed to all types of audiences, where audiences comprised at least 5% children between the ages of 4 and 12. During the presentation of the results of the monitoring period, the NBC brought to the attention of broadcasters of universal appeal programmes, the need to make greater efforts to develop a portfolio of advertisements suitable for programmes which may be watched by children. The aim of such operations should be, as in the case of specialised children's channels, the total elimination of advertisements for sweets, high-salt snacks, and sweetened carbonated beverages.⁷³

⁷² Broadcasting Act of 29 December 1992 (Unofficial translation of the consolidated text 2016). Available [here](#)

⁷³ Details taken from the website of the Polish regulatory authority. [Limiting the unhealthy food advertisements to children.](#)

8. The BAI CCC – Comparative overview

This chapter provides an analysis of the current BAI Children's Commercial Communications Code in the context of the findings outlined in previous chapters. It also summarises particular issues and themes that were of interest to the BAI in the context of commissioning this review.

8.1. Overview and general comments

An extensive range of comparative tables have been provided in this report in chapter four regarding definitions, chapter five regarding the themes addressed in the regulation of commercial communications relevant to children, and in chapter seven on the regulation of food advertising. It is apparent from those tables that the BAI code is one of the more comprehensive codes in terms of the range of issues covered in the rules provided (8.4). In addition, its presentation as one comprehensive code can be considered as a much more practical and accessible way of understanding the applicable rules (see 8.6).

Areas that may need consideration with regard to the BAI Children's Commercial Communications Code include: the rule on privacy (and data collection), which may need to be updated according to the GDPR, requiring consent for under 16s; the audience threshold criteria as a trigger for the application of rules (see section 8.3); and broadening the scope of the application of rules (see 8.2) to certain on-demand services (see section 8.4), which may be facilitated by closer co-operation with self-regulatory bodies of the establishment of a co-regulatory system (see 8.5).

8.2. Scope of the BAI Children's Commercial Communications

The current scope of the BAI Code Children's Commercial Communications Code is limited to those commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes i.e. children's commercial communications.

The scope of the code is restricted to children's commercial communications on television broadcasting services, with children's commercial communications defined as commercial communications broadcast during or between children's programmes or commercial communications that promote products, services, or activities that are deemed to be of particular interest to children. The definition of children's programmes will be reviewed in more detail below (8.3).

The BAI code is perhaps one of the few remaining regulatory codes that addresses this issue in a single concise document, and at least the only one that exists in the range of countries reviewed here. The scope of the code is limited with regard to types of media – linear broadcast services but not on-demand services, reflecting both the nature of the services licensed by the BAI and also the legislative responsibility of the BAI, which currently does not include on-demand services.

The BAI code takes a wide and detailed approach to defining children, starting from under 18 and including lower age categories where additional rules may be applicable (for under 15, under 13, under 6). As was outlined in chapter four (table 4.1), there is a wide variance with regard to definitions of children. Minors (under 18) are frequently protected from certain forms of advertising in most other jurisdictions. The typical definition of a child ranges from 12 years (Austria, France, Germany, Sweden and Canada) to 13 (Norway and Quebec), to 14 (Australia and New Zealand) to 16 in the UK.

8.3. Definition of children's programming and triggers for application of rules

This is a very complex question and one that was indicated as being of interest to the BAI in the course of this review. It was outlined in chapter four that the concept of children's programming is quite varied and not always clear. Rules on commercial communications tend to address both those communications that directly target children, and those that are likely to be seen by children.

Rules may also refer to any type of advertising but specify that it should follow specific rules when placed around or within children's programming. Rules on the scheduling of advertisements may make it clear which types of advertising – in particular advertisements for specific products – may not be placed adjacent to children's programming.

Hence, the definitions of children's programming, programming of particular appeal to children, commercial communications targeting children, and commercial communications likely to be seen by children are crucial to an understanding of when the application of certain rules may be "triggered". The following is a list of criteria, keys, factors to be taken into account when considering this trigger moment. Some are specific and others are vague. In most cases, note needs to be taken of several criteria. Broadly speaking, they cover labelling of programmes, programmes targeting an age group, characteristics of programmes, audiences of programmes, and time scheduling of programmes.

- Programming that is labelled / called children's programming (Ireland)
- A programme directed to the under 12 audience as defined by the broadcaster (Canada)
- Programming that made for persons under 16 (United Kingdom)
- Programs which by content, form or airtime, are more likely to attract under-14s. (Germany)
- Content with specific appeal to children (New Zealand)
- Individual broadcasts whose design links elements to look like a unified children's program, are also considered children's program. (Germany)
- Programming where 15% of audience is under 13 (for HFSS foods) (Canada, pending legislation). The initial proposal was 15% of the audience under 17.
- Programmes with an audience profile where 50% are under 18 (15/13/6) years of age (Ireland)
- Any programme/ media where 15% of the audience is under 13 years (Canada - Québec)
- No medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries and not more than 25% under 18 for alcohol, gambling and electronic cigarettes. (Advertising Standards Authority UK, non-broadcast code)
- Programmes where 25% or more of the expected audience will be children under 14 (New Zealand)
- Programmes broadcast in child viewing time zones (New Zealand)
- Programming broadcast in P-period (pre-school) and in C-Period (Children U-14) (Australia)
- Marketing communications for food and beverages primarily directed at children – in media where 35% or more of the audience is under 12 years of age (EU Pledge, self-regulation food industry)

An examination of the above definitions indicates that the audience threshold in the BAI code appears to be very high at 50% for the moment where rules on commercial communications for children may be triggered. The thresholds in most countries are allowing a much broader field of programming that is of appeal to children.

A research paper (cited earlier) on the impact of initiatives to limit the advertising of food and beverage products to children that reviewed 60 reports noted that differences in audience definitions can provide significant variations on the measured success of rules: *Most of the scientific papers used times of day when children are likely to be watching television, whereas the pledges have specified ‘children’s TV’ to be only those TV programmes watched by an audience of which over 35% (or in some cases over 50%) are children under age 12 years. Using such a high percentage of the audience may eliminate most TV programming: an analysis of Australian free-to-air TV watching found no time in weekdays and only a short period at weekends when the proportion of the audience aged under 14 years exceeded 35%.*⁷⁴

Table 8.1 Examples of different child audience thresholds

	IE	CA	GB CAP	GB BCAP	New Zealand	EU pledge
Rules on children apply	Where 50% of audience under 18 under 15 under 13 under 6	Where 15% of audience is under 13		Particular appeal Index 120*	25% or more of the expected audience will be children under 14	
Ban on HFSS foods	Where 50% of audience under 18	Where 15% of audience is under 13	Where more than 25% of audience is under 16			Where 35% of audience is under 12
Alcohol ACC	Where 50% of audience under 18		Where more than 25% of audience is under 18			

*for example where audience is 10% of entire potential viewers and 12% entire potential child viewers

8.4. Thematic issues addressed in regulatory, co-regulatory and self-regulatory codes

In chapter five, it was apparent that a very wide range of themes are covered in the various codes on audiovisual commercial communications and children. It was not possible to make word-for-word comparisons regarding the various codes, but rather the comparisons focus on the issues addressed.⁷⁵ There is an extent to which almost identical themes and language exist in many codes. This is partly due to the incorporation of EU in the rules of Member States. Regarding self-regulatory codes, this is also due to the fact that many are derived from international and European codes such as the International Chamber of Commerce Advertising and Marketing Communications Code.⁷⁶

The BAI code is one of the most comprehensive in terms of the themes addressed. In relation to the issue of exploiting inexperience and credulity, the BAI code was one of the most comprehensive. The rule on privacy may need to be updated according to the GDPR, requiring an age limit for consent (for example for under 16s). The BAI code is one of the most comprehensive with regard to products banned or restricted. Some areas that could be added may include the advertisement or promotion of products for over 18s including films, DVDs and games, and sex services. The coverage of issues relating to moral, physical or mental detriment, and the depiction of types of behaviour, lifestyle, and attitudes is also significant in the BAI code with practically all potential types of depictions of behaviour being addressed.

⁷⁴ Galbraith-Emami, S. and T. Lobstein (2013): The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review. In Obesity Reviews. Citing MacKay (2011)

⁷⁵ All relevant codes are produced in the annex to this report.

⁷⁶ International Chamber of Commerce Advertising & Marketing Communications. Code [Available here](#)

Table 8.2 Range of themes and issues addressed in codes – a comparison

Themes / products	Total	AT	DE	FR	GB	IE	AUS	CA	NZ	US
Exploiting inexperience and incredulity	19	9	6	13	14	17	14	9	12	15
Products and services banned or restricted*	13	6	2	3	8	9	5	1	3	4
Moral, physical or mental detriment and types of behaviour, lifestyle, attitudes etc	15	8	5	9	7	12	7	3	10	7
General rules on food	11	5	3	7	7	5	6	6	4	4
Rules on HFSS foods	17	9	2	5	7	7	7	1	5	1

*For Canada, New Zealand and the US, details are available in a variety of other laws

Regarding, the themes covered in the codes on food, the presence of a ban on this advertising in children's programmes in Ireland and the UK may lead to less themes being covered in the rules on children's advertising. Some interesting areas covered that may be considered useful when updating the code include: not disparaging the selection of healthy foods or undermining people's choices to give up certain foods (which appear in the Austrian, French, German, British, Canadian and American codes). Other issues in the French codes include not depicting waste of food, and not showing people eating in front of screens (see chapter 7 for more detail).

8.5. To which media do rules on children's commercial communications apply

Several jurisdictions have completely banned advertising and marketing to children in the media, either on all types of media, or on all children's programming. These include Sweden and Norway, for children under 12 and 13 respectively, and on both television and on-demand audiovisual services, with relevance to both public and private services. In Canada, the province of Québec banned all advertising and marketing to children in all media (public and private) as far back as the 1980s.

Public and private channels

From the overview provided in relation to bans and restrictions in chapter four, it is clear that there are several jurisdictions where advertising is banned or more heavily restricted on public television. The BBC public channels and the Swedish public channels may show no advertising whatsoever and hence provide potential commercial free zones for children's TV viewing. Advertising is strongly restricted on the German public service channels ARD and ZDF with a total of 20 minutes per day and no advertising after 8pm, or on Sundays or public holidays. In addition, their other services including the children's channel Kika and all of the regional public service channels are prohibited from having any advertising.

Advertising has also been restricted in general on the French public service channels with no advertising after 8pm, and no advertising before during or after children's programming on the national public services. The Austrian legislation is also slightly more restrictive for public broadcasters where commercial communications that *directly target children* cannot be broadcast during children's programmes on the Austrian public service broadcaster. According to feedback from the Austrian regulator, "directly" means the first or the last advertising spot before the start or after the end of the children's programme.

Hence, there are quite a few distinctions between public and private broadcasters with regard to restrictions on advertising (in general) and sometimes regarding children's commercial communications specifically.

Free to air and pay TV, and EU and non-EU channels

No particular distinctions were noted between free to air and pay television. It should be noted that the Australian co-regulatory system for the Commercial Television Industry Code of Practice is a system of the free to air television channels only. It covers a range of issues including advertising. It has been noted in some of the codes reviewed here that niche or thematic channels will be affected differently.

Children's channels, it is assumed will always need to apply rules regardless of the time of broadcast, due to the very nature of their content. While the broadcast market is pan-European with the possibility of having access to a range of channels established in other countries, the nature of self-regulation of the advertising industry, or guidelines or pledges of broadcasters and other audiovisual media service providers tends to be national. No distinctive criteria was identified between EU and non-EU channels, as the national rules will apply to all channels licensed under a particular jurisdiction. Some of the European self-regulatory associations have established means of dealing with cross-border complaints.⁷⁷

Linear and non-linear services

Chapter six provided an overview of developments in relation to on-demand audiovisual media.

It should be noted that the AVMSD includes on-demand audiovisual media in its definition of audiovisual media services. These media services have the same obligations to protect children with regard to content of, and exposure to, commercial communications as those of the linear media services (Article 9). In addition, the revised version of the Directive now includes rules for Video-sharing-platforms. These also must meet the obligations under article 9 with regard to the content of advertising. The Directive also stresses the need to develop co- and/or self-regulatory codes to ensure that VSPs reduce the exposure of children to commercial communications for HFSS foods. Chapter six outlines some initial approaches to this issue.

The area of media literacy – and advertising literacy – appears to be gaining ground as an important tool in improving how people and particularly children and young people deal with new types of advertising. There have also been several examples of the provision of guidance to Youtubers and Video Bloggers about labelling advertisements: from the Norwegian Media; the German DLM (Directors Conference of the State Media Authorities); and from several advertising industry standards authorities (notable in Ireland and the UK).

In assessing its children's commercial communications code, the BAI may wish to have regard to the following options:

- Ensuring that the rules applicable to linear services (licensed by the BAI) are carried over to their online services, websites and catch-up services.
- Assessing the extent, if any, self or co-regulation might complement child protection focused rules, and the appropriateness of the current ODAS Code in that context. As of yet, on-demand services do not seem to have developed a specific code of conduct regarding the marketing of food and beverages. By comparison, in the UK, in 2017, the Advertising Standards Authority introduced new rules, which banned HFSS food advertising in children's online media, mirroring the standards already in place for TV.
- Given the actions of the Irish Department of Health, in introducing a voluntary code for Non-Broadcast Media Advertising regarding food and non-alcoholic beverages,⁷⁸ it

⁷⁷ European Advertising Standard's Alliance [Cross Border Complaints System](#)

⁷⁸ Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement. [Available here](#) f

may be worth considering how to consolidate an agreement linking all of these initiatives and codes for the on-demand media services - and for relevant Video-Sharing Platforms – and including reference to such an agreement within the code.

- Co-operation with other regulatory bodies, for example those in consumer and data protection, might also be helpful.

8.6. Where to find rules on children's commercial communications

One issue of interest to the BAI was the extent to which child-focused rules are incorporated into or could be regarded as separate from rules of a more general nature relating to commercial communications within the relevant jurisdiction. The Irish example of having a separate but consolidated document focusing on only children's commercial communications is not typical. There are several countries with self-regulatory codes regarding children and commercial communications. But many of these are minimal and require reference to several other codes in order to have the full picture of the relevant rules.

In Germany, it is necessary to first refer to general principles in media law and to principles of youth protection in the youth media protection laws. The details of the rules on content are outlined in a range of self-regulatory codes covering the content of advertising, which requires the review of several codes in order to achieve the full picture of the guidelines, for example a code on children, with separate codes on alcohol, tobacco, food, gambling etc., each of which contain sections on children not referenced in the main children's document. Also in France, there are a range of self-regulatory codes covering the content of advertising, which requires the review of several codes in order to achieve the full picture of the guidelines, for example a code on children, a code on digital communications, and a code on food.

Table 8.3 overleaf outlines the entire range of codes (and laws) reviewed.

Table 8.3 Where to find codes and rules relevant to Children's commercial communications

	AUS	AT	CAN	CAN-Q	FR	DE	IE	NZ	GB	USA
Media law	LEG	LEG	LEG	LEG	LEG	LEG	LEG		LEG	LEG
Youth protection law						LEG				
Consumer Protection law				LEG						
Data protection law										LEG
Health law re. food and obesity			LEG		LEG		SR			
General codes on children's TV Standards	REG									
General codes on TV industry practice	CR									
TV industry codes for food advertising and children		SR								
General codes on commercial communications including advertising industry codes	SR	SR	SR		SR	SR	REG SR	SR	CR	
Specific codes on children's commercial communications including advertising industry codes			SR		SR	SR	REG	SR		SR
Specific codes on food advertising (with sections on children)	SR				SR	SR				
specific codes on food advertising to children					SR					
Code on toys					SR					
Code on Alcohol (with sections on children)					SR	SR		SR		
Code on Gambling (with sections on children)					SR	SR				
Code on online media (with sections on children)					SR					
Non-broadcast media (with sections on children)									CR	
Food industry initiatives/ pledges re. food advertising to children	VCP									
Cross-sectoral charter on promoting healthy eating and lifestyle					VCP					

REG= regulatory; CR= co-regulation; SR= self-regulation; VCP = voluntary actions, charters and pledges

In the United Kingdom, a singular document (BCAP) is provided by the Advertising Standards Authority for all rules related to the content of advertising in broadcasting (144 pages), while a second document (CAP) relates to all rules on the content of advertising in all other media except broadcasting but including the Internet (and hence on-demand audiovisual media services). A further example of a completely comprehensive code is the Advertising Standards of Ireland code. However, in these cases, the documents are very large and still require scanning in a range of relevant sections (children, alcohol, tobacco, data protection, food etc.)

However, in reviewing the relevant codes and guidelines for a significant number of jurisdictions in the course of this research, it can be stated that a singular, child focused and comprehensive document is most practical. Even where this document may overlap with or cross-reference other codes, legislation and regulation, it seems to be far more manageable for professionals who are working in children's television, in scheduling, in the production of advertising, and in the purchase and scheduling of advertising etc. One example of such a consolidated code exists in Canada. This is the self-regulatory regime of the Advertising Standards Canada with the Broadcast Code for Advertising to Children.

In order to be completely comprehensive, it might be useful if the Irish CCC also contained detail on the rules on alcohol and gambling with reference to children (as outlined in the General Commercial Communications Code).

9. Annexe 1: Country reports: legislation, regulation, codes and guidelines

10. Australia: Children's commercial communications

10.1. Introduction and overview of regulatory structure

In Australia, the audio-visual media are regulated by the Australian Communications and Media Authority.⁷⁹ The Australian Communications and Media Authority (ACMA) regulates radio and television content through: broadcast licence conditions set out in the Broadcasting Services Act 1992; mandatory program standards that outline the requirements for Australian content and children's programs on commercial television; industry codes of practice that cover most matters relating to the content and presentation of radio and television programs including classification and the amount of advertising allowed; the Television Program Standard for Australian Content in Advertising, which aims to ensure that the majority of advertisements on television are Australian-made; the Broadcasting Services (Commercial Radio Advertising) Standard 2000, which encourages commercial radio broadcasters to ensure paid advertising is clearly distinguishable from all other programs.

Content on advertising on commercial television, commercial radio and pay TV is covered by the Advertising Standards Bureau code of practice. Regarding advertising and children, these issues are addressed in: the Children's Television Standards⁸⁰ code of the regulator; in the Commercial Television Industry Code of Practice (FreeTV)⁸¹; and in the Advertising Industry Code for Advertising & Marketing Communications to Children.⁸² Hence this incorporates a regulatory structure (ACMA), a co-regulatory regime involving the regulatory authority and the free to air commercial television industry (ACMA and FreeTV), and a self-regulatory approach of the advertising industry (AANA).

Key points:

- The Australian system combines: regulation – relevant for standards in children's television: co-regulation – with the providers of free to air television; and self-regulation – relevant to the advertising industry.
- Commercial communications are completely prohibited in programming that targets preschool children and during the scheduling block for pre-school children – children under 5.

10.2. The Children's Television Standards of the Australian Regulator

Advertising is addressed within the broader context of the Children's Television Standards (CTS) of the Australian Communications and Media Authority. The Children's Television Standards were last updated in 2014. These standards cover a broad range of areas including the obligations of licensed services to provide children's programming. Part 3 of the Standards addresses the Requirements relating to Protection of Children. These include regulations on self-promotion (promoting of other programmes), regulations on prizes, and regulations with regard to the broadcast of unsuitable material (they will be dealt with further below). Sections 26 to 36 focus specifically on advertising.

Advertising ban and restrictions

No advertising is allowed during the television schedule of programming for pre-school children. Advertising is allowed in other children's programming but it must conform to certain restrictions.

For example, advertisements are classified in a similar way to programmes as regards their content. In addition, any cross-promotion or self-promotion of programming also must comply

79 Australian Media and Communications Authority homepage: <https://www.acma.gov.au/>

80 Children's Television Standards (CTS), available [here](#)

81 Commercial Television Industry Code of Practice (FreeTV), available [here](#)

82 Australian Association of National Advertisers (AANA): Code for Advertising & Marketing Communications to Children, available [here](#)

with these classifications regarding trailers and content clips. Table 1, overleaf, provides a useful first look at some of the definitions and classifications used in the CTS. Children are defined as people younger than 14 years of age. Only G (general programming) classified advertisements (which also meet the content restrictions of CTS 25, and CTS 30 to CTS 36), may be broadcast during children's programming periods.

Table 9.1: Programme classifications in Australia

Type of programming	Description	Relevance to rules
P-programming	Programming targeting pre-school children program which has been classified by the ACMA, or a person or body appointed by the ACMA for that purpose, as a program which meets the criteria of suitability for preschool children in CTS 6 (2), and is broadcast in a P period.	No advertising is allowed during P periods.
C-programming	Programming targeting children a program which has been classified by the ACMA, or a person or body appointed by the ACMA for that purpose, as a program which meets the criteria of suitability for children in CTS 6 (1), and is broadcast in a C period. Children are defined as people younger than 14 years of age.	<ul style="list-style-type: none"> - Only G classified advertisements - each 30 minutes of a C period may contain no more than 1 minute of G classified program promotions and station identifications. - Where Australian C Drama is broadcast, the maximum amount of time for commercial communications and promotions is 6 minutes and 30 seconds per 30 minutes
G – General programming	Material classified G is not necessarily intended for children but it must be very mild in impact and must not contain any matter likely to be unsuitable for children to watch without supervision. All elements must be justified by context.	G is the classification for advertisements and any programming promoted during the C Periods.
PG – Parental Guidance programming	Material classified PG may contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. All elements must be justified by context.	
M - Mature (M) Classification	Material classified M is for mature audiences. It is recommended for viewing only by persons aged 15 years or over.	
MA +15 - Mature Audience (MA) Classification	Material classified MA is suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of violence, sexual depictions, or coarse language, adult themes or drug use.	

Maximum advertising time, separation, sponsorship and repetition

The standards introduce a maximum advertising time (under CTS 27). These state that:

- (1) Except during a C period in which an Australian C Drama is broadcast, each 30 minutes of a C period may contain no more than 5 minutes of advertisements.
- (2) During a C period in which an Australian C Drama is broadcast, the maximum amount of advertisements, program promotions, station identifications and community service announcements is 6 minutes and 30 seconds per 30 minutes.

Regarding separation, sponsorship (CTS 28): during C periods, advertisements and sponsorship announcements must be clearly distinguishable as such to a child viewer. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice. During any 30 minutes of a C period a licensee may broadcast the same advertisement no more than twice (CTS 29).

Advertisements must be clearly distinguishable to a child viewer. During any 20 minutes period, the same advert can be shown no more than twice. With the exception of Australian Drama the maximum amount of advertisement in each 20 minutes can be no more than 5 minutes. For Australian drama this can be 6 minutes and 30 seconds. Presumably this is to support the production of Australian children's drama programming.

Advertising content rules

The sections from CTS 30 to CTS36 of the CTS cover the content of advertising:.

Table 9.2: Australian Children's Television Standards and Content of Advertising

CTS 30 Content of advertisements

- (1) No advertisement may mislead or deceive children.
- (2) Nothing in these Standards is to be taken to limit the obligation imposed by CTS 30.

CTS 31 Pressure in advertisements

- (1) A licensee may not broadcast any advertisement designed to put undue pressure on children to ask their parents or another person to purchase an advertised product or service.
- (2) No advertisement may state or imply:
 - (a) that a product or service makes children who own or enjoy it superior to their peers; or (b) that a person who buys an advertised product or service for a child is more generous than a person who does not.

CTS 32 Clear presentation

- (1) Advertisements must accurately represent the advertised product or service.
- (2) Claims made in advertisements must not be ambiguous.
- (3) Advertisements in which children are depicted using products (including toys and games) must fairly represent the performance which a child, of the age depicted, can obtain from those products.
- (4) If the size of the product is not clear in an advertisement it must be made clear by reference to something which a child can readily recognise.
- (5) If accessories (for example, batteries, transformers or doll's clothes) are needed to operate or enjoy a product depicted in an advertisement then:
 - (a) this must be able to be clearly understood by children; and
 - (b) reference to price must clearly differentiate between the price of the product and the price of any accessories.
- (6) Prices, if mentioned, must be accurately presented in a way which can be clearly understood by children, and must not be minimised by words such as 'only' or 'just'.
- (7) An advertisement for a food product may not contain any misleading or incorrect information about the nutritional value of that product.

CTS 33 Disclaimers and premium offers

- (1) A disclaimer must be presented conspicuously.
- (2) An advertisement that contains a premium offer:
 - (a) must not make reference to the premium in a way that is more than merely incidental to the reference to the advertised product or service; and

(b) must not stimulate any unreasonable expectation of the product or service offered; and
(c) must clearly set out any conditions that must be met before the premium may be obtained.
Example If an advertisement advertises a product that has both food and non-food components, and the non-food component is a premium, the reference to the non-food component must be merely incidental to the reference to the food component.

(3) For CTS 33 (2)

(a), the following matters are relevant in the consideration of whether a premium offer is merely incidental:

(a) the amount of time devoted to the premium offer compared to the amount of time devoted to the product or service being advertised;

(b) the way in which pictures, text or moving images are used to promote the premium offer;

(c) the way in which sound is used to promote the premium offer

CTS 34 Competitions

If competitions for children are referred to in programs or advertisements:

(a) a summary of the basic rules must be stated; and

(b) any statement about the chance of winning must be clear, fair and accurate.

CTS 35 Promotions and endorsements by popular characters

(1) No material broadcast during a C period or P period, or in the break immediately before or after a C period or P period, may contain an endorsement, recommendation or promotion of a commercial product or service by:

(a) a principal personality or character from a C program or P program; or

(b) a popular program character or popular movie character; or

(c) a popular cartoon, animated or computer-generated character; or

(d) a popular personality; or

(e) a licensed character; or

(f) a proprietary character.

Note 1: Popular personality includes well known sporting and music personalities.

Note 2: Licensed character and proprietary character are defined in CTS 5 and include characters from fiction, television, movies, etc

(2) CTS 35 (1) does not apply to an advertisement:

(a) if: (i) the advertisement depicts a commercial product or service in the form the product or service is usually offered for sale; and (ii) no endorsement, recommendation or promotion of the commercial product or service is provided by way of voice-over, animation or any other means by a character or personality mentioned in CTS 35(1); or

(b) if: (i) the advertisement contains an endorsement, recommendation or promotion of a commercial toy or game; and (ii) the endorsement, recommendation or promotion is made by a character mentioned in CTS 35(1); and (iii) the character is represented in the toy or game.

(3) An advertisement during a C period may use a character or personality mentioned in CTS 35 (1) to endorse, recommend or promote a non-commercial product or service if the advertisement:

(a) contains only generic statements about nutrition, safety, education or like matters; and (b) is suitable to be contained in a children's program described in CTS 6.

CTS 36 Advertising of alcoholic drinks

(1) Advertisements for alcoholic drinks may not be broadcast during a C period.

(2) No advertisement or sponsorship announcement broadcast during a C period may identify or refer to a company, person, or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.

(3) No advertisement for alcoholic drinks may be broadcast during:

(a) a program which has been classified by the ACMA, or a person or body appointed by the ACMA for that purpose, as a program which meets the criteria of suitability for a C program under CTS 6(1) or the criteria of suitability for a P program under CTS 6(2), and which is broadcast outside a C period or P period;

or (b) a break immediately before or after a program referred to in CTS 36 (3)(a).

(4) No advertisement or sponsorship announcement broadcast during a program referred to in CTS 36 (3) (a), or in a break immediately before or after such a program, may identify or refer to a company, person or organisation whose principal activity is the manufacture, distribution or sale of

alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.

Other relevant issues

The CTS also refers to limits on programme promotions and identifications (CTS 20), and to regulations on prizes (CTS 24), and to any other unsuitable material (CTS 25).

Table 9.3: Australian Children's Television Standards: promotions and prizes

Regarding program promotions and station identifications:

- (1) Subject to CTS 27 (2), each 30 minutes of a C period may contain no more than 1 minute of G classified program promotions and station identifications.
- (2) Only C programs, P programs, G programs and coverage of sports events suitable for viewing by children may be promoted during any breaks immediately before, during or immediately after C programs or P programs.
- (3) In addition to the program promotions permitted by CTS 20 (1) and CTS 27 (2), voice - over announcements promoting C programs may be made during the end credits of C programs.

In relation to Prizes:

- (1) No prizes may be offered or given during a P program.
- (2) In C programs which involve the giving or offering of prizes:
 - (a) the presenter may not recommend or endorse a product or service which is presented as a prize, nor encourage children to buy it;
 - (b) if the prize is not a cash prize, the price or value of the prize may not be mentioned; and (c) any description by the presenter should be only to clarify the nature of the prize

Finally, with reference to Unsuitable material, no material broadcast during a C period or P period may: (a) demean any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, or mental or physical disability; or (b) present images or events in a way which is unduly frightening or unduly distressing to children; or (c) present images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them; or (d) advertise products or services which have been officially declared unsafe or dangerous by a Commonwealth authority or by an authority having jurisdiction within the licensee's licence area.

10.3. Commercial Television Industry Code of Practice – co-regulation

The industry code of practice was developed by Free TV Australia: Free TV is an industry body which represents all of Australia's commercial free-to-air television licensees. The Code was developed by Free TV Australia in consultation with the public and is registered with the Australian Communications and Media Authority (the ACMA).⁸³ The latest version went into force in 2015.

The Code is intended to regulate the broadcast content of commercial free -to-air television according to current community standards, and to assist viewers in making informed choices about their television viewing. It also provides a procedure for handling viewer complaints about matters covered by the Code.

Regarding the industry code, this operates in a co-regulatory structure alongside the Broadcasting Services Act 1992 (BSA), and other ACMA Standards and regulatory requirements. The ACMA has the power to investigate viewer complaints and determine compliance with the Code provisions. Broadcasters will investigate and respond in writing to valid complaints made about matters covered by the Commercial Television Industry Code of Practice that are received within 30 days of the relevant broadcast. If a complainant does not receive a response within 60 days or is dissatisfied with the response received they may refer

⁸³ Australian Commercial Television Industry Code of Practice. Available [here](#)

the matter to the Australian Communications and Media Authority. The table below outlines the elements relevant to children.

Table 9.4: Australian Commercial Television Industry Code of Practice

<p>6. Advertising restrictions</p> <p>6.1 Application</p> <p>6.1.1 In this Section, Commercials include information within Programs or segments of Programs for which Licensees receive payment or other valuable consideration (excluding the free/discounted provision of products or services).</p> <p>Note: These requirements do not apply where goods or services are provided free of charge or at a discount for use on the production of a Program, such as for the purposes of review, or as set dressing/props, or access to a setting/location, unless the Licensee also receives some other form of payment or valuable consideration.</p> <p>6.2 Alcoholic Drinks</p> <p>6.2.1 A Commercial for Alcoholic Drinks may be broadcast at any of the following times: a) in the M and MA15+ classification zones set out in Section 2 (except between 5.00am and 6.00am, and 7.30 pm and 8.30 pm); and b) as an accompaniment to a Sports Program on a Weekend or a Public Holiday; and c) as an accompaniment to the broadcast of a Live Sporting Event broadcast simultaneously across more than one licence area, if one of subclauses (a) or (b) is satisfied for: i. the licence area in which the Live Sporting Event being broadcast is held, for an event taking place in Australia; ii. the majority of metropolitan licence areas in which the Live Sporting Event is shown, for an event taking place overseas.</p> <p>6.3 Intimate products and services</p> <p>6.3.1 A Commercial or Community Service Announcement for condoms or other contraceptive products must not be broadcast in a Program that is classified G or lower, unless it contains a public health or safety message.</p> <p>6.3.2 A Commercial for a sex service (including a sex line) must only be broadcast between 11.00pm and 5.00am.</p> <p>6.4 Films and computer games</p> <p>6.4.1 A Licensee must not broadcast a Commercial for a Film classified X18+.</p> <p>6.4.2 A Commercial for a Film classified R18+ (including for purchase as a DVD or Blu-Ray) or a computer game classified R18+ may only be broadcast in the M and MA15+ classification zones set out in Section 2 (except between 5.00am and 6.00am, and 7.30 pm and 8.30 pm)</p> <p>6.5 Betting and gambling</p> <p>6.5.1 A Commercial relating to betting or gambling must not be broadcast : a) in any Program classified G or lower between: i. 6.00 am and 8.30 am; and ii. 4.00 pm and 7.00 pm ; and b) during any Program that is broadcast between 5.00 am and 8.30 pm and principally directed to Children.</p> <p>6.5.2 For the avoidance of doubt, the restrictions in clause 6.5.1 do not apply during news, Current Affairs or Sports Programs.</p> <p>6.5.3 The restrictions at clause 6.5.1 do not apply to the following: a) a Commercial relating to such things as Government lotteries, lotto, keno or contests; b) a Commercial relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism Commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use.</p>

10.4. Advertising Industry Codes - self-regulation

The codes of the advertising industry are managed by the Advertising Standards Bureau. The advertising industry has developed a wide range of codes. These include the Code for Advertising & Marketing Communications to Children developed by the Australian Association of National Advertisers. The object of the Code (according to its introduction) is to: “ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.”⁸⁴

⁸⁴ Australian Association of National Advertisers (AANA): Code for Advertising & Marketing Communications to Children. Available [here](#)

Table 9.5 Australian AANA: Code for Advertising & Marketing Communications to Children

Definitions	
Children	persons 14 years old or younger
Advertising or Marketing Communications to	any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and over which the advertiser or marketer has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct, but does not include Excluded Advertising or Marketing Communications
Advertising or Marketing Communications to Children	Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product (goods, services and/or facilities which are targeted toward and have principal appeal to Children).
Excluded Advertising or Marketing Communications	means labels or packaging for Products, public relations communications (corporate or consumer) and related activities and, in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.
Medium	means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct-to-consumer media including new and emerging technologies.
<p>2.2 FACTUAL PRESENTATION</p> <p>Advertising or Marketing Communications to Children:</p> <p>(a) must not mislead or deceive Children; (b) must not be ambiguous; and (c) must accurately represent, in a manner that is clearly understood by Children:</p> <p>(i) the advertised Product;</p> <p>(ii) any features (including the size and performance of the product) which are described or depicted or demonstrated in the Advertising or Marketing Communication;</p> <p>(iii) the need for and the price of any accessory parts; and</p> <p>(iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non-commercial communication.</p> <p>(d) Price</p> <p>(i) Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as “only” or “just”;</p> <p>(ii) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.</p> <p>2.3 PLACEMENT</p> <p>Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication, is unsuitable for Children according to Prevailing Community Standards.</p> <p>2.4 SEXUALISATION</p> <p>Advertising or Marketing Communications to Children:</p> <p>(a) must not employ sexual appeal;</p> <p>(b) must not include sexual imagery in contravention of Prevailing Community Standards; and</p> <p>(c) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.</p> <p>2.5 SAFETY</p> <p>Advertising or Marketing Communications to Children:</p> <p>(a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and</p>	

(b) must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.

2.6 SOCIAL VALUES

Advertising or Marketing Communications to Children:

- (a) must not portray images or events in a way that is unduly frightening or distressing to Children; and
- (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.

2.7 PARENTAL AUTHORITY

Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;
- (b) must not contain an appeal to Children to urge their parents, carers or another person to buy a Product for them;
- (c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and
- (d) must not state or imply that persons who buy the Product are more generous than those who do not.

2.8 QUALIFYING STATEMENTS

Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.

2.9 COMPETITIONS

An Advertising or Marketing Communication to Children which includes a competition must:

- (a) contain a summary of the basic rules for the competition;
- (b) clearly include the closing date for entries; and
- (c) make any statements about the chance of winning clear, fair and accurate.

2.10 POPULAR PERSONALITIES

Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to endorse, recommend, promote or advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.

2.11 PREMIUMS

Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:

- (a) must not create a false or misleading impression in the minds of Children about the content of the Product;
- (b) must be presented conspicuously;
- (c) must not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;
- (d) must not refer to the premium in more than an incidental manner to the advertised product;
- (e) must make the terms of the offer clear as well as any conditions or limitations; and
- (f) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

2.12 ALCOHOL

Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

2.13 PRIVACY

If an Advertising or Marketing Communications indicates that personal information in relation to a Child will be collected, or, if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain a parent or guardian's express consent prior to engaging in any activity that will result in the collection or disclosure of

such personal information. Personal information is information that identifies the child or could identify the child.

2.14 FOOD AND BEVERAGES

(a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits;
(b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

2.14 AANA CODE OF ETHICS

Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.

The Australian Association of National Advertisers (AANA) also has a specific Food and beverages Advertising and Marketing Communications Code.⁸⁵

Table 9.6: The AANA Food and Beverages Advertising and Marketing Communications Code

2. ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits

2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.

2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.

2.5 Advertising or Marketing Communications for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.

2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.

2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/ or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.

2.8 Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.

2.9 Advertising or Marketing Communications for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

3. ADVERTISING AND CHILDREN

3.1 Advertising or Marketing Communications to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or

⁸⁵ Australian Association of National Advertisers (AANA) Food and beverages Advertising and Marketing Communications Code, available [here](#)

a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.

3.2 Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

3.3 Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non-possession of the Children's Food or Beverage Product would have the opposite effect.

3.4 Advertising or Marketing Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.

3.5 Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.

3.6 Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

Food industry code

The Australian food industry has two self-regulatory initiatives managed by the Australian Food and Grocery Council (AFGC) that specifically address food and beverage advertising to children, namely the Responsible Children's Marketing Initiative (RCMI), which covers products found in retail outlets and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI), which covers food sold in quick service restaurants.

Table 9.7: The AFGC Responsible Children's Marketing Initiative (RCMI) (summary)

Responsible Children's Marketing Initiative (RCMI)

Advertising or Marketing Communications to Children

Content

Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.

Placement

Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium.

Children

Persons under 12 years of age.

Initiative

The Responsible Children's Marketing Initiative

Medium

Television, radio, print, cinema, internet sites

Advertising and Marketing Messaging

S1.1. Advertising and Marketing Communications to Children for food and/or beverages must:

- a. Represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in Signatories' Company Action Plan; and
- b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:
 - i. Good dietary habits, consistent with established scientific or government standards; and
 - ii. Physical activity.

Product Placement

S1.2. Signatories must not pay for the placement of, or actively seek to place, food and/or beverage products in the program or editorial content of any Medium directed primarily to Children unless such food and/or beverage products are consistent with S1.1.

Use of Products in Interactive Games

S1.3. Signatories must ensure that any interactive game directed primarily to Children which includes the Signatory's food and/or beverage products is consistent with S1.1.

Advertising in Schools, Pre-Schools and Day Care Centres

S1.4. Signatories must not engage in any Advertising and Marketing Communication to Children in Australian primary schools, pre schools and day care centres, except where specifically requested by, or agreed with, the school administration for educational or informational purposes, or related to healthy lifestyle activities under the supervision of the school administration or appropriate adults.

Other relevant codes

There are additional codes of the advertising industry that are relevant to minors and children. The Alcoholic beverages advertising code included responsible placement of alcohol marketing as part of its Responsible Alcohol Marketing Code from November 1, 2017.⁸⁶ These new standards include additional safeguards for minors, namely a requirement to use available age restriction controls in digital media to exclude minors from an audience, to only use media platforms with a 75%+ adult audience, verification of ages as 18+ for electronic direct mail and no placement with content or programs primarily aimed at minors.

The AANA Wagering Advertising Code states that: "Advertising or Marketing Communication for a Wagering Product or Service must not, having regard to the theme, visuals and language used, be directed primarily to Minors; and that "Advertising or Marketing Communication for a Wagering Product or Service must not depict a person who is a Minor unless the person is shown in an incidental role in a natural situation and where there is no implication they will engage in

wagering activities; and that "Advertising or Marketing Communication for a Wagering Product or Service must not depict a person aged 18-24 years old engaged in wagering activities."

⁸⁶ It was not possible to find an updated version of this code online – all links were broken.

11. Austria: Children's commercial communications

11.1. Introduction and overview of regulatory structure

The Austrian audiovisual sector is regulated by the KommAustria commission, supported by the RTR. The public service broadcaster is regulated under a specific law: -the *ORF Law*. The main Broadcasting Act applicable to the private broadcasting sector is the *Audiovisuelle Mediendienste-Gesetz (Federal Act on Audio-visual Media Services) (AMD-G)*.⁸⁷

In addition, there are a range of self-regulatory codes. These include: the code of conduct of Austrian Broadcasters regarding commercial communications for food around children's programmes; and the code of ethics of the Association for self-control of the advertising industry.

Key points:

- Different laws apply to public and private broadcasters
- Public service broadcasters cannot any programmes with advertising and they cannot broadcast advertising directly before and directly after the children's programmes
- Outside of the national legislation, the system is entirely self-regulatory
- All the broadcasters and relevant telecommunications companies have developed a joint code with regard to commercial communications and children and advertising of food
- The Advertising industry also has a general code of ethics that includes children

11.2. Public service broadcasting and children's advertising

The Law on public service broadcaster - ORF - regulates the public broadcaster with regard to advertising. Section § 15 ORF-G prohibits the public service broadcaster from interrupting any programmes with advertising. Section § 13 ORF-G addresses general issues as regards the content of advertising. Section § 14 ORF-G deals with the placement of advertising around children's programming.⁸⁸

Table 10.1 Austrian Public Service Broadcasting advertising rules

Section § 13 ORF-G Content requirements and restrictions

- (1) Commercial communications must be clearly recognisable. Surreptitious advertising and subliminal commercial communication in programs and broadcasts is prohibited.
- (2) In commercial communications, no persons appear in the image or sound who regularly present news programs and broadcasts on current political events or who regularly moderate other programs as programmatic and journalistic employees of the Austrian Broadcasting Corporation.
- (3) Commercial communications should not
 1. Violate human dignity
 2. Discriminate on the basis of race or ethnic origin, sex, age, disability, religion or belief or nationality or sexual orientation,
 3. Promote behaviours that endanger health or safety,
 4. Promote behaviours that pose a significant threat to the protection of the environment,
 5. promote unlawful practices,
 6. mislead and harm the interests of consumers or
 7. affect editorial independence.
- (4) Any form of commercial communication for spirits, cigarettes or other tobacco products, as well as for prescription medicines, medical devices and therapeutic treatments, is prohibited. Commercial communication for all other medicines, medical devices and therapeutic treatments must be honest, truthful and verifiable. It must not damage people.
- (5) Commercial communication for alcoholic beverages must meet the following criteria:

⁸⁷ Audiovisuelle Mediendienste-Gesetz (AMD-G) [consolidated version of 2015, in English]
Audiovisual Media Services Act [consolidated version of 2015, in English]

⁸⁸ The Law on public service broadcaster ORF § 13 ORF-G Content requirements and restrictions.
Available [here](#). Unofficial translation provided here in report.

1. It must not be specifically targeted at minors and encourage over-consumption of such beverages.
2. In particular, it must not represent minors drinking alcohol.
3. There must be no link between improving physical performance and drinking alcohol or driving and drinking alcohol.
4. The impression should not be given that drinking alcohol promotes social or sexual success.
5. It must not suggest a therapeutic, stimulant, sedative or conflict-solving effect of alcohol.
6. Abstinence or moderation in the consumption of alcoholic beverages should not be negatively expressed.
7. The level of alcoholic strength of beverages must not be highlighted as a positive feature.

(6) Commercial communication must not cause physical or mental harm to minors and is therefore subject to the following criteria for the protection of minors:

1. It may not make direct calls to purchase or rent goods or services to minors who exploit their inexperience and credulity.
2. It may not directly require minors to convince their parents or third parties to purchase the advertised good or service.
3. It must not take advantage of the special trust that minors have with parents, teachers or other confidants.
4. It must not show minors without legitimate reason in dangerous situations.

(7) The presentation of production aids or prices of insignificant value in news programs and political information programs is inadmissible.

(8) The Austrian Broadcasting Corporation shall issue guidelines for commercial communication broadcast before, after or during children's programmes regarding foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. These guidelines require the consent of the regulatory authority and shall be published in a manner that is easily, directly and permanently accessible.

(9) The Foundation Council may specify further restrictions in terms of content and time for commercial communication. Those types of specified guidelines shall be published in a manner that is easily, directly and permanently accessible.

§14, Television and radio advertising, advertising times

(1) Advertising shall be readily recognisable and distinguishable from editorial content. It shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.

(2) Advertising aimed specifically at minors without legal capacity may not be broadcast directly before or after children's programmes

As noted in the table above, §14 (2) states that advertising aimed specifically at minors without legal capacity may not be broadcast directly before or after children's programmes certain number of nuances emerge when looking at a range of jurisdictions. According to feedback from the Austrian regulator, this prohibits the broadcasting of advertising specifically aimed at minors directly before or after children's programmes. In this context, "directly" means the first or the last advertising spot before the start or after the end of the children's programme. Therefore, the first or the last advertising spot before or after a children's programme cannot be an advertising spot that is aimed specifically at children.

11.3. [Private broadcasting legislation](#)

The main legislation applicable to the private broadcasting sector is the Audiovisuelle Mediendienste-Gesetz (Federal Act on Audio - visual Media Services) (AMD-G).⁸⁹

⁸⁹ Audiovisuelle Mediendienste-Gesetz (AMD-G) [consolidated version of 2015, in English]
Audiovisual Media Services Act [consolidated version of 2015, in English]

This Act includes the general principles regarding commercial communications as laid out in the AVMS Directive. In addition, the law makes specific reference to the development of guidelines by media outlets with regard to the advertising of HFFS foods. These guidelines are outlined under section 10.4 below.

Table 10.2 Austrian audiovisual media Law advertising rules

Audiovisuelle Mediendienste-Gesetz (Federal Act on Audio - visual Media Services) (AMD-G)

Part 7 Requirements Regarding All Audiovisual Media Services

Audio-visual Commercial Communication and Protection of Minors

§ 36.

(1) Audio-visual commercial communication shall not cause moral or physical detriment to minors.

(2) Therefore, audio - visual commercial communication shall comply with the following criteria for the protection of minors:

1. It shall not directly exhort minors to buy or hire a product or a service by exploiting their inexperience or credulity.

2. It shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised.

3. It shall not exploit the special trust minors place in parents, teachers or other persons.

4. It shall not unreasonably show minors in dangerous situations

(3) All media service providers shall issue guidelines for audio-visual commercial communication broadcast before, after or during children's programmes regarding foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended, and shall publish such guidelines in a manner that is easily, directly and permanently accessible.

Audio-visual Commercial Communication for Alcoholic Beverages

§35. Audio-visual commercial communication for alcoholic beverages shall comply with the following criteria:

1. It shall not be aimed specifically at minors and, in particular, depict minors consuming these beverages.

Interruption of Programmes

§ 44.

(3) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by television advertising once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is longer than 30 minutes

11.4. Self-regulation: broadcasters and food advertising

The code of conduct of Austrian Broadcasters is focused on food – the Self- regulatory code of conduct of Austrian Broadcasters regarding commercial communications for food around children's programmes. This common code was developed by German Association of Telecommunications and Broadcasting Companies of Austria, the ORF (Austrian Public Service Broadcaster), and the Association of Austrian Private Broadcasters.⁹⁰

⁹⁰ Code of Conduct of Austrian Broadcasters regarding inappropriate audiovisual commercial communication in connection with children's programs and food".

(Verhaltenskodex der österreichischen Rundfunkveranstalter hinsichtlich unangebrachter audiovisueller kommerzieller Kommunikation in Zusammenhang mit Kindersendungen und Lebensmittel"). Available [here](#) and available [in English](#):

Table 10.3 Code of Conduct of Austrian Broadcasters regarding ACC and Food

Code of Conduct of Austrian Broadcasters regarding inappropriate audiovisual commercial communication in connection with children's programs and food

This Code of Conduct includes a voluntary undertaking by the broadcasters for audiovisual commercial communications accompanying or included in children's programs and relating to food and drink containing nutrients or substances having nutritional or physiological effects, in particular such as fat, trans fatty acids, salt / sodium and sugar, whose excessive intake is not recommended in the context of overall nutrition (hereinafter referred to as "food").

Audiovisual commercial communications for these foods broadcast immediately before, after or during (commercial breaks) broadcasts directed exclusively or predominantly to children (understood to be persons before the age of twelve) must meet the following criteria:

1. General principles

Audiovisual commercial communications for these foods

- 1.1. should be designed so that children's confidence in the quality of the advertised products is not abused.
- 1.2. should not counteract a healthy, active lifestyle. In particular, it must not suggest that an inactive lifestyle is preferable to exercise.
- 1.3 should not counteract or diminish a balanced, healthy diet. In particular, it must not devalue or discourage / discourage the consumption of fresh fruit or vegetables.
- 1.4 should not encourage excessive or unilateral consumption of the advertised products. The positive presentation forced or morbid eating habits is inadmissible.
- 1.5. should not undermine choices to give up the consumption of the advertised products.

2. Special provisions

Audiovisual commercial communication for these foods

- 2.1. must not establish any link between improving school performance and eating these foods.
- 2.2 should not give the impression that the possession or consumption of these foods promotes social success or ensures higher status and popularity in the age group of children.
- 2.3 must not suggest any therapeutic, curative or disease preventive effects of these foods.
- 2.4 must not encourage intemperance in the enjoyment of these foods or be detrimental to moderation or temperament.
- 2.5 must not contain any negative statements about persons who, for whatever reason, wish to reduce the consumption of these foods.
- 2.6 must not suggest that these foods could replace a meal. In particular, it must not indicate that these foods can represent a complete replacement for vegetables and / or fruits.
- 2.7 Audiovisual commercial communication for calorie-reduced modifications of these foods ("light versions") must not encourage excess consumption of the calorie-reduced food.
- 2.8 Audiovisual commercial communications for these foods and the information they provide about taste, portion size and the potential contribution of these foods to a balanced diet must be truthful, complete and understandable.
- 2.9 Audiovisual commercial communication for these foods and the information contained therein about the amount of carbohydrates, fat or protein contained in these foods should not misleadingly suggest positive effects for a balanced overall diet (for example, foods high in carbohydrates should not be indicated by reference to their low-fat or low-fat foods -lose content and vice versa).
- 2.10 If these foods are directly related to children's programs (e.g. licensed products), audiovisual commercial communications may not be broadcast immediately before, during or after such programs.

Audiovisual commercial communication for these foods

- 2.11 should not cause physical or mental harm to children.
- 2.12 should not direct appeals for these foods to children that exploit their inexperience and credulity.
- 2.13 does not prompt children to persuade their parents or third parties to buy these foods.
- 2.14 should not unduly exploit the special trust that children have with parents, teachers and other natural confidants (including "children's idols") by explicitly calling them to buy and thus counteract learning a balanced diet and a healthy lifestyle. Furthermore, it must not suggest that the

consumption of these foods directly enables children to gain the popularity or social status of these individuals.

2.15 should not show children without legitimate reason in dangerous situations.

2.16 Any complaints in connection with the Code of Conduct may be filed with the "Österreichischer Werberat" within the framework of the procedures established there. The broadcaster reserves the right to reject the audiovisual commercial communication in case of a decision of the Austrian Advertising Council not or not to broadcast anymore.

11.5. Self-regulation: Advertising Code of ethics

The "Association for self-control of the advertising industry" is an industry representative agency in charge of the self-regulation of advertising. The code distinguishes between advertising in general and advertising that targets children. The code also addresses the use of children as actors in advertisements. And, finally it also has a specific section relevant to adolescents (12-18).

Table 10.4 Austrian advertising industry code of ethics

Code of ethics

Part 2: Special rules of conduct – People

2.2. Children and Youth

Children and young people are, for reasons of their immaturity and lack of life experience, particularly under threat of abuse. The Austrian law therefore places children and youth under special protection, both under national and supranational legislation, as well as through international conventions, such as the UN Convention on the Rights of the Child.

The Austrian Advertising Council

The Austrian Advertising Agency takes this fact into account and has created special rules of conduct. Advertising with children and adolescents and advertising aimed directly at children and young people should pay special attention to the maturity and life experience of children and adolescents. The way in which children and young people perceive advertising and respond to advertising must be taken into account in all promotional activities, especially in view of the fact that children also learn by imitation. Therefore, the Austrian Advertising Council appeals to all advertisers to be aware of the pedagogical responsibility towards children and adolescents.

2.2.1. Children (People up to the age of 12 years)

a) Advertising in general:

1. Advertising may not present or have the appearance of presenting any violent, aggressive or anti-social behaviour as an example
2. Advertising may not communicate content to children or work with images that may cause physical, mental or moral harm to children
3. Advertising should not jeopardize the emotional wellbeing of children, especially through fear or horror.
4. Advertising must not be dangerous, unhealthy, or reckless, or incite children to engage in such behaviours.
5. Advertising shall not indicate or demonstrate any educational measures likely to impair or injure the physical or mental well-being and dignity of the child. This is especially true when these measures are presented by persons who embody parents or other guardians or educators.
6. Advertising may not discriminate against children if they do not buy or own the advertised product. In particular, we must refrain from statements and statements that exclude such children, for example, by making them appear unpopular, socially inferior or unsuccessful.
7. Product-related information regarding the protection of minors and other warnings must also be clearly visible on advertising measures.

b) Advertising that is aimed directly at children:

1. Advertising or promotional activities must take into account the lack of maturity and experience of children. Representations and statements must be adapted to the respective age of the target group and must not overstrain or misuse the child's imagination.
2. Advertising with children must not be gender-discriminatory.
3. Advertising for non-child-friendly products, such as Alcohol, tobacco, medicines, weapons, nutritional supplements and slimming products or certain services (such as gambling, betting) should not be targeted at children.

4. Children have limited knowledge, less experience and less vocabulary than adults. Advertising should take this fact into account through simple, clear and complete information and must not mislead children.
5. Advertising may not work with images in which children directly or persuade their parents or third parties to buy a particular product.
6. Child-directed advertising must be specially marked so that any confusion with a part of the program or an editorial contribution is excluded.

c) Advertising with children as actors:

1. Children should not be portrayed in an erotic or sexualized way, nor should children's presentation be aimed at arousing sexual desire.
2. Children should never be demeaned or ridiculed
3. Children may not be portrayed as victims of whatever kind of violence or of perpetrators of violence.
4. In advertising for products or services that are not suitable for children and that are likely to affect or endanger the well-being or health of children, children should not be used as performers; In particular, this includes advertising for weapons, plastic surgery, gambling, betting, tobacco, alcohol and video games with content that is not child-friendly and / or glorifies violence.

2.2.2. Youth/ adolescents (people aged between 12 and 18)

Basically, the points listed under 2.2.1 also apply to young people, albeit in age-appropriate form. However, the following points should be taken into special account in connection with adolescents:

1. Advertising should not be reckless and / or dangerous actions that encourage adolescents to imitate.
2. Advertising with adolescents or advertisers directed at adolescents may only include criminally relevant representations or statements if they are to be understood as a message and request for legally compliant behaviour.
3. Advertising for products such as tobacco, alcohol, medicines, weapons, dietary supplements and slimming products should not appeal to the target group of adolescents.
4. There must be no advertising allowed for cosmetic surgery for under-18s.
5. For the protection of adolescents, no representations or statements may be made that could promote health-damaging behaviour. Especially with regard to bulimia, anorexia, obesity, etc., it must be ensured that health-threatening body forms, in particular with regard to body weight, are not displayed, but also not ridiculed.
6. Furthermore, no representations or statements may be made that could promote an over-idealized overall appearance (e.g., facial corrections, breast augmentations, over-exercise) as an aspired (beauty) ideal.

https://www.werberat.at/show_99.aspx

12. Canada: children's commercial communications

12.1. Introduction and overview of regulatory structure

At the federal level in Canada, the regulation of children's commercial communications is a self-regulatory structure. The different situation in the province of Québec will be discussed below. Current plans to strengthen the regulation of the advertising of HFSS foods will also be discussed below.

Key points:

- the regulation of children's commercial communications is a self-regulatory structure at the Federal level in Canada
- A very different situation prevails in Québec where all advertising and marketing on all media directed at children has been banned since 1980.
- Currently a new Bill is working its way through the legislative process in Canada, which will prohibit the marketing of food and beverages to children
- Both the Québec Consumer Act and the pending federal law on marketing of food and beverages to children define children as under 13.
- They both consider the threshold as being when the portion of children in the viewing audience is over 15%

12.2. Advertising Standards Canada – Broadcast Code for Advertising to Children

The Advertising Standards Canada (ASC) is the national not-for-profit advertising self-regulatory body. The ASC has a general advertising standards code but also a specific Broadcast Code for Advertising to Children.⁹¹

Table 11.1 Advertising Standards Canada - Broadcast Code for Advertising to Children

Broadcast code for advertising to children

1. Definitions

(a) Children's Advertising – "Children's Advertising" refers to any paid commercial message that is carried in or immediately adjacent to a children's program. Children's advertising also includes any commercial message that is determined by the broadcaster as being directed to children and is carried in or immediately adjacent to any other program.

(b) Children – "Children" refers to persons under 12 years of age.

(c) A Child Directed Message – "A child directed message" refers to a commercial message on behalf of a product or service for which children are the only users or form a substantial part of the market as users, and the message (i.e. language, selling points, visuals) is presented in a manner that is directed primarily to children.

(d) Children's Program – A "children's program" refers to a program that is directed to the under-12 audience, as defined by the broadcaster.

(e) Commercial Message – A "commercial message" has the same meaning as that defined in the Television Broadcasting Regulations, 1987.

(f) Premium – A "premium" is anything offered with or without additional cost, and is conditional upon the purchase of the advertiser's regular product or service.

(g) The Code – This Code shall be known as "The Broadcast Code for Advertising to Children" and shall hereinafter be referred to as "the Children's Code."

2. Jurisdiction

All Children's advertising must conform to the Children's Code, be precleared in accordance with the procedures set out from time to time by ASC and have the requisite ASC clearance number.

3. Factual Presentation

(a) No children's advertising may employ any device or technique that attempts to transmit messages below the threshold of normal awareness.

⁹¹ Advertising Standards Canada – Broadcast Code for Advertising to Children. Available [here](#)

- (b) Written, sound, photographic and other visual presentations must not exaggerate service, product or premium characteristics, such as performance, speed, size, colour, durability, etc.
- (c) The relative size of the product must be clearly established.
- (d) When children's advertising shows results from a drawing, construction, craft or modelling toy or kit, the results should be reasonably attainable by an average child.
- (e) The words "new," "introducing," "introduces" or similar words may be used in the same context in any children's advertising for a period of up to one year only.

4. Product Prohibitions

- (a) Products not intended for use by children advertised either directly or through promotions that are primarily child-oriented.
- (b) Drugs, proprietary medicines and vitamins in any pharmaceutical form, with the exception of children's fluoride toothpastes.

5. Avoiding Undue Pressure

- (a) Children's advertising must not directly urge children to purchase or urge them to ask their parents to make inquiries or purchases.
- (b) Direct response techniques that invite the audience to purchase products or services by mail or telephone are prohibited in children's advertising.
- (c) In children's advertising which promotes premiums or contests, the product must receive at least equal emphasis. Promotion of the premium or contest must not exceed one-half of the commercial time. In promoting contests which have an age restriction that excludes children, this must be made clear orally or visually.

6. Scheduling

- (a) The same commercial message or more than one commercial message promoting the same product cannot be aired more than once in a half-hour children's program. In children's programs of longer duration, the same commercial message or more than one commercial message promoting the same product must not appear more than once in any half-hour period.
- (b) No station or network may carry more than four minutes of commercial messages in any one half-hour of children's programming or more than an average of eight minutes per hour in children's programs of longer duration.
- (c) In children's programs, only paid commercial messages are included in the four minutes per half-hour limitation. Promotions and public service announcements may occupy the time difference between the Code limit and the CRTC regulation limit. Broadcasters will, however, consider the appropriateness of the content of public service announcements before scheduling in children's programs.
- (d) For the purposes of this section, the time devoted to the broadcasting of a children's program includes any time devoted to a commercial message that is inserted within the program and/or immediately adjacent to the end of the program and also includes any time devoted to a child-directed commercial message inserted between the end of the program and the beginning of the following program.

7. Promotion by Program Characters, Advertiser-Generated Characters, and Personal Endorsements

- (a) Puppets, persons and characters (including cartoon characters) well-known to children and/or featured on children's programs must not be used to endorse or personally promote products, premiums or services. The mere presence of such well-known puppets, persons or characters in a commercial message does not necessarily constitute endorsement or personal promotion. (For example, film clips or animation are acceptable as a mood or theme-setting short introduction to commercial messages before presenting the subject of the commercial message itself.) These puppets, persons and characters may not handle, consume, mention or endorse in any other way the product being advertised.
- (b) This prohibition does not apply to puppets, persons and characters created by an advertiser which may be used by advertisers to sell the products they were designed to sell as well as other products produced by the same advertiser or by other advertisers licensed to use these characters for promotional purposes.
- (c) Professional actors, actresses or announcers who are not identified with characters in programs appealing to children may be used as spokespersons in advertising directed to children.

(d) Puppets, persons and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc. in children's advertising.

8. Price and Purchase Terms

(a) Price and purchase terms, when used, must be clear and complete. When parts or accessories that a child might reasonably suppose to be part of the normal purchase are available only at extra cost, this must be made clear in audio and video.

(b) The cost must not be minimized as by the use of "only," "just," "bargain price," "lowest price(s)," etc.

(c) The statement in audio, "it has to be put together" or a similar phrase in language easily understood by children must be included when it might normally be assumed that the article would be delivered assembled.

(d) When more than one toy is featured in a commercial message it must be made clear in audio and video, which toys are sold separately (this includes accessories).

9. Comparison Claims

(a) Commercial messages shall not make comparisons with a competitor's product or service when the effect is to diminish the value of other products or services.

(b) In the case of toys or children's possessions, comparisons should not be made with the previous year's model, even when the statements or claims are valid.

10. Safety

(a) Commercial messages, except specific safety messages, must not portray adults or children in clearly unsafe acts or situations (e.g. the use of flame or fire is not permitted in children's advertising).

(b) Commercial messages must not show products being used in an unsafe or dangerous manner.(e.g. tossing a food item into the air and attempting to catch it in the mouth, etc.)

11. Social Values

(a) Children's advertising must not encourage or portray a range of values that are inconsistent with the moral, ethical or legal standards of contemporary Canadian society.

(b) Children's advertising must not imply that possession or use of a product makes the owner superior or that without it the child will be open to ridicule or contempt. This prohibition does not apply to true statements regarding educational or health benefits.

Interpretation Guidelines for Clause 11

i. Child-directed messages for food products in broadcast advertising that are inconsistent with the pertinent provisions of the Food and Drugs Act and Regulations, or the Canadian Food Inspection Agency's Food Labelling for Industry (CFIA Industry Labelling Tool) shall be deemed to violate Clause 11 (Social Values) of the Children's Code. This Interpretation Guideline is intended, among other purposes, to ensure that advertisements representing mealtime clearly and adequately depict the role of the product within the framework of a balanced diet, and snack foods are clearly presented as such, not as substitutes for meals.*

ii. Every "child-directed message" for a product or service should encourage responsible use of the advertised product or service with a view toward the healthy development of the child.**

iii. Advertising of food products should not discourage or disparage healthy lifestyle choices or the consumption of fruits or vegetables, or other foods recommended for increased consumption in Canada's Food Guide, and Health Canada's nutrition policies and recommendations applicable to children under 12.**

iv. The amount of food product featured in a "child-directed message" should not be excessive or more than would be reasonable to acquire, use or, where applicable, consume, by a person in the situation depicted.**

v. If an advertisement depicts food being consumed by a person in the advertisement, or suggests that the food will be consumed, the quantity of food shown should not exceed the labelled serving size on the Nutrition Facts Panel (where no such serving size is applicable, the quantity of food shown should not exceed a single serving size that would be appropriate for consumption by a person of the age depicted).**

* April 2004

** September 2007

Note: These Guidelines do not form part of the Children's Code. They are intended to provide guidance regarding the interpretation and application of Clause 11 to food product advertising.

12. Substantiation Required

Where measurable claims are made regarding specific products - performance, safety, speed, durability, etc., the advertiser must be prepared on request to provide the Children's Advertising Section with evidence supporting such claims, and/or a sample of the product.

13. Assessment

Each commercial message shall be judged on its individual merit.

14. Code Administration

(Procedure in effect across Canada, with the exception of Quebec, whose authority to prohibit broadcast advertising to children has been affirmed. Clearance numbers are not required for commercial messages broadcast in Quebec. Therefore, the following procedure applies to the rest of Canada only.)

(a) Enforcement & Jurisdiction – The enforcement body for the Children's Code will be the Children's Advertising Section of ASC/Children's Clearance Committee. The Children's Clearance Committee shall have nine members: the chairperson; three public representatives, and one member each nominated respectively by the CRTC, private broadcasters, the CBC, advertiser and advertising agency associations. In order to ensure balanced representation, any member who is unable to participate may be represented by an approved alternate. A quorum shall consist of four members, at least one of whom shall be a public representative. ASC has jurisdiction only over commercial messages broadcast by Canadian stations or on behalf of Canadian advertisers.

(b) Clearance and Consultation – No broadcaster shall broadcast any children's advertising that has not received the prior approval of the Children's Clearance Committee. The prior approval is not mandatory for children's advertising that is carried in one market only, but individual broadcasters are responsible for ensuring that such commercial messages conform to the Children's Code.

Because of the time and expense involved in creating television advertising, it is recommended that where any reasonable doubt exists about possible contravention of the Children's Code, advertisers or their advertising agencies should submit ideas in storyboard or script form to ASC for evaluation.

(c) Enforcement procedure – If the broadcaster/Children's Advertising Section of ASC determines that any children's advertising is in breach of the Children's Code, a broadcaster shall not run the offending commercial message and the advertiser and/or its agency and ASC shall be so notified.

(d) Compliance Time – The Children's Advertising Section may, at its discretion, allow time for compliance for commercial messages produced prior to the announcement of this edition of the Children's Code.

12.3. Legislation to prohibit food and beverage marketing directed at children

A bill is currently (November 2018) working its way through the Canadian legislative process, which is an Act to amend the Food and Drugs Act (prohibiting food and beverage marketing directed at children) - Bill S-228 The Child Health Protection Act⁹²

According to the website of the Health Ministry (Health Canada),⁹³ the marketing of food and beverages to children remains widespread in Canada despite voluntary measures such as the Broadcast Code for Advertising to Children and the Canadian Children's Food and Beverage Advertising Initiative.

The Senate Committee recommended, in its report entitled Obesity in Canada: A Whole-of-Society Approach for a Healthier Canada tabled on March 1, 2016, that the federal government implement a prohibition on the advertising of foods and beverages to children.

⁹² Canadian Child Health Protection Act. Available [here](#)

⁹³ Text taken from the government website Health Canada: <https://www.canada.ca/en/health-canada/programs/consultation-restricting-unhealthy-food-and-beverage-marketing-to-children/update-proposed-regulations.html>

Whereas it is widely acknowledged that marketing to children has spread well beyond the traditional media of television, radio and print to include online and other digital content and celebrity and character endorsement, and it is therefore critical that restrictions on marketing of food and beverages to children cover all potential marketing media in a broad and robust fashion in order to provide fulsome protection to young Canadians.

The Canadian Bill, which originally proposed a definition of children as under 17, was adapted to a definition of under 13 in the course of the legislative process. It will require implementing regulations. The new regulations will:

1. define "unhealthy" food;
2. set out factors to determine if an advertisement is directed at children; and,
3. set out exemptions to the prohibition, such as for children's sports sponsorship.

The regulations will also establish criteria to determine "advertising directed primarily at children." The proposed approach addresses three primary elements:

1. settings;
2. media channels; and,
3. advertising techniques.

Health Canada will consider the following elements to determine whether unhealthy food advertising is primarily directed at children.

a) How to define "child directed settings"?

"Settings" would include places, events or activities, and could include day-care, schools, children's clubs as well as children's concerts and festivals, among others. Health Canada is proposing that the following factors related to settings be considered when determining whether unhealthy food advertising is child-directed:

- Whether the setting is one where children are generally or frequently in attendance; and,
- The nature and purpose of the event or activity.

Marketing to children would be prohibited in child-directed settings. Where the audience has both adults and children, the marketing of unhealthy food will be restricted only if the advertisement itself is found to have "child appeal". For example, an advertisement for fast food on a banner at an amusement park would be prohibited if the characteristic of the ad such as colour, theme and/or language was clearly directed at children.

b) How to define "child directed media channels"?

Children are exposed to advertising through a variety of media channels, including digital applications, internet, television, films, and print. Health Canada is exploring the use of factors such as the nature and purpose of the media, whether it was intended or designed for children and whether children constitute a significant portion of the audience (i.e. the proportion of children under 13 in the viewing audience is higher than the proportion in the overall Canadian population) when determining whether unhealthy food advertising is child-directed. Interpretative guidance would specify the threshold at which children would constitute a "significant" proportion of the audience.

Health Canada is considering a threshold of 15%, which is slightly higher than the proportion of this age group in the general population (i.e. 13%). Marketing to children would be prohibited when the portion of children in the viewing audience is over 15%. For example, an ad for a carbonated sugary drink would be prohibited in a child directed magazine. Health Canada is also proposing that regulations be broad enough to ensure that new techniques can be captured in the future, as they evolve (e.g. new digital media).

For media channels where the proportion of children in the viewing audience is less than 15%, the marketing of unhealthy food will be restricted only if the advertisement is found to have clear "child appeal". For example, during a TV program with adult viewers and a portion of children viewers below the 15% threshold, the unhealthy food advertisement would be

prohibited only if it depicted child-appealing elements such as themes, jingles and/or language that are clearly directed at children. Health Canada intends to provide interpretive guidance to help determine whether the advertisement is appealing to children, as in Quebec.

c) How to define "advertising techniques with child appeal"?

A wide range of powerful techniques are used to advertise foods to children. Health Canada is proposing that the following factors related to techniques be considered when determining whether the design or characteristics of an advertisement is child-directed:

Does the design, technique, or characteristic of the advertisement target, influence, or appeal to children? Elements to be considered include, but are not limited to:

- characteristics of the advertisement (such as its theme, images, colours, music and/or language)
- use of characters, animals, children, celebrities, movie tie-ins, premium offers (e.g., contests, toys, discounts, free downloadable content)

Marketing to children would be prohibited when the advertisement includes elements that are clearly directed at children. For example, an ad for confectionary treats depicting child appealing elements such as cartoon images and/or children's toys would be prohibited.

12.4. The ban on children's commercial communications in Québec

In the Canadian province of Québec the 1980 Consumer Protection Act prohibited commercial advertising directed at children under 13 years of age. The Office de la protection du consommateur (Office for Consumer Protection) issued a useful guideline to the law (last updated in 2012).⁹⁴

In this document, the word "child" refers to persons under 13 years of age. All formats and media are targeted when they are used to distribute or broadcast commercial advertising. Examples include: radio; television; the web; mobile phones; printed materials such as newspapers, magazines and flyers; signage; promotional items. Since the Act's interpretation is constantly evolving, new formats and media that emerge as a result of changes in advertising practices and technologies are also affected

How to determine whether commercial advertising is directed at children?

Television commercials directed mainly at children may only be broadcast in programs for which children make up less than 5% of the audience. Commercials directed partly at children may only be broadcast in programs for which children make up less than 15% of the audience.

The Act also provides three criteria that correspond to the following questions:

- For whom are the advertised goods or services intended? Do they appeal to children?
- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears or is broadcast?

What the Act states: "Section 249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of:

- a) the nature and intended purpose of the goods advertised;
- b) the manner of presenting such advertisement;
- c) the time and place it is shown.

⁹⁴ Office de la protection du consommateur, Québec (2012): Advertising Directed at Children under 13 Years of Age. Guide to the Application of Sections 248 and 249, Consumer Protection Act. Available [here](#)

The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age. "An overall analysis of advertisements that takes the relationship between these three criteria into account is essential since each criterion, when considered separately, is not decisive in itself. Therefore, an advertisement that is broadcast and intended for adults could still be considered as advertising aimed at children when all the criteria are assessed. The fig overleaf is taken from the guidelines.

Figure 11.1 Québec Consumer Protection Act: proportion of children exposed to advertising

Appendix II: Example of an assessment of the proportion of children exposed to advertising broadcast during a TV show

To determine if an advertisement is directed at children, the percentage of the audience consisting of children under 13 years of age at the time the advertisement is broadcast on television as well as the other two criteria must be assessed.

	Product essentially directed at children	Product with strong appeal for children	Product with no appeal for children
Program with over 15% of viewership composed of children	Advertisement Prohibited	Advertisement prohibited if the message is designed to arouse the interest of children.	Advertisement allowed provided that the message is not designed to arouse the interest of children.
Program with up to 15% of viewership composed of children	Advertisement prohibited if the message is designed to arouse the interest of children.	Advertisement allowed provided that the message is not designed to arouse the interest of children.	Advertisement allowed

In some cases, the threshold used may be lower than 15%. For example, if the advertisement makes it possible to reach a large number of children, the 15% threshold is no longer appropriate. For instance, an advertisement could be regarded as being directed at children even though children make up only 10% of the audience if the show's viewership is very high and the product and presentation appeal to children.

13. France: Children's commercial communications

13.1. Introduction and overview of regulatory structure

Commercial communications are regulated in the audiovisual law – the Loi Léotard.⁹⁵ Several decrees have introduced rules on the content of advertising, for example regarding health messages around food advertising. The content of audiovisual commercial communications are mainly regulated via the self-regulatory mechanisms of the Autorité de Régulation Professionnelle de la Publicité (ARPP).

Key points:

- The most significant development was the banning of advertising in programming targeting children (12 years and under) on the public service channels in 2016
- Several decrees have introduced rules on the content of advertising, for example regarding health messages around food advertising
- The content of advertising is largely self-regulated via a range of codes from the ARPP
- These include a code on children a code on food, a code on toys, and codes on alcohol, gambling and digital advertising
- In 2009, a Charter to promote healthy eating and physical activity in programmes and advertisements broadcast on television was signed by the regulator – the CSA -, and by broadcasters, advertising associations, food industry associations, audiovisual producers, and animation film producers, relevant public bodies and ministries

13.2. Ban on advertising to children on the public service broadcasters

In December 2016, a new law was introduced in France removing all commercial communications during programming of the public service broadcaster France Télévisions which is primarily aimed at children under 12.⁹⁶ Programmes of the national television services (mentioned in article 44) that are primarily aimed at children under 12 may not carry commercial communications, except for generic messages for goods and services related to the health or development of children, or campaigns of general interest (public interest). The restriction applies during the programmes, and also 15 minutes before and after the programmes.

The law also applies to all communications distributed on the websites of the same national television services that are offering programmes principally targeting children less than 12 years of age.

13.3. Self-regulation of the advertising industry

The content of audiovisual commercial communications are mainly regulated via the self-regulatory mechanisms of the Autorité de Régulation Professionnelle de la Publicité (ARPP). They have a code on children⁹⁷ and several other codes which have relevant sections on the protection of minors.

⁹⁵ Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard) [Available here](#)

⁹⁶ LOI n° 2016-1771 du 20 décembre 2016 relative à la suppression de la publicité commerciale dans les programmes jeunesse de la télévision publique. [Available here](#)

⁹⁷ The ARPP Children's Code: [Available here](#) /

Table 12.1 ARPP Children's Code

ARPP Children's Code

Preamble

The Fair Practices Code of Advertising of the International Chamber of Commerce contains general provisions recognized by all professionals. Some, since the beginning, apply directly to advertising aimed at children.

Thus: "Commercial communication must not exploit inexperience or credulity [of children or adolescents]" (Article 18 of the ICC Code).

"Commercial communication must not include any statement or visual treatment that might cause mental or physical harm to children or adolescents" (Article 18 of the ICC Code).

Respect for these principles must be assessed according to the sensitivity of the social body at a given moment and according to that of the public exposed to advertising.

In this context, the following deontological rules apply to any message broadcast in France, whatever its form, when staging children or addressing them:

1. IDENTIFICATION OF ADVERTISING

1.1 Advertising must be clearly distinguishable as such, regardless of the medium used.

1.2 When addressing children, the advertising nature of the message must be readily identifiable.

2. SOCIAL RESPONSIBILITY

Advertising must be designed with a fair sense of social responsibility:

2.1 Advertising must not favourably promote antisocial or criminal acts or incite children to commit such acts.

2.2 It must not legitimize behaviour that is contrary to the principles of citizenship, the rules of etiquette, lifestyle, protection of the environment or respect for others.

2.3 Advertising must not devalue the authority, responsibility or judgment of parents and educators.

3. DIGNITY, DECENCY

3.1 Advertising must not be likely to offend sensitivity, to shock or provoke by spreading an image of the child that harms his or her dignity or decency.

3.2 Advertising shall not portray the child in situations that may degrade the child's physical or moral integrity.

3.3 Advertising must not be such as to arouse the child's feelings of anguish or discomfort.

3.4 When advertising refers to child nudity, care should be taken to ensure that the child's behaviour corresponds to the attitudes that he or she is likely to adopt in his daily environment.

4. VIOLENCE

4.1 Advertising must avoid any scene of violence or abuse, whether direct or suggested, whether moral or physical.

4.2 Under no circumstances should the message or presentation trivialize violence or abuse or give the impression that such behaviour is acceptable.

4.3 It should not encourage children to reproduce aggressive or violent behaviour.

5. SECURITY

5.1 Advertising aimed at children must present the products in an environment and situations that comply with the safety rules provided for by the standards in force.

5.2 Advertising shall not give the impression that dangerous or reckless behaviour is acceptable and may be reproduced in any situation, including play.

6. LOYAL/HONEST ADVERTISING

6.1 The possibly deceptive nature of an advertisement is assessed according to the audience to whom the message is addressed. Advertising aimed at children must take into account their maturity and experience. Messages to children should be clear and simple to reflect their level of knowledge, vocabulary or experience.

6.2 Advertising should not mislead children, especially on:

- the characteristics, dimensions, value, nature, life or performance of the product,
- the results that can be expected from its use by minimizing, for example, strength, address or degree required skill.

6.3 If the addition of certain elements is essential for the operation of the product presented (batteries for example) this precision must be mentioned.

6.4 When the product belongs to a set, this information must be included in the advertising message.

6.5 Advertising must not make a judgment on a product or service by children in respect of which they are indisputably unable to have a consistent opinion.

7. YOUNG CONSUMER EDUCATION

7.1 Advertising must not suggest that the mere possession or use of a product gives the child a physical, social or psychological benefit to other children of his / her age, or that the non-possession of that product would contrary effect.

7.2 Advertising to children should not create a sense of urgency or suggest that the purchase is essential.

7.3 Advertising must not imply that the product presented is within the reach of any family budget nor minimize its price by using terms such as "only", "just", etc.

7.4 The advertising message must not include mentions directly encouraging children to persuade their parents to buy them the product or service presented.

8. INTERACTIVE ADVERTISING

The advertising nature of this type of message must be clearly recognizable.

8.1 When the message directly solicits children (by telephone or other interactive means) and encourages an expense (for example, promotion of a premium rate number), the call to participate must explicitly associate the parents. .

8.2 Interactive advertising must be limited to the commercial purpose of the original advertisement, excluding any misleading advertising display (for example, a falsely identified icon). They must not allow direct access to a site with foreign content to the original advertisement.

8.3 It is forbidden to encourage appointments, online or offline, with strangers or to go to unknown or dangerous places for the purpose of participating in a game or receiving gifts.

8.4 The collection of personal data and their use may only be carried out in strict compliance with the Law and the rules of the National Commission for Data Protection and Liberties.

9. VIDEOGRAMS AND RECREATION SOFTWARE

Advertising for videograms and entertainment software must include restrictions on the content of certain products. The age ranges set for the children's viewing of certain films as well as the Pan European Game Information (PEGI) classification, set up by software publishers as part of the Interactive Software Federation of Europe, must be perfectly legible in advertisements.

Other relevant codes of the ARPP

In addition, several other codes are relevant to the protection of children:; on gambling; on alcohol; and on digital advertising. Codes relevant to food (on food advertising and on ;advertising of food for children under the age of three) will be dealt with in the next section.

Table 12.2 Excerpts from other relevant ARPP codes

Code on Toys

In addition to the applicable laws and regulations, advertising intended for children and adolescents for a toy must, in whatever form, comply with the following ethical rules:

1. DESCRIPTION

1.1 Written, audio or visual descriptions of toys should not be misleading as to their characteristics (eg performance, speed, durability, strength, dimensions).

1.2 The advertising must clearly specify when elements (examples: batteries, paints, additional accessories) must be purchased separately.

1.3 The advertisement must specify "works with batteries" when the toy does not operate only mechanically.

In this case, and if the price is indicated, it must be specified whether the batteries are supplied or not.

1.4 Whenever possible, toys should be presented without discrimination between boys and girls.

2. SIZE

The actual size of the toys or their scale must be easily identifiable, preferably by showing them accompanied by any object whose size or scale can be easily recognised.

3. MOVEMENT

In any demonstration, it must be clearly shown whether the movement is mechanical, electrical or provided by a simple manual operation.

Excerpt from the Code on Alcohol

2. MINORS

Commercial communications should in no way be made for minors. In particular, it should not:

- 2.1 To show or hear minors;
- 2.2 Represent or evoke scenes or persons, real or imagined, with a clear attraction to minors;
- 2.3 Communicating in print media, radio media or on-line communication services that is reasonably unlikely to include at least 70% of adults 18 years of age and older.

Excerpt from the Code on Gambling

1.3 Protection of minors

In addition to complying with the Child Recommendation of the ARPP, the advertising of gambling must not be aimed at young audiences (children or adolescents), given the legal prohibition they are subject to. For this purpose, the advertising of gambling must not, in any way whatsoever:

- a) represent young audiences in buying or playing situations, even if they are accompanied by an adult (s);
- b) suggest that young audiences can play these games;
- c) use elements - visual, sound, verbal or written - making it specifically attractive to young audiences;
- d) to present gambling as signs of the passage to adulthood;
- e) introduce gambling as a gift that a child can offer or receive.

Excerpt from the Code on Digital Advertising

2. PROTECTION OF CHILDREN AND ADOLESCENTS

The ease of access to information, the interactivity of the media used by digital communication and their wide use by children and adolescents must lead both issuers and broadcasters to be particularly vigilant towards them.

Therefore, the digital advertising communication, in whatever form it presents, must respect the deontological rules specific to the children and adolescents of the ICC and the ARPP.

Therefore :

The visual, audio or written content of the advertisement must not affect the physical or moral integrity of children and adolescents.

Particular attention will be paid to: not to value illicit, aggressive, dangerous or antisocial behaviour; not to devalue the authority of parents, teachers and other educators; not to present children or adolescents degradingly; not to present to them images, and / or indecent and / or violent remarks likely to shock them; not exploit the inexperience and credulity of children or adolescents,

With respect to sites, portals or other digital media or services intended primarily for children and adolescents, it is particularly important to ensure that the purpose of the advertising message and its content are not prejudicial to them.

When the message is aimed at children and incites an expense (subscribe a paid service, promotion of a premium rate number ...) the call to participate must explicitly associate the parents. The collection of personal data and their use can only be carried out in strict compliance with the law and the recommendations of the National Commission on Data Protection.

In particular it is essential: to encourage, in particular on the forms of seizure, the children to ask the permission of the parents or their legal persons before providing personal information, not to collect through a child the personal data of a third party.

In order to promote public confidence in advertising, it is recommended to use targeting information (use of information such as age or date of birth, etc.) to avoid and adolescents are exposed to advertising content that may be harmful to them.

13.4. Regulation of food advertising

There were several regulatory changes in France regarding food advertising between 2004 and 2007. In the context of a new law on public health policy introduced in August 2004, the

issue of advertising of food and beverages was addressed. Advertising messages promoting drinks with added sugar, salt or artificial colouring, and processed foods, broadcast in the territory of France, must include health information. A further decree was published in February 2007⁹⁸ outlining in more detail how this system should work, and that the focus of the campaign concerned advertising messages surrounding and interrupting children's programming. On television, the prescribed health messages are: "eat at least five fruits and vegetables per day"; "take regular physical exercise"; "avoid eating too much fat, too much sugar, too much salt"; "avoid snacking between meals." This information should be displayed on a band of screen at least 7% the size of the screen and remain for the entire duration of the advertisement, and should also be presented in a segment immediately following the advertisement.

The self-regulatory body, the ARPP has a code on food advertising and a code on advertising of food for children under the age of three.

Table 12.3 ARPP Codes on Food advertising

Code on food advertising

PREAMBLE

Conscious of the role they can play in helping to prevent unbalanced dietary behaviour, professionals have engaged in an active approach to promote healthy eating and physical activity, particularly in the area of nutrition regarding the young audience. In this spirit, responsible communication must ensure that its content does not run counter to the concern to improve French food hygiene. Thus, when the advertising evokes or represents a food behaviour, it should not encourage behaviour contrary to the currently accepted recommendations on lifestyle and issued by the National Program Nutrition and Health (PNNS).

Scope

These rules apply to all advertisements representing eating behaviours, regardless of the persons represented, and regardless of the public.

They concern all sectors of activity.

The concept of product, used below, refers to both food and beverages.

In addition to the specific legislative and regulatory provisions, these advertisements, whatever their form, must comply with the following ethical rules.

1. GENERAL PRINCIPLES

1/1 Balanced diet

a / When an entire meal, lunch or dinner is viewed, this representation must correspond to a balanced eating situation. The representation of a balanced eating situation must be respected in all circumstances for breakfast and afternoon meals.

b / If the PNNS consumption benchmarks are mentioned in the advertisement, they must be presented positively.

c / Similarly, advertising must neither contradict nor ridicule good eating or lifestyle behaviours nor minimize their interest.

1/2 Excessive consumption

a / Advertising should not encourage excessive consumption of the product. The notion of excessive quantity is analysed in relation to the public concerned and according to the context represented. Incitement to excessive consumption means, for example, representing an individual consuming or about to consume a product without restraint or in unreasonable quantities.

b / A fortiori, any express inducement to excessive consumption of the type "to consume without moderation" is proscribed.

c / Physical activity or sport cannot be used as an excuse for excessive consumption.

d / Is not intended the expression of satisfaction and pleasure related to the consumption of a product.

1/3 Nibbling/ snacking

⁹⁸ Décret n° 2007-263 du 27 février 2007 relatif aux messages publicitaires et promotionnels en faveur de certains aliments et boissons et modifiant le code de la santé publique (deuxième partie : dispositions réglementaires). [Available here](#)

a / If the representation of a consumption between the meals is possible, the advertisement does not however have to encourage to eat all the day long.
b / Nibbling should not be used as a substitute for a meal.

1/4 Context of consumption

No scene of consumption in front of a screen in the home must be represented that it puts in scene individuals or characters of fiction, real or imaginary.

1/5 Equivalences and nutritional comparisons

a / Equivalencies between food products are reserved for products belonging to the same food category.
b / They should not encourage substitutions between categories, in particular by suggesting that the profits of two products compared are globally equivalent.
c) These equivalencies must be nutritionally relevant (for example, dealing with common nutrients present in significant amounts).
d / Raw products should not be the subject of a presentation that devalues them.

1/6 Food behaviours and social values

No scene of consumption in front of a screen in the home must be represented that it puts in scene individuals or characters of fiction, real or imaginary.

A / WASTE FOOD

Advertising must avoid representing behaviour contrary to the ethical provisions relating to sustainable development, by presenting scenes encouraging food waste. Food waste is defined as the dumping of a significant quantity of food products, still consumable.

B / DIVERSITY

Advertising must avoid any form of stigmatization of people because of their size or their size or leanness.

C / PHYSICAL OR SPORTS ACTIVITIES

When food advertising involves sports or physical activities, care should be taken not to divulge messages that, in any form, would be contrary to the values of sport (such as violent messages). , incivility, discrimination ...)

2. ADVERTISING WITH CHILDREN AND / OR ADDRESSING CHILDREN

2/1 Performance associations to humour or an imaginary universe

a / Young children should not be able to believe that the taking of a food produces an effect likely to modify their daily life (artistic activity, school, sports) by exceptional performances.
The use, through advertising, of humour, of staggered situations or the reference to imaginary universes is, therefore, legitimate in so far as it remains in the register of fantasy and does not lead to a false interpretation, by young children, real performances that could result from the consumption of a food.
b / Advertising featuring imaginary characters but known in works of fiction disseminated elsewhere and encouraging children to consume a product, should in no way promote behaviours that would be contrary to the rules of good eating and eating habits. 'lifestyle.

2/2 Reference to adults

Advertising must not devalue or downplay the authority or advice of referring adults surrounding children in terms of product consumption, nor suggest their resignation.

Code on advertising of food for children under the age of three

1. PRINCIPLE

Advertising should not suggest that everyday products meet the specific nutritional needs of young children.

2. CURRENT POWER PRODUCTS

If, however, in the same visual are represented products of everyday consumption and products intended for children under three years, no confusion must exist as to the nature of these different products.

3. ORGANIC PRODUCTS

The advertising of foods derived from organic farming (BIO products) must not denigrate, directly or indirectly, food for children under three years who are subject, by regulation, to higher safety obligations.

4. ABSENCE OF UNAUTHORIZED INGREDIENTS

Any advertising highlighting the absence of ingredients not authorized by the regulations (eg "no colouring", "no preservatives" ...) is prohibited, except to specify very legibly "in accordance with regulations".

5. GUARANTEE

Any medical or scientific guarantee appropriating regulatory, health or nutritional guarantees, is prohibited.

French Charter to promote healthy eating and physical activity

In 2009, the French government was moving towards a ban on HFSS food advertising in children's programming. However, a different agreement was reached with stakeholders. The Charter to promote healthy eating and physical activity in programs and advertisements broadcast on television consists of 14 commitments from the industry.⁹⁹ It was first signed in 2009 and updated in 2014. Co-signatories include the regulator – the CSA -, broadcasters, advertising associations, food industry associations, audiovisual producers, and animation film producers, relevant public bodies and ministries. The 14 commitments are summarised in the table below.

Table 12.4 French Charter to promote healthy eating and physical activity (summary)

1. Advertisers are committed to strengthening the responsible approach to advertising concerning the content of food advertising, including overseas.
2. TV channels and advertising companies provide discounted airtime to organisations with campaigns promoting healthy food (fruits, vegetables etc), and to organisations promoting healthy lifestyles and physical activity.
3. TV channels commit to broadcasting programs promoting a healthy lifestyle, including:
 - a diversified and balanced diet.
 - regular practice of physical and / or sporting activities
 - sleep necessary for the balance and proper functioning of the metabolism.
4. The Charter specifies exactly how many hours of such programmes should be broadcast on each type of channel (youth channels, private channels, public channels, local channels, DTT channels).
5. Any program that the channels will produce under this charter must systematically refer to the site www.mangerbouger.fr (eatmove.fr) or to any another site dealing specifically with health emanating from concerned public bodies that have signed this Charter and the institutions under their supervision providing information relating to the health.
6. The channels strive to cover each year the European Day of obesity. They can also provide special programming or further relevant campaigns
7. All programming related to these issues should as far as possible also be offered on the websites of the channels.
8. Overseas public channels and local channels should offer programmes locally, and adapted to the specificities of each territory.
9. Channels should strive to include the health messages in oral and visual form connected to advertising in programmes intended for the youth.
10. The Society of Producers of French animation films agreed to produce a video clip featuring various animation characters that would promote exercise and a healthy lifestyle. This clip would be provided for free to all signatories of this charter.
A similar initiative will be carried out by audiovisual producers producing programmes aimed at a young audience and highlighting healthy lifestyles

⁹⁹ CSA (2013): Charte visant à promouvoir une alimentation et une activité physique favorables à la santé dans les programmes et les publicités diffusés à la télévision - 1er janvier 2014. [Available here](#)

11. Advertisers or groups of advertisers in the agri-food industries undertake to finance short programmes educating young people and promoting good behaviour, diet and physical activity.

12. The CSA is in charge of the follow-up of the implementation of this charter for the editorial aspects of programmes as well as for the legal content of advertisements in accordance with the provisions of Article 14 of the Law of 30 September 1986 as amended.

13. The CSA in co-operation with various ministries established a Committee of Experts. The CSA can seek the opinion of this Committee on the programming reported under this charter.

14. The advertising self-regulatory body, the ARPP, in accordance with its mission, exercises a systematic control before broadcasting on television and on the audiovisual media services at the request of each advertiser.

The ARPP carries out in consultation with the stakeholders of the CSA (consumer associations, family associations, NGOs), an annual review of the application of the ethical rules concerned by this charter. This report is sent to the signatory public bodies for the purpose of evaluating the good application thereof.

14. Germany: Children's commercial communications

14.1. Introduction and overview of regulatory structure

The audiovisual legislation in Germany comprises at the federal level - the Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty)¹⁰⁰ and the broadcasting laws of the Bundesländer (federal states). In Germany, the regulation of broadcasting is the responsibility of the Bundesländer. Hence, the 14 state regulatory authorities are in charge of licensing and controlling private radio and television. The Interstate Broadcasting Treaty is negotiated between the governments of the Länder. Another piece of relevant legislation is the Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (Interstate Treaty on the protection of minors – JMStV)¹⁰¹

Key points:

- There are broad restrictions on the amount of ANY advertising allowed on the public service broadcasters ARD and ZDF. No advertising is allowed on the other services they provide, or on the third programmes – the regional public broadcasters in Germany
- Hence, public have far less advertising overall than private broadcasters
- For both public and private, children's programmes may not be *interrupted* by advertising
- Outside of the national legislation, the system is entirely self-regulatory regarding advertising guidelines and in particular, commercial communications re. HFSS foods
- The Advertising industry has a range of general codes of ethics that includes separate codes on children, on food, on alcohol and on gambling

14.2. Media legislation

As noted above, the Interstate Broadcasting Treaty is negotiated between the governments of the Länder. It covers advertising in terms of amount, insertion and general principles. These include the general principles from the AVMSD on respect for human dignity and on non-discrimination etc.

In addition, for all broadcasters (under Section I of the Treaty), children's programming may not be interrupted by advertising (article 7a), may not include sponsorship logos (article 8 (6)) or product placement (article 15).

Table 13.1 German Media legislation and advertising rules

Interstate Broadcasting Treaty

Article 7

Advertising Principles, Obligatory Identification

(1) Advertising and teleshopping shall not

1. prejudice respect for human dignity,
2. include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation,
3. be misleading or prejudice the interests of consumers, or
4. encourage behaviour prejudicial to health or safety as well as grossly prejudicial to the protection of the environment.

Article 7a

Insertion of Advertising and Teleshopping

(1) Broadcasts of religious services and children's programmes must not be interrupted by advertising or teleshopping spots.

Article 8: sponsorship logos (not in children's programming)

100 Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) (in English): available [here](#)

101 Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (Interstate Treaty on the protection of minors – JMStV). Available [here](#)

Article 15 : Product placement (not in children's programming)

The specific rules regarding children and young people are outlined in the legislation on the protection of youth in the media.

14.3. Youth protection in the media legislation

Table 13.2 German Youth protection legislation and advertising

Article 6

Protection of minors in advertising and teleshopping

(1) Advertising for indexed content is permitted only subject to the terms applicable to the content in question itself. The List of media harmful to minors (Article 18 of the German Protection of Young Persons Act) must not be disseminated or made accessible for advertising purposes. In advertising, there must not be any reference to any pending or completed procedure for the inclusion of content or a data medium with identical content in the list pursuant to Article 18 of the German Protection of Young Persons Act.

(2) Advertising shall not cause any physical or moral detriment to children and adolescents, nor shall it

1. contain direct appeals to buy or rent goods or services directed at children or adolescents exploiting their inexperience and credulity, 2. directly encourage children or adolescents to persuade their parents or others to purchase the goods or services being advertised, 3. exploit the special trust children or adolescents place in parents, teachers or other persons of trust, 4. unreasonably show children or adolescents in dangerous situations.

(3) Advertising the content of which is suited to impair the development of children or adolescents into self-responsible and socially competent personalities shall be transmitted separately from content directed at children or adolescents.

(4) Advertising directed at children or adolescents or advertising in which children or adolescents are involved as actors shall not harm the interests of children or adolescents or exploit their inexperience.

(5) Advertising for alcoholic beverages shall not be aimed at children or adolescents nor specifically appeal to children and adolescents through its presentation, nor show them consuming alcohol.

(6) Paragraphs (1) to (5) above shall apply mutatis mutandis to teleshopping and sponsorship. In addition, teleshopping must not exhort children or adolescents to contract for the sale or rental of goods and services.

A joint Directive of the State Media Authorities was issued in 2012 concerning advertising, product placement and sponsorship in Telemedia and television.¹⁰² This clarifies some of the law and also provides useful definitions.

For example, for the definition of children's programmes: Programmes which by content, form or airtime, are more likely to attract under-14s. Individual broadcasts designed linking elements to look like a unified children's programme, are also considered children's program.

14.4. Self-regulation

There are also various industry codes of practice. As one of the most important bodies in the area of advertising regulation, the German Advertising Standards Council (Werberat) develops guidelines and codes of conduct for specific advertising activities and specific products and services (e.g., covering alcoholic beverages or gambling). Such codes of conduct are based on the principle of self-regulation and therefore are on the whole not binding. Nonetheless, in the case of non-compliance, complaints may be issued. If the conduct objected to is not changed or removed, the advertising council may also issue a public reprimand. However, non-compliance can be seen as an indication of unfair competition. The

¹⁰² A joint Directive of the State Media Authorities was issued in 2012 concerning advertising, product placement and sponsorship in Telemedia and television. *Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, die Produktplatzierung, das Sponsoring und das Teleshopping im Fernsehen* (18. September 2012). Available [here](#)

German Advertising Standards Council¹⁰³ voluntary self-regulation has 10 different codes covering the following areas:

- **Basic rules** including: not misuse consumer confidence and do not exploit lack of experience or lack of knowledge; To inflict neither physical or mental harm on children and adolescents; do not encourage or tacit form of discrimination based on race, descent, religion, gender, age, disability or sexual orientation, or reduction to a sexual object; do not encourage, or tacit, any form of violent, aggressive or anti-social behaviour; do not create fear or instrumentalize unhappiness and suffering; do not encourage or tacitly endanger the safety of consumers.
- Disparagement and discrimination
- Children and Youth
- Food
- Alcoholic Drinks
- Gambling
- Imagery of dangerous situations (safety at work)
- Advertising for car tires!
- Traffic noise in radio advertising (to prevent accidents)
- Advertisements using celebrities (protecting interests and rights of celebrities)

For a full picture of the code relevant to children and adolescents, it is necessary to read the Children and Youth Code in Conjunction with Basic Rules, Food, Alcoholic Drinks and Gambling codes.

Code of conduct on Children and Youth

The Code of Conduct of the German Advertising Council for the promotion of children and young people in television, radio and telemedia (March 2017 version).¹⁰⁴ The code contains a long preamble that is a political statement on the importance of advertising: *Advertising is an indispensable factor for free, fair and fair competition*. This includes according to the German advertising industry, the need for exposure of children to advertising in order for them to become educated on the nature of advertising: the education of children's and adolescents learning how to use advertising responsibly requires that there is **no foreclosure** of these age groups of advertising content. In this context they also refer to the European educational initiative Media Smart e.V. They also claim that "the existing strict rules do not imply that any advertising measures in offers that can be perceived by children, but are not targeted at them, must automatically be designed and labelled child-friendly. The corrective that parents present in child-related market decisions, especially for smaller children, may well include and presuppose advertisers in the planning and design of their advertising measures."

Table 13.3 German Advertising Council Code of conduct: Children and Youth

Code of Conduct: Children and Youth

For the purpose of these rules of conduct children implies those who are not yet 12 years old and adolescents are those who are at least 12 years old but under the age of 18.

When advertising with children and when advertising specifically targeting children, in television, radio and telemedia, the following principles in particular must be observed when designing and implementing advertising measures:

1. Advertising shall not contain any presentation by children about particular benefits and peculiarities of the product that are not in accordance with the natural life expressions of the child.
2. Advertising should not represent children without justifiable cause in dangerous situations.
3. Advertising should not endorse any punishable or equitable by any criminal act or other misconduct that could endanger individuals.
4. Advertising should not portray children as sexual objects.

¹⁰³ German Advertising Standards Council (Werberat) [website](#)

¹⁰⁴ The Code of Conduct of the German Advertising Council for the promotion of children and young people in television, radio and telemedia (March 2017 version). Available [here](#)

5. Advertising should not use realistic scenes without positive resolution that could be burdensome or anxious in the life context of children (e.g. accidents, family conflicts).
6. Advertising should not contain direct purchase requests to children. The same applies to the request to children to the consumption of a product or a service, as far as this request resembles a direct purchase request.
7. Advertising shall not contain any immediate requests from children and / or children to persuade their parents or third parties to purchase the advertised good or service.
8. Advertising should not abusive use the special trust that children have to parents, teachers and other confidants.

For advertising in television, radio and telemedia, which is aimed specifically at young people, the following rules apply:

9. Advertisement should not represent adolescents without justifiable cause in dangerous situations.
10. Advertising should not be punishable or endorsed as punishable or equitable by any criminal act or other misconduct that could endanger individuals.
11. Advertisement should not direct purchase requests to young people who exploit their inexperience and credulity.
12. Advertising should not directly prompt young people to persuade their parents or third parties to buy the advertised goods or services.
13. Advertising should not abuse the special trust that young people have in their parents, teachers and other confidants.

14.5. Other relevant codes

There are a range of other codes that are relevant to children, or make reference to them including those on food, alcohol and gambling.

Table 13.4 Other relevant German Advertising Council Codes

Code on food

Since 2009, manufacturers, retailers, media and agencies have been subject to the special rules of conduct of the German Advertising Council for Food Advertising. The Code applies to all forms of commercial communications - online and offline. Classic advertising is covered, for example, on television, on billboards, in newspapers or magazines, on the radio, in the cinema, but also mobile advertising, advertising in social networks, sponsorship measures or advertising at the point of sale. The products themselves and product design are not within the scope of the Code of Conduct.

The guidelines are designed to refrain from all commercial advertising of the food industry, which could be understood as a call for an over-extensive and one-sided diet.

(Examples are provided)

Excessive or one-sided consumption is promoted, for example, when a single person is shown consuming large quantities of a single food.

It also violates the rules of conduct when the renunciation of a food that should be consumed in moderation is deprecated. This can happen, for example, through exclusion of a person in advertising who does not want to eat or drink a particular food. **(you don't make friends eating salad)**

Children and food advertising

The focus of the rules on food advertising is on children in particular. When advertising to this age group, a different level of vulnerability applies. This has been taken into account by the legislature and the German Advertising Council through a large number of additional regulations.

For example, food advertisements targeted at children should not contain any direct requests to buy or consume and not counteract a healthy, active lifestyle. Also, food advertising should not suggest to children that eating a particular food is irreplaceable for a full and balanced meal.

Complaints sometimes reach the advertising agency when children are being promoted for foods that the complainants find unhealthy.

Foods are neither healthy nor unhealthy per se. There is only one healthy or unhealthy lifestyle. Crucial is the right combination of different foods as part of the diet and sufficient exercise.

Advertising does not prevent children from learning a healthy, active lifestyle if food is not presented as a one-sided source of nutrition or if physical activity is presented as superfluous. A direct request for the purchase or consumption of children exists only if the advertising is also aimed at children. If neither the product itself nor a child-friendly design of the advertising suggest that children should be addressed specifically, there is nothing wrong with a direct invitation to buy or consume from the point of view of the advertising council. Adults can handle such an appeal. However, the speech in the "Du-form" does not suggest a child-friendly advertising, since the use of the "du" is now also established for advertising against adults.

However, advertising can be critical if it asks children to fill the school bag with sweets. This can counteract the promotion of a balanced and healthy diet of children as well as the efforts of society to teach them to learn an active lifestyle.

Code on Alcohol

Children and adolescents

Particular attention is paid to the Code of Conduct of the German Advertising Council on the commercial communication of alcoholic beverages on the protection of minors. Advertising content may not be designed in such a way that especially minors feel encouraged to drink alcohol. For this it is not sufficient to show situations that might be of interest to minors (for example, parties, sports events). However, motives that are specific to children or adolescents due to their presentation are inadmissible. When this is the case, it can only be judged on the basis of the circumstances of the specific case.

Advertising for alcoholic beverages should not be specifically aimed at minors. When assessing, all circumstances of the individual case must always be taken into account. The more youthful design elements are used (for example, youth language, presentation of youthful everyday world, youthful presentation of the models), the closer is the assumption of a targeted approach of minors.

Important for the media planning: If the editorial part of an offer (TV station, online offer, app, magazine, etc.) is aimed at minors, no alcohol advertising may be used in these media.

Code on gambling

3. Children and Youth - Commercial Communication for Gambling

Do not encourage children and adolescents to participate in gambling or gambling.

Representations and statements that appeal to children and adolescents should not be used: not in media whose editorial part is aimed primarily at children and adolescents; not by advertising jerseys with children and youth teams and through advertising and sponsoring measures that are directly related to children and adolescents; not show only performers who are also perceived by the visual impression at least as young adults.

14.6. Advertising online

The DLM (Directors Conference of the State Media Authorities) published guidelines in November 2018 for online services regarding the identification of advertising.¹⁰⁵ It includes a complete Matrix as to how the rules on advertising can be applied properly by the service with regard to Youtube videos, pictures, blogs etc.

In addition to the "Children's Rules" of the German Advertising Council, the companies of the advertising industry have also made clear with the ZAW (Zentralverband der deutschen Werbewirtschaft ZAW e.V./ Central Association of the German Advertising Industry) criteria catalogue for the external design and placement of advertising on websites for children,¹⁰⁶ that a recognition (or labelling) of advertising that meets the requirements of the age of the target group is required. These provide rules covering: the separation of advertising from editorial content; ensuring advertising is recognisable using design and placement: clear signals that content is advertising, for example using words such as "advert"; links leading to advertising

¹⁰⁵ DLM (2018): Guidelines for advertising social media offers: Advertising Tag Matrix with Tips for Offers on YouTube, Facebook, Instagram and Co. [Available here](#)

¹⁰⁶ Central Association of the German Advertising Industry (ZAW): Advertising techniques on Internet sites for children – design and placement. [Available here](#)

must be clearly recognisable as such; the functions for closing advertising windows or pop ups must be visible to children and easy to use.

In addition, as part of the self-regulation for behavioural online advertising at the German Data Protection Council Online Advertising (Deutscher Datenschutzrat Online-Werbung) (DDOW), companies have undertaken to refrain from targeting children under 12.¹⁰⁷

¹⁰⁷ German Data Protection Council Online Advertising (DDOW): Self-regulatory Code of Internet Services regarding behavioural advertising: [Available here](#)

15. New Zealand: Children's commercial communications

15.1. Introduction and overview of regulatory structure

In New Zealand, broadcasting is regulated by the Broadcasting Standards Authority. However, apart from programme promotions and broadcast political advertising, the BSA has no jurisdiction over advertisements. A self-regulatory approach is used via the Advertising Standards Authority¹⁰⁸ and complaints about advertisements are made to the Advertising Standards Complaints Board.

Key points:

- Audiovisual commercial communications aside from programme promotions and broadcast political advertising are regulated via a self-regulatory system of the Advertising Standards Authority
- There are a range of codes including the Children and Young people's advertising code
- This includes a voluntary ban on advertising of HFSS foods within and around programmes and media that target children under 14
- For this purpose, a 'significant proportion' of children in the expected average audience is where 25% or more of the expected audience are children

15.2. Self-regulatory codes of the Advertising Standards Authority

The Advertising Standards Authority (ASA) has a list of codes on advertising:

- Advertising Standards Code (Effective for new ads placed for the first time from 1/11/18)
- Children and Young People's Advertising Code
- Code for Advertising and Promotion of Alcohol
- Therapeutic and Health Advertising Code
- Code For Advertising Gaming and Gambling
- Code For Financial Advertising

The new Advertising Standards Code¹⁰⁹ was effective from November 1st 2018. Several other codes are to be phased out from February 2019.¹¹⁰ The main code is organised under two main principles:

1. Social Responsibility covering the following issues - Privacy, Consent, Decency and Offensiveness, Exploitation of Children and Young People, Safety, Violence and anti-social behaviour, Fear and distress, Health and well-being, Protecting the environment.
2. Truthful Presentation covering the following issues – Identification, Truthful presentation, Use of data, Comparative advertising, Advocacy advertising, Use of testimonials and endorsements, Food and Beverage Claims, Environmental Claims.

Table 14.1 New Zealand Advertising Standards Code

Effective 1st November 2018 for new ads

Effective 1st February 2019 for all ads

Purpose of the Code

The purpose of the Advertising Standards Code (Code) is to ensure that every advertisement is a responsible advertisement.

All advertising must be legal, decent, honest and truthful and respect the principles of fair competition, so that the public can have confidence in advertising.

The Principles and Rules set out in this Code are the standards expected in all advertising. Other ASA Codes may also be applicable and many sectors have their own specific advertising requirements – these must also be taken into account.

Definition of Advertisement

¹⁰⁸ New Zealand Advertising Standards Authority: www.asa.co.nz

¹⁰⁹ New Zealand Advertising Standards Code is available [here](#)

¹¹⁰ A search of the website of the Advertising Standards Authority found no explanations regarding the changes to the codes, no links to consultations on the issue, and no relevant research.

“Advertising and Advertisement(s)” means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

Application of the Code

This Code applies to all advertisements placed in any media.

Ultimately, the responsibility to be aware of and comply with all aspects of advertising regulation is shared between all the parties to an advertisement, including the advertiser, agencies and media organisations. The Code does not apply to content not controlled by the advertiser or to product labels or packaging. However, when a label or packaging appears in an advertisement it forms part of the advertisement and therefore any visible aspects are covered by the Code.

The Code is made up of three parts:

Principles: The standards expected in advertising.

Rules: Examples, by no means exhaustive, of how the principles are to be interpreted and applied.

Guidelines: Information and examples to explain a rule.

Interpreting the Code

Social responsibility in advertising is embodied in the Principles and Rules of the Code. In interpreting the Code, emphasis must be placed on compliance with both the spirit and intention of the Code. It is possible for advertising to be in breach of one or more of the Principles in the Code without being in breach of a specific Rule.

In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including;

generally prevailing community standards;

previous decisions;

the consumer takeout from the advertisement;

the context, medium and intended audience; and

the product or service being advertised.

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1 (d) Exploitation of Children and Young People

Advertisements must not portray or represent anyone who is, or appears to be, under 18 years old in any way that is exploitative or degrading or inappropriate for their age.

Guidelines: Advertisements whose principal function is to promote the welfare of, or to prevent harm to, under 18-year olds, may include sexual portrayal or representation, provided it is not excessive. For example, safe sex campaigns. Advertisements targeting Children or Young People must comply with the ASA's Children and Young People's Advertising Code

The ASA's Children and Young People's Advertising Code is elaborated on the basis of 2 main principles:

Principle 1 : Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

This covers the following issues: Undue pressure, dangerous situations, anti-social behaviour, bullying, superiority, body image, unhealthy lifestyle, sexual imagery, sexualisation of children, promotions, gambling, and licensed characters and celebrities and Rules On Food Advertising.

Principle 2: Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

This covers the following issues: Clarity of presentation, prices, characteristics of product, personal details, privacy, competitions.

Table 14.2 New Zealand ASA: Children and Young People's Advertising Code

Children and Young People's Advertising Code

Introduction

Advertising to children and young people shall adhere to the laws of New Zealand and the Principles and Rules set out in this Code where applicable. All advertising must also comply with the ASA Code of Ethics.

This Code recognises the need to protect children pursuant to the United Nation's Convention on the Rights of the Child ("Convention"), particularly Article 3 of the Convention which states, "the best interests of the child shall be a primary consideration", and Article 17(e) which calls for "appropriate Rules for the protection of the child from information and material injurious to his or her well-being."

Code Application

This Code applies to all advertisements that target children or young people, whether contained in children's or young people's media or otherwise. In determining whether this Code is applicable, the Complaints Board will make an evaluation based on context, medium, audience and product or service. This Code does not apply to product packaging, bona fide news, reviews, editorial and broadcast programmes.

Care should be taken to ensure that the product and style of advertisement is appropriate for the intended audience. The way in which children and young people perceive and react to advertising is influenced by their age, experience and the context in which the message is delivered.

The likely audience (including the media that advertisements are broadcast, printed, or displayed in) is a key factor in determining code compliance.

In interpreting the Code, emphasis will be placed on compliance with both the principles and the spirit and intention of the Code. The Rules are examples, by no means exhaustive, of how the Principles are to be interpreted and applied. It is possible for advertising to be in breach of one or more of the Principles in the Code without being in breach of a specific Rule. The Complaints Board will have regard to all relevant matters, including the overall impression conveyed, the context and target market.

Definitions

"Advertising and Advertisement(s)" are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

"Children" means all persons below the age of 14 years.

"Young People" means all persons who are at least 14 years but under 18 years.

"Occasional Food and Beverage Products" are those food and beverage products which are high in fat, salt or sugar and classified under the Food and Beverage Classification System (FBCS) as being intended for occasional consumption. If a particular product is not classified under the FBCS but is comparable or equivalent to a product which is classified, then it shall be deemed to have the same classification. If a particular product is not classified under the FBCS and is not comparable or equivalent to a product which is classified, then it shall be deemed to be an "Occasional food and beverage product" if it has less than 3.5 stars under the Health Star Rating System.

"Social Responsibility" is embodied in the Principles and Rules of the Code and is integral to the consideration of the Complaints Board. Previous decisions of the Complaints Board also guide its determinations, as do generally prevailing community standards.

"Special Duty of Care" is a responsibility to ensure advertising is not likely to result in physical, mental or moral harm.

"Moral Harm" means harm caused by exposure to indecent, immoral or adult themed visuals and language.

"Targeting" is determined by the context of the advertisement and the relationship between the following three criteria;

- Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.
- Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.
- Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people.

Principle 1 : Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

RULES – ALL ADVERTISING

Rule 1(a)

Advertisements must not urge children or young people to ask their parents, guardians or caregivers to buy particular products for them.

Guidance Note: Factors that may prompt such requests include;

- Limited number of product / service available
- Limited time for a set price
- Limited time for an additional item 'for free'

Rule 1(b)

Advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous to copy, unless the purpose of the advertisement is to discourage such behaviour.

Guidance Note: Children must not be encouraged to enter into unsafe situations or strange places or talk to strangers, including, for example, for the purpose of making collections or accumulating labels, wrappers or coupons. Children must not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, gas, medicines and potentially dangerous household substances and electrical appliances and machinery.

Rule 1(c)

Advertisements must not condone, encourage or unreasonably feature anti-social behaviour, for example vindictiveness or bullying, unless the purpose of the advertisement is to discourage such behaviour.

Guidance Note: This includes violence, aggression, bullying or horrific elements that may disturb children or young people.

Rule 1(d)

Advertisements must not suggest inferiority or lack of acceptance for not having the advertised product.

Rule 1(e)

Advertising must not provide an unrealistic sense of body image or promote an unhealthy lifestyle.

Guidance Note: This includes denigration of healthy diets or lifestyles.

Rule 1(f)

Advertising must not employ sexual appeal nor include sexual imagery.

Guidance Note: Children or young people must not be portrayed as sexual beings nor that ownership or enjoyment of a product will enhance their sexuality. Images and themes used in advertisements to children or young people must be age-appropriate.

Rule 1 (g)

Use of sales promotion schemes must be undertaken in a responsible manner.

Guidance Note: Certain gambling activity is restricted by law. Advertisers should consult the relevant legislation prior to undertaking any form of promotion that may be considered to be 'gambling'. Gambling Act 2003 and Department of Internal Affairs. Where permitted, responsible sales promotion schemes may include a product for purchase and / or consumption, providing the amount is age-appropriate.

Rule 1(h)

When licensed and proprietary characters and celebrities popular with children or young people are used in advertisements, they must be used in a responsible manner.

Guidance Note: Licensed and proprietary characters and celebrities popular with children or young people may present factual statements about nutrition, physical activity, safety or education.

RULES – FOOD AND BEVERAGE ADVERTISEMENTS

Rule 1(i)

Advertisements (including sponsorship advertisements) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience.

Guidance Note: Advertisers need to demonstrate that care is taken when evaluating the expected average audience composition prior to the placement of occasional food or beverage advertisements to ensure they are not targeted at children.

Measures to determine if children are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following;

- Where accurate data exists, 25% or more of the expected audience will be children.
- Child viewing time zones.
- Content with significant appeal to children such as programmes, artists, playlists, video, movies, and magazines.
- Locations where children gather (e.g. schools, school grounds, pre-school centres, playgrounds, family and child clinics and paediatric services and during any children's sporting and cultural events).

Rule 1(j)

A special duty of care must be applied to occasional food and beverage product advertising to young people.

Guidance Note: Advertisements must not state or imply that such products are suitable for frequent or daily consumption. Where possible, healthy or better-for-you options should be promoted.

Rule 1(k)

The quantity of the food in the advertisement should not exceed portion sizes that would be appropriate for consumption on one occasion by a person or persons of the age depicted.

Guidance Note: Refer to the Ministry of Health Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2-18 years),

Rule 1(l)

Advertisements featuring a promotional offer of interest to children or young people which is linked to food and beverage products must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption.

Guidance Note: Advertising for collection-based promotions must not seem to urge children, young people or their parents to buy excessive quantities of food. For the avoidance of doubt, there shall be no promotional offers for occasional food and beverage products to children

Principle 2: Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

RULES – ALL ADVERTISING

Rule 2(a)

It must be clear to children or young people that the advertising is a commercial communication rather than programme content, editorial comment or other non-commercial communication.

Guidance Note: Licensed characters and celebrities popular with children or young people (live or animated) must not obscure the distinction between commercial promotions and programme or editorial content.

Rule 2(b)

If price is referred to, the complete price must be clear, including the cost of the main item and additional items that must be purchased separately.

Guidance Note: Prices must be accurately presented in a way which can be clearly understood by children and must not be minimised by words such as "only" or "just". Advertising must not imply the product being promoted is immediately within the reach of every family budget. Any disclaimers, qualifiers or asterisked or footnoted information must be conspicuously displayed and clearly explained.

Rule 2(c)

Advertisements must clearly indicate if assembly or extra items are required to use the advertised product.

Rule 2(d)

Extreme care must be taken when requesting or recording the names, addresses and other personal details of children or young people to ensure their privacy rights are fully protected and the information is not used in an inappropriate manner.

Guidance Note: If advertising indicates that personal information about a child will be collected, or is likely to be collected, then it must include a statement that a parent or guardian's verifiable consent is required. Advertisers must not require a child to disclose more personal information than is reasonably necessary to participate in an activity (e.g. play a game, enter a contest, etc.).

Rule 2(e)

Where reference is made to a competition, the rules must be clear and the value of prizes and the chances of winning must not be exaggerated.

RULES – FOOD AND BEVERAGE ADVERTISEMENTS

Rule 2(f)

Advertisements must not mislead as to the potential physical, social or mental health benefits from consumption of the product.

Guidance Note: Advertisements must not mislead as to the nutritional value of any food or beverage. This includes products high in fat claiming to be low in sugar or sugar free and products high in sugar claiming to be low fat or fat free. Where occasional food and beverage products are advertised to young people, they should not be portrayed in any way that suggests they are beneficial to health.

Principle 3: A special duty of care must be exercised for Occasional Food and Beverage Product sponsorship advertising targeted to young people.

Rules – Food and Beverage advertisements

Rule 3(a)

Sponsorship advertisements must not show an occasional food or beverage product, or such product's packaging, or depict the consumption of an occasional food or beverage product.

Rule 3(b)

Sponsorship advertisements must not imitate or use any parts of product advertisements for occasional food or beverage products from any media.

Guidance Note: Companies or brands can sponsor teams / events / individuals and activities. A clear sponsorship association should be made in sponsorship advertising (e.g. proud sponsor of x). The focus of a sponsorship advertisement should be on the activity, the team or the sponsored individual. These restrictions do not apply to sponsorship advertisements for food and beverage products that are not "occasional food or beverage products".

In addition, the ASA has several other codes of relevance to children including the codes on alcohol and gambling.

Table 14.3: New Zealand ASA: Relevant excerpts from the code on advertising of alcohol

Code on Advertising of Alcohol

Principle 3: Alcohol Advertising and Promotions shall be directed at adult audiences. Alcohol Advertising and Promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.

Guideline 3 (a) : Alcohol advertising and promotions in non-restricted areas shall not use or refer to identifiable heroes or heroines of the young.

Guidance Note

This Guideline is included within the Principle which requires alcohol advertising and promotion to be targeted at adult audiences. The selection of media, placement, style of presentation, content and context where ads appear are all key factors in determining Code compliance. For example a different standard is applicable in an on-premise or specialist alcohol outlet than a general

supermarket (other than a restricted area in a supermarket), where greater care would be required. Similarly advertising in media, where the audience is less predictable, and likely to include minors requires care. Age-restricted websites are another example where there is an adult audience. Some heroes of the young are clearly targeted to a young audience and should not be used for alcohol advertising and promotion. Others will have appeal to a wider age group and are suitable for use if specific attention is given to the appropriate environment in terms of context and placement in which the message is presented. An adult audience of at least 75% would be expected in such cases.

The Advertising Standards Complaints Board is the final arbiter as to whether an advertisement has appropriately targeted an adult audience.

In order to minimise the appeal of alcohol products to minors, heroes that minors may wish to emulate or that have strong appeal should not be included in alcohol advertising that includes images of products and/or sales messaging, intended to promote the sale and consumption of alcohol in non-restricted areas where minors are likely to see such advertising.

To be considered to have strong appeal under the Code, the hero must have more than recognition, it would be an individual or group that minors would aspire to be or to connect with.

A number of teams in particular have been identified as heroes of the young. They include the All Blacks, the Kiwi League team, the Warriors League team, the Black Caps cricket team and the Silver Ferns netball team. This identification applies to the teams and high-profile individuals that are current team members. Other representative sports teams may also be heroes of the young, for example Super 15 Rugby franchises have been identified as such.

Not all sports teams or sports people would be considered heroes of the young. Most retired sports people would not meet the threshold with regard to a level of appeal and hero status (excluding recent retirements). Sports that are less appealing to young people would also fit into this category. It is important to take into account the age range of minors which provide the key measurement – up to 18 years. Events and tournaments are also not heroes of the young, although teams/ participants in them may be.

Celebrities, TV and film stars and musicians with particular appeal to a younger demographic could be heroes of the young. In making this assessment, considerations should be given to the ratings of the shows/films they have appeared in, and the target audience for the shows/films and for a singer or band's music.

Note, where the teams / individuals / groups pro-actively connect with under 18's through children's merchandise, special training sessions for children to attend, and other initiatives with a youth focus – then the likelihood of an issue re heroes of the young is increased.

Sponsorship advertising is defined separately under the Code. Please also review the Sponsorship Guidance Note below

Table 14.4: New Zealand ASA: Relevant excerpts from the code on gambling

Principle 2. – Advertisements should observe a high standard of social responsibility.

Guidelines

Advertisements should not be directed at minors, have strong or evident appeal to minors, nor portray minors participating in activities in which they are under the legal age. Minors may appear in situations in which they would be naturally found (e.g. a family meal), provided there is no direct or implied suggestion that they will participate in the gaming.

16. United Kingdom: Children's commercial communications

16.1. Introduction and overview of regulatory structure

In the UK, the communications regulator Ofcom shares responsibility for broadcast advertising with the Advertising Standards Authority (ASA). Ofcom sets rules that restrict the amount of television advertising that broadcasters can transmit and where such advertising can be scheduled. These rules are intended to protect viewers and, in some cases, are based on requirements stipulated in European law. There is a statutory duty placed on Ofcom to maintain standards in broadcast advertising. However, better regulation principles that were included in the Communications Act 2003 placed a duty upon Ofcom to pursue alternative forms of regulation where practical. Ofcom took advantage of this provision and established a co-regulatory partnership with the ASA in 2004.

Key points:

- The content of advertising is regulated via a co-regulatory regime which is a partnership between the regulator Ofcom and the Advertising Standards Authority
- Ofcom remains the regulator of advertising in terms of amount of advertising and scheduling of advertising
- The Advertising Standards Authority has two major codes: one for broadcast media – the BCAP; and one for non-broadcast media – the CAP, which also includes on-demand services
- Sections on children form part of these codes, but also relevant are a range of other sections on, for example, medicines, weight control and slimming, food, gambling, alcohol, motoring, telecommunications-based sexual entertainment services, etc
- The advertising of HFSS foods to children under 16 is prohibited in both broadcasting and on-demand programme services
- For establishing whether programmes have particular appeal for children, the ASA uses a complex system of audience indexing. For example, if a programme is viewed by 10% of the total entire potential viewing population, and at the same time is viewed by 12% of the entire potential 10-15-year-old age group, then this programme is considered to be of particular appeal to children between 10 and 15.
- In its action plan on childhood obesity published in June 2018 the Government committed to consult on introducing a 9pm television watershed for HFSS advertising as well as similar protection for children viewing adverts online.

16.2. Rules on scheduling of advertising

Ofcom's television licensees must comply with the Ofcom Code on the Scheduling of Television Advertisements, which can be consulted on the Ofcom website.¹¹¹ With regard to children, under the placement of advertising, the code states that: Breaks are not permitted within schools programmes (11), and that; Children's programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children's programmes with a

scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes (12).

In addition, the code provides a section on the protection of minors. With regard to "appropriate scheduling", the criteria to be taken into account are:

- *the nature of the content;*
- *the likely number and age range of children in the audience, taking into account school time, weekends and holidays;*
- *the start time and finish time of the programme;*
- *the nature of the channel or station and the particular programme; and*
- *the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.*

¹¹¹ Ofcom's code on the scheduling of advertising. [Available here](#)

16.3. Co-regulation system of the Advertising Standards Authority

In the UK, the content of advertising, sales promotions and direct marketing across all media, including marketing on websites, is self-regulated by the Advertising Standards Authority (ASA). The ASA has two separate Advertising codes: one for non-broadcast (the CAP) and one for broadcast advertisements, the broadcast advertising code BCAP.

In practice, this means that the ASA system is responsible on a day-to-day basis for broadcast advertising content standards. The Broadcast Committee of Advertising Practice (BCAP) is responsible for writing and maintaining the UK Code of Broadcast Advertising, but Ofcom retains overall sign-off on major changes to the Code. The ASA is responsible for administering the Code, but is able to refer broadcasters to Ofcom for further action, if needed.

The Advertising Standards Authority (ASA) broadcast advertising code BCAP covers a broad range of issues regarding advertising: compliance, recognition of advertising, misleading advertising, harm and offence, children, privacy, political and controversial matters, distance selling, environmental claims, prohibited categories, medicines, medical devices, treatments and health, weight control and slimming, food, food supplements and associated health or nutrition claims, financial products, services and investments, faith, religion and equivalent systems of belief, charities, gambling, lotteries, alcohol, motoring, betting tipsters, premium-rate telephone services, telecommunications-based sexual entertainment services, homeworking schemes, instructional courses, services offering individual advice on consumer or personal problems, introduction and dating services, competitions, private investigation agencies, and so on. the document covers 144 pages.

Section 5 of the code is focused on children. However, several other chapters of the code have specific reference to children. Other sections of interest are outlined below concerning: Harm and Offence (section 4); food, food supplements and associated health or nutrition (section 13); Scheduling (section 32).

Table 16.1 Advertising Standards Authority (ASA) broadcast advertising code BCAP

Advertising Standards Authority (ASA) broadcast advertising code BCAP

Section 4: Harm and Offence

Principle

Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence. The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling (see Section 32: Scheduling).

Rules

4.1 Advertisements must contain nothing that could cause physical, mental, moral or social harm to persons under the age of 18.

4.3 Advertisements must not exploit the special trust that persons under the age of 18 place in parents, guardians, teachers or other persons.

4.13 Advertisements must not portray or represent anyone who is, or seems to be, under 18 in a sexual way. However, this rule does not apply to advertisements whose principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.

Section 5 Children

Principle

Children must be protected from advertisements that could cause physical, mental or moral harm.

Background

The context in which an advertisement is likely to be broadcast and the likely age of the audience must be taken into account to avoid unsuitable scheduling. Advertisements that are suitable for older children and young persons but could distress younger children must be sensitively scheduled or placed. This section should therefore be read in conjunction with Section 32:

Scheduling. Care must be taken when scheduling advertisements that could frighten or distress children or could otherwise be unsuitable for them: those advertisements should not be scheduled

or placed in or around children's programmes or in or around programmes likely to be seen by significant numbers of children. Care must also be taken when featuring children in advertisements.

Definitions

A child is someone under 16.

"Children's products and services" are products or services of more or less exclusive interest to children.

"Products and services of interest to children" are products or services that are likely to appeal to children but are not of exclusive interest to them.

Rules

5.1 Advertisements that are suitable for older children but could distress younger children must be sensitively scheduled (see Section 32: Scheduling).

5.2 Advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous for children to emulate. Advertisements must not implicitly or explicitly discredit established safety guidelines. Advertisements must not condone, encourage or feature children going off alone or with strangers.

This rule is not intended to prevent advertisements that inform children about dangers or risks associated with potentially harmful behaviour.

5.3 Advertisements must not condone or encourage practices that are detrimental to children's health.

5.4 Advertisements must not condone or encourage bullying.

5.5 Advertisements must not portray or represent children in a sexual way.

5.6 Advertisements must not imply that children are likely to be ridiculed, inferior to others, less popular, disloyal or have let someone down if they or their family do not use a product or service.

5.7 Advertisements must not take advantage of children's inexperience, credulity or sense of loyalty. Advertisements for products or services of interest to children must not be likely to mislead; for example, by exaggerating the features of a product or service in a way that could lead to children having unrealistic expectations of that product or service.

5.8 Child actors may feature in advertisements but care must be taken to ensure that those advertisements neither mislead nor exploit children's inexperience, credulity or sense of loyalty.

5.9 Advertisements must not include a direct exhortation to children to buy or hire a Product or service or to persuade their parents, guardians or other persons to buy or hire a product or service for them.

5.10 Advertisements that promote a product or service and invite consumers to buy that product or service via a direct response mechanism must not be targeted directly at children. Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the supplier.

5.11 If it includes a price, an advertisement for a children's product or service must not use qualifiers such as "only" or "just" to make the price seem less expensive.

5.12 Television only

Advertisements for a toy, game or comparable children's product must include a statement of its price or, if it is not possible to include a precise price, an approximate price, if that product costs 30 or more.

5.13 Advertisements for promotions targeted directly at children:

5.13.1 must include all significant qualifying conditions

5.13.2 must make clear if adult permission is required for children to enter.

Advertisements for competitions targeted directly at children are acceptable only if the skill required is relevant to the age of likely participants and if the values of the prizes and the chances of winning are not exaggerated.

5.14 Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be targeted directly at children.

Advertisements for promotions directly targeted at children should comply with Section 28: Competitions.

Section 10- prohibited categories,

Tobacco

10.5 Advertisements that might be of particular interest to children or teenagers must not refer to tobacco or smoking, unless that reference obviously forms part of an anti-smoking or anti-drugs message

Section 11 – Medicines, medical devices, treatment and health

11.24 No advertisement for a medicinal product or treatment may be directed at children. See also Section 5: Children and Section 32: Scheduling.

Section 12 – Weight control and slimming

12.2 Advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially in children.

12.2.1 Advertisements must not condone or encourage damaging oral healthcare practices, especially in children.

Section 13 - Food, food supplements and associated health or nutrition claims

Food and soft drink product advertising to children

Background

These rules should be read in conjunction with the general rules in this section and other rules in this code, especially Section 5: Children and, for television only, Section 32: Scheduling.

The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food.

Definitions

"Children": persons below the age of 16.

"Advertisements targeted directly at pre-school or primary school children": advertisements that directly target pre-school or primary school children through their content as opposed to their scheduling. For rules on the scheduling of HFSS product advertisements, please see Section 32: Scheduling.

"Equity brand characters": those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

"Licensed characters": those characters that are borrowed equities and have no historical association with the product.

"HFSS products": those food or drink products that are assessed as High in Fat, Salt or Sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005. Information on the nutrient profiling scheme is now available on the Department of Health website at: <https://www.gov.uk/government/publications/the-nutrient-profiling-model>
For the avoidance of doubt, HFSS product advertisements may make nutritional or health claims in accordance with rule 13.4.

References to food apply also to soft drinks.

13.9 Television only –Promotional offers must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

13.9.1 Advertisements featuring a promotional offer linked to a food product of interest to children must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption

13.9.2 Advertisements must not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product

13.9.3 Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They must not directly encourage children only to collect promotional items, emphasise the number of items to be collected or create a sense of urgency. If a promotional offer can also be bought, that must be made clear. Closing dates for collection-based promotions must enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time

13.9.4 Advertisements must not encourage children to eat more than they otherwise would. The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

13.10 Television only

Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children. That prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.

13.11 Television only

No nutrition or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children. For the avoidance of doubt, claims referring to children's development or health are acceptable in non-HFSS product advertisements, if those claims are authorised by the European Commission.

13.12 Television only

Although children might be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and must not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them. (Please see rule 5.9 in Section 5: Children)

13.12.1 Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves.

13.12.2 Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not buy, consume or use a product or service.

13.12.3 Advertisements must neither try to sell to children by appealing to emotions such as pity, fear, loyalty or self-confidence nor suggest that having the advertised product somehow confers superiority, for example, making a child more confident, clever, popular or successful.

13.12.4 Advertisements addressed to children must not urge children to buy or persuade others to buy and must avoid high-pressure or hard-sell techniques. Neither the words used nor the tone of the advertisement should suggest that young viewers could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.

13.12.5 If an advertisement for a children's product contains a price, the price must not be minimised by the use of words such as "only" or "just".

Section 15 – Faith, religion and equivalent systems of belief

Principle

These rules seek to strike a balance between freedom of speech and the prevention of advertising that could be harmful. BCAP intends them to: reduce the social harm that can result from damage to inter-faith relations; protect the young and allow parents to exercise choice in their children's moral and philosophical education; protect those who are vulnerable because, for example, of sickness or bereavement; prevent potentially harmful advertisements from exploiting their audience.

15.5 Television only

Subject to rules 15.5.1 and 15.5.2, television advertisements may promote services that the audience is likely to regard merely as entertainment and that offer generalised advice that would obviously be applicable to a large section of the population, for example, typical newspaper horoscopes.

15.5.3 Advertising permitted under rule 15.5 may not:

Make claims for efficacy or accuracy;

Predict negative experiences or specific events;

Offer life-changing advice directed at individuals including advice related to health (including pregnancy) or financial situation;

Appeal particularly to children;

Encourage excessive use.

15.14 Advertisements must not appeal particularly to people under 18 and must not be broadcast during or adjacent to programmes that appeal or are likely to appeal particularly to those under 18. This rule does not apply to advertisements for public events, including services and festivals, that children are likely to participate in or to advertisements for publications or similar merchandise that are designed for children, provided that neither the advertisement nor the advertised product or service is linked to recruitment or fundraising. It does not apply to advertisements on channels or stations whose editorial content is dedicated to matters of religion, faith or equivalent systems of belief.

15.15 Advertisements must not feature children as presenters, unless the advertisement is for an event, such as Christmas carol services or Diwali celebrations, that children are especially likely to take part in.

Section 16 – charities

16.3 Advertisements seeking donations for, or promoting the needs or objectives of a charitable body must not (among others):

16.3.4 address fund-raising messages to children or likely to be of particular interest to them.

Section 18 – Lotteries

Principle

The rules in this section are designed to ensure that marketing communications for lotteries are socially responsible, with particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited by advertising that features or promotes lotteries. It should be noted, however, that the minimum age limit for purchasing National Lottery products and participating in society lotteries is 16.

18.4 Advertisements for lotteries must not exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of under - 18s or other vulnerable persons.

18.5 Advertisements for lotteries must not be likely to be of particular appeal to under - 18s, especially by reflecting or being associated with youth culture. Please refer to Section 32 for scheduling restrictions.

18.6 Advertisements for lotteries may include under - 18s. No - one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role.

18.7 Advertisements that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include under - 18s in a significant role.

Section 19 – Alcohol**Principle**

Advertisements for alcoholic drinks should not be targeted at people under 18 years of age and should not imply, condone or encourage immoderate, irresponsible or anti - social drinking. The spirit as well as the letter of the rules in this section applies

19.15 Television only

Alcohol advertisements must not:

19.15.1 be likely to appeal strongly to people under 18, especially by reflecting or being associated with youth culture or showing adolescent or juvenile behaviour

19.15.2 include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.

19.16 Radio only

Alcohol advertisements must not:

19.16.1 be targeted at those under 18 years or use a treatment likely to be of particular appeal to them.

19.16.2 include a person or character whose example is likely to be followed by those aged under 18 years or who has a particular appeal to those aged under 18.

19.17 Alcohol advertisements must not feature in a significant role anyone who is, or seems to be, under 25 and must not feature children. An exception is made for advertisements that feature families socialising responsibly. Here, children may be included but they should have an incidental role only and anyone who seems to be under the age of 25 must be obviously not drinking alcohol.

Section 22 Premium rate telephone services

22.3 Advertisements for premium - rate children's services, services accessed by automated equipment or subscription services must always include clear pricing information.

22.8 Advertisements for live premium - rate services must not appeal particularly to people under 18, unless those services have received prior permission from PhonepayPlus to target people under 18

Section 32- Scheduling**Principle**

Broadcasters must take special care when scheduling advertisements that might be unsuitable for children or young persons or the audience of religious programmes or for broadcast around sensitive programming or news items.

Particular sensitivity is required for advertisements inserted in or around news or current affairs programmes in which a news item, especially one of a tragic nature, could completely transform the context in which an advertisement having an apparent connection with it could be perceived by viewers or listeners. A separation from news references might be inadequate and suspending the advertisement altogether to avoid distress or offence could be preferable. Ofcom's television licensees must comply with the Ofcom Code on the Scheduling of Television Advertisements, which can be consulted on the Ofcom website, www.ofcom.org.uk

Scheduling of television and radio advertisements

32.1 Broadcasters must exercise responsible judgement on the scheduling of advertisements and operate internal systems capable of identifying and avoiding unsuitable juxtapositions between advertising material and programmes, especially those that could distress or offend viewers or listeners.

32.2 These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:

32.2.1 alcoholic drinks containing 1.2% alcohol or more by volume (see rule 32.4.7)

32.2.2 gambling except lotteries, football pools, equal - chance gaming (under a prize gaming permit or at a licensed family entertainment centre), prize gaming (at a non - licensed family entertainment centre or at a travelling fair) or Category D gaming machines (see rule 32.4)

32.2.3 betting tipsters

32.2.4 slimming products, treatments or establishments (an exception is made for advertisements for calorie - reduced or energy - reduced foods and drinks, if they are not presented as part of a slimming regime and provided the advertisements do not use the theme of slimming or weight control)

32.2.5 religious matter subject to the rules on Religious Advertising in Section 15: Faith, Religion and Equivalent Systems of Belief

32.2.6 live premium - rate services, unless those services have received prior permission from Phonepay Plus to target people under 18

32.2.7 electronic cigarettes.

32.3 Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.

32.4 These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to persons below the age of 16:

32.4.1 lotteries

32.4.2 football pools

32.4.3 equal - chance gaming (under a prize gaming permit or at a licensed family entertainment centre)

32.4.4 prize gaming (at a non - licensed family entertainment centre or at a travelling fair)

32.4.5 Category D gaming machines

32.4.6 medicines, vitamins or other dietary supplements

32.4.7 drinks containing less than 1.2% alcohol by volume when presented as low - alcohol or no - alcohol versions of an alcoholic drink

32.4.8 computer or console games carrying an 18+, 16+ or 15+ rating, including those that have not yet been classified, but which are expected by the publisher to secure a 15, 16+ or 18 - rating.

Other television scheduling or timing restrictions children

32.5 These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16:

32.5.1 food or drink products that are assessed as high in fat, salt or sugar (HFSS) in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005. Information on the nutrient profiling scheme is now available on the Department of Health website at: [https://www.gov.uk/government/publications/the - nutrient - profiling - model](https://www.gov.uk/government/publications/the-nutrient-profiling-model)

32.5.2 matches

32.5.3 trailers for films or videos carrying an 18 - certificate or 15 - certificate (that does not preclude the scheduling in or adjacent to children's programmes of an advertisement containing brief extracts from such a film if those are used in connection with a promotional offer, derived from the film, for other types of product, subject to content).

32.6 These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10:

32.6.1 sanitary protection products

32.6.2 condoms.

Administering medicines, vitamins or food supplements to children

32.7 Advertisements in which children are shown having a medicine, vitamin or other food supplement administered to them must not be broadcast before 9.00pm. Children's merchandise, endorsements and appearances by persons from children's

32.8 Advertisements for merchandise based on a children's programme must not be broadcast in the two hours before or after episodes or editions of that programme. The ASA and BCAP reserve the right to require a wider separation around some programmes, including a prohibition of any advertisement while a programme series is running

32.9 Advertisements in which persons (including puppets) who appear regularly in any children's programme on any UK television channel present or endorse products of special interest to children must not be broadcast before 9.00pm.

32.10 To maintain a distinction between programmes and advertisements that is clear to a child audience, and to minimise any risk of confusion between the two, advertisements featuring a well -

known personality or performer, or a person who takes a leading role in or whose appearance is central to a children's programme, must not be scheduled in breaks in or adjacent to that programme. For the purposes of this rule, cartoon and puppet characters are classed as "persons". For appearances by persons in chart programmes or programmes such as pop concerts, the restriction applies only to the breaks adjacent to the programme segment in which they appear. The rule does not apply to public service advertisements or to characters specially created for advertisements.

32.11 Advertisements containing appearances by persons in extracts from a children's programme must not be broadcast in the two hours before or after an episode or edition of the relevant programme.

Scheduling of radio advertisements

32.17 Special care is required for these categories:

32.17.1 sensational newspapers, magazines or websites or their content

32.17.2 divination or the supernatural

32.17.3 sexual material, sex shops, stripograms or similar

32.17.4 sanitary protection products

32.17.5 family planning products (including contraceptives and pregnancy - testing products)

32.17.6 anti - drugs messages, including solvent abuse

32.17.7 HIV/AIDS prevention messages.

32.18 Violent or sexually explicit material must not be advertised in or adjacent to programmes targeted particularly at audiences below the age of 18.

Placement of television text and interactive advertisements

32.19 BCAP expects broadcasters to exercise responsible judgement in the placing of broadcast television text and interactive television advertisements and especially to consider the sensitivities of viewers likely to be exposed or attracted to particular editorial content. Advertisements that are unsuitable for children (for example, because they might cause distress or because they refer explicitly to sexual matters) must be subject to restrictions on the time of transmission designed to minimise the risk that children in the relevant age group will see them.

32.20 Broadcast television text and interactive television advertisements for these product categories must not:

- be directly accessible from programmes commissioned for, principally directed at or likely to appeal particularly to children
- be directly accessible from advertisements that are adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children
- appear on editorial pages (text or interactive) that are likely to be of particular appeal to a significant audience of children

32.20.1 alcoholic drinks (including low - alcohol drinks)

32.20.2 films or DVDs carrying an 18 - certificate or 15 - certificate

32.20.3 medicines, vitamins or other dietary supplements

32.20.4 betting tips

32.20.5 computer or console games carrying an 18+, 16+ or 15+ rating

32.20.6 introduction and dating agencies

32.20.7 religious bodies. The only exception is advertising for publications, merchandise or other items if there is no recruitment or fund - raising link

32.20.8 advertisements that promote a product or service and invite consumers to buy that product or service via a direct response mechanism

32.20.9 matches

32.20.10 food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the FSA. Information on the nutrient profiling scheme is now available on the Department of Health website at:

<https://www.gov.uk/government/publications/the-nutrient-profiling-model>

32.20.11 gambling, including lotteries.

Identifying programmes likely to appeal to children

The co-regulatory approach adopted by the Advertising Standards Authority uses audience measurements with regard to Age Restricted Products, in the non-broadcast code which covers online content: generally, no medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries and not more than 25% under 18

for alcohol, gambling and electronic cigarettes.¹¹² The code for broadcast media BCAP uses the concept of programming of “particular appeal” which is relevant to indexing on TV. A guidance note is provided on this by the ASA.¹¹³

According to feedback from the Ofcom and the ASA, in all media the burden of proof falls on the advertiser, and in the event of an investigation the ASA will expect the advertiser to be able to show that they took advantage of the means at their disposal to ensure their advertising was responsibly targeted.

The index is rather complex and an index of 120 implies that the programme is of particular appeal for children. For example, if a programme is viewed by 10% of the total entire potential viewing population, and at the same time is viewed by 12% of the entire potential 10-15-year-old age group, then this programme is considered to be of particular appeal to children between 10 and 15. The graphic below shows examples of the index formula.

Table 16.2: ASA example of audience indexing for programmes of particular appeal

% of 10-15 age category watching	TVR	% of total viewing population watching	TVR	Calculation of Index	Index score	Appeal
8	8	10	10	8/10 x100	80	Lower
10	10	10	10	10/10 x100	100	General
12	12	10	10	12/10 x100	120	Particular

16.4. Non-broadcast media: on-demand and online services

The ASA has a second code – the CAP code - for non-broadcast media which includes on-demand services.¹¹⁴ The ASA was designated by Ofcom as the co-regulator of advertising content included in on-demand services with effect from August 2010.

Table 16.3 Relevant excerpts from the CAP code.

Code
Principle
The central principle for all marketing communications is that they should be legal, decent, honest and truthful. All marketing communications should be prepared with a sense of responsibility to consumers and society and should reflect the spirit, not merely the letter, of the Code.
HFSS PRODUCT AD PLACEMENT
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.
On-demand services
368E Harmful material
(1) An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.
(2) If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.
368F Advertising

¹¹² Advertising Standards Authority Website- [Guidance on Children Targeting](#):

¹¹³ Identifying TV programmes likely to appeal to children Advertising Guidance. Available [here](#)

¹¹⁴ The ASA CAP code for non-broadcast media. [Available here](#)

- (1) Advertising of the following products is prohibited in on-demand programme services—
 - (a) cigarettes or other tobacco products;
 - (b) any prescription-only medicine.
- (2) Advertising of alcoholic drinks is prohibited in on-demand programme services unless—
 - (a) it is not aimed at persons under the age of eighteen, and
 - (b) it does not encourage excessive consumption of such drinks.
- (3) Advertising included in an on-demand programme service—
 - (a) must be readily recognisable as such, and
 - (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (4) Advertising included in an on-demand programme service must not—
 - (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
 - (g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (h) exploit the trust of such persons in parents, teachers or others; or
 - (i) unreasonably show such persons in dangerous situations.

ASA and the CAP

Section 5: children

APPENDIX 2: Advertising Rules for On-Demand Services Regulated by Statute

Principle

The rules in Appendix 2 reflect the legal requirements in the Communications Act 2003 (as amended) with which media service providers must ensure they comply. Failure to ensure that advertising included in a regulated on - demand service complies with these rules may result in the matter being referred to Ofcom. If Ofcom concludes that the media service provider has contravened the relevant requirements of the Act, this may lead to Ofcom considering imposing a statutory sanction against the provider.

Definition

Some video-on-demand services are subject to regulation under the Communications Act 2003 (as amended). ('the Act'). In this section, "regulated on - demand services" refers to those services that are subject to statutory regulation and "media service providers" means providers of regulated on-demand services. The rules in this section apply only to advertising "included" in a regulated on-demand service, which is advertising that can be viewed by a user of the service as a result of the user selecting a programme to view.

Rules

- 30.1 Advertising must be readily recognisable as such.
- 30.2 Advertising must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- 30.3 Advertising must not prejudice respect for human dignity.
- 30.4 Advertising must not contain any material likely to incite hatred based on race, sex, religion or nationality.
- 30.5 Advertising must not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.
- 30.6 Advertising must not encourage behaviour prejudicial to health or safety.
- 30.7 Advertising must not encourage behaviour grossly prejudicial to the protection of the environment.
- 30.8 Advertising of the following products is prohibited:
 - 30.8.1 cigarettes or other tobacco products
 - 30.8.2 any prescription - only medicine
 - 30.8.3 electronic cigarettes or electronic cigarette refill containers (as defined in the section 368R of the Act)
- 30.9 Advertising for alcoholic drinks is prohibited unless

30.9.1 it is not aimed at persons under the age of eighteen, and
30.9.2 it does not encourage excessive consumption of such drinks.
30.10 Advertising must not cause physical or moral detriment to persons under the age of eighteen.
30.11 If advertising contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.
30.12 Advertising must not directly exhort persons under the age of eighteen to purchase or rent goods or services in a manner which exploits their inexperience or credulity.
30.13 Advertising must not directly encourage persons under the age of eighteen to persuade their parents or others to purchase or rent goods or services .
30.14 Advertising must not exploit the trust of persons under eighteen in parents, teachers or others.
30.15 Advertising must not unreasonably show persons under eighteen in dangerous situations.

Advertisements on regulated on-demand services are also separately subject to the CAP Code. The marketer, not the media service provider, bears the primary responsibility for ensuring compliance with the CAP Code.

Guidance on child targeting

The co-regulatory approach adopted by the Advertising Standards Authority uses audience measurements with regard to Age Restricted Products, in the non-broadcast code which covers online content: generally, no medium with an audience that is more than 25% under 16 should be used to advertise HFSS products or lotteries and not more than 25% under 18 for alcohol, gambling and electronic cigarettes.¹¹⁵

16.5. Recent debates on children's commercial communications

In its action plan on childhood obesity published in June 2018 the Government committed to consult on introducing a 9pm television watershed for HFSS advertising as well as similar protection for children viewing adverts online. The Government aims to explore "options to ensure that any restrictions are proportionate and to consider a focus on those products that children consume and most contribute to the problem of childhood obesity".¹¹⁶

¹¹⁵ Advertising Standards Authority Website- [Guidance on Children Targeting](#):

¹¹⁶ UK Government (2018): Childhood obesity: a plan for action. [Available here](#)

17. USA: Children's commercial communications

17.1. Introduction and overview of regulatory structure

In the USA, the system for regulating the content of advertising is self-regulatory. The Advertising Self-Regulatory Council (ASRC) establishes the policies and procedures for advertising industry self-regulation, including the National Advertising Division (NAD), the Children's Advertising Review Unit (CARU), the National Advertising Review Board (NARB), the Electronic Retailing Self-Regulation Program (ERSP) and the Online Interest-Based Advertising Accountability Program (Accountability Program.) The self-regulatory system is administered by the Council of Better Business Bureaus.

Key points:

- A self-regulatory system exists in the USA managed by the Advertising Self-Regulatory Council , and for children the Children's Advertising Review Unit
- The code covers all types of media
- The US code includes extensive guidelines on online data collection practices and is based on the Children's Online Privacy Protection Act of 1998 (COPPA)

17.2. Children's Advertising Review Unit and self-regulation

The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB) is a U.S. self-regulatory organization that was established in 1974 by the National Advertising Review Council (NARC). It is an independent self-regulatory agency for the promotion of responsible advertising to children under the age of 12 in all media. CARU reviews and evaluates advertising for truth, accuracy, appropriateness and sensitivity to children's still developing cognitive abilities in accordance with its Self-Regulatory Program for Children's Advertising (the Guidelines) and relevant laws.

In 1974, the National Advertising Review Council (NARC) established the Children's Advertising Review Unit (CARU)¹¹⁷ as a self-regulatory programme to promote responsible children's advertising. CARU is administered by the Council of Better Business Bureaus (CBBB) and funded by members of the children's advertising industry. The purpose of the programme is to assure that advertising directed to children is not deceptive, unfair or inappropriate for its intended audience. The standards take into account the special vulnerabilities of children, e.g., their inexperience, immaturity, susceptibility to being misled or unduly influenced, and their lack of cognitive skills needed to evaluate the credibility of advertising.

CARU's standards are periodically revised to address changes in the marketing and media landscapes. For example, in 1996, CARU added a new section to the guidelines to address concerns about online data collection practices and updated this section again in 2014 to reflect amendments to the Children's Online Privacy Protection Act (COPPA).

Self-Regulatory programme for Children's Advertising

The Self-Regulatory Programme for Children's Advertising¹¹⁸ covers: national advertising primarily directed to children under 12 years of age in any medium: and online data collection and other privacy-related practices by website or online service operators that target children under 13 years of age or that have actual knowledge that a visitor is a child under 13 years of age.

Advertising primarily directed at children

The definition of advertising primarily directed to children under 12 years of age in any medium is identified using a range of criteria. Such advertising will be determined by an analysis of factors, no single one of which will necessarily be controlling, including:

¹¹⁷ Children's Advertising Review Unit (CARU): http://www.caru.org/news/art_children.aspx

¹¹⁸ Self-Regulatory Programme for Children's Advertising. [Available here](#)

(a) whether the content of the media in which the advertisement appears is intended for children under 12, (considering the content's subject matter, format, projected audience demographics, and extent to which other advertising in that content is intended for children under 12);

(b) whether the advertisement appears during, or just before or after, a television program aired during what is generally understood to be children's programming, considering the time of day during which the advertisement appears and the media outlet;

(c) whether the advertisement appears during, or just before or after, a television program which is counted towards the broadcaster's or cable-caster's Children's Television Act obligations; and (d) whether, based on available information (including the subject matter and format of the advertisement), the advertiser intended to direct the advertisement primarily to children under 12.

With regard to data protection, the scope of the regulation covers: online data collection and other privacy-related practices by website or online service operators that target children under 13 years of age or that have actual knowledge that a visitor is a child under 13 years of age.

The principles and guidelines of the programme are outlined in the table below.

Table 17.1 CARU Self-Regulatory programme for Children's Advertising

C. Core Principles

The following Core Principles apply to all practices covered by the self-regulatory program.

1. Advertisers have special responsibilities when advertising to children or collecting data from children online. They should take into account the limited knowledge, experience, sophistication and maturity of the audience to which the message is directed. They should recognize that younger children have a limited capacity to evaluate the credibility of information, may not understand the persuasive intent of advertising, and may not even understand that they are being subject to advertising.
2. Advertising should be neither deceptive nor unfair, as these terms are applied under the Federal Trade Commission Act, to the children to whom it is directed.
3. Advertisers should have adequate substantiation for objective advertising claims, as those claims are reasonably interpreted by the children to whom they are directed.
4. Advertising should not stimulate children's unreasonable expectations about product quality or performance.
5. Products and content inappropriate for children should not be advertised directly to them.
6. Advertisers should avoid social stereotyping and appeals to prejudice, and are encouraged to incorporate minority and other groups in advertisements and to present positive role models whenever possible.
7. Advertisers are encouraged to capitalize on the potential of advertising to serve an educational role and influence positive personal qualities and behaviors in children, e.g., being honest and respectful of others, taking safety precautions, engaging in physical activity.
8. Although there are many influences that affect a child's personal and social development, it remains the prime responsibility of the parents to provide guidance for children. Advertisers should contribute to this parent-child relationship in a constructive manner

2. Part I: General Guidelines

(a) Deception

To assure that advertising directed to children is not deceptive:

1. The "net impression" of the entire advertisement, considering, among other things, the express and implied claims, any material omissions, and the overall format, must not be misleading to the children to whom it is directed.
2. Whether an advertisement leaves a misleading impression should be determined by assessing how reasonable children in the intended audience would interpret the message, taking into account their level of experience, sophistication, and maturity; limits on their cognitive abilities; and their ability to evaluate the advertising claims.

(b) Product Presentations and Claims

To avoid deceptive and/or inappropriate advertising to children involving product presentations

and claims:

1. Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to, speed, method of operation, color, sound, durability, nutritional benefits and similar characteristics.
2. The presentation should not mislead children about benefits from use of the product. Such benefits may include, but are not limited to, the acquisition of strength, status, popularity, growth, proficiency and intelligence
3. Claims should not unduly exploit a child's imagination. While fantasy, using techniques such as animation and computer-generated imagery, is appropriate for both younger and older children, it should not create unattainable performance expectations nor exploit the younger child's difficulty in distinguishing between the real and the fanciful.
4. Advertisements should demonstrate the performance and use of a product in a way that can be duplicated by a child for whom the product is intended.
5. The advertisement should not mislead children about what is included in the initial purchase.
6. Advertising that compares the advertised product to another product should be based on real product attributes and be understandable to the child audience.
7. The amount of product featured should not be excessive or more than would be reasonable to acquire, use or consume by a person in the situation depicted. For example, if an advertisement depicts food being consumed by a person in the advertisement, or suggests that the food will be consumed, the quantity of food shown should not exceed the labeled serving size on the Nutrition Facts panel; where no such serving size is applicable, the quantity of food shown should not exceed a single serving size that would be appropriate for consumption by a person of the age depicted.
8. Advertising of food products should encourage responsible use of the product with a view toward healthy development of the child. For example, advertising of food products should not discourage or disparage healthy lifestyle choices or the consumption of fruits or vegetables, or other foods recommended for increased consumption by current USDA Dietary Guidelines for Americans and My Pyramid, as applicable to children under 12.
9. Advertisements for food products should clearly depict or describe the appropriate role of the product within the framework of the eating occasion depicted.
 - a. Advertisements representing a mealtime should depict the food product within the framework of a nutritionally balanced meal.
 - b. Snack foods should be clearly depicted as such, and not as substitutes for meals.

(c) Material Disclosures and Disclaimers

1. All disclosures and disclaimers material to children should be understandable to the children in the intended audience, taking into account their limited vocabularies and level of language skills. For young audiences, simple words should be chosen, e.g., "You have to put it together." Since children rely more on information presented in pictures than in words, demonstrative disclosures are encouraged.
2. These disclosures should be conspicuous in the advertising format and media used, e.g., online, advertisers should make disclosures clear and proximate to, and in the same format (i.e., audio or graphic) as, the claims to which they are related; in television, advertisers should use audio disclosures, unless disclosures in other formats are likely to be seen and understood by the intended audience.
3. Circumstances where material disclosures are needed include, but are not limited to, the following:
 - a. Advertising for unassembled products should clearly indicate they need to be put together to be used properly.
 - b. If any item essential to use of the product is not included, such as batteries, this fact should be disclosed clearly.
 - c. Advertisers should clearly disclose information about products purchased separately, such as accessories or individual items in a collection.
 - d. If television advertising to children involves the use of a toll-free telephone number, it must be clearly stated, in both audio and video disclosures, that the child must get an adult's permission to call. In print or online advertising, this disclosure must be clearly and prominently displayed.
4. Advertisers that create or sponsor an area in cyberspace, either through an online service or a website, must prominently identify the name of the sponsoring company and/or brand in that area. This could be done by using wording such as "Sponsored by _____."

5. If videotapes, CD-ROMS, DVDs or software marketed to children contain advertising or promotions (e.g., trailers) this fact should be clearly disclosed on the packaging.

(d) Endorsements

1. Advertisers should recognize that the mere appearance of a celebrity or authority figure with a product can significantly alter a child's perception of the product. Advertisers may use such personalities as product endorsers, presenters, or testifiers, but they must take great care to avoid creating any false impression that the use of the product enhanced the celebrity's or authority figure's performance.
2. All personal endorsements should reflect the actual experiences and beliefs of the endorser.
3. An endorser who is represented, either directly or indirectly, as an expert must possess qualifications appropriate to the particular expertise depicted in the endorsement.

(e) Blurring of Advertising and Editorial/Program Content

1. Advertisers should recognize that children may have difficulty distinguishing between program/editorial content and advertising, e.g., when program/editorial characters make advertising presentations or when an advertisement appears to be content to the intended audience.
2. Advertising should not be presented in a manner that blurs the distinction between advertising and program/editorial content in ways that would be misleading to children.
3. Prohibited practices in television advertising
 - a. Program personalities, live or animated, should not be used to advertise products, premiums or services in or adjacent to a television program primarily directed to children under 12 years of age in which the same personality or character appears.
 - b. Products derived from or associated with a television program primarily directed to children under 12 years of age should not be advertised during or adjacent to that program.
4. In media other than television, a character or personality associated with the editorial/content of the media should not be used to sell products, premiums or services in close proximity to the program/editorial content, unless the advertiser makes it clear, in a manner that will be easily understood by the intended audience, that it is an advertisement.
5. On websites or online services directed to children, if an advertiser integrates an advertisement into the content of a game or activity, then the advertiser should make clear, in a manner that will be easily understood by the intended audience, that it is an advertisement.
6. If videotapes, CD-ROMS, DVDs or software marketed to children contain advertising or promotions (e.g., trailers), the advertising itself should be separated from the program and clearly designated as advertising.

(f) Premiums, Kids' Clubs, Sweepstakes and Contests

1. Advertisers should recognize that their use of premiums, kids' clubs, contests and sweepstakes has the potential to enhance the appeal of their products to children.
2. Advertisers should take special care in using these kinds of promotions to guard against exploiting children's immaturity.
 - i. Premiums
 - a. Since children have difficulty distinguishing product from premium, advertising that contains a premium message should focus the child's attention primarily on the product and make the premium message clearly secondary.
 - b. Conditions of a premium offer should be stated simply and clearly.
 - ii. Kids' Clubs
 - a. Advertising should not mislead children into thinking they are joining a club when they are merely making a purchase or receiving a premium.
 - b. Before an advertiser uses the word "club," certain minimum requirements should be met. These are: 1. Interactivity -The child should perform some act demonstrating an intent to join the club, and receive something in return. Merely watching a television program or eating in a particular restaurant, for example, does not constitute membership in a club. 2. Continuity -There should be an ongoing relationship between the club and the child member, e.g., a regular newsletter or activities scheduled over a period of time. 3. Exclusivity -The activities or benefits derived from membership in the club should be exclusive to its members, and not merely the result of purchasing a particular product.
 - c. Additional requirements applying to kids' clubs online are covered in Part II of the Guidelines.
 - iii. Sweepstakes and Contests

- a. Advertisers should recognize that children may have unrealistic expectations about the chances of winning a sweepstakes or contest or inflated expectations of the prize(s) to be won.
- b. The prize(s) should be clearly depicted.
- c. The free means of entry should be clearly disclosed.
- d. The likelihood of winning should be clearly disclosed in language readily understandable to the child audience. Disclosures such as, "Many will enter, a few will win." should be used, where appropriate.
- e. All prizes should be appropriate to the child audience.
- f. Online contests or sweepstakes should not require the child to provide more information than is reasonably necessary. Any information collection must meet the requirements of the Data Collection section of the Guidelines and the federal Children's Online Privacy Protection Act (COPPA).

(g) Online Sales

1. Advertisers who sell products and services to children online should clearly indicate to the children when they are being targeted for a sale.
2. If an advertiser offers the opportunity to purchase any product or service, either through the use of a "click here to order" button or other on-screen means, the ordering instructions must clearly and prominently state that a child must have a parent's permission to order.
3. Online advertisers must make reasonable efforts, in light of all available technologies, to provide the person responsible for paying for such products and services the means to exercise control over the transaction.
4. If no reasonable means is provided to avoid unauthorized purchases by children online, the advertiser should enable the person responsible for payment to cancel the order and receive full credit without incurring any charges.

(h) Sales Pressure

1. Advertising should not urge children to ask parents or others to buy products. It should not suggest that a parent or adult who purchases a product or service for a child is better, more intelligent or more generous than one who does not.
2. Advertisers should avoid using sales pressure in advertising to children, e.g., creating a sense of urgency by using words such as 'buy it now.'
3. Advertisements should not convey to children that possession of a product will result in greater acceptance by peers or that lack of a product will result in less acceptance by peers.
4. Advertisements should not imply that purchase or use of a product will confer upon the user the prestige, skills or other special qualities of characters appearing in advertising.
5. Advertisements should not minimize the price of goods and services with words such as, "only," "just," or "bargain price" that children do not understand to be exaggeration or "puffing."

(i) Unsafe and Inappropriate Advertising to Children

1. Safety

- a. Advertisers should take into account that children are prone to exploration, imitation, and experimentation and may imitate product demonstrations or other activities depicted in advertisements without regard to risk.
- b. Advertisers should not advertise products directly to children that pose safety risks to them, i.e., drugs and dietary supplements, alcohol, products labeled, 'Keep out of the reach of children;' nor should advertisers targeting children display or knowingly link to pages of websites or online services that advertise such products.
- c. Advertisements for children's products should show them being used by children in the appropriate age range. For instance, young children should not be shown playing with toys safe only for older children.
- d. Advertisements should not portray adults or children in unsafe situations or in acts harmful to themselves or others. For example, when activities (such as bicycle riding or skateboarding) are shown, proper precautions and safety equipment should be depicted; when an activity would be unsafe without adult supervision, supervision should be depicted.
- e. Advertisers should be aware that many childhood injuries occur from the misuse of common household products and should avoid demonstrations that may encourage inappropriate use of such products by children.

2. Inappropriate Advertising

- a. Advertisers should take care to ensure that only age -appropriate videos, films and interactive software are advertised to children, and if an industry rating system applies to the product, the rating label is prominently displayed.
- b. Advertising should not portray or encourage behavior inappropriate for children (e.g., violence or sexuality) or include material that could unduly frighten or provoke anxiety in children; nor should advertisers targeting children display or knowingly link to pages of a website or online service that portray such behaviors or materials.

3. Part II: Guidelines for Online Privacy Protection

This Part addresses concerns about the collection of personal data from children and other privacy-related practices on the Internet. Its provisions are consistent with the Children's Online Privacy Protection Act of 1998 (COPPA) and the FTC's implementing Rule, which protect children under the age of 13, and will be interpreted consistently with those rules.

Online data collection from children poses special concerns. The medium offers unique opportunities to interact with children and to gather information for marketing purposes. Young children however, may not understand the nature of the information being sought or its intended uses, and the medium makes it easy to collect such data directly and passively from children without the supervision or permission of their parents or guardians. The collection of personal information from children, as defined in Data Collection below, therefore triggers special privacy and security concerns.

The guidelines below address those concerns by providing guidance on specific issues involving online data collection and other privacy-related practices by operators of a website or other online service that

- 1) targets children under 13 years of age (based on the criteria set forth in the definition of website or online services directed to children in Section 312.2 of the COPPA Rule);
- 2) has actual knowledge that it is collecting or maintaining personal information from a child under 13 years of age; or
- 3) has actual knowledge that it is collecting personal information directly from users of another website or online service directed to children.

(a) Data Collection

1. Personal information is defined under COPPA as individually identifiable information about an individual collected online, including: first and last name; home or physical address; online contact information, such as email addresses, or other identifiers that allow direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier; a screen or user name where it functions in the same manner as online contact information; a phone number; a Social Security number; a persistent identifier that can be used to recognize a user over time and across different websites and online services, e.g., a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier; a photo, video or audio file where such files contain a child's image or voice; geolocation information sufficient to identify street name and name of a city or town; or information concerning the child or the parents of that child and combines with information contained in this definition.

2. In collecting information from children under 13 years of age, operators should adhere to the following guidelines: Operators must clearly disclose to website or online service users its information collection and tracking practices, information uses, and the means for correcting or removing the information. These disclosures should be prominent and readily accessible before information is collected. For instance, on a website or online service where there is passive tracking, the notice should be on the page where the child enters the site. A heading such as "Privacy," "Our Privacy Policy," or similar designation is acceptable if it allows an adult to click on the heading to obtain additional information on the site or service's practices concerning information collection, tracking and uses.

3. Operators should disclose, in language easily understood by a child, (a) why the information is being collected (e.g., "We'll use your name and email to enter you in this contest and also add it to our mailing list") and (b) whether the information is intended to be shared, sold or distributed outside of the collecting company.

4. Operators should disclose passive means of collecting information from children (e.g., navigational tracking tools, browser files, persistent identifiers, etc.) and what information is being collected.
5. Operators must obtain “verifiable parental consent” before they collect personal information (such as email addresses, screen names associated with other personal information, phone numbers, addresses or photographs) that will be publicly posted, thereby enabling others to communicate directly with the child online or offline, or when the child will be otherwise able to communicate directly with others.
6. For activities that involve public posting, operators should encourage children not to use their full names or screen names that correspond with their email address, but choose an alias (e.g., “Bookworm,” “Skater,” etc.) or use first name, nickname, initials, etc.
7. Operators should not require a child to disclose more personal information than is reasonably necessary to participate in the online activity (e.g., play a game, enter a contest, etc.).
8. Operators must obtain “verifiable parental consent” before they collect, use or disclose personal information to third parties, except those who provide support for the internal operation of the website or online service and who do not use or disclose such information for any other purpose.
9. When an operator collects personal information only for its internal use and there is no disclosure of the information to a third party, the company may obtain parental consent through the use of email, coupled with some additional steps to provide assurance that the person providing the consent is the parent
10. Exceptions to prior parental consent:
 - (a) Where the sole purpose of collecting the name or online contact information of the parent is to provide notice and obtain parental consent;
 - (b) Where the purpose of collecting a parent’s online contact information is to provide voluntary notice to, and subsequently update the parent about, the child’s participation in a website or online services that does not otherwise collect, use or disclose children’s personal information;
 - (c) Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child and the information is not used to re-contact the child or any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child’s request;
 - (d) Where an operator collects and retains online contact information to be able to respond directly more than once to a child’s specific request (such as an email newsletter or contest) but will not use the information for any other purpose, the operator must directly notify the parent of the nature and intended uses of the information collected, and permit access to the information sufficient to allow a parent to remove or correct the information;
 - (e) Where the purpose of collecting a child’s and a parent’s name and online contact information is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child’s safety;
 - (f) Where the purpose of collecting a child’s name and online contact information is to:
 - (i) protect the security of its website or online service;
 - (ii) take precautions against liability;
 - (iii) respond to judicial process;
 - (iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; where such information is not used for any other purpose;
 - (g) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service;
 - (h) Where an operator covered under paragraph two (2) of the definition of website or online service directed to children in §312.2 of the COPPA Rule collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child.
11. To respect the privacy of parents, operators should not maintain in retrievable form information collected and used for the sole purpose of obtaining verifiable parental consent or providing notice to parents, if consent is not obtained after a reasonable time.
12. If an operator communicates with a child by email, there should be an opportunity with each mailing for the child or parent to choose by return email or hyperlink to discontinue receiving mailings.

(b) Age-Screening/Hyperlinks

1. A website or online service that is directed to children under the criteria set forth in the definition of websites or online services directed to children in Section 312.2 (a) of the COPPA Rule, but that does not target children as its primary audience, shall not be deemed directed to children if it: i) does not collect personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provision of the COPPA Rule.
2. Operators should ask screening questions in a neutral manner so as to discourage inaccurate answers from children trying to avoid parental permission requirements.
3. Age-screening mechanisms should be used in conjunction with technology, e.g., a session cookie, to help prevent underage children from going back and changing their age to circumvent age-screening.
4. A website or online service shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. Similarly, a website directed to children shall not be deemed in violation of these Guidelines by linking to a general audience website.

17.3. Children's Food and Beverage Advertising Initiative

The Children's Food and Beverage Advertising Initiative (CFBAI)¹¹⁹ is a voluntary programme created to improve food advertising directed to children under the age of 12 to help address concerns regarding childhood obesity. Currently 18 leading U.S. food and beverage and restaurant companies participate in the program, which is administered by the Council of Better Business Bureaus. Launched in 2007, CFBAI was created to respond to the Federal Trade Commission (FTC) and Institute of Medicine (IOM) calls for self-regulation to do more to address food advertising to children in light of the increase in childhood obesity. The initiative consists mainly in the development of nutrition criteria to be used by the food industry members. Since 2013 this means that all participants' foods advertised to children under age 12 must meet CFBAI's uniform category-specific nutrition criteria.

¹¹⁹ Children's Food and Beverage Initiative: [website](#)

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Appendix 3 – OCS Report – Engagement with Stakeholders

*Review of the effectiveness of the Children's Commercial
Communications Code: **Stakeholder Analysis***

Report for the Broadcasting Authority of Ireland (BAI)

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1. Introduction

The Broadcasting Authority of Ireland (BAI) Children's Commercial Communications Code ("the Code"), first introduced in 2005, sets down the rules applying to broadcasters in respect of commercial communications that promote products, services, or activities, that are deemed to be of particular interest to children and/or broadcast during and between children's programming.

The Code was updated in 2011 to give effect to the Audiovisual Media Services Directive (AVMS Directive) introduced in 2010 and again in 2013 to introduce rules on High Fat, Salt, Sugar foods (HFSS) – included in the Diet and Nutrition section of the Code. The current Code became effective on September 2nd, 2013.

As provided under the Broadcasting Act 2009, the BAI is required to undertake a statutory review of the effectiveness of the Code. A number of strands of work were conducted by the BAI to inform this review. A 'stakeholder analysis' or 'targeted consultation process' was one such strand of work. The stakeholder analysis was conducted across April/May 2019 and involved a series of four workshop meetings with representatives of broadcasters, advertisers, civil society groups and public health bodies.

Following a tendering process OCS Consulting was commissioned to support the BAI with the conduct of the stakeholder analysis.

This report provides a summary of the range of issues, views and suggestions surfaced across the series of four stakeholder meetings.

This report is intended to be read in conjunction with the BAI Children's Commercial Communications Code and assumes familiarity with the rules contained therein. A copy of the code, guidance notes and other related documentation is available on the BAI's website – www.bai.ie.

2. Methodology

It was agreed with the BAI that the consultation would take place in the form of four stakeholder meetings that were hosted at the BAI offices and facilitated by an independent Chair, Hugh O'Connor of OCS Consulting. Two members of the BAI Executive, Declan McLoughlin and Monica Doyle attended all four meetings and contributed to the facilitated discussion. These meetings were held in April/May 2019 and included representatives from the following organisations:

1. Broadcasters. 8 meeting participants representing the following organisations:

- Craol: The Community Radio Forum of Ireland
- eir Sport
- Independent Broadcasters of Ireland (IBI)
- RTÉ
- TG4 with Post TV
- Virgin Media Television

2. Advertisers / Advertising interests. 8 meeting participants representing the following organisations:

- Advertising Standards Authority for Ireland (ASAI)
- Association of Advertisers in Ireland (AAI)
- Food Drink Ireland (FDI)
- Institute of Advertising Practitioners of Ireland (iapi)
- Irish Business and Employers Confederation (IBEC)

3. Civil Society Organisations. 6 meeting participants representing the following organisations:

- Foróige
- Irish Heart Foundation
- National Parents Council
- National Youth Council of Ireland
- Youth Work Ireland

4. Public Health Bodies. 8 meeting participants representing the following public health bodies:

- Department of Children and Youth Affairs
- Department of Health
- Food Safety Authority of Ireland (FSAI)
- Health Service Executive (HSE)
- Institute of Public Health in Ireland (IPH)
- safefood

A meeting agenda, together with links to the Code and associated guidelines, were circulated to all those invited to attend the various stakeholder meetings. Participants were invited to review the Code prior to attending the relevant workshop meeting.

The conduct of each of the meetings was structured in line with the circulated meeting agenda as agreed with the BAI (included at Appendix 1).

A number of key areas set out within the Code were considered, in sequence, by meeting participants;

- Definition of a child and use of age groupings.
- Definition of a children's programme.
- Definition of a children's commercial communication.
- Scheduling.
- Diet and nutrition rules.
- Inexperience and credulity, including the use of taglines.
- Special protection for children in advertising.
- Other additional areas.
- Approach to implementation.
- Overall recommendations.

To assist with analysis and discussion the independent Chair maintained detailed notes of the discussion at each of the four stakeholder meetings.

On completion of the stakeholder meetings the data was examined to understand the range and variation in reported views, experiences and recommendations on each of the various discussion topics. The following section provides a summary of the range of issues and views surfaced across the series of stakeholder meetings.

3. Stakeholder meetings - Findings

The meeting agenda, as agreed with the BAI, provided a structure for each of the four stakeholder meetings.

An introduction or summary overview for each of the agenda items was provided by BAI officials participating in the stakeholder meetings. Discussion was then facilitated on each of the key areas. As part of this discussion stakeholders put forward a range of views and, in some cases, suggestions or recommendations for each of the key areas of the Code discussed. A summary of these key views and recommendations is provided across the following pages.

3.1 Definition of a child and use of age groupings

There was general support across the four stakeholder groups for the principle of differentiation in respect of age; the majority of stakeholders agreed that it was important that the Code would include separate provision for children of different ages “as one’s level of comprehension and understanding evolves with age”.

The majority of stakeholders agreed that the Code should continue to “apply varying and decreasing levels of protection” for children as they age. Stakeholders agreed that both ‘under six’ and ‘under fifteen’ years of age are “key milestone points” which ought to be provided for separately within the Code. The ‘under six’ years of age group was described as a particularly important and potentially vulnerable group who would benefit from “close protection to ensure no harm may be caused”.

Some of the stakeholders suggested that there is a “very big jump from six (years of age) to 15 (years of age)” and therefore the relevance of a further sub-category, ‘under 12 years of age’, could, usefully be considered. Stakeholders were in agreement that one’s ability “to evaluate programme content and advertising develops with age”. Fewer (or less restrictive) rules could therefore, according to some stakeholders, be applied “to provide protection for children between 15 and 18 years of age”.

Some stakeholders suggested that there *may* be merit in considering alternative, and possibly additional, age categories. A variety of reasons were outlined, including, in order to:

- Achieve greater consistency and closer alignment with age groupings already in place across the digital environment. “The online space is where young people are consuming the majority of their content...much more so than traditional TV...”
- Secure closer alignment with commonly recognised child development and educational milestones. ‘Pre-school’, ‘Primary’ and ‘Post Primary’ were suggestions put forward for age related categories which key stakeholders – and particularly parents – “could readily understand and connect with”. In putting forward this suggestion, some stakeholders proposed that such a categorisation “could help to develop greater levels of much needed awareness and understanding among parents”.

- Address the significant “developmental jump” between a 6-year-old and a 15-year-old - which may suggest the need for a further separation within “this wide age range category”.
- Reflect growing levels of media literacy, sophistication and understanding amongst children and young people.

With regard to introducing any changes to the age ranges several stakeholders proposed that, in addition to further consultation with stakeholders “currently connected to this process”, it would be appropriate for the BAI to engage with educationalists, child development and other experts to further inform the most appropriate position.

The need to build awareness of the Code and its provisions amongst key stakeholders and particularly ‘advertisers’ was emphasised; “There is a high level of turnover in creative staff amongst the advertising agencies”. The call for the BAI to engage more with advertising agencies through a programme of training or awareness building in respect of the Code and its key provision was referenced by some stakeholders in this context.

The need for ‘clarity’ and the ‘avoidance of ambiguity’ within the Code was also referenced by a number of stakeholders as part of this discussion.

Some broader issues were noted regarding children ‘under three’ years of age and the influence of advertising on parental choices when selecting food to feed such young children - who are recognised as having very different nutritional needs to a child over the age of three. In this respect, it was suggested that by only regulating children’s programmes and children’s commercial communications there may be a risk as young parents will “potentially fall between the stools”.

3.2 Definition of a children’s programme

There was a general level of support for the definition of a children’s programme as presented currently within the Code.

Some stakeholders suggested that “a level of care ought to be applied” should the BAI consider the need to include any further qualitative description to support understanding of the phrase ‘as commonly understood’ set out within the Code. While a small number of participating stakeholders indicated that “some supporting examples could be helpful” the majority of stakeholders proposed that there would not be any additional value in including such a further qualitative description.

A number of representatives participating in both the civil society organisation and public health body stakeholder meetings emphasised that the Code and any associated regulation will need to provide appropriate protection for children when viewing children’s programming, and also when watching programming broadcast as part of family viewing time or at other times when children could, conceivably, see an advertisement.

3.3 Definition of a children's commercial communications

There was a general level of support amongst stakeholders for the definition of a children's commercial communication as presented currently within the Code. The associated guidelines were credited, by a number of stakeholders, with "providing a sufficient level of detail".

A number of broadcasters suggested that the provision of some further guidance to accompany this definition – and, in particular, the reference included within the Code to programmes "of particular interest" may be helpful. Such guidance could, according to some of the broadcaster representatives, offer some practical illustration to support the definition currently provided. One example offered in this context included "a description of the types of products or services that are of particular interest to children" and/or the characteristics associated with same. Other stakeholders, including some advertising representatives, however, suggested that it would be inappropriate to expand the guidelines in this respect "any further as a level of common sense needs to apply" and "it would be impossible to include an exhaustive list of examples (within any supporting guidance which may be provided)". Such stakeholders suggested that any expansion of the definition or additional guidance may, for these reasons, "result in unintended consequences or ineffective regulation".

A range of views were offered on the perceived value of 'clarity' or 'certainty' over 'ambiguity' within the text of the Code with no one single view settled on.

Some representatives of participating public health bodies put forward concerns that some editorial content featuring events, such as high-profile charity events, sponsored by HFSS providers could provide "a loophole or way around the restrictions of the Code". The scope for HFSS promoters to engage in such promotions, according to some participating public health body representatives, needs to be considered by the BAI when developing its approach to regulation in this area.

The role of parents in "exercising their parental responsibility" in safeguarding children was also put forward by stakeholders as part of the discussion on this topic item.

Stakeholders suggested that any text set out as part of this and other elements of the Code ought to be "accessible" and "where possible, set out in plain English".

3.4 Scheduling

The rules under the scheduling section of the Code provide guidance on applying the audience profile mechanism used by the BAI to define a children's programme. As part of this discussion, the BAI also invited participants to provide views on the desirability or otherwise of additional or different regulation applying during peak viewing times (6pm-11.30pm), including family viewing times (6pm-9pm).

Certain stakeholders, including broadcasters and advertisers, indicated that they are satisfied with the provisions in respect of scheduling set out under the Code. Such stakeholders would not favour a change to rules pertaining to the regulation of family viewing time under the Code. In this context, it was suggested that "it would be difficult to plan across a (television) series as viewing numbers can vary significantly across a series.

It was recommended, by such stakeholders, that family viewing time should be protected from any further regulation on the basis that there are “adults viewing television together with children and thus parental responsibility ought to apply”. Furthermore, it was stated by a number of broadcasters that content related rules are more appropriate than scheduling rules on the basis that a “timebound approach is too blunt an instrument and thus provisions under the Code (in this respect) should not be changed”. Some broadcasters also put forward a view that the traditional definition of family viewing time is becoming increasingly difficult to define as viewing patterns have evolved considerably due to time shifted and other forms of viewing.

Some advertisers indicated that despite the current level of commentary on the perceived need to regulate family viewing times and/or to put in place a watershed in the case of particular types of products is absent “solid evidence which would support or justify any call for further or more stringent regulation in this area”. It was also noted that as broadcaster revenues have been on “a continual downward curve across recent years it would be detrimental to introduce further and more restrictive regulation”. Such stakeholders also suggested that the majority of advertisements are viewed by children “on the non-BAI regulated opt out channels” and thus “any change to the rules for Irish based broadcasters would have little impact (on children’s exposure to advertising) but to drive advertising away from the Irish broadcasters”. This “unequal position” would need to be considered by the BAI.

Other stakeholders, including those participating in the civil society organisation meeting, noted that Ofcom (the UK broadcast regulator) had recently reported that “only 27% of children’s viewing time is before 6.00pm”. These stakeholders argued that as there is a significant proportion of children who are viewing Irish television at later hours in the evening “there may be a rationale for strengthening or augmenting the rules associated with ‘family viewing time’ on the basis that current viewing habits amongst children have outgrown the Code”. The changes in household dynamics, viewing patterns and “growing prevalence of televisions in children’s rooms” would, according to such stakeholders indicate that there may be a requirement for “additional controls to protect children from inappropriate advertising”.

While all stakeholders recognised that parental responsibility is a factor some suggested that parents may need “additional support in the form of further regulation” given this change in household dynamics and viewing patterns.

Some civil society organisation representatives suggested that there may be different concerns for parents, children and the regulator alike depending on the product being advertised. Therefore a 9.00pm watershed could, according to some civil society organisation and public health body representatives, be considered as an appropriate or desirable regulatory response for the advertising of HFSS products while content rule changes may be preferable for dealing with other issues and products as “every product is different”. Stakeholders representing both broadcasters and advertisers agreed that were there to be any move to introduce a watershed this would require “a sound rationale and very solid evidence”.

Other issues noted by a number of civil society organisation representatives as part of this discussion included what they considered to be the general lack of awareness of the significant and “often detrimental effect of advertising” and the need to develop media literacy amongst people of all ages.

There was considerable discussion at both the civil society organisation and public health body meetings on the “serious public health issue which HFSS products represent”. Public health body representatives also suggested that as there is a whole of Government commitment, in the context of Healthy Ireland, to promote healthy eating and higher levels of physical activity “there would be a danger were the BAI to promote a contradictory policy position”.

Further discussion on this subject included concern, amongst some stakeholders, about what was perceived to be the current high level of advertising for gambling, HFSS and alcohol products as part of sports programming. It was also suggested by some public health body representatives that “television sponsorship can drive the normalisation of poor nutrition behaviours which must be addressed”.

3.5 Diet and Nutrition Rules

On the subject of provisions relating to diet and nutrition broadcasters suggested that the Code, as it is currently framed, is appropriate and on this basis “changes should not be introduced”.

Furthermore, broadcasters did not favour the introduction of a 9pm watershed in the case of the promotion of HFSS food. It was their view that this would represent a “disproportionate move on the part of the BAI”. Broadcasters spoke positively of the current Nutrient Profiling Model which, such representatives suggest, has achieved a level of recognition and acceptance amongst stakeholders operating across the Irish broadcasting sector. This model is used to define commercial communications for HFSS products.

Broadcasters had not experienced any implementation issues with this model and, for this reason, proposed that the introduction of a new model may “lead to a level of uncertainty and unnecessary regulatory disruption”. Broadcasters also suggested that Ireland is “far more advanced in its approach to regulation in this space in comparison to other countries” and therefore should not “be in a race to replace existing provisions” or the “widely accepted” Nutrient Profiling Model with more stringent measures.

Similarly, advertisers held the view that the current approach and associated model “works well”. Advertisers also proposed that further endorsement for the current approach has been provided in the adoption of the recently introduced voluntary code¹ with stakeholders choosing to underpin this approach with the same model; “A move to a new and more stringent model would open up a lengthy and arduous learning curve” for all those involved. The WHO model, which has been spoken about in this context, was described by such stakeholders as “too extreme”. That it would not align with the approach used in the UK or indeed the new voluntary code would, according to advertisers, also introduce a lack of regulatory alignment which may have the effect of “driving a further share of advertising to the opt out channels”.

¹ This voluntary code, approved by the Department of Health, deals with the marketing of food, in particular HFSS food in non-broadcast media.

As part of this discussion, a number of advertisers emphasised that the “derogation for advertising of cheese ought to be maintained”. Advertisers also noted how the Code, as it is currently framed, has encouraged food and drink manufacturers to invest in a considerable level of reformulation of products that “were previously high in fat, salt or sugar”, thereby providing evidence that “the current approach is working”. It was therefore suggested, by such stakeholders, that evidence would need to be provided to demonstrate that the current approach is not working should proposals be introduced to amend the Code or the model underpinning it.

A number of stakeholders participating in the civil society organisation stakeholder meeting indicated that they would favour the introduction of a 9.00pm watershed for the advertising of HFSS products. The WHO Model was also considered, by such stakeholders, to be “more robust” than the current Nutrient Profiling Model used by the BAI to define HFSS foods.

Civil society organisation stakeholders suggested that the BAI could usefully consider introducing “active and independent monitoring” of the Nutrient Profiling Model certification process. This, according to such stakeholders, could involve selection of a random number of Nutrient Profiling Certificates for further monitoring and scrutiny.

Again, civil society organisation representatives noted that there is not yet, in their experience, a sufficient level of awareness and understanding among key stakeholders of the Code, its provisions and purpose. As a result, advertisers are, according to civil society organisation representatives, afforded “a level of flexibility” to target children with advertising of HFSS products outside of children’s programming. There was also a level of concern among some of these stakeholders that “brand rather than product led advertising” can allow promoters of products that are high in fat, salt and sugar to target children through advertising.

Civil society organisation stakeholders also suggested that changes could usefully be introduced in respect of “the complaints process so that it is easier and less onerous to make complaints about inappropriate advertising”.

Public health body representatives also indicated that the Code and associated provisions would benefit from some updating. There was particular concern, among such stakeholders, about advertising that is, on the basis of its content and association with “fun or humour”, “clearly appealing to children”. The view in this regard was that such adverts might meet the letter but not the spirit of the Code. There was some support among such representatives for the recently developed WHO model. Some stakeholders were, however, concerned that this model may not yet be “broadcast-ready”. Other instruments such as the ‘Nutri Score Model’ were also referenced for consideration in this context. It was suggested that an independent comparison between the various models could usefully be undertaken.

A number of public health body representatives suggested that “improvements to the Code” in the form of “additional provisions” ought to be “introduced by the BAI on an incremental basis”. It was emphasised that children ought to be protected for as long as possible so as to promote life-long healthy eating behaviours.

3.6 Inexperience and credulity, including use of taglines;

Both broadcasters and advertisers were broadly satisfied with current provisions set out within the Code in respect of inexperience and credulity. Representatives from both of these stakeholder groups agreed that it was relevant for the Code to include provisions in respect of taglines and that any such safeguards “should not be eroded”. The rules as they are currently framed in this area would not appear, from the perspective of broadcasters or advertisers, to cause any operational or implementation related challenges.

Civil society organisation representatives endorsed the role for taglines suggesting that they provide a “further and important level of protection for younger children”. That many of the required taglines are featured to assist or provide additional protection for children ought to frame the approach adopted as part of advertisements; “The tagline has to be presented in such a way that it is appropriate to the audience (and age of same) which it is intended for”.

A number of public health body representatives also suggested that taglines “must be presented in a child friendly and accessible manner...with plain English and clear, concise language”. This was thought to be particularly important when presenting important health related information and associated terminology.

3.7 Special protection for children in advertising;

Broadcasters and advertisers were broadly satisfied with current provisions set out in in this area. It was noted, by such stakeholders, that “we are seeing far less adverts in general for products with HFSS”, and on this basis “the Code, as it stands, must be working”.

A number of representatives in the civil society organisation stakeholder meeting, again, emphasised that “there are still some loopholes (in the regulation) which allow HFSS advertisers to take a brand rather than product led approach to advertising...By promoting the brand they can overcome any Code related restrictions and can by extension promote, albeit in a subtle way, HFSS products within their portfolio”. It was also noted that some advertisements can be “manipulative...in that they promote poor role models and health related behaviours” for children who may be viewing.

4. Other additional areas

Broadcasters and advertisers both concluded by emphasising that “as there are no issues with the Code there is no need for changes”. Other stakeholders suggested other possible areas of concern. They are as follows:

Approach to implementation: A number of civil society organisation representatives suggested that there is a lack of awareness, amongst the viewing public, in respect of how to make a complaint about inappropriate advertising. Such stakeholders held the view that the complaints process should be streamlined and simplified so that “it is easier and less onerous for the viewing public to make a complaint...and where possible it should be permitted to make complaints directly to the BAI”.

Enforcement: Some stakeholders suggested, given the seriousness of this key public health issue, any breaches of the Code ought to be made public.

Gambling and gaming: Some stakeholders expressed concern about the perceived high level of advertising for both gaming and gambling related products and services which can have a detrimental impact on people of all ages.

Appendix 1

Meeting Agenda

Broadcasting Authority of Ireland

Children's Commercial Communications Code - Stakeholder meetings

1. Welcome and introductions

2. Stakeholder meetings: Context and format

3. Key discussion topics:

- Key Code areas:
 - Definition of a child and use of age groupings e.g. u/6, u/15 etc.
 - Definition of a children's programme.
 - Definition of a children's commercial communications.
 - Scheduling.
 - Diet and Nutrition Rules.
 - Inexperience and credulity, including use of taglines.
 - Special protection for children in advertising.
 - Other additional areas.
- Approach to implementation.
- Overall recommendations.

4. Next steps

5. AOB



Appendix 4 – Ipsos MRBI Report – Engagement with Children, Parents, and the Public

REVIEW OF THE EFFECTIVENESS OF THE BAI CHILDREN'S COMMERCIAL COMMUNICATIONS CODE



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1 EXECUTIVE SUMMARY

In the increasingly complex communications landscape, parents of younger children and children in their teenage years are clear that the regulation of commercial communication towards children continues to be essential.

The BAI is currently undertaking a review of the effectiveness of its Children's Commercial Communication Code. In that context, the BAI commissioned Ipsos MRBI to engage with a relevant sample of parents and children (as well as the general public) to ascertain the ability of the Code to meet the requirement to protect children from any commercial communication that could be considered harmful to them. This research included discussion groups with parents of children under the age of 13 years and with children aged 14-17 years. In addition, a short national Omnipoll survey was conducted with 1000 respondents. The results of this research indicate that the Code is believed to be comprehensive, relevant and clear.

The Code's focus on adapted levels of protection for children of different ages was considered important to participants in both discussion groups. The separation of under 6s, under 13s and under 15s was considered relevant. It was interesting to note that it wasn't just the under 6s who were believed to be the most vulnerable to inappropriate commercial communication. Cases were made for children between the ages of 6 to 15 as potentially being more vulnerable.

The importance of regulation of commercial communication of foods high in fat, sugar and salt (HFSS foods) was highlighted in discussions with the target audience. This concern was also reflected (to an extent) by quantitative findings amongst the general population. Findings from the survey found that one in five people mentioned foods, some of which would be likely to fall under the HFSS category, in the context of any commercial messages which they would prefer children did not see or hear. This was re-enforced when specifically probing for categories which should be restricted – where foods, some of which would likely fall under the category of HFSS foods, comes second to alcohol in this context.

Respondents in our survey perceive that family and home environment is the single most influential factor in children's diet and health, mentioned to a much greater degree for example than *lack of exercise*. This would seem to reflect a belief that the culture of a family – what their attitudes are and, perhaps how they behave in terms of food preparation or exercise, is the key factor in health outcomes for their children. Advertising emerges as the next most significant factor in terms of influencing children's diet and health, mentioned by one-third of respondents in our national survey and this finding would seem to support the reflections of focus group participants who perceived the Code to be a welcome and essential protection for children within the Irish broadcasting landscape.

This report is intended to be read in conjunction with the BAI Children's Commercial Communications Code and assumes familiarity with the rules contained therein. A copy of the code, guidance notes and other related documentation is available on the BAI's website – www.bai.ie.

2 BACKGROUND & OBJECTIVES

The BAI was established in 2009 under the Broadcasting Act 2009 and is the statutory regulator for the Irish broadcasting sector. One of its responsibilities is to develop and review broadcasting codes and rules.

The Children's Commercial Communication Code ("the Code") sets down the general principles and specific rules applying to Irish TV and radio broadcasters in respect of children's commercial communications. These are commercial messages that promote products, services, or activities that are deemed to be of particular interest to children which are broadcast at any time of the day and/or commercial messages broadcast during and between children's programming (regardless of whether they are of particular interest to children). The Code addresses the full range of commercial communications including advertising, sponsorship and product placement.

As part of the statutory review the BAI commissioned a series of research modules comprising consultation among a range of stakeholders including broadcasters, advertisers and advertising agencies, public health bodies, children's representative bodies, civic society bodies and children themselves. In this context, Ipsos MRBI was engaged to undertake the component of the review which focused on engagement with children. This included capturing the views of children, of parents of young children and of the general public (in terms of their views on the interests of children).

The objectives of the research were to:

- To assess the extent to which children and parents of children believe the Code is relevant in today's communications landscape.
- To assess the extent to which children and parents of children believe the Code is comprehensive.
- To determine whether the Code is still fit for purpose or requires updating and amending to reflect features not currently relevant in the Code.

Additionally, the research was tasked to understand:

- The perceived factors influencing the diet and health of children.
- Attitudes to commercial communication which children may be exposed to.
- Impact of taglines as promoted in the Code.

To this end, Ipsos MRBI's approach primarily involved qualitative research among children and parents, supported by a short quantitative study via Ipsos MRBI's Omnipoll research service.

3 METHODOLOGY

The research undertaken by Ipsos MRBI was undertaken using a combined approach utilising both qualitative and quantitative methodologies.

(i) Qualitative Group discussions

The review encompassed two focus group discussions. The structure of the focus groups stemmed from the requirement to examine the Code in detail and was based on our understanding of researching young people. Cognitive, social and emotional development of children evolves significantly as children age. When communicating directly with these younger audiences, where possible, there is a requirement to adapt the stimulus to make it age appropriate. In circumstances where this adaptation may be insufficient to help meet the objectives of the research a direct conversation with the parents of these children was proposed.

In the case of this review, the core content of the research was the Code, a formal document with a series of headings that needed to be examined. There was limited scope to adjust the document in such a way as to make it accessible for younger audiences and still be able to meet the requirements to review the Code. This is particularly the case with children under 10 years of age.

This understanding drove the design and selection of the participants – one group targeted children aged 14 to 17 and the second group, parents of children aged up to 13. In terms of the latter, on recruitment parents were asked to read a copy of the Code prior to the focus group to promote a level of understanding of the content and to maximise the time spent on evaluation of the Code. For children aged 14-17, an adapted version of the key themes of the Code was presented to enable exploration of these themes.

These focus groups were conducted on 1st May 2019.

(ii) Quantitative Survey via Omnipoll

In parallel with the qualitative phase, a short survey was undertaken via Omnipoll, Ipsos MRBI's National telephone omnibus service. Using a very focused questionnaire the survey gathered attitudinal information on the perception of commercial messages aimed at children, the factors influencing the diet and health of children and the recognition of taglines used in children's advertising.

Omnipoll was conducted among 1000 adults aged 15+ across all sectors of the population and all regions of the country. Data on age of children in the household was collected to facilitate an analysis among the sub-segment of the sample with children residing in the home.

Fieldwork was conducted from 15th to 30th April 2019.

4 FINDINGS – QUALITATIVE GROUP DISCUSSIONS

Overall Feedback on the Code

4.1 Objectives

The Code sets out four objectives as follows:

- To offer protection for children from inappropriate and/or harmful commercial communications;
- To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities;
- To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children, and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial communications on Irish broadcasting services.

Across the discussions there was universal agreement amongst participants that the objectives are appropriate and that a code of this type remains essential. The participants agreed that children were a common target for advertising and that it was important that suitable guidelines were in place to provide guidance to advertisers and broadcasters to support adequate protection for children.

As mentioned in the methodological section of the report, parents of younger children were asked to read the Code in detail and make any notes or comments about gaps, ambiguity or concerns they had about the contents of the Code. The absence of significant questions and concerns about specific aspects of the Code demonstrates that parents participating in the research viewed the content as comprehensive. Despite being probed to find additional areas of concern, there was universal agreement that the Code, as it is currently formulated, was generally found by participants to be comprehensive and appropriate.

4.2 Definitions

This section of the Code sets out a number of definitions that are applied in the rules. These include definitions of a 'child', of 'children's commercial communications' and 'High Fat Salt and Sugar' (HFSS) foods, amongst others. This section also highlights that different rules will apply to different age groups e.g. rules intended to protect those under 6 years of age, in order to recognise different levels of maturity amongst children.

Parents and children participating in the research acknowledged that defining children as anyone under the age of 18 was accurate and appropriate. They further acknowledged in discussions that children of different ages were likely to require different protection that matched their cognitive and linguistic development. The separation of those under 6, under 13 and those under 15 were viewed as acceptable groupings of ages.

Discussions did take place in relation to which age group required the most protection from inappropriate or harmful commercial communication. For parents, the age group between 6 and 9 years of age was considered a priority. They argued that children of this age were more likely to be aware of the messages being communicated to them but were less likely to have developed the cognitive skills to be able to understand that the communication was for commercial benefit to an advertiser.

Interestingly, those aged 14-17 believed that children in early teenage years (13-15 years of age) were more vulnerable to inappropriate or harmful messages. They cited the impact of peer pressure when children are in this early teenage stage. At this age, children's ability to be able to cope with the pressure placed on them by peers and society at large was less developed. As a result, these children were believed to be at greater risk.

Their perspective was captured in the direct quotes emerging in discussion with them.

"Your intellectual development is a lot different between 13 and 15. You're a bit more mature [at 15]. You're at more of a stage where you can think for yourself."

"Your interests - a 13-year-old could be a nine-year-old compared to a 14 or 15-year-old. I just think, looking back when I was 13, you're very easily influenced by the people and things around you. You say, 'I have to be like the models', and you end up beating yourself up."

These responses highlight the perception amongst younger participants that children in these younger teenage years are aware of the advertising messages but may not have the maturity to be able to filter the message as appropriately as older teenagers.

Several other specific definitions were discussed prior to the exploration of the detail of the Code. In this regard, definitions and views of participants can be summarised as follows:

Commercial Communication – this definition was considered clear and unambiguous by participants.

Children's Commercial Communications – as a subset of the definition of commercial communication, this definition was considered clear and unambiguous by participants.

There was significant discussion across both the parent and children's discussion groups in relation to products that were of 'particular interest' to children. Commercial communication relating to HFSS foods were commonly referenced by participants in these discussions.

Promotional activity such as games and token collection associated with HFSS foods were believed by participants to often be of interest to children. Those aged 14-17 felt particularly strongly about this, recognising that the usage of charity based/board game promotions that are likely to engage children, might fall into this category.

It wasn't clear to participants the extent to which advertisers view this commercial communication as 'specifically targeting' children but both groups felt that, on balance, this type of communication was likely to be of interest to individuals under the age of 18. The number of times our discussions highlighted HFSS foods as being of specific interest/concern reflects the concern of parents and children.

Children's Advertising, Children's Sponsorship and Children's Product Placement – this definition was considered clear and unambiguous by participants.

Children's Programmes – this definition was considered clear and unambiguous by participants.

HFSS Food – this definition was considered clear and unambiguous by participants.

Programme Characters - this definition was considered clear and unambiguous by participants.

Licensed Characters - this definition was considered clear and unambiguous by participants.

4.3 Scheduling

In the context of the earlier definition of children's programming, the guidance provided for broadcasters in respect of scheduling programming based on the audience profile of viewers or listeners was believed to be clear and unambiguous for participants.

4.4 Compliance and Assessment

The contextual factors referenced in this section of the Code, and which inform decisions regarding compliance, were considered appropriate and necessary by participants.

4.5 Social Values

There was unanimous agreement among participants that the social values described in the Code were clear, unambiguous and very relevant for Ireland, as the country's social values continue to evolve.

4.6 Inexperience and Credulity

Children are naturally inexperienced as they develop social, emotional and cognitive skills to navigate the world. The requirement for commercial communication to not take advantage of this inexperience was considered by participants to be an important feature of the Code. More generally, participants were of the view that the rules under this section were appropriate and suitable. A number of observations were made in respect of rules under the headings of 'Factual presentation' and 'Price of product/service'.

4.6.1 Factual presentation

Toys were considered by participants to be a key focus of children's interests, so parents naturally expected that commercial communications will inevitably focus on this type of product. Parents spent significant time discussing the importance of clarity in relation to what is included/not included with the toy or only available at extra cost. This was considered particularly true when more than one product is shown on the screen at the same time.

Other features of the Code relating to clear messaging, illustration of the product's actual size, battery requirements, and assembly requirements were all considered important by participants. Similarly, the use of language, special effects or imaginative scenes, which might confuse, should be avoided.

The avoidance of direct comparison between existing and improved versions/models of products was considered important, though likely to be limited in impact. Parents felt that children were implicitly aware when a product advertised to them was new or distinct. For participants, avoidance of explicit referencing did not remove the natural tendency for children to look for the latest version of a product. As one child pointed out –

"Sometimes, like with the iPhone, it's a bigger number, so they know it's the new one anyway."

The above verbatim highlights an example of the launch of a new mobile phone, identified by the next number in a sequence. There is no direct comparison in the ads to the previous model but, in the view of participants, viewers would know that this phone was a new model.

Oral statements of any on-screen messages or small print for products and services targeting under 6's was considered vital by participants, given natural gaps in literacy skills. Parents felt that a requirement to increase this age limit could be considered – that children up to 9 could benefit from this explicit oral description.

4.6.2 Price of product / service

There was universal acceptance of all sub-elements of this section of the Code. Prior to this research, parents and children were unaware of the inclusion of a reference to expensive toys in the Code. There was some discussion about the current figure of €30. It was noted that a figure well below €30 could be too expensive for some families, but that, on balance, participants believed that the figure was a reasonable anchor point for the Code.

4.7 Undue Pressure

There were significant discussions in relation to this section of the Code, which is intended to ensure that children's commercial communications do not exert undue pressure on parents, guardians or children. Participants believed there to be an inherent tension between the role of commercial communication to encourage the purchase of products and services, and the requirement to avoid undue pressure on the child and their parents. As was summed up by one parent –

“[Pressure]...But that's what advertisements do.”

This verbatim illustrates the perceived purpose of advertising to encourage an individual or individuals to purchase a specific item that is being advertised.

The only way respondents believed it was possible to remove any pressure on parents and children, was to ban all advertising. This idea wasn't considered practical, warranted or desirable. On balance, parents believed that the Code is clear and comprehensive in relation to the responsibilities of advertisers and broadcasters. Participants felt that ultimately it was the responsibility of parents to be able to manage their response to their children's requests based on the commercial communications that they see – this was believed to be relevant for commercial communication generally, not just commercial communication deemed to be of particular interest to children.

4.8 Special Protection for Children

Participants were of the view that the rules under this section of the Code were broadly appropriate. A number of observations were made in respect of rules under the headings of 'Children endorsing products and services'.

4.8.1 Children Endorsing Products and Services

There was some concern raised by parents about the role of children in commercial communication by charities. In particular, the appearance of disadvantaged children in charity communication was commented upon. There was some concern that children may become upset when watching commercial communications portraying children in uncomfortable or dangerous situations.

Parents were unclear where this portrayal of children fitted into this Code or broader broadcasting Codes but felt sufficiently strongly about it to comment on it.

There was greater acceptance amongst parents of this style of commercial communication being broadcast during 'family time'. Parents anticipated that an adult would be there to explain the context of the advert should it be viewed by a child. There was less comfort that this would be shown during children's programming. As expressed by one parent –

"It is part of life, unfortunately, but if it's at a family viewing time, you can explain to them. If it's during children's viewing time, there's no one there (to explain it)."

This verbatim from the group discussion with parents references the benefits of having a parent present when an advert of this type may be broadcast. It also highlights the perception that, in the case of children's viewing time, potentially a parent won't be present.

4.8.2 Sexualisation of Children

The presence of this protection in the Code was welcomed by participants. They considered the Code to be clear and unambiguous.

4.8.3 Privacy and Provision of Information/Adults Pretending to be Children.

There were no issues expressed by participants in relation to these elements of the Code. It was considered clear and unambiguous.

4.9 General Safety

The overall importance of not putting children in danger, as articulated and provided for in this section of the Code, was universally accepted by participants. It was acknowledged that extending this message to unsafe situations, dangerous places/substances, or equipment was important.

The presence of road safety advertising on television was referenced by both parent's and children's groups. The exception in this section of the Code relating to a commercial communication that promotes safety, was considered necessary and relevant by both audiences. Both groups believed that this type of communication, whilst potentially upsetting, is necessary to discourage unsafe practices.

4.9.1 Behaviour

There was universal agreement in both groups that no commercial communication that falls under this Code should promote anti-social behaviour, bullying, taunting or teasing other children, unless the sole purpose is to discourage such behaviour. The Code was perceived to be clear and unambiguous in communicating this.

4.10 Violence

The rules under this section of the Code are considered by participants to be a challenging part of the Code for advertisers, chiefly because it can be difficult to determine what might cause distress to children. This is particularly the case for younger children.

Participants stated that they were aware of violence that is highly likely to be upsetting to children of different ages. It was felt by participants that it was vital that this type of violence isn't present in advertising targeting this young audience.

There were examples given of content that wouldn't be upsetting to most children but that was upsetting to an individual child in an individual context. In these cases, where a child finds something upsetting but that other children of a similar age wouldn't normally find upsetting, parents believe that the onus is on the parent to discuss the content with the child. They do not advocate removal of this commercial communication entirely.

Notwithstanding the above, participants were broadly satisfied with the rules under this section of the Code subject to the above concerns.

4.11 Diet and Nutrition

This section of the Code is concerned with ensuring the responsible promotion of food. It includes general rules in this regard as well as a number of specific rules relating to less healthy foods that are high in fat, salt and sugar (HFSS foods).

The focus group discussions highlighted that HFSS foods are a top of mind issue for parents and children. This was a challenging discussion as the lines between products that don't necessarily fit the requirements for being subject to this Code but are still attractive to children, was considered by participants to be quite porous. Products that were perceived to fall into this discussion include snacks and breakfast bars (but could include a much broader cross section of foods). Parents were not suggesting that these products are being advertised contrary to the Code but were finding that their children were still interested in these products.

4.11.1 Children's commercial communication for HFSS food products and/or services

The importance of these rules within the Code was highlighted by parents. There is considerable concern about the dangers of HFSS foods for children, so restricting advertising within the framework of this Code is considered important to parents who participated in the research. The prohibition of these food products during children's programming, the prohibition on licenced characters, nutrition claims, and promotional offers was welcomed by parents.

Cereals with licenced characters were considered a problem by some parents. They were not certain where they had seen advertising for these products (they may have been on channels, platforms or times that weren't relevant to this Code) but nonetheless they were concerned about them. It is important for parents that products such as these are restricted as much as possible in line with the regulations in this Code.

4.11.2 Fast Food and Confectionery

This part of the Code relates to defining Fast Food. The definition was not queried across the groups. The presence of visual or acoustic messaging with specific health messages was also referenced in the groups. These messages were welcomed by parents. The recall of these messages is discussed in greater detail in the quantitative findings of this report.

4.11.3 Celebrities

This element of the Code was clear and unambiguous for participants.

Those taking part in the research did not comment on other aspects of this section of the Code which would indicate their broad satisfaction with these other rules.

4.12 Parental Responsibility

The balance achieved between the role of a parent or guardian, as the individual with primary responsibility for children, and those responsible for ensuring commercial communications do not undermine the efforts of the parents, was believed by participants to be well established in this section of the Code.

4.13 Programme Characters

This element of the Code was clear and unambiguous for participants. There were no concerns raised by this element of the Code amongst participants.

4.14 Children's Advertising, Children's Sponsorship, Children's Product Placement

The specific sections of the General Communications Code relating to Advertising, Teleshopping Sponsorship and Television Product Placement were not examined within the scope of this research.

Each of the specific elements of the Code in this section were welcomed and were clear and unambiguous for participants.

4.15 Restriction and Prohibitions

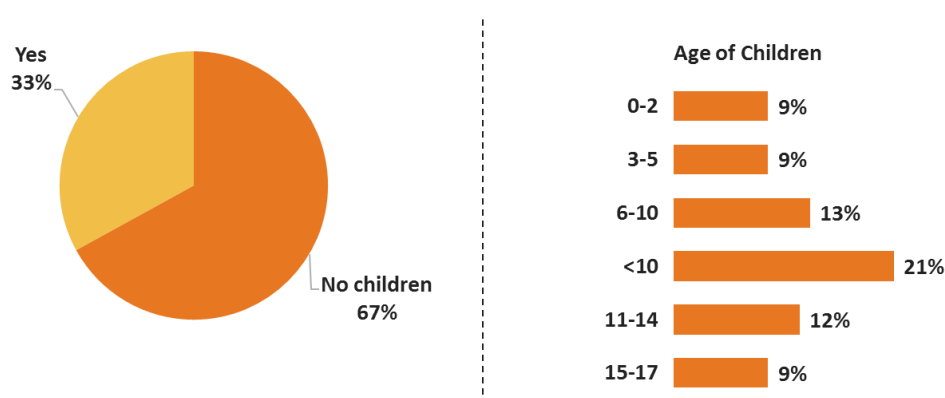
The list of products and services prohibited from broadcast was believed by participants to be extensive and comprehensive. Parents and children were unable to recommend any other category of products or services that should be considered for addition to the Code.

5 FINDINGS – QUANTITATIVE SURVEY VIA OMNIPOLL

A short national survey of 1000 adults aged 15+ was undertaken to gather information on the perception of commercial messages aimed at children among the population in general, including those living in a household with a child aged less than 18 years. Please note, throughout this interview there was no specific reference made to the BAI Children’s Commercial Communication Code and respondents were not asked any questions specifically relating to the Code.

The final weighted sample achieved in this study comprised the following segments in terms of presence of children in the household and age of those children.

Children In The Home (Aged <18)



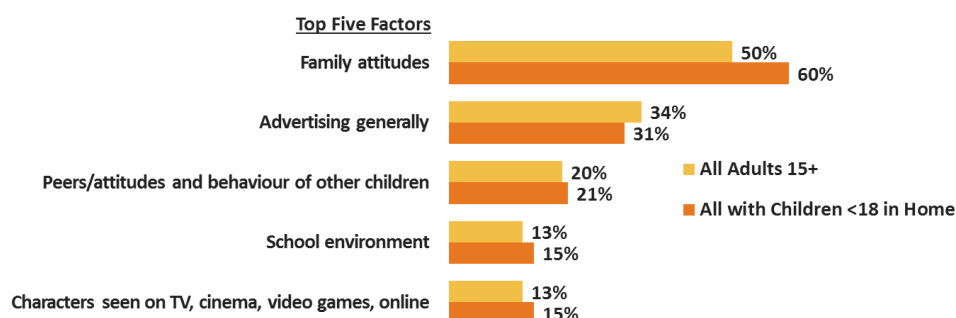
Throughout this report, all findings are presented for the total sample who participated in this survey and, to provide some understanding among the segments with children living in the home, further analysed by relevant sub-segments of the whole. In this case focusing on individuals living with younger children (<10), pre/early teens (11-14) and older teenagers (15-17).

5.1 Factors Influencing Children’s Diet and Health

The first question addressed the influencing factors on children’s diet and health. The question was unprompted - “*What if anything, do you think influences children’s diet and health?*” - with responses coded to a pre-coded list of answer options. Among our sample the single most influential factor is the family and home environment. Half of all respondents spontaneously mention this factor and this proportion increases to 60% among those with children living in the household. Furthermore, family environment is mentioned to a greater than average extent by those in the ABC1 social class group.

The top five influencing factors among the total sample and among those with children in the household, are illustrated in the chart below.

Factors Influencing Children's Diet & Health



Q.5 What, if anything, do you think influences children's diet and health?
Base: All Adults 15+: 1,001

The second most influential factor on the diet and health of children is perceived to be advertising, mentioned by one-third of all respondents. Levels of mention increases among the older 55+ group but among those with children in the house, marginally fewer mentions than average. One in five mention the influence of peers – the attitudes and behaviour of other children and this is followed by the school environment emerging at 13%. A similar proportion, 13%, perceive fictional characters to be an influence – characters seen on TV, in the cinema, online or in video games. This latter factor was a concern raised in the focus group discussions in relation to the promotion of cereals.

Other influential factors did emerge around the specific issue of food, diet and exercise but mentioned spontaneously by 5% or less of the sample (see chart overleaf) – availability/low cost of fast food (5%); food and drink seen in the shops (5%); poor diet (4%), lack of exercise/inactivity (4%) and the availability/low cost of convenience food (3%).

Among those homes with a 15-17-year-old teenager living there, while the top five factors remain unchanged for this group, concern around fast food is mentioned to a slightly higher than average degree (8%) as is the perceived influence of the behaviour of well-known personalities (9%). Media - either TV, social media, internet, magazines – is perceived as an influential factor by 8% of the population though this is less of an issue among those with younger children (aged <10 years) in the house (4%). (See Appendix pg.24 for full list).

Factors Influencing Children's Diet & Health

		All with Children in Home			
	All 15+ (1,001)	Any Children <18 (330)	Children <10 yrs (213)	Children 11-14 yrs (124)	Children 15-17 yrs (89)
	%	%	%	%	%
Family attitudes	50	60	64	59	57
Advertising generally	34	31	30	31	31
Peer group	20	21	23	24	25
School environment	13	15	14	17	17
Characters seen on TV progs. etc.	13	15	15	15	15
Availability/low cost of fast food	5	4	3	4	8
Food & drink seen/ available in shops	5	4	3	3	4
Behaviour of well-known personalities	4	6	5	6	9
Poor diet	4	3	4	2	3
Lack of exercise/inactivity	4	4	4	6	3
Availability/low cost of convenience food from supermarket	3	2	1	3	0
Availability of large/king size portions	*	*	0	1	0
Eating too much	*	*	*	0	0
None	1	1	2	1	1
Don't know	9	4	4	3	4

Although this survey is not directly comparable to the in-depth attitudinal research carried out in 2008¹, four of the top five factors mentioned here emerged in the top five back in 2008 with family attitudes emerging as the number one factor then.

5.2 Reaction to Commercial Messages Seen by Children

The interview moved on to address the issue of commercial messages. The definition of commercial messages was read out to the respondent – defined as including advertising, sponsorship, competitions, product placement and telesshopping on TV and radio.

Respondents were asked to consider the kinds of messages (seen or heard by children) on TV or radio that they would prefer children didn't see or hear. Again, this was an unprompted, spontaneous response question, with responses coded to a pre-coded list of answer options.

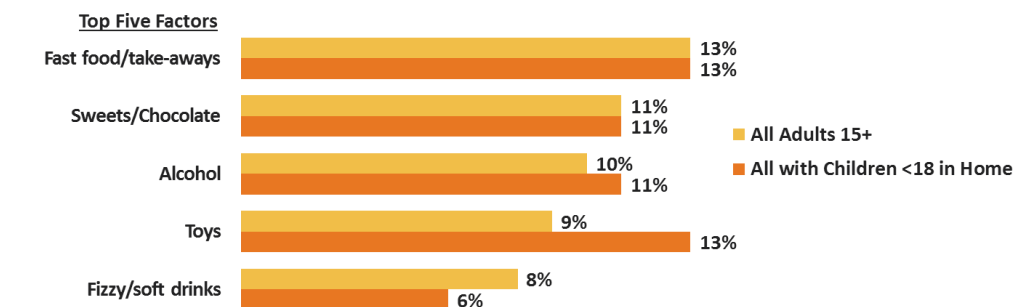
¹ The 2008 research was undertaken by the BCI as part of a prior review of the Code.

Furthermore, as mentioned earlier, this interview was conducted without any reference to the existing BAI Children's Commercial Communications Code – respondents were simply sharing their opinion about commercial messages generally.

In this context, any message relating to products, some of which would be likely to fall under the category of HFSS foods (such as fast foods, confectionery, sugary drinks and cereals, convenience food and snacks), was mentioned by one in five respondents when identifying commercial messages that respondents would prefer children didn't see or hear. The HFSS product area was also identified as a key area of concern among participants of the focus groups.

Specifically, breaking this broad category of food types down to the individual parts, the item of concern emerging in the highest position is fast food and take-aways, mentioned by 13%. Sweets and chocolate emerge in 2nd position (11%) and fizzy/soft drinks in 5th position (8%). Crisps/snacks, sugary cereals are also mentioned by 5% and 4% respectively.

Commercial Messages Would Prefer Children Didn't See Or Hear



Q.1 Thinking of the commercial messages that you believe children see on television or hear on radio, what kinds of things, if any, would you rather they didn't see or hear about, in these commercial messages?
Base: All Adults 15+: 1,001

Alcohol is spontaneously mentioned by one in ten respondents, 3rd place in this chart and commercials relating to toys is mentioned by 9%, this latter issue is naturally a greater concern in households with younger children living there.

Games and movies aimed at the over 18 market, while each only mentioned by 4% of the total, is mentioned to a slightly higher degree among those with older children in the home.

Adult phone or chat service is mentioned by 8% of those with pre/early teens in the house.

In response to this question, one in every five say they would prefer that no commercials be seen or heard by children at all and this attitude is higher than average among those with children in the home.

Commercial Messages Would Prefer Children Didn't See or Hear

		All with Children in Home			
	All 15+ (1001)	Any Children <18 (330)	Children <10 yrs (213)	Children 11-14 yrs (124)	Children 15-17 yrs (89)
	%	%	%	%	%
Fast food/take-aways	13	13	15	10	10
Sweets & chocolate	11	11	13	9	6
Alcohol	10	11	11	9	10
Children's toys	9	13	16	9	6
Fizzy/soft drinks	8	6	7	5	2
Crisps or similar snacks	5	5	5	4	3
Adult phone or chat services	5	6	6	8	3
Sugary cereals	4	4	4	2	5
Computer games aimed at over 18's	4	6	5	9	8
Betting/gambling services	4	5	5	5	3
Movies aimed at older children/over 18's	4	5	5	7	8
Slimming products & services	2	2	2	1	4
Safety campaigns e.g. drink driving	2	2	2	2	1
Product placement in television programmes	1	1	1	2	1
Convenience meals/snacks bought at supermarket	1	*	0	1	2
Medicines available without prescriptions	*	1	1	1	3
National Lottery/Lotto	*	1	0	1	2
None	21	25	19	32	35
Don't know	21	20	19	20	26

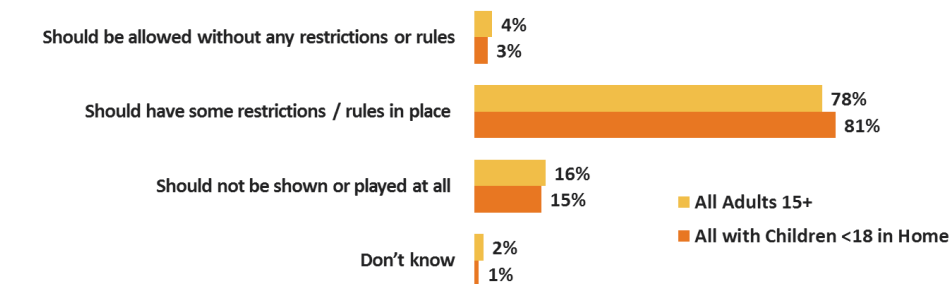
While this question related specifically to commercial activity, some other themes emerged that are not necessarily seen or heard in commercials on Irish broadcast channels but nonetheless reflect the concerns of adults and parents. The prospect of children seeing or hearing material of a violent nature is mentioned spontaneously by 7% of the sample and adult themes/sexual content by 4%. Cigarettes/vaping, items no longer advertised on Irish broadcast channels, emerge at 3%. Comments in relation to body image, beauty or gender stereotypes emerge but are only mentioned by small numbers of individuals (2% or less).

Safety campaigns, a category discussed in the qualitative sessions, emerged here with relatively low mentions although the proportion was somewhat higher among younger respondents.

5.3 Attitudes to Regulation of Commercial Messages Seen or Heard by Children

Responding to a prompted question which aimed to clarify the respondent's opinion on this issue, the vast majority of the sample (78%) feel that commercial messages likely to be seen or heard by children should have some restrictions or rules in place. 16% believe that commercials should not be shown or played at all, this proportion increasing among the older 55+ group, while only 4% feel they should be allowed without any restrictions or rules. Among those with children in the home, 81% believe there should be some restrictions/rules in place.

Attitudes To Commercial Messages Likely To Be Seen Or Heard By Children

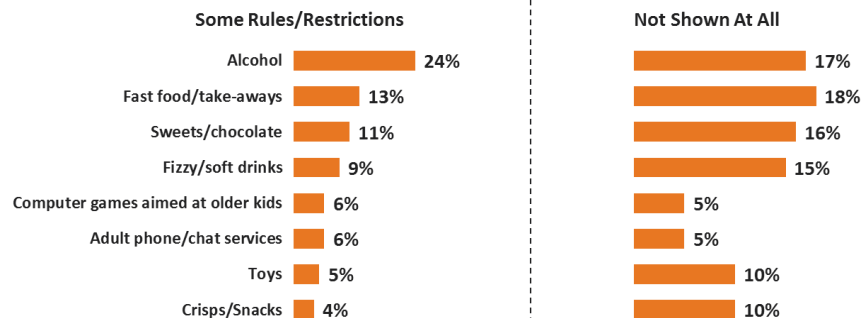


Q.2 In general, when thinking about commercial messages that are likely to be seen or heard by children, which of the following best matches your own opinion?
Base: All Adults 15+: 1,001

When probed to describe the types of messages that should have some restrictions or that should not be shown at all, similar themes emerged as previously shown, though the relative positions in the chart may have changed. In this context alcohol jumps up the chart and fast food, sweets and fizzy drinks are particularly singled out by those who believe commercials should not be shown at all.

Restrictions/Rules

Top Item mentions



Q.3 What kinds of things shown or heard in commercial messages would you say should have some restrictions or rules applied?
Q.4 What kinds of things shown or heard in commercial messages, would you say should not be shown or played at all?
Base: All who say some restrictions should apply: 777
Base: All who say should not be shown at all: 163

5.4 Recognition of Phrases or Taglines Commonly Used in Commercial Campaigns.

The BAI Children's Commercial Communication Code has specific regulations in place around the use of visual or acoustic warnings or messages that must be displayed in relation to a range of product/service commercial communications.

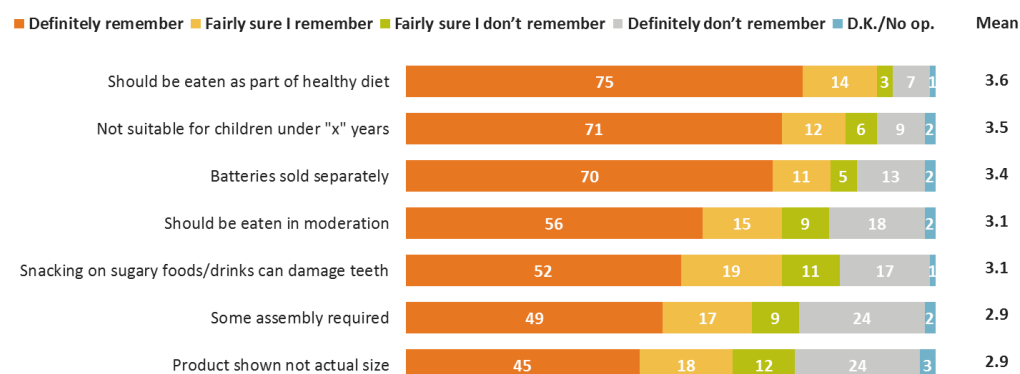
The final question put to our respondents featured a sample of such messages - phrases or taglines often heard in commercial campaigns, in line with the provisions of the BAI Code. The aim of the question was to determine if such phrases resonate with the viewing and listening public. This issue also featured in the qualitative discussions where parents reinforced the importance of this aspect of the Code.

Each phrase was read out and using a pre-coded scale the respondent was asked whether they remembered seeing or hearing that phrase. The scale used to measure memorability in this case was:

- Definitely remember;
- Fairly sure I remember;
- Fairly sure I don't remember;
- Definitely don't remember.

The three most recognisable phrases are *"should be eaten as part of a healthy diet"*; *"not suitable for children under 'x' years"* and *"batteries sold separately"*. At least seven in ten respondents claim to "definitely" remember each one. Unsurprisingly, recognition increases even further among those with children in the home. These levels of recognition suggest that the current regulations in terms of providing a warning message are effective.

Recognition Of Phrases/Taglines



Q.6 In terms of the following scale, how recognisable or not are the following phrases from advertising campaigns which I will read out to you.
Base: All Adults 15+: 1,001

While the final four phrases do not resonate to quite the same extent, nonetheless significant proportions claim to remember and when "definitely" and "fairly sure" are added together, the impact is evident.

Recognition of Phrases

		All with Children in Home			
<i>"Definitely Remember"</i>	All 15+ (1,001)	Any Children <18 (330)	Children <10 yrs (213)	Children 11-14 yrs (124)	Children 15-17 yrs (89)
	%	%	%	%	%
Should be eaten as part of healthy diet	75	76	77	78	72
Not suitable for children under "x" years	71	76	75	80	78
Batteries sold separately	70	77	77	78	73
Should be eaten in moderation	56	58	59	60	52
Snacking on sugary foods/drinks can damage teeth	52	50	48	61	54
Some assembly required	49	52	55	56	44
Product shown not actual size	45	50	53	52	47

Q.6 In terms of the following scale, how recognisable or not are the following phrases from advertising campaigns which I will read out to you.
Base: All Adults 15+: 1,001

See APPENDIX for full range of answers to spontaneous response questions.

6 APPENDIX A – TABULAR CODED DATA – “OTHER MENTIONS”

CHILDREN'S COMMERCIAL MESSAGES PREFER NOT TO SEE OR HEAR						
All Respondents						
		Children in Household		All with Children in Home		
	Total	Any <18	None <18	Children <10 yrs	Children 11-14 yrs	Children 15-17 yrs
Total	1,001	330	671	213	124	89
Adult phone or chat services	5%	6%	4%	6%	8%	3%
Alcohol	10%	11%	10%	11%	9%	10%
Children's toys	9%	13%	7%	16%	9%	6%
Product placement in television programmes	1%	1%	1%	1%	2%	1%
Computer games aimed at older children / over 18s	4%	6%	3%	5%	9%	8%
Movies aimed at older children / over 18's	4%	5%	3%	5%	7%	8%
Convenience prepared meals and snacks - bought at grocery shop/supermarkets	1%	0%	1%	0%	1%	2%
Sweets and chocolate	11%	11%	11%	13%	9%	6%
Crisps or similar snacks	5%	5%	5%	5%	4%	3%
Sugary Cereals	4%	4%	4%	4%	2%	5%
Fast food / take-aways	13%	13%	13%	15%	10%	10%
Medicines available without prescription	0%	1%	0%	1%	1%	3%
National Lottery / Lotto	0%	1%	0%	0%	1%	2%
Fizzy/soft drinks	8%	6%	8%	7%	5%	2%
Safety campaigns example drink driving	2%	2%	2%	2%	2%	1%
Slimming products and services	2%	2%	2%	2%	1%	4%
Betting/gambling services	4%	5%	4%	5%	5%	3%
Violence	7%	6%	7%	6%	7%	6%
Adult themes/Sexual Content	4%	5%	3%	6%	4%	4%
Cigarettes/ Vaping	3%	4%	3%	4%	4%	4%
Body Image Issues	2%	1%	2%	2%	1%	0%
Junk Food/ Unhealthy Food (Unspecified)	1%	1%	1%	0%	0%	2%
Drugs	1%	1%	1%	1%	0%	2%
Political Messages	1%	1%	1%	1%	1%	0%
All advertising/ Advertising aimed at children	1%	2%	1%	2%	2%	0%
Teleshopping	1%	1%	1%	1%	1%	1%
Bad language/ Swearing	1%	1%	1%	1%	1%	2%
Financial / lending	1%	1%	1%	1%	1%	1%
Technology/ Gadgets	1%	2%	1%	2%	2%	1%
Clothes/ Fashion/ Beauty Products	1%	2%	1%	1%	2%	2%
Seasonal / Christmas Ads	1%	1%	1%	0%	0%	2%
Charity ads	0%	0%	0%	0%	1%	1%
Holiday ads	0%	0%	0%	1%	0%	0%
False/Misleading ads	0%	0%	1%	0%	1%	1%
Ads promoting consumerism	0%	0%	1%	0%	1%	1%
Celebrity endorsement	1%	1%	0%	0%	1%	0%
Female hygiene products	1%	0%	1%	0%	0%	0%
Gender stereotypes	1%	0%	1%	1%	0%	0%
Other	3%	2%	3%	2%	3%	1%
None	21%	25%	20%	19%	32%	35%
Don't know/can't recall	21%	20%	22%	19%	20%	26%

COMMERCIAL MESSAGES WHICH SHOULD HAVE SOME RESTRICTIONS						
All who said should have some restrictions / rules in place						
		Children in Household		All with Children in Home		
	Total	Any <18	None <18	Children <10 yrs	Children 11-14 yrs	Children 15-17 yrs
Total	777	267	510	174	103	72
Adult phone or chat services	6%	7%	5%	8%	8%	8%
Alcohol	24%	27%	23%	27%	35%	30%
Children's toys	5%	6%	5%	8%	3%	5%
Product placement in television programmes	2%	1%	2%	2%	0%	0%
Computer games aimed at older children / over 18s	6%	7%	5%	5%	7%	7%
Movies aimed at older children / over 18's	4%	6%	3%	6%	3%	10%
Convenience prepared meals and snacks - bought at grocery shop/supermarkets	0%	0%	1%	0%	1%	1%
Sweets and chocolate	11%	13%	10%	13%	7%	13%
Crisps or similar snacks	4%	5%	4%	5%	3%	5%
Sugary Cereals	5%	4%	5%	5%	2%	4%
Fast food / take-aways	13%	13%	13%	15%	9%	10%
Medicines available without prescription	1%	2%	0%	2%	3%	0%
National Lottery / Lotto	1%	1%	0%	1%	1%	0%
Fizzy/soft drinks	9%	8%	9%	7%	4%	9%
Safety campaigns example drink driving	2%	1%	3%	2%	2%	0%
Slimming products and services	2%	2%	2%	2%	2%	3%
Betting/gambling services	6%	7%	6%	7%	10%	5%
Violence	5%	6%	4%	6%	6%	7%
Adult themes/Sexual Content	4%	4%	4%	4%	4%	2%
Cigarettes/ Vaping	5%	5%	6%	4%	7%	6%
Body Image Issues	1%	2%	1%	2%	1%	0%
Junk Food/ Unhealthy Food (Unspecified)	2%	2%	1%	3%	1%	2%
Drugs	2%	2%	2%	0%	4%	4%
Political Messages	0%	0%	0%	0%	1%	2%
All advertising/ Advertising aimed at children	2%	2%	2%	3%	1%	2%
Teleshopping	2%	1%	3%	1%	0%	0%
Bad language/ Swearing	3%	3%	2%	4%	3%	1%
Financial / lending	1%	0%	1%	0%	1%	0%
Technology/ Gadgets	2%	2%	2%	3%	1%	0%
Clothes/ Fashion/ Beauty Products	2%	1%	2%	1%	2%	2%
Seasonal / Christmas Ads	1%	0%	1%	0%	0%	0%
Charity ads	0%	0%	0%	1%	1%	0%
Holiday ads	0%	0%	0%	0%	0%	0%
False/Misleading ads	1%	0%	1%	0%	0%	2%
Ads promoting consumerism	0%	0%	0%	0%	0%	0%
Celebrity endorsement	0%	0%	0%	0%	0%	0%
Female hygiene products	0%	0%	0%	0%	0%	0%
Gender stereotypes	0%	0%	0%	1%	0%	0%
Other	5%	4%	5%	4%	5%	2%
None	6%	4%	7%	1%	6%	10%
Don't know/can't recall	23%	24%	23%	23%	22%	23%

COMMERCIAL MESSAGES WHICH SHOULD NOT BE SHOWN AT ALL						
All who said should not be shown or played at all						
		Children in Household		All with Children in Home		
	Total	Any <18	None <18	Children <10 yrs	Children 11-14 yrs	Children 15-17 yrs
Total	163	50	114	34 *	14 *	11 *
Adult phone or chat services	5%	7%	4%	7%	13%	9%
Alcohol	17%	27%	13%	22%	46%	44%
Children's toys	10%	15%	8%	16%	14%	8%
Product placement in television programmes	3%	4%	2%	3%	6%	8%
Computer games aimed at older children / over 18s	5%	5%	5%	4%	11%	8%
Movies aimed at older children / over 18's	1%	2%	1%	0%	6%	8%
Convenience prepared meals and snacks - bought at grocery shop/supermarkets	1%	2%	1%	0%	6%	8%
Sweets and chocolate	16%	16%	16%	7%	27%	27%
Crisps or similar snacks	10%	13%	9%	8%	27%	8%
Sugary Cereals	9%	11%	9%	8%	16%	20%
Fast food / take-aways	18%	18%	18%	10%	24%	35%
Medicines available without prescription	1%	3%	0%	0%	11%	14%
Fizzy/soft drinks	15%	14%	16%	10%	11%	27%
Slimming products and services	2%	2%	2%	0%	6%	8%
Betting/gambling services	5%	8%	3%	12%	6%	0%
Violence	6%	3%	7%	0%	12%	0%
Adult themes/Sexual Content	8%	7%	9%	4%	5%	20%
Cigarettes/ Vaping	4%	5%	3%	4%	7%	9%
Body Image Issues	2%	3%	1%	4%	0%	0%
Junk Food/ Unhealthy Food (Unspecified)	3%	9%	1%	9%	0%	13%
Drugs	1%	0%	1%	0%	0%	0%
All advertising/ Advertising aimed at children	9%	7%	9%	10%	0%	0%
Teleshopping	1%	0%	1%	0%	0%	0%
Bad language/ Swearing	2%	0%	3%	0%	0%	0%
Financial / lending	2%	2%	2%	0%	5%	0%
Technology/ Gadgets	0%	0%	1%	0%	0%	0%
Clothes/ Fashion/ Beauty Products	1%	0%	1%	0%	0%	0%
Seasonal / Christmas Ads	1%	0%	1%	0%	0%	0%
False/Misleading ads	0%	2%	0%	2%	0%	0%
Ads promoting consumerism	1%	3%	1%	4%	0%	0%
Celebrity endorsement	1%	2%	0%	0%	8%	0%
Female Hygiene products	1%	0%	2%	0%	0%	0%
Other	8%	13%	7%	6%	27%	19%
None	10%	12%	9%	18%	9%	11%
Don't know/can't recall	17%	11%	20%	16%	0%	0%

**Caution: Small sample size*

INFLUENCES ON CHILDREN'S DIET AND HEALTH						
All Respondents						
		Children in Household		All with Children in Home		
	Total	Any <18	None <18	Children <10 yrs	Children 11-14 yrs	Children 15-17 yrs
Total	1001	330	671	213	124	89
Family attitudes and behaviour / home environment	50%	60%	45%	64%	59%	57%
Lack of exercise / inactivity	4%	4%	3%	4%	6%	3%
School environment	13%	15%	12%	14%	17%	17%
Peer group / attitudes and behaviour of other children	20%	21%	20%	23%	24%	25%
Advertising generally	34%	31%	36%	30%	31%	31%
Availability / low cost of fast food	5%	4%	5%	3%	4%	8%
Availability / low cost of convenience food from supermarkets	3%	2%	3%	1%	3%	0%
Food drink seen / available in the shops	5%	4%	5%	3%	3%	4%
Characters seen in TV programmes cinema videogames or online	13%	15%	12%	15%	15%	15%
Behaviour of film music sporting online or other well-known public personalities	4%	6%	4%	5%	6%	9%
Eating too much	0%	0%	0%	0%	0%	0%
Poor diet	4%	3%	4%	4%	2%	3%
Availability of large/king size portions and packs	0%	0%	1%	0%	1%	0%
Social Media	3%	2%	4%	2%	4%	1%
Income/ Economic Factors/Social status	2%	3%	2%	3%	2%	4%
Television	2%	1%	3%	1%	2%	2%
Internet/On--line/Gaming	2%	2%	2%	1%	3%	3%
Sports/Access to clubs/spaces	1%	1%	1%	1%	2%	1%
Magazines	1%	0%	1%	0%	0%	0%
Media (Unspecified)	1%	1%	1%	0%	1%	2%
Education / Awareness	1%	1%	1%	1%	1%	1%
Sugar Content	1%	1%	1%	0%	1%	0%
Healthy eating/availability of healthy options/quality	1%	2%	1%	1%	1%	3%
NET Media	8%	6%	9%	4%	8%	8%
Other	4%	4%	4%	5%	4%	3%
None	1%	1%	1%	2%	1%	1%
Don't know/can't recall	9%	4%	11%	4%	3%	4%

7 APPENDIX B – QUALITATIVE DISCUSSION GUIDES

Discussion Guide (Parents) – BAI Children’s Commercial Communications Code

1.0 Introduction (5 Minutes)

Introduce Ipsos MRBI, the overall aim of the research, how the session will run, confidentiality, reassurance, explanation of taping.

- No right or wrong answers.
- Researchers have no vested interest in the outcome of the research.
- Mobiles off.
- Reassure respondents of adherence to MRS code of conduct, GDPR, and confidentiality of individual responses.
- Explain viewing facility.
- Explain nature of research – one element of a comprehensive review of the current state of regulation in relation to advertising to children on Irish TV/Radio channels. Other elements include advertisers, interest groups, broadcasters and other stakeholders.
 - Respondent introduction. Name.
 - Family status.
 - Occupation.
 - Most recent advertising/sponsorship that they can recall on Irish TV
 - What was the brand?
 - Features that made it memorable?
- Please note: For these groups, all parents have been provided with copies of the code. They all will have read the code and made comments and notes on their relevant thoughts.

2.0 Viewing habits of children (10 Minutes)

- How have your children’s viewing habits changed from early ages (2+ years of age) to teenage years?
 - Spontaneous and then probe...
 - How have your viewing habits as a family changed?
 - Are your children watching TV more on their own since they were younger?
 - Do they have their own TV set e.g. in their room/ access to their own viewing time on TV in the home?
- Are they watching TV (scheduled, recorded, on-demand)? Do they listen to the radio?
 - What programmes do they watch?
 - What channels do they watch? What stations do they listen to?
 - Is this children’s programming, family programming (6-9pm) or adult programming (after 9pm) that is of interest to children?
 - Probe types of programmes.

3.0 Overall Responses to the Children's Commercial Code (10 Minutes)

- Clarifying the scope of the discussion i.e.
 - Advertising, sponsorship and product placement associated with
 - A. Advertising during and between children's programming
 - B. Advertising during family or adult programmes for a product or service that is of particular interest to children.
 - It is only associated with advertising broadcast during programmes carried by Irish broadcasters.
 - It does not include non-Irish broadcasters on TV/radio, on-demand services or on the Internet.
- What types advertising have your children seen during children's programmes / family programmes (family programmes e.g. those broadcasted weekdays from 6pm to 9pm)/Adult programmes?
 - Record and probe examples.
- Do any of these types of advertising give you cause for concern?
 - Record and probe responses
 - What type of programmes were they broadcast during? Children/Family/Adult?
 - Why are these particular adverts a concern?
 - A concern for children of all ages or particular ages?
 - Do you think adverts seen by children watching children's programming should be regulated differently to adverts seen by children during family programming and adult programming?
You have all had time to review the Children's Commercial code. Firstly, I'd like to get your perspectives on the code.
- What positive observations did you make about the code?
 - Record and probe for understanding
- Were there any negatives/concerns about aspects of the code or perceived gaps in the code from your perspectives?
 - Record and probe for understanding
- Are there any specific areas that you believe need to be improved?
 - *Care being taken to air but not dwell on issues such as extending the code to all broadcasters / including social media/video on the web.*
- Considering the scope of the code (Ref: A & B), where does parental responsibility fall in relation to children seeing advertising that is potentially detrimental to children?
- Were you aware of the code prior to this research taking place?
- Having discussed the code at an overall level, do you think that the code is still necessary and relevant going forward?

4.0 Specifics of the Children's Code (65 Minutes)

We are now going to work through the specifics of the code.

- Looking at the initial focus of the code:-
 - Objectives
 - Definitions
 - Scheduling
 - Compliance and assessment
 - Social Values
 - Inexperience and Credulity
 - Are the elements?
 - Transparent?
 - Clear?
 - Comprehensive?
 - Beneficial for the code?
 - Sufficient?
 - Alleviate concerns?
 - Are there gaps?
 - Looking at the definition of children – there are currently 3 sub-categories - under 6, under 15 and under 18 (with one HFSS rule applying to Under 13)
 - Are the categories
 - Necessary?
 - Sufficient?
 - Worthwhile.
 - Thoughts if there were a simplified sub-categorisation e.g. under / over a specific age?
 - Thoughts on what age that might be if it were introduced?
- Looking at the next sections of the code:
 - Factual presentation
 - Price of Product/Service
 - Undue pressure
 - Special protection or children
 - Children Endorsing Products and Services
 - Sexualisation of children
 - Privacy and provision of information
 - Adults pretending to be children
 - General Safety
 - Are the elements?
 - Transparent?
 - Clear?
 - Comprehensive?
 - Beneficial for the code?
 - Sufficient?
 - Alleviate concerns?
 - Are there gaps?

- Looking at the final sections of the code:
 - Behaviour
 - Violence
 - Diet & Nutrition
 - Parental Responsibility
 - Programme characters
 - Sponsorship and product placement
 - Prohibitions and restrictions
 - Are the elements?
 - Transparent?
 - Clear?
 - Comprehensive?
 - Beneficial for the code?
 - Sufficient?
 - Alleviate concerns?
 - Are there gaps?

5.0 Conclusion

- Summary & concluding remarks

Thank and close

Discussion Guide (Children 14-17 years of age) – BAI Children's Commercial Communications Code

1.0 Introduction (5 Minutes)

Introduce Ipsos MRBI, the overall aim of the research, how the session will run, confidentiality, reassurance, explanation of taping. Please note: The introduction tailored to younger audiences.

- No right or wrong answers.
- Researchers have no vested interest in the outcome of the research.
- Mobiles off.
- Reassure respondents of adherence to MRS code of conduct, GDPR, and confidentiality of individual responses.
- Explain viewing facility.
- Explain nature of research – exploring the world of advertising directed towards young people on TV and Radio.
- Respondent introduction.
 - Name.
 - Year in school
 - Favourite pastime
 - Favourite TV programme

2.0 Viewing habits of children (10 Minutes)

- When do you watch TV?
 - What occasions?
 - Check for times of days/ days of the week? Who with?
 - Probe for viewing with younger siblings.
- What channels do you watch?
 - Probe for Irish vs. International broadcasters.
- What programmes do you watch?
 - Do you watch scheduled TV, recorded or on-demand programmes?
 - Is this programming for individuals Under 18 years of age, family programming (6-9pm) or adult programming (post 9pm) that is most relevant to you.
- An advert they have seen recently that they liked on TV?
 - What was it about it that you liked?
- In general, what types of advertising are you aware of on TV?
 - What products?
 - What services?
 - What brands?
 - Are these adverts that you think of for products for people your age vs. products for older people/everyone?
 - When do you see these adverts during programming for individuals under 18 years of age, family programming (6-9pm) or adult programming (post 9pm)?
- What do adverts try to do to the people who watch them?

- Have you ever seen an advert that you didn't like?
 - If yes, probe reasons for not liking it (will examine the extent to which any of these reasons have relevance to the code).
- Have you seen adverts that you younger siblings have seen that you thought weren't suitable for them? Probe.
- Beyond watching TV, have you seen advertising on other platforms that you didn't think was suitable for your age group? Probe where they saw it and what the issue was.

3.0 Responses to the Children's Commercial Code (45 Minutes)

Discussion with the aid of either the full commercial code or a shortened version if available.

- Explaining the remainder of the discussion. We are going to take a look at a series of rules focused on...
 - Advertising, sponsorship and product placement associated with
 - C. Advertising during and between programming for those under 18
 - D. Advertising during family or adult programmes for a product or service that is of particular interest to those under 18.
 - It is only associated with advertising broadcast during programmes carried by Irish broadcasters.
 - It does not include non-Irish broadcasters on TV/radio, on-demand services or on the Internet.
- We'd now like you to read through this document, spend 10 minutes reading through it and mark anything that interests you in the code.
 - Mark it
 - If you think it is interesting or important
 - If you are not sure what the document is saying.
- Looking at a summary of the code
 - **General guidelines**
 - **Ads should not make anyone under 18 years of age have negative feelings about themselves or others**
 - **Ads should not promote an unhealthy diet or lifestyle**
 - **Prohibited Ads**
 - **Ads should be clear and truthful**
 - Are the elements?
 - Transparent?
 - Relevant for individuals under 18 like you?
 - Comprehensive?
 - Beneficial for the code?
 - Sufficient?
 - Alleviate concerns?
 - Looking at the definition of those U18 – there are currently 3 sub-categories - under 6, under 13 and under 15 (and U18)?
 - Are the categories
 - Necessary?
 - Sufficient?
 - Worthwhile.
 - Thoughts if there were a simplified sub-categorisation e.g. under / over a specific age?
 - Thoughts on what age that might be if it were introduced?

- Do you think adverts seen by those under 18 watching programming for under 18s should be regulated differently to adverts seen by those under 18 during family programming and adult programming?

5.0 Conclusion .

- Do you think that the code still has relevance for individuals under 18?
 - Probe reasons.
- Is there anything missing from the code that is important?
 - Probe what that might be and why it is important.
- Summary & concluding remarks

Thank and close

8 APPENDIX C – OMNIPOLL QUANTITATIVE QUESTIONNAIRE

BAI CCCC Review-Omnipoll Questionnaire

ASK ALL WHO HAVE CHILDREN UNDER 18 LIVING AT HOME:
SCRIPTOR: PLACE AFTER CHILDREN IN HOUSEHOLD QUESTION

Q.C Are there children/young adults aged

INTERVIEWER: READ OUT. MULTI CODE.

2 years or under	1
Between 3 and 5 years.....	2
Between 6 and 10 years.....	3
Between 11 and 14 years.....	4
Between 15 and 17 years.....	5

ASK ALL

Q.1 What, if anything, do you think influences children's diet and health?

INTERVIEWER: DO NOT READ OUT. CODE TO PRECODES. PROBE: ANYTHING ELSE. MULTI CODE.

Family attitudes and behaviour / home environment	1
Lack of exercise / inactivity	2
School environment.....	3
Peer group / attitudes and behaviour of other children	4
Advertising generally	5
Availability / low cost of fast food	6
Availability/ low cost of convenience food from supermarkets	7
Food, drink seen / available in the shops	8
Characters seen in TV programmes, cinema, videogames or online	9
Behaviour of film, music, sporting, online or other well known public personalities	10
Eating too much.....	11
Poor diet	12
Availability of large/king size portions and packs	13
Other (please specify)	14
None.....	15 (DNRO)
Don't know.....	16 (DNRO)

ASK ALL

Moving on to the topic of commercial messages which includes advertising, sponsorship, competitions, product placement and teleshopping on TV and radio.

- Q.2** Thinking of the commercial messages that you believe children see on television or hear on radio, what kinds of things, if any, would you rather they didn't see or hear about, in these commercial messages?

INTERVIEWER: DO NOT READ OUT. CODE TO PRECODES. PROBE FULLY – ANY OTHER? MULTI CODE.

Adult phone or chat services	1
Alcohol	2
Children's toys	3
Product placement in television programmes	4
Computer games aimed at older children / over 18's.....	5
Movies aimed at older children / over 18's.....	6
Convenience prepared meals and snacks - bought at grocery shop/supermarkets	7
Sweets and chocolate	8
Crisps or similar snacks	9
Sugary Cereals	10
Fast food / take-aways	11
Medicines available without prescription.....	12
National Lottery / Lotto	13
Fizzy/soft drinks	14
Safety campaigns, example drink driving	15
Slimming products and services.....	16
Betting/gambling services.....	17
Other (please specify).....	18
None.....	19 (DNRO)
Don't know.....	20 (DNRO)

ASK ALL

- Q.3** In general, when thinking about commercial messages that are likely to be seen or heard by children, which of the following best matches your own opinion?

INTERVIEWER: READ OUT. SINGLE CODE.

SCRIPTOR: FLIP SCALE

Commercial messages likely to be seen or heard by children ...

Should be allowed without any restrictions or rules	1
Should have some restrictions / rules in place	2 (GO TO Q.4)
Should not be shown or played at all	3 (GO TO Q.5)
Don't know.....	6 (DNRO)

ASK ALL CODE 2 @ Q.3

Q.4 What kinds of things shown or heard in commercial messages would you say should have some restrictions or rules applied. Remember, commercial messages include advertising, sponsorship, competitions, product placement and teleshopping.

INTERVIEWER: DO NOT READ OUT. CODE TO PRECODES. PROBE FULLY – ANY OTHER? MULTI CODE.

Adult phone or chat services	1
Alcohol	2
Children's toys	3
Product placement in television programmes	4
Computer games aimed at older children / over 18's.....	5
Movies aimed at older children / over 18's.....	6
Convenience prepared meals and snacks - bought at grocery shop/supermarkets	7
Sweets and chocolate	8
Crisps or similar snacks	9
Sugary Cereals	10
Fast food / take-aways	11
Medicines available without prescription.....	12
National Lottery / Lotto	13
Fizzy/soft drinks	14
Safety campaigns, example drink driving	15
Slimming products and services.....	16
Betting/gambling services.....	17
Other (please specify).....	18
None.....	19 (DNRO)
Don't know.....	20 (DNRO)

ASK ALL CODE 3 @ Q.3

Q.5 What kinds of things shown or heard in commercial messages, would you say should not be shown or played at all? Remember, commercial messages include advertising, sponsorship, competitions, product placement and teleshopping.

INTERVIEWER: DO NOT READ OUT. CODE TO PRECODES. PROBE FULLY – ANY OTHER? MULTI CODE.

Adult phone or chat services	1
Alcohol	2
Children's toys	3
Product placement in television programmes	4
Computer games aimed at older children / over 18's.....	5
Movies aimed at older children / over 18's.....	6
Convenience prepared meals and snacks - bought at grocery shop/supermarkets	7
Sweets and chocolate	8
Crisps or similar snacks	9
Sugary Cereals	10
Fast food / take-aways	11
Medicines available without prescription.....	12
National Lottery / Lotto	13
Fizzy/soft drinks	14
Safety campaigns, example drink driving	15
Slimming products and services.....	16
Betting/gambling services.....	17
Other (please specify).....	18
None.....	19 (DNRO)
Don't know.....	20 (DNRO)

ASK ALL

Q.6 In terms of the following scale, how recognisable or not are the following phrases from advertising campaigns which I will read out to you.

INTERVIEWER: READ OUT SCALE.

SCRIPTOR: FLIP SCALE. ROTATE LIST. ALLOW DON'T KNOW/NO OPINION

Definitely remember hearing or seeing this phrase

Fairly sure I remember hearing or seeing this phrase.

Fairly sure I don't remember hearing or seeing this phrase

Definitely don't remember hearing or seeing this phrase

Don't know/No opinion (**DNOR**)

INTERVIEWER: READ OUT LIST. SINGLE CODE PER ROW

	Definitely remember	Fairly sure I remember	Fairly sure I don't remember	Definitely don't remember	Don't know /no opinion
"...batteries sold separately	4	3	2	1	0
"...should be eaten in moderation"	4	3	2	1	0
"...snacking on sugary foods and drinks can damage teeth"	4	3	2	1	0
"...some assembly required"	4	3	2	1	0
"...should be eaten as part of a healthy diet"	4	3	2	1	0
"...product shown not actual size"	4	3	2	1	0
"...not suitable for children under "x" years of age	4	3	2	1	0



Appendix 5 – Advertising Trends Report

BAI Review
Children's Commercial Communications Code
Report on Advertising Trends
2011-2019

July 2020

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Executive Summary

This report looks at viewing trends as they relate to children aged 4-17. In particular, the report considers the amount of television viewed by children in terms of: -

- The minutes watched per day;
- The dayparts where viewing took place. In this report, the following dayparts are used: Mon-Sun 03:00-26:59 / 06:00 - 17:59/18:00 - 20:59/ 21:00 - 23:29;
- Viewing by different age groups. Namely, 4-5 year olds, 5-6 year olds, 4-14 year olds and 4-17 year olds;
- The channels viewed, including Irish Channels and Total TV;
- Data concerning advertising of foods that are High in Fat, Salt and Sugar (HFSS) including, information about the number of advertising spots broadcast and exposure of children to this type of advertising in terms of Irish Channels, Total TV and channels originating in the UK but carrying specific advertising feeds to the Republic of Ireland (commonly referred to as 'opt-out' channels). The report also includes information on HFSS advertising trends as they relate to RTÉ channels and Virgin Media Ireland channels as these Irish channels have the highest viewership amongst children.

The findings of the report can be summarised as follows: -

- When comparing 2016 to 2019, there has been a decline in food advertising spend overall in Ireland, with declines in spend in Press, Digital and TV. There was growth in advertising spend for food advertising in Outdoor and Radio. Notwithstanding the decline in TV spend, it remains the most popular medium for food advertising with Outdoor advertising a close second.
- In terms of specific categories of food, the top food categories in terms of Irish television advertising spending are Chain Restaurants, Confectionary & Snacks, Soft Drinks, Prepared & Convenience Foods, Dairy Products & Substitutes.
- Over the 2011-2019 period, there was an overall drop in average daily minutes of television viewing for all individuals, including in the case of children across a range of ages (4-5 year olds, 4-6 year olds and 4-14 year olds). Looking at children's watching, the average daily minutes was highest amongst those aged 4-5 & 4-6.
- While average daily viewing minutes has declined, the share of viewing of Irish channels that are watched by children aged 4-17 has remained relatively stable across the 2011-2019 period. However, a consistent and significant amount of the overall share of viewing of television by 4-17 year olds is to channels located and regulated outside of the Republic of Ireland.
- In terms of the Top TV programmes watched by children, when comparing 2011-2019, we see in the case of the programmes viewed by 4-17 year olds, all of the Top 20 Programmes were broadcast on Irish television services. The top programme in both years was The Late Late Toy Show on RTÉ, which increased its audience between the two years.

- Programmes viewed by 4-17 year olds were a mix of content created by Irish programme makers and content produced by programme makers outside of the State. Family movies, high rating entertainment programmes, soaps, and live sports programming are consistently present in both years, although 2019 saw a significant number of sports programming in the Top 20 list.
- Looking at Audience Profile and absolute numbers viewing to Total TV, the percentage of children making up the audience watching Irish channels and television channels as a whole has declined and has declined across all parts of the day, including the evening and post-watershed periods.
- In line with falls in Children's TV viewing and falls in food TV advertising expenditure, there has been a fall in advertising weight for HFSS food products. On Irish Channels, over the 2011-2019 period there was a fall 60% in advertising exposure (TVRs), the largest fall being on RTÉ TV. When taking into account the Irish Channels and channels originating in the UK carrying specific advertising feeds to the Republic of Ireland, the fall overall was 52% over this period.
- Looking at HFSS advertising on the two largest Irish TV groups, RTÉ and Virgin Media Ireland, the information generated indicates that in terms of food categories, chain restaurants, soft drinks and confectionary are the predominant category of HFSS food advertising viewed by Children aged 4-17 years old in 2019.

1. OVERVIEW

This report looks at viewing trends as they relate to children aged 4-17. In particular, the report considers the amount of television viewed by children in terms of: -

- The minutes watched per day;
- The dayparts where viewing took place. In this report, the following dayparts are used: Mon-Sun 03:00-26:59 / 06:00 - 17:59/18:00 - 20:59/ 21:00 - 23:29;
- Viewing by different age groups. Namely, 4-5 year olds, 5-6 year olds, 4-14 year olds and 4-17 year olds;
- The channels viewed, including Irish Channels and Total TV (Total TV relates to Irish channels', subscribing channels and non-subscribing channels).¹
- Data concerning advertising of foods that are High in Salt, Sugar and Fat (HFSS) including, information about the number of advertising spots broadcast and exposure of children to this type of advertising in terms of Irish Channels, Total TV and channels originating in the UK but carrying specific advertising feeds to the Republic of Ireland. The report also includes data on HFSS advertising trends as they relate to RTÉ channels and Virgin Media Ireland channels as these Irish channels have the highest viewership amongst children.

The information in this report is drawn from the viewing data gathered by TAM Ireland Ltd/Nielsen TAM. This data is based on the television viewing behaviour of a representative sample of 1,000 reporting households, which currently represents approximately 1,680m television households in the Republic of Ireland. The measurement system used to gather data works via a combination of in-home monitoring of TV set usage via electronic meters, together with an Establishment Survey to ensure that the homes being monitored are representative of Irish TV viewing as a whole. The viewing data in this report is based on consolidated data. Consolidated data includes all viewing watched live or within 7 days of original broadcast (168 hours).

Information on the television audience data gathering used by TAM Ireland Ltd/Nielsen TAM can be found on the TAM Ireland website here: - <https://www.tamireland.ie/>. Information on Nielsen can be found here: - <https://www.nielsen.com>. The report was completed with the assistance of Empirica <https://www.empirica.ie>.

The report covers viewing by children aged 4-17 for 2011-2019 period except where stated otherwise. This age group is selected as TAM Ireland Ltd/Nielsen TAM do not collect data on viewing by children younger than 4 years of age. The report does not examine all data gathered but rather highlights key trends of relevance to the review of the BAI's Children's Commercial Communications Code.

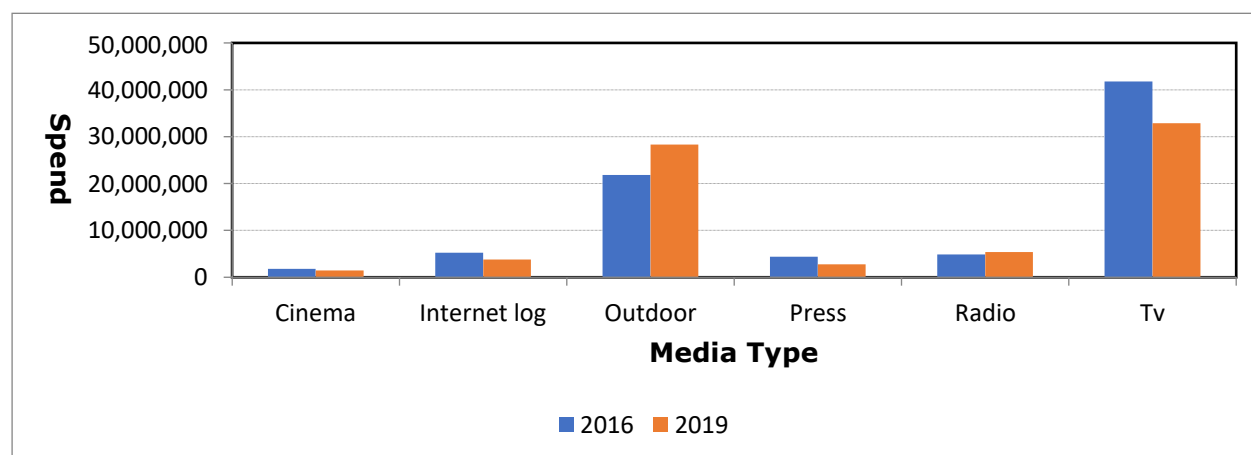
¹ Subscribing channel include those channels for which Nielsen provides individual channel level detail. Primarily, these include channels that carry advertising feeds directly targeting consumers in the Republic of Ireland market. In addition, BBC One and Two are reported at an individual channel level given the high level of viewing to these channels. Non-subscribing channels are measured by Nielsen but are not reported at an individual channel level in the software. Note, non-subscribing channels can include 'Irish channels', e.g. RTÉ News Now.

2. ADVERTISING SPEND TRENDS – FOOD ADVERTISING

This section of the report examines topline trends as they relate to spending on the advertising of food. The table and chart below detail food advertising spending across five different types of media. The data provides a comparison between food advertising spending in 2016 and 2019. As can be seen from the data, food advertising expenditure in Ireland, as measured by TAM Ireland Ltd/Nielsen TAM, is predominantly on TV, followed by Outdoor advertising (posters etc.), Digital ('Internet Log'), Radio, Press and Cinema. Over the period 2016-19 there was a 7% decline in food advertising spend overall, with significant declines in spend in Press and Digital (37% and 27% declines respectively). It is worth noting while TV had the biggest spend, there was an overall decline in spending when comparing 2016 with 2019 (-21%) There was growth in advertising spend for food advertising in certain sectors with a significant growth in Outdoor (30%) and a lesser but still notable degree of growth for Radio (11%) given overall declining spend trends when looking at the comparative years.

TAM Ireland Ltd/Nielsen TAM food advertising spending data for digital does not capture spend for social, classified or search advertising. The advertising spending data also does not include expenditure on sponsorships and events which are playing an increasing role in Marketing Communications (including those with exposure to Children) e.g. Kellogg's sponsorship of the GAA Cúl Camps, Red Bull Cliff Diving, Cadbury's GAA U-21 championship. As such, not all food spending for non-traditional digital mediums is captured in the data reported. However, it does capture key data relevant to this review, namely, spend on media covered by the BAI's code - radio and television.

Food Spend (€) Per Media - 2016/2019 Comparison²



Source: Nielsen Ad Intel - Advertising Spend Service 2019

² Please note, the Advertising Spend figures reported under Nielsen Ad Intel are not actual revenue figures. They are based on Nielsen Media Ireland's coverage and a defined methodology for each Media Type, which is agreed and continually reviewed with key industry stakeholders. The reported spend figures are indicative only but provide valuable insights on Adspend trends over time by Media Type across Categories, Advertisers and Brands.

Food Spend (€) Per Media – 2016/2019 Comparison

	Total	Cinema	Digital* (Display & VOD)	Outdoor	Press	Radio	Tv
Year	Spend	Spend	Spend	Spend	Spend	Spend	Spend
Total	154,325,955	3,184,224	9,004,020	50,135,817	7,122,351	10,220,190	74,659,353
2016	79,775,966	1,758,756	5,210,966	21,811,096	4,367,210	4,845,260	41,782,678
2019	74,549,989	1,425,468	3,793,054	28,324,721	2,755,141	5,374,930	32,876,675
% Change '19 Vs '16	-7%	-19%	-27%	30%	-37%	11%	-21%

Source: Nielsen Ad Intel - Advertising Spend Service 2019

2.1 FOOD ADVERTISING SPENDING BY CATEGORY

Turning to food advertising by category, figures for 2019 indicate the following in terms of television advertising spend data in the Republic of Ireland. This highlights that the top food categories in terms of Irish television advertising are Chain Restaurants, Confectionery & Snacks, Soft Drinks, Prepared & Convenience Foods, Dairy Products & Substitutes.

Food Category Split	Spend (€) 2019
Chain Restaurants	8,212,884
Confectionery & Snacks	7,089,461
Soft Drinks	5,185,276
Prepared & Convenience Foods	4,775,151
Dairy Products & Substitutes	4,059,643
Meat, Fish & Poultry	1,499,588
Cooking Products & Seasoning	1,136,351
Fruit, Vegetables, Pasta	463,414
Bakery Goods	315,172
Food - Sponsorship	139,735
Total	32,876,675

Source: Nielsen Ad Intel - Advertising Spend Service 2019

3. CHILDREN'S TV VIEWING

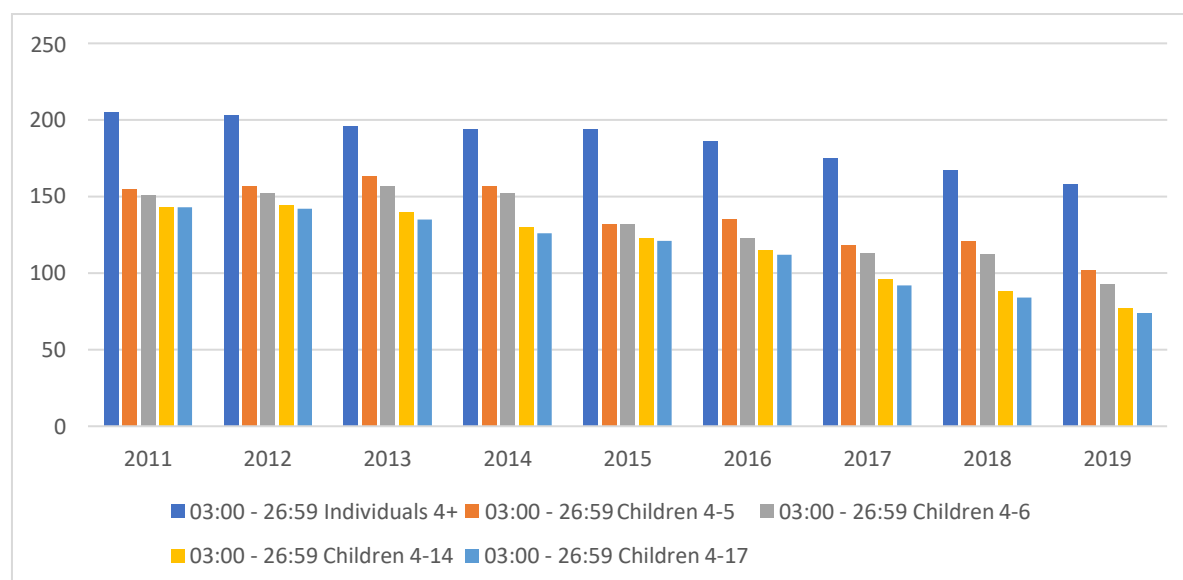
This section examines the amount of television viewed by children aged 4-17 years.

In particular, the data presented relates to the average daily viewing levels for children to both Total TV and Irish Channels (as defined above).

The report also looks at channel audience shares as it relates to 4-17 year olds. The audience share for Irish and other channels is provided. Share is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching television, what proportion are viewing a particular channel (e.g. an Adult Share of 30 for a programme indicates that of all adults who were watching TV at the time, 30% of them watched the programme).

In terms of overall TV viewing for the 2011-2019 period, the data highlights the following in terms of average daily minutes watched per year. This data relates to Total TV and looks at average daily minutes watched by different viewers, including children of different ages.

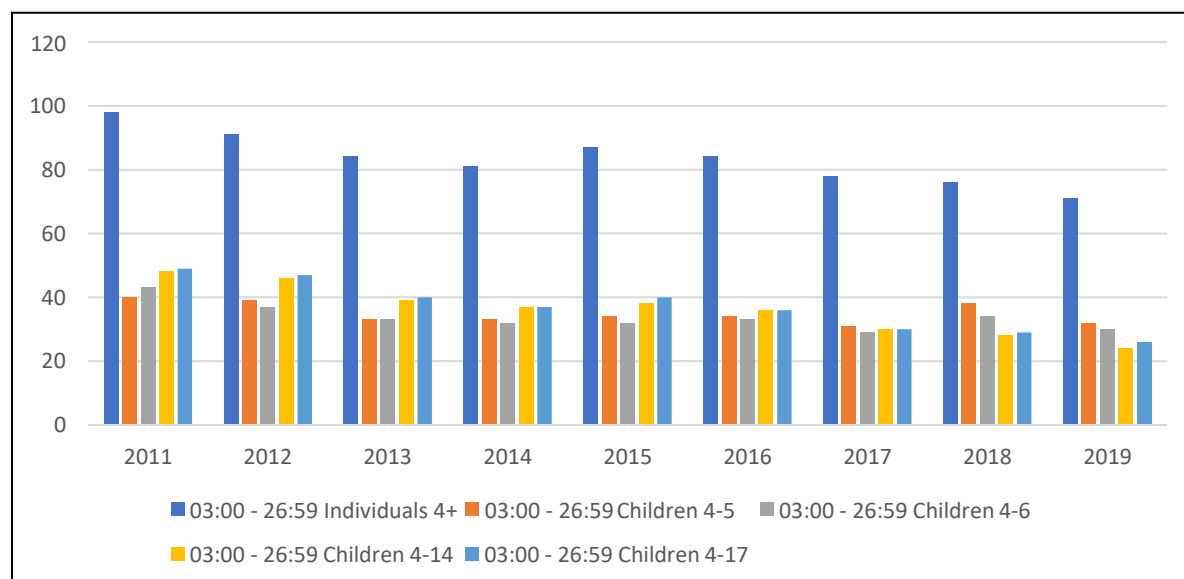
Average Daily Minutes Per Person – Total TV (2011-2019)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Avg Mins/ Person, Total TV, 1st January 2011 - 31st December 2019

Looking specifically at Irish channels, average daily minutes viewing per day per person over the 2011-2019 period highlights the following trends.

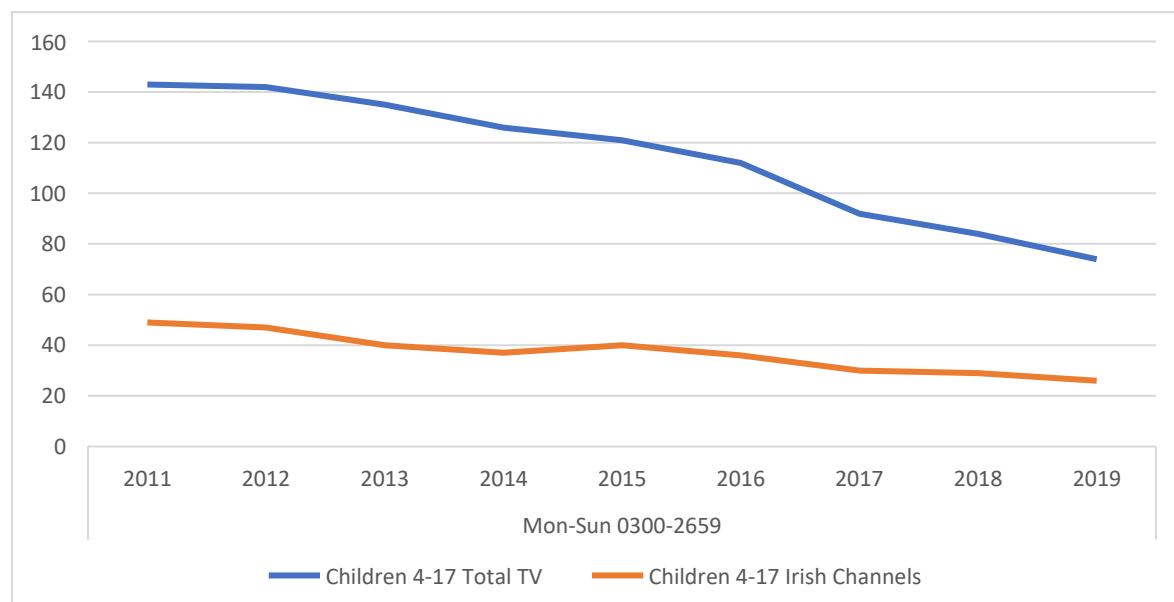
Average Daily Minutes Per Person – Irish Channels (2011-2019)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Avg Mins/ Person, Irish Channels (inc. RTÉ Total, Virgin Media Television, TG4 and eir Sport 1)

Over the 2011-2019 period, children aged between 4-17 years on average watched significantly less TV over this time period, in terms of both Total TV and Irish Channels as shown in the chart below.

Average Daily Minutes Per Person 4-17yrs – Total TV & Irish Channels (2011-2019)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Avg Mins/ Person, Total TV, 1st January 2011 - 31st December 2019

Looking at these trends in more detail, in 2011, children aged 4-17 watched, on average, 143 minutes of TV daily and spent 49 minutes watching Irish Channels daily. By 2019, their overall viewing to TV dropped to 74 minutes per day on average with 26 minutes spent watching Irish Channels. This was in line with an overall decline in television viewing for all individuals both in terms of Irish Channels and Total TV over the 2011-2019 period, including in the case of children across a range of ages (4-5 year olds, 4-6 year olds and 4-14 year olds). Looking at children's watching, the average daily minutes was highest amongst those who are aged 4-5 & 4-6.

Average minutes viewing per day/per person – Total TV & Irish Channels (2011-2019)

National, Consolidated, Av Mins/Pn		Mon-Sun 0300-2659								
		2011	2012	2013	2014	2015	2016	2017	2018	2019
Individuals 4+	Total TV	205	203	196	194	194	186	175	167	158
	Irish Channels	98	91	84	81	87	84	78	76	71
Children 4-5	Total TV	155	157	163	157	132	135	118	121	102
	Irish Channels	40	39	33	33	34	34	31	38	32
Children 4-6	Total TV	151	152	157	152	132	123	113	112	93
	Irish Channels	43	37	33	32	32	33	29	34	30
Children 4-14	Total TV	143	144	140	130	123	115	96	88	77
	Irish Channels	48	46	39	37	38	36	30	28	24
Children 4-17	Total TV	143	142	135	126	121	112	92	84	74
	Irish Channels	49	47	40	37	40	36	30	29	26

Source: TAM Ireland Ltd/ Nielsen TAM. Based on National, Consolidated, Avg Mins/ Person, Total TV, 1st January 2011 - 31st December 2019

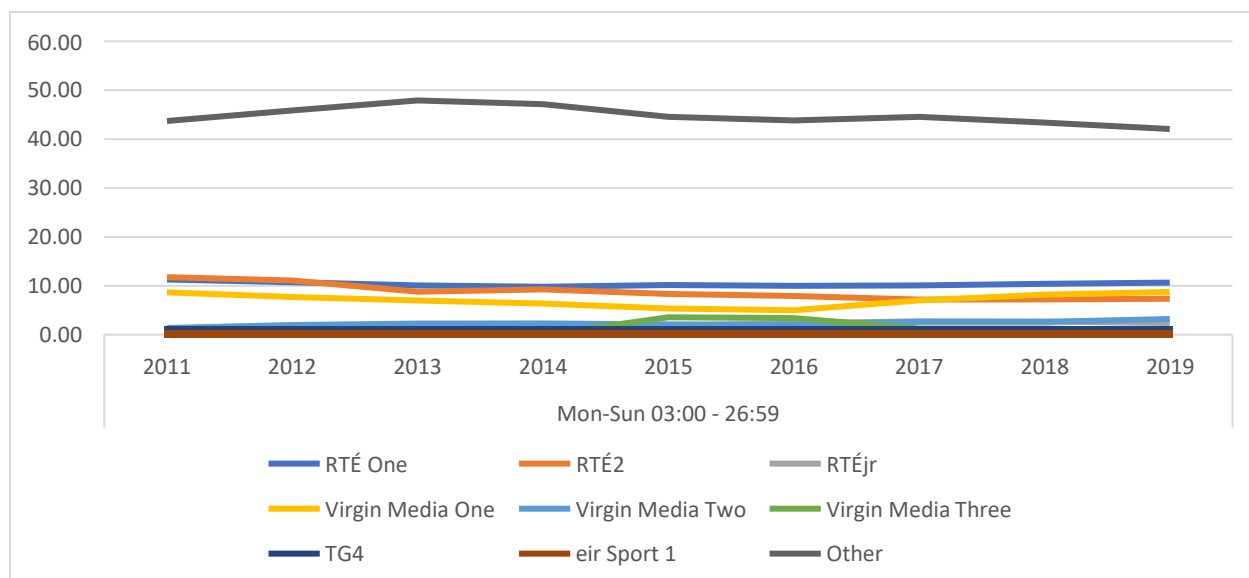
This decline in average minutes viewed is also evident across the important 6pm-9pm time period with average daily viewing of Irish Channels by 4-17 year olds declining from 17 minutes in 2011 to 9 minutes in 2019.

National, Consolidated, Av Mins/Pn		Mon-Sun 18:00-20:59								
		2011	2012	2013	2014	2015	2016	2017	2018	2019
Individuals 4+	Total TV	60	59	58	57	58	55	52	49	46
	Irish Channels	34	32	30	29	31	30	27	26	24
Children 4-5	Total TV	44	44	46	44	38	39	30	34	30
	Irish Channels	14	14	13	13	12	12	9	12	11
Children 4-6	Total TV	43	43	45	43	38	36	31	32	27
	Irish Channels	15	13	13	12	12	12	10	11	10
Children 4-14	Total TV	42	43	42	39	37	35	28	27	23
	Irish Channels	17	17	15	14	14	13	11	10	9
Children 4-17	Total TV	41	42	40	38	36	34	27	25	22
	Irish Channels	17	17	15	14	15	13	11	10	9

Source: TAM Ireland Ltd/ Nielsen TAM. Based on National, Consolidated, Avg Mins/ Person, Total TV, 1st January 2011 - 31st December 2019

Looking now at the audience share for Irish channels amongst 4-17 year olds (including data in respect of share for all other services), we can note that a significant amount of viewing by children is to services regulated outside of the Irish state.

4-17 Yrs: Share of Viewing (%) by Channel based on Total TV



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Share, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1 and 'Other', 1st January 2011 - 31st December 2019

In this regard, the following tables provides further details in terms of the share breakout for Irish Channels and Other channels.

Children 4-17 – Audience Share Data (%) 2011-2019 (All Day)

Children 4-17	Mon-Sun 03:00 - 26:59								
	2011	2012	2013	2014	2015	2016	2017	2018	2019
RTÉ One	11.26	10.70	10.04	9.78	10.15	9.97	10.03	10.36	10.62
RTÉ One + 1	0.00	0.17	0.39	0.41	0.44	0.58	0.64	0.54	0.65
RTÉ2	11.76	11.08	8.81	9.26	8.35	7.92	7.18	7.23	7.37
RTÉ2 + 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10
RTÉjr	0.00	0.00	0.00	0.68	1.83	2.36	2.74	2.69	2.38
Virgin Media One	8.68	7.72	6.99	6.36	5.35	5.02	7.02	8.22	8.74
Virgin Media One +1	0.00	0.00	0.00	0.02	0.23	0.29	0.39	0.26	0.22
Virgin Media Two	1.39	1.99	2.30	2.31	2.11	2.04	2.66	2.66	3.20
Virgin Media Three	0.00	0.00	0.00	0.00	3.55	3.39	1.28	1.28	0.84
TG4	1.13	0.95	0.81	0.78	0.81	0.88	0.93	0.95	1.12
eir Sport 1	0.27	0.22	0.17	0.16	0.18	0.20	0.06	0.08	0.16
Other	43.68	45.86	47.90	47.13	44.55	43.78	44.53	43.35	42.06

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Share, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1 and 'Other', 1st January 2011 - 31st December 2019

Perhaps unsurprisingly, the share of viewing amongst 4-17 year olds to the 'Other' category of television channels is lower during peak time, as demonstrated by the tables below, with viewing shifting to Irish Channels during these time periods.

Children 4-17 – Audience Share Data (%) 2011-2019 (6pm-8.59pm daypart)

Children 4-17	Mon-Sun 18:00 - 20:59								
	2011	2012	2013	2014	2015	2016	2017	2018	2019
RTÉ One	15.44	15.54	14.86	14.69	14.70	13.69	14.62	14.83	15.78
RTÉ One + 1	0.00	0.20	0.54	0.57	0.55	0.71	0.84	0.70	0.77
RTÉ2	9.91	9.51	8.14	9.33	8.36	8.86	7.25	7.50	6.79
RTÉ2 + 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.13
RTÉjr	0.00	0.00	0.00	0.20	0.73	1.07	1.10	1.10	1.04
Virgin Media One	12.61	11.55	10.88	9.71	5.74	5.37	10.39	11.15	9.93
Virgin Media One +1	0.00	0.00	0.00	0.02	0.15	0.22	0.37	0.21	0.21
Virgin Media Two	1.42	2.02	2.30	2.28	2.05	2.36	2.54	2.18	2.74
Virgin Media Three	0.00	0.00	0.00	0.00	6.86	6.33	1.25	1.09	0.81
TG4	0.74	0.70	0.59	0.60	0.63	0.72	0.67	0.76	0.79
eir Sport 1	0.23	0.21	0.18	0.18	0.15	0.21	0.06	0.07	0.14
Other	36.40	38.59	39.57	39.71	38.79	38.24	39.10	38.78	38.50

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Share, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1 and 'Other', 1st January 2011 - 31st December 2019

Children 4-17 – Audience Share Data (%) 2011-2019 (9pm – 11.29pm Daypart)

Children 4-17	Mon-Sun 21:00 - 23:29								
	2011	2012	2013	2014	2015	2016	2017	2018	2019
RTÉ One	18.56	17.72	17.30	17.51	18.33	16.81	16.94	16.90	15.87
RTÉ One + 1	0.00	0.46	1.02	1.17	1.21	1.60	1.75	1.48	1.33
RTÉ2	12.19	12.70	9.15	10.66	8.97	9.66	8.46	8.50	7.89
RTÉ2 + 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.19
RTÉjr	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01
Virgin Media One	13.08	10.52	9.41	9.09	7.51	8.78	10.10	10.46	10.60
Virgin Media One +1	0.00	0.00	0.00	0.04	0.39	0.55	0.76	0.49	0.43
Virgin Media Two	2.22	3.53	4.57	4.72	3.25	2.99	4.01	4.79	6.02
Virgin Media Three	0.00	0.00	0.00	0.00	4.51	4.29	1.95	2.24	1.10
TG4	1.12	1.12	1.04	0.91	0.76	0.90	1.23	1.20	1.27
eir Sport 1	0.26	0.22	0.22	0.24	0.28	0.29	0.08	0.08	0.14
Other	32.56	32.72	35.77	34.26	35.56	33.40	34.45	33.83	33.85

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Share, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1 and 'Other', 1st January 2011 - 31st December 2019

Finally, taking a look at the viewing amongst children to channels originating in the UK but carrying specific advertising feeds to the Republic of Ireland,³ we see that, when combined, these make up a notable amount of viewing by children in terms of channel share. In the data below, these channels are reported under the headings of 'C4 Sales Ireland' and 'Sky MEDIA' as per the reporting software.

C4 Sales Ireland is the advertising sales company for Channel 4, Channel 4 + 1, E4, E4 + 1, More 4, Film 4.

³ Often referred to as 'Opt-out' channels.

Sky MEDIA sells advertising opportunities across Sky One, Sky 2, Sky News, Sky Witness, Sky Atlantic, Sky Comedy, Sky Sports Main Event, Sky Sports Premier League, Sky Sports Football, Sky Sports Golf and Sky Sports News. In addition, Sky Media Ireland sell on behalf of their media partners including: MTV, Comedy Central, Comedy Central Extra, Nickelodeon, Nick Jnr, Nick Jr Too, Nicktoons, E!, Discovery, Discovery ID, Dave, GOLD, Alibi, W, TLC, Pick, Challenge, Really, Drama, CBS Reality, CBS Justice and Food Network. Share of viewing amongst 4-17 year olds to these channels has grown over the 2011-2019 period.

Children 4-17 – Audience Share Data (%) 2011-2019 (03:00 – 26:59 Daypart)

Children 4-17	Mon-Sun 03:00 - 26:59								
	2011	2012	2013	2014	2015	2016	2017	2018	2019
RTÉ Total	23.02	21.94	19.24	20.13	20.77	20.84	20.58	20.82	21.11
Virgin Media Television	10.08	9.70	9.29	8.70	11.24	10.74	11.35	12.42	13.01
TG4	1.13	0.95	0.81	0.78	0.81	0.88	0.93	0.95	1.12
eir Sport 1	0.27	0.22	0.17	0.16	0.18	0.20	0.06	0.08	0.16
C4 Sales Ireland	1.32	1.41	1.49	2.25	2.46	2.66	3.07	3.30	3.39
Sky MEDIA	12.88	13.13	15.15	15.91	16.51	17.51	16.90	16.22	15.71
BBC Total	4.25	3.69	2.93	2.96	2.93	2.90	2.37	2.85	3.44
Other	43.68	45.86	47.90	47.13	44.55	43.78	44.53	43.35	42.06

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Share, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1, C4 Sales Ireland, Sky Media, BBC Total and 'Other', 1st January 2011 - 31st December 2019

3.1 TOP PROGRAMMES 2011/2019 – 4-17 YEAR OLDS

In terms of the most watched programmes amongst 4-17 year olds, the data highlights the following in terms of the Top 20 programmes with a comparison between 2011 with 2019. The programme name, channel, date, TVR and average audience⁴ for the programme are provided.

Top Programmes 2011 – 4-17yrs⁵

Looking at the Top 20 programmes in 2011 for the 4-17 yrs audience, unsurprisingly The Late Late Toy Show leads the way with an average of 387,000 children aged 4-17 watching the programme (out of a total of just over 1.5m viewers). The other top programmes feature family movies but also high rating entertainment programmes such as Eurovision, The X Factor and sport and soaps. Apart from the Toy Show, the other Top programmes have an audience range of 94,000 to 223,000 amongst children aged 4-17.

2011						Children 4-17		Individuals 4+	
Rank	Description	Channel	Date	Time	Dur	(r) TVR	000s	TVR	000s
1	Late Late Show Toy Show, The	RTÉ One	02-12-2011	21:37 - 23:48	132	45.48	387.0	37.33	1528.8
2	Eurovision Song Contest, The	RTÉ One	14-05-2011	20:00 - 23:27	208	25.91	222.9	29.01	1182.7
3	THE X FACTOR: THE RE	Virgin Media One	06-11-2011	19:59 - 20:57	59	18.66	158.8	17.82	729.6
4	Eurovision Song Contest, The	RTÉ2	12-05-2011	20:00 - 22:00	121	18.34	157.8	19.12	779.5

⁴ Average Audience = 000s. The 000s variable refers to: The average target audience who have viewed a programme, day part, spot, minute, etc. expressed in thousands. Average 000s are calculated minute-by-minute across the programme or daypart duration. Source: TAM Ireland, 'Understanding TV Data'.

⁵ The tables below for 2011 and 2019 only includes the best performing episode of each series/ title, not the average performance of a series.

5	Sunday Game Live, The	RTÉ2	18-09-2011	15:28 - 17:53	146	17.80	151.5	26.50	1085.2
6	THE X FACTOR 2011	Virgin Media One	10-12-2011	19:59 - 22:00	122	16.47	140.2	16.32	668.1
7	Mrs Brown's Boys	RTÉ One	31-12-2011	21:59 - 22:31	33	16.20	137.9	19.26	788.8
8	Elf	RTÉ One	17-12-2011	20:00 - 20:19	20	16.11	137.1	14.81	606.7
9	Mrs Brown's Boys Christmas Special	RTÉ One	25-12-2011	22:04 - 22:32	29	15.78	134.3	23.24	951.7
10	Santa Clause, The	RTÉ One	26-11-2011	20:06 - 20:18	13	14.93	127.1	11.33	463.8
11	Ice Age: Dawn Of The Dinosaurs	RTÉ One	12-11-2011	20:03 - 20:13	11	14.48	123.2	10.75	440.2
12	I'M A CELEBRITY...GE	Virgin Media One	13-11-2011	21:02 - 22:30	89	13.34	113.5	12.31	504.0
13	I'M A CELEBRITY GET	Virgin Media One	03-12-2011	21:32 - 22:30	59	13.29	113.1	10.81	442.6
14	Madagascar Escape 2 Africa	RTÉ One	21-05-2011	18:36 - 20:03	88	11.74	101.0	9.66	393.9
15	Santa Clause 3, The: The Escape Clause	RTÉ One	10-12-2011	18:34 - 20:03	90	11.73	99.8	10.49	429.6
16	CORONATION STREET 20	Virgin Media One	06-01-2011	20:30 - 20:57	28	11.66	97.5	15.12	618.1
17	RTÉ News: Nine O'Clock	RTÉ One	02-12-2011	21:03 - 21:29	27	11.45	97.4	18.62	762.7
18	Rugby World Cup 2011 Live	RTÉ2	02-10-2011	08:00 - 10:47	168	11.19	95.2	15.42	631.6
19	RTÉ News Special	RTÉ One	04-12-2011	21:30 - 21:42	13	11.17	95.0	29.43	1205.3
20	School Of Rock	RTÉ One	18-06-2011	20:08 - 20:36	29	10.93	94.0	8.12	331.3

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 1st January - 31st December, Mon-Sun 03:00 - 26:59. Top Programmes based on Children 4-17 (ranked by TVR), All Subscribing Channels, Averaging Option: Any Day, Any Time, Best Episode, Minimum Duration 10 Minutes. Please note, Top Programmes excludes pre and post coverage and trophy lift for live sports.

Top Programmes 2019 – 4-17yrs

In 2019, the average number of 4-17 year olds who watched The Late Late Toy Show grew to 412,000. Sport comprises a large proportion of Top Programmes with 11 programmes in the Top 20. However, a range of other genres again make the list including entertainment programmes, comedy and family movies. The prevalence of sports programming in the Top 20 is a notable difference when compared with Top Programmes for 2011. Apart from the Toy Show, the other Top programmes have an audience range of 77,000 to 158,000 amongst children aged 4-17 - a fall compared to 2011.

2019						Children 4-17		Individuals	
Rank	Description	Channel	Date	Time	Dur	(r)TVR	000s	TVR	000s
1	Late Late Toy Show,	RTÉ One	29-11-2019	21:38 - 24:00	143	43.80	412.2	35.40	1540.7
2	Saturday Game Live - Live Play - AISFFR - Dublin V	RTÉ2	14-09-2019	18:01 - 19:38	98	16.76	157.7	22.77	991.3

3	Sunday Game Live - Live Play - AISFF - Dublin V Kerry	RTÉ2	01-09-2019	15:30 - 17:08	99	15.43	145.2	22.71	988.6
4	Saturday Game Live - Post Match - AISFF - Dublin	RTÉ2	14-09-2019	19:39 - 20:26	48	13.96	131.3	16.71	727.3
5	I'M A CELEBRITY. ..GET	Virgin Media One	17-11-2019	21:01 - 22:43	103	13.30	125.1	16.63	724.1
6	Sunday Game Live - Post Match - AISFF - Dublin V K	RTÉ2	01-09-2019	17:09 - 17:34	26	12.41	116.8	18.34	798.5
7	Rugby World Cup 2019 Live - Live Play - Ireland V	RTÉ2	22-09-2019	08:47 - 10:46	120	11.14	104.8	14.79	643.7
8	6 NAT LIVE IRE V ENG	Virgin Media One	02-02-2019	16:45 - 18:40	116	10.16	94.5	22.62	980.2
9	Home Alone 2: Lost In New York	RTÉ One	25-12-2019	14:54 - 16:45	112	9.43	88.8	9.27	403.4
10	LIVE: TOTT V LIVERP	Virgin Media One	01-06-2019	20:01 - 21:58	118	9.16	85.2	14.61	633.1
11	Ireland's Fittest Family	RTÉ One	15-12-2019	18:31 - 19:55	85	9.07	85.4	9.73	423.5
12	Rugby World Cup 2019 Live - Live Play - New Zealan	RTÉ2	19-10-2019	11:19 - 13:12	114	8.93	84.1	17.60	766.3
13	Sunday Game Live - Live Play - AISHF - Kilkenny V	RTÉ2	18-08-2019	15:30 - 17:01	92	8.86	83.3	19.06	829.5
14	6 NAT LIVE IRE V FRA	Virgin Media One	10-03-2019	14:59 - 16:53	115	8.80	81.8	17.83	772.4
15	Mrs Brown's Boys - A Wonderful Mammy	RTÉ One	25-12-2019	22:01 - 22:37	37	8.70	81.9	14.55	633.4
16	Rugby World Cup 2019 Live - Live Play - Japan V Ir	RTÉ2	28-09-2019	08:17 - 10:10	114	8.50	80.0	14.30	622.6
17	Paddington 2	RTÉ One	25-12-2019	19:03 - 20:41	99	8.46	79.6	7.55	328.6
18	How To Train Your Dragon	RTÉ One	26-01-2019	20:05 - 20:14	10	8.36	77.7	6.36	275.7
19	Beauty And The Beast	RTÉ One	25-12-2019	16:47 - 17:58	72	8.35	78.6	8.05	350.6
20	New Year's Eve Countdown Concert	RTÉ One	31-12-2019	23:50 - 24:24	35	8.20	77.1	11.81	514.0

Source: TAM Ireland Ltd/ Nielsen TAM. Based on National, Consolidated, 1st January - 31st December, Mon-Sun 03:00 - 26:59. Top Programmes based on Children 4-17 (ranked by TVR), All Subscribing Channels, Averaging Option: Any Day, Any Time, Best Episode, Minimum Duration 10 Minutes. Please note, Top Programmes excludes pre and post coverage and trophy lift for live sports

4. AUDIENCE NUMBERS AND AUDIENCE PROFILES

A key aspect of the Children's Commercial Communications Code is the use of Audience Profiles as part of the definition of what constitutes a Children's Programme. This coupled with the criteria as to whether the programme is a children's programme 'as commonly understood' are intended to work together in ensuring that the scope of the rules covers all relevant programmes. The primary purpose for using Audience Profile is to allow broadcasters to use historical viewing data when planning advertising campaigns and it assists them with ensuring planned campaigns comply with the BAI's Code.

When used for the purpose of compliance with the BAI's Code, the Audience Profile relates to the percentage of the overall television audience watching a given programme that consist of those between the ages of 4-17. Where over 50% are aged 4-17, then the programme is a children's programme and is covered by the rules of the Code. Where 50% or less are 4-17 but the programme is self-evidently one targeting children because of its content, then the rules also apply. In practice, programmes with an audience consisting of more than 50% children are also children's programming as commonly understood. It was for this reason that this threshold was selected as suitable for planning.

A criticism levelled against this framework by some stakeholders is that it does not consider the number of children watching a programme. Namely, that programmes which may not specifically target children or where they do not make up the majority of the audience (and which are therefore not covered by the Code) may, nevertheless, still have a significant number of children in the audience. It should be noted that in this circumstance the wide range of rules included in the BAI General Commercial Communications Code will apply, many of which have a focus on the interests of children. Given the above, it is appropriate to review recent data regarding audience profile and number of children watching. This is set out in this section.

4.1 Audience Numbers and Profiles – Total TV and Irish Channels

Looking at Audience Profile and absolute numbers of viewers to Total TV, the following information emerges.

- We see that, across the broadcast day during the 2014-2019 period, the percentage of the Total TV audience that is made up of those aged 4-17 year olds ranges from 14.3% to 10.1%.
- During the daytime period (6am-17:59pm), the percentage ranges from 19% in 2014, to just under 13% in 2019.
- During the evening period (6pm – 8:59), the percentage of the television audience made up of 4-17 year olds ranges from just under 15% in 2014, to 10% in 2019.
- For the post-watershed period (9pm-23:29pm), it ranges from just under 10% in 2014 to just under 8% in 2019.
- By 2019, the average number of 4-17 year olds watching Total TV is 48,000, down from 80,000 in 2014. However, as we have seen above, audience numbers amongst 4-17 year olds can range between 77,000 and 158,000 in the case of most watched programmes for the 2019 period.

These trends are unsurprising given both the decline in overall average daily viewing minutes by children aged 4-17 (as highlighted above), a trend which is more pronounced than overall declines in television watching by those aged 4 and over. Movement to other media platforms is likely also a key factor.

Average Audience Profile (%) and Viewing (000's) – Total TV (2014-2019)

Total TV		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
03:00 - 26:59	2014	558.3	100.0	16.0	2.9	23.2	4.2	66.3	11.9	79.9	14.3
	2015	555.1	100.0	14.1	2.5	20.4	3.7	62.2	11.2	75.9	13.7
	2016	528.7	100.0	12.1	2.3	17.8	3.4	58.5	11.1	70.5	13.3
	2017	510.3	100.0	11.3	2.2	16.7	3.3	49.2	9.6	58.9	11.5
	2018	495.6	100.0	11.9	2.4	15.9	3.2	45.5	9.2	54.2	10.9
	2019	476.4	100.0	10.0	2.1	13.5	2.8	40.1	8.4	48.3	10.1
Total TV		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
06:00 - 17:59	2014	388.7	100.0	18.7	4.8	26.6	6.9	65.6	16.9	75.3	19.4
	2015	390.1	100.0	16.0	4.1	23.0	5.9	61.2	15.7	70.0	18.0
	2016	372.1	100.0	13.5	3.6	19.6	5.3	56.9	15.3	64.9	17.5
	2017	365.0	100.0	13.5	3.7	19.2	5.3	49.7	13.6	56.4	15.4
	2018	362.7	100.0	13.4	3.7	17.5	4.8	44.4	12.2	50.8	14.0
	2019	348.4	100.0	10.8	3.1	14.6	4.2	38.2	11.0	43.9	12.6
Total TV		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
18:00 - 20:59	2014	1315.6	100.0	36.2	2.8	53.0	4.0	159.7	12.1	191.5	14.6
	2015	1318.6	100.0	32.5	2.5	46.9	3.6	149.6	11.3	183.1	13.9
	2016	1260.1	100.0	28.5	2.3	42.1	3.3	143.4	11.4	172.2	13.7
	2017	1206.8	100.0	23.1	1.9	36.6	3.0	116.9	9.7	139.5	11.6
	2018	1163.3	100.0	26.5	2.3	36.1	3.1	110.0	9.5	129.9	11.2
	2019	1119.7	100.0	23.5	2.1	31.3	2.8	97.8	8.7	115.3	10.3
Total TV		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
21:00 - 23:29	2014	1376.2	100.0	16.1	1.2	24.2	1.8	101.8	7.4	134.2	9.8
	2015	1354.2	100.0	15.8	1.2	22.8	1.7	97.1	7.2	133.8	9.9
	2016	1285.9	100.0	13.3	1.0	20.5	1.6	91.1	7.1	122.9	9.6
	2017	1234.3	100.0	10.8	0.9	17.6	1.4	72.7	5.9	98.0	7.9
	2018	1192.6	100.0	13.7	1.2	19.2	1.6	73.0	6.1	94.8	7.9
	2019	1146.6	100.0	13.4	1.2	17.8	1.5	67.6	5.9	88.4	7.7

Source: TAM Ireland Ltd/ Nielsen TAM. Based on National, Consolidated, Share, Mon-Sun 03:00 - 26:59

Turning to the data for Irish Channels, a similar trend is evident, but the downward trend is less pronounced, quite probably due to the greater popularity and relevance of Irish specific content provided by these services.

Average Audience Profile (%) and Viewing (000's) – Irish Channels (2014-2019)

Irish Channels		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
03:00 - 26:59	2014	233.7	100.0	3.4	1.5	4.9	2.1	18.9	8.1	23.8	10.2
	2015	247.2	100.0	3.6	1.5	5.0	2.0	19.4	7.8	25.1	10.1
	2016	238.1	100.0	3.1	1.3	4.8	2.0	18.2	7.7	23.0	9.7
	2017	228.1	100.0	2.9	1.3	4.3	1.9	15.4	6.7	19.4	8.5
	2018	224.8	100.0	3.8	1.7	4.9	2.2	14.5	6.5	18.6	8.3
	2019	213.9	100.0	3.1	1.5	4.3	2.0	12.7	5.9	17.1	8.0
Irish Channels		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
06:00 - 17:59	2014	122.2	100.0	2.5	2.1	3.6	2.9	12.5	10.3	15.0	12.3
	2015	139.2	100.0	3.1	2.2	4.2	3.0	13.8	9.9	16.7	12.0
	2016	136.4	100.0	2.8	2.1	4.2	3.1	12.8	9.4	15.1	11.1
	2017	133.2	100.0	3.3	2.5	4.3	3.3	12.0	9.0	14.2	10.6
	2018	138.7	100.0	3.8	2.7	4.7	3.4	11.3	8.2	13.8	9.9
	2019	132.8	100.0	2.8	2.1	3.9	3.0	10.0	7.5	12.6	9.5
Irish Channels		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
18:00 - 20:59	2014	673.3	100.0	10.5	1.6	15.0	2.2	57.9	8.6	72.0	10.7
	2015	707.9	100.0	10.2	1.4	14.3	2.0	56.8	8.0	73.1	10.3
	2016	673.5	100.0	8.7	1.3	13.5	2.0	54.8	8.1	68.1	10.1
	2017	636.9	100.0	6.8	1.1	11.4	1.8	43.9	6.9	54.5	8.6
	2018	615.2	100.0	9.5	1.5	12.7	2.1	40.7	6.6	51.4	8.4
	2019	586.5	100.0	8.9	1.5	11.9	2.0	35.6	6.1	45.1	7.7
Irish Channels		Individuals 4+		Children 4-5		Children 4-6		Children 4-14		Children 4-17	
		000s	Profile	000s	Profile	000s	Profile	000s	Profile	000s	Profile
21:00 - 23:29	2014	683.1	100.0	6.7	1.0	10.1	1.5	44.7	6.5	59.5	8.7
	2015	684.5	100.0	6.6	1.0	9.2	1.3	43.1	6.3	60.5	8.8
	2016	661.3	100.0	4.9	0.7	8.2	1.2	40.7	6.1	56.4	8.5
	2017	636.5	100.0	3.6	0.6	6.1	1.0	31.7	5.0	44.4	7.0
	2018	617.4	100.0	5.8	0.9	7.6	1.2	31.8	5.1	43.7	7.1
	2019	578.7	100.0	5.4	0.9	7.3	1.3	27.6	4.8	39.6	6.8

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Share, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1', 1st January 2014 - 31st December 2019, Mon-Sun 03:00 - 26:59

5. CHILDREN'S TV VIEWING – HFSS ADVERTISING

This section of the report focuses on viewing by children of adverts for products that are High in Fat, Salt or Sugar (HFSS). The report sets out the dataset used to create the information provided in the report. Namely, the product categories that are used to decide which advertisements are used for the purposes of calculating the HFSS data. Information on the methodology behind the data is provided, Information on the most seen advertisements is presented and detailed information in respect of spots and viewing of HFSS advertising is provided, including in respect of Irish Channels.

5.1 HFSS TV ADVERTISING CATEGORY DATASET

As advertising data available from TAM Ireland Ltd/Nielsen TAM does not categorise advertisements as products/brands that are High in Fat, Salt or Sugar, for the analysis set out in this report we have drawn on proxy categories in order to generate the dataset of products/brands. We have created the dataset by manually selecting from the TAM Ireland Ltd/Nielsen TAM advertising category and brand lists. The resultant dataset is as close as practicable to a robust HFSS dataset. There may be a few brands included/ excluded that do not fall within the HFSS definition, but we do not judge this variance to be material to the key findings of the report.

Category
BAKERY GOODS GENL
BISCUITS
BREAD & BAKERIES
BUTTER
CAKES & PASTRY MIXES
CAKES, FRUIT PIES & PASTRIES
CEREAL BARS & CEREAL SNACKS
CEREALS
CHAIN RESTAURANTS
CHOCOLATE
CHOCOLATE BARS & COUNTLINES
CONDIMENTS, SAUCES & DRESSINGS
CONFECTIONERY
CONVENIENCE DESSERTS
COOKING FATS
CORDIALS
CREAM & SUBSTITUTES
CRISPBREAD / CRACKER

Category
DAIRY RANGE
DEHYDRATED,CANNED READY TO EAT
FROZEN READY TO EAT MEALS
FRUIT JUICES/STILL FRUIT DRINK
ICE CREAM & LOLLIES
JAM & SPREADS
MEAT & VEGETABLE EXTRACTS
MEAT PIES & SAUSAGES
PIZZA FRESH/FROZEN
POTATO CRISPS & SNACKS
PREPARED FOOD RANGE
PREPARED/CONVENIENCE FOOD GENL
SAUCES - COOKING & MIXES
SLICE MEAT,MEAT/FISH SPRD,PATE
SOFT DRINKS
SOUP
SPORT/ENERGY/HEALTH DRINKS

5.2 UNDERSTANDING TVR AND AD SPOT INFORMATION

Before examining viewing of HFSS advertising by 4-17 year olds, we first look at more general trends in terms of advertising viewership.

In order to understand the advertising information contained in the rest of this section, it is necessary to have an understanding of the concept of TVRs (TV Ratings). The TVR is the percentage of a target audience viewing a programme, daypart, commercial break or advertisement. One TVR is equivalent to one percent of a target audience e.g. for Children, for example, if The Late Late Toy Show had a Children 4-17yrs TVR of 35, this means that, on average during the programme, 35% of Children 4-17yrs watched The Late Late Show Toy Show. In the case of an advertising spot i.e. a single advertisement, a Children 4-17yrs TVR of 15 for an advertising spot indicates that on average 15% of Children 4-17yrs watched that single advertisement.

In the case of advertisements, the Total TVR of an advertising campaign is calculated by adding up all of the TVRs for each individual advertising spot to get an aggregate figure. The higher the Total TVR, the more people who have seen the advertisement. Total TVR is of particular interest to advertisers as TVRs are the currency used between advertisers and broadcasters when buying and selling airtime for advertisements. In general, the higher the TVR for an advertising spot, the more expensive the airtime will be.

TV spots are the number of advertisements transmitted (each transmission is one advertising 'spot') regardless of the TVR. Numbers of spots are far less important than TVRs when measuring advertising exposure.

5.3 TOP ADVERTISERS – 4-17 YEAR OLDS

Looking at the Top TV 30 Advertisers (for all products) as seen by 4-17 year olds in 2019 on Irish Channels, McDonalds is the only prominent food company in the Top 20, some of whose products include those high in fat, salt and sugar. In the remaining 10, there are three other relevant food companies, some of whose products include those that are high in fat, salt and sugar. Namely, Mars Ireland, Nestle and Coca Cola Ireland.

Top TV 30 Advertisers All Sections – 4-17yrs Ranked by 30sec TVRs (2019)

Irish Channels		4-17 Year Olds
Rank	Advertiser	30" TVRs
1	PROCTER & GAMBLE IRE	11,514.46
2	EIR	7,343.42
3	SKY	7,322.97
4	DIAGEO	5,929.37
5	VODAFONE IRELAND	5,411.03
6	THREE	5,109.74
7	MCDONALDS	4,771.90
8	ALDI STORES LTD	4,489.89

9	TESCO IRELAND	4,155.24
10	VIRGIN MEDIA	3,765.57
11	LIDL IRELAND GMBH	3,632.46
12	BANK OF IRELAND	3,365.35
13	ALLIED IRISH BANKS	3,294.48
14	HEINEKEN IRELAND	3,275.56
15	LOREAL	3,156.46
16	AN POST	3,124.17
17	SUPERVALU	2,957.23
18	RECKITT BENCKISER	2,831.01
19	NATIONAL LOTTERY	2,429.21
20	PERMANENT TSB	2,228.32
21	ROAD SAFETY AUTHORITY	2,222.26
22	GSK CONSUMER HEALTH	2,189.41
23	NESTLE	2,175.01
24	ULSTER BANK	2,119.80
25	MARS IRELAND	1,986.93
26	TOYOTA IRELAND	1,963.41
27	HYUNDAI IRELAND	1,962.17
28	VHI	1,961.89
29	COCA COLA IRELAND	1,816.79
30	AVIVA	1,769.04

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVRs, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1, 1st January - 31st December 2019, Mon-Sun 03:00 - 26:59

Looking at the Top 30 food advertisers as seen by 4-17 year olds on Irish television, data for 2019 highlights the following. As can be seen, the Top 30 advertisers include a number of advertisers, some of whose products include those that are high in fat, salt and sugar.

Top 30 Food Advertisers – 4-17yrs Ranked by 30sec TVRs (2019)

Irish Channels		4-17 Year Olds
Rank	Advertiser	30" TVRs
1	MCDONALDS	4,771.90
2	COCA COLA IRELAND	1,816.79
3	MARS IRELAND	1,626.26
4	CADBURY	1,285.14

5	KERRY FOODS	1,146.62
6	DANONE BABY	1,118.63
7	WRIGLEY	1,081.85
8	LUCOZADE RIBENA SUNTORY	995.74
9	SMA	937.35
10	DOMINOS PIZZA GROUP	897.10
11	NESTLE	692.99
12	UNILEVER	645.58
13	MONDELEZ INT	629.82
14	DANONE IRELAND	615.15
15	GLANBIA	606.11
16	PEPSICO	596.81
17	BIRDS EYE	596.23
18	KELLOGGS	497.83
19	FERRERO	429.77
20	GREEN ISLE FOODS	426.19
21	SUBWAY	405.32
22	BURGER KING	394.20
23	JUST EAT	393.99
24	LINDT	393.93
25	BRITVIC IRELAND	355.93
26	RED BULL COMPANY	351.52
27	IRISH DAIRY BOARD	314.97
28	HEINZ IRELAND	310.13
29	FLAHAVANS	288.79
30	MULLER	249.29

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVRs, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1, 1st January - 31st December 2019, Mon-Sun 03:00 - 26:59

5.4 HFSS CHILDREN'S TV EXPOSURE TRENDS

The chart below shows the exposure to 4-17 year old children of TV advertising for HFSS products/brands in each year 2011-2019 on Irish TV Channels (RTÉ, Virgin TV, TG4 and Eir). The analysis indicates that there has been a 60% fall in HFSS product TVRs over the 10-year period - a large reduction in exposure to 4-17s of HFSS product advertising over this period. In the same period there was a 38% increase in the number of advertising spots, indicating that many of these spots had a low TVR and were seen by few children.

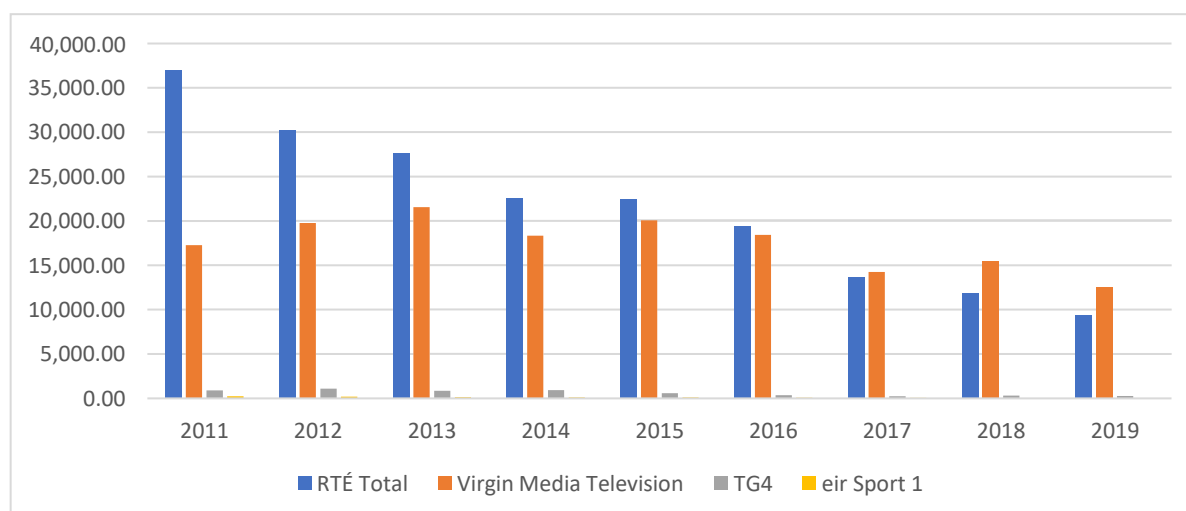
HFSS 30secs TVRS & Spot Data – 4-17yrs Irish Channels (2011-2019)

CHILDREN 4-17	30SEC EQUIV TVRS	NO. OF AD SPOTS
2011	55,314.53	87,641
2012	51,186.26	97,370
2013	50,208.02	107,680
2014	41,897.52	100,205
2015	43,202.33	144,326
2016	38,234.17	133,839
2017	28,192.67	128,436
2018	27,699.67	126,112
2019	22,142.84	120,663
% Change (2011/2019)	-60%	+38%

Source: TAM Ireland Ltd/ Nielsen TAM. Based on National, Consolidated, 30 Sec TVRs and Number of Spots, RTÉ Total, Virgin Media Television, TG4 and eir Sport 1, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

In practical terms, the majority of HFSS 4-17 yrs TVRs for Irish Channels are on RTÉ and Virgin Media Ireland channels. In 2017, Virgin Media Ireland services became the largest broadcaster for HFSS TVRs in Ireland, although the figure represents a declining trend. TG4 and Eir Sport TVRs are very low and have been falling.

HFSS 30secs TVRs – 4-17yrs Irish Channels (2011-2019)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVR, RTÉ Total, Virgin Media Television, TG4, eir Sport 1, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

It should be noted that it is natural that the level of HFSS brand TVRs (and % change in these TVRs over time) should reflect audience level trends and share of audience across individual TV stations. The RTÉ and Virgin Media Ireland stations have the majority of Children's viewing on Irish Channels and so also carry the highest level of HFSS TVRs.

Looking at the trend for specific Irish Channels, when comparing 2011 to 2019, the data highlights significant drops in viewing of HFSS advertisements on varying Irish Channels as follows (bearing in mind that some of these channels would have significantly higher child audiences than others).

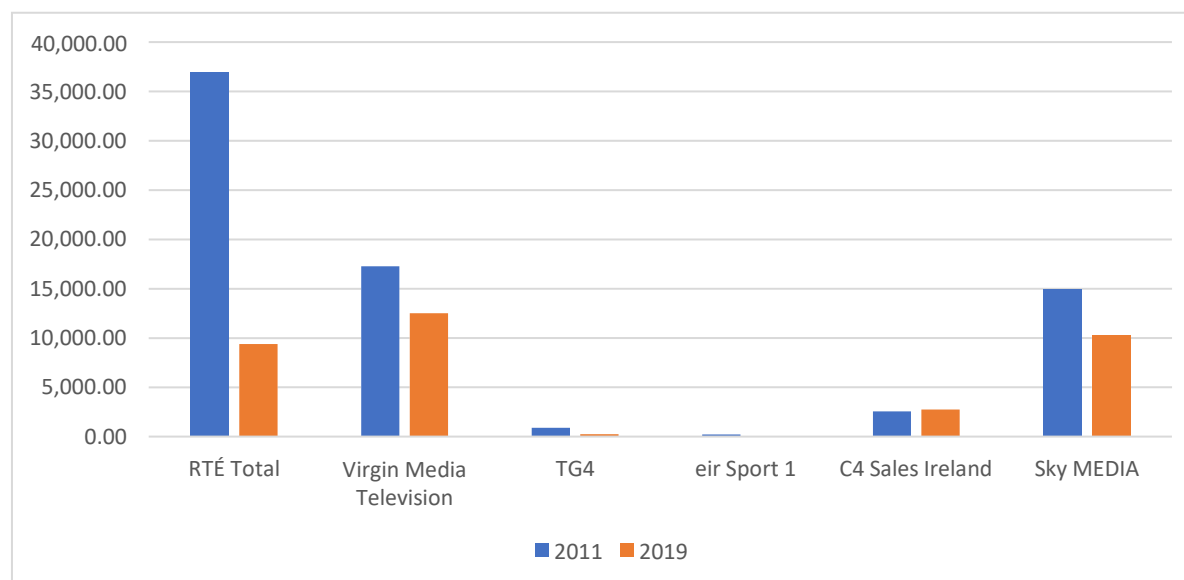
HFSS 30sec TVRs – 4-17yrs Irish Channels (2011/2019 comparison)

	2011	2019	% Change
RTÉ Total	36,937.21	9,378.22	-75%
Virgin Media Television	17,265.33	12,513.59	-28%
TG4	896.78	251.03	-72%
eir Sport 1	215.20	0	-100%
Total	55,314.52	22,142.84	-60%

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVR, RTÉ Total, Virgin Media Television, TG4, eir Sport 1, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

Turning to HFSS advertising on Irish Channels and channels originating in the UK but carrying specific advertising feeds to the Republic of Ireland, data for the 2011-2019 period demonstrates the overall decline in exposure of those aged 4-17 to HFSS advertising albeit it with a slight increase in the case of Channel 4 channels.

HFSS 30sec TVRs – 4-17yrs Irish Channels and channels originating in the UK but carrying specific advertising feeds to the Republic of Ireland (2011/2019 comparison)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVR, RTÉ Total, Virgin Media Television, C4 Sales Ireland, Sky MEDIA, TG4, eir Sport 1, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

HFSS 30sec TVRs – 4-17yrs Irish Channels and channels originating in the UK but carrying specific advertising feeds to the Republic of Ireland (2011/2019 comparison)

	2011	2019	% Change
RTÉ Total	36,937.21	9,378.22	-75%
Virgin Media Television	17,265.33	12,513.59	-28%
TG4	896.78	251.03	-72%
eir Sport 1	215.20	0	-100%
C4 Sales Ireland	2,546.52	2,753.80	+8%
Sky MEDIA	14,985.01	10,246.99	-32%
Total	72,846.05	35,143.63	-52%

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVR, RTÉ Total, Virgin Media Television, C4 Sales Ireland, Sky MEDIA, TG4, eir Sport 1, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

5.5 HFSS Advertising – RTÉ and Virgin Media

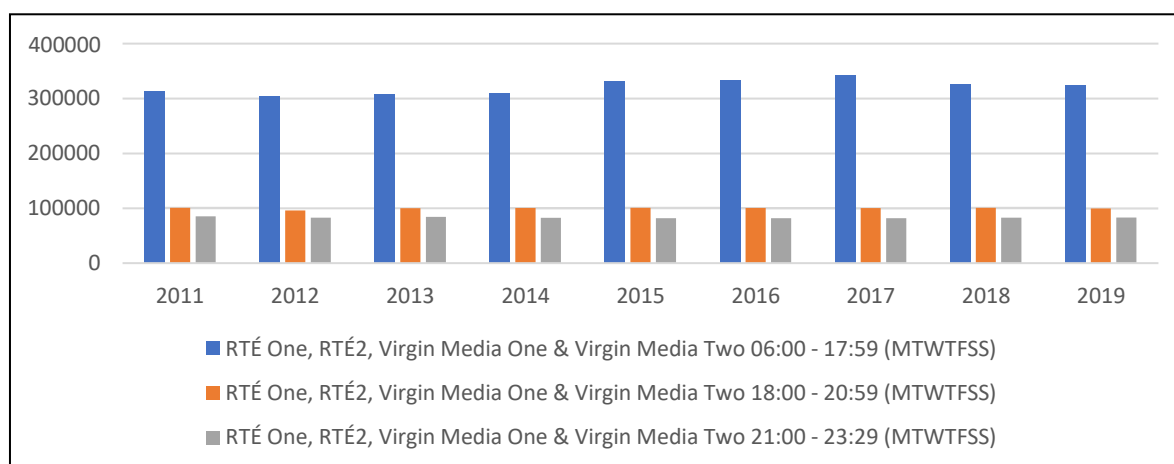
In terms of HFSS viewing by 4-17 year olds, the report examines HFSS advertising on the two Irish Channels which have a higher 4-17 year old audience, namely, RTÉ Total and Virgin Media Ireland and where the majority of HFSS advertising would be seen. In this regard, the data emerging highlights the following in terms of the TVRs for different categories of food products used by the BAI for this report as proxies for HFSS foods.

Total Advertising Spots and HFSS Spots

TV spots are the number of advertisements transmitted (each transmission is one advertising 'spot') regardless of the TVR. Numbers of spots are far less important than TVRs when measuring advertising exposure as spot counts do not provide information about viewing of those adverts. Some spots may be watched by a high number of 4-17 years olds and will have a high TVR while others might be seen by none or few of those aged 4-17 years of age. Furthermore, a decline in TVRs may reflect the overall decline in TV viewing rather than a reduction in the number of spots which aired. In terms of trends in respect of spot advertising, the data highlights the following.

As can be seen on the chart below, the number of spots broadcast during times where children may have seen them has remained relatively consistent between 2011 and 2019.

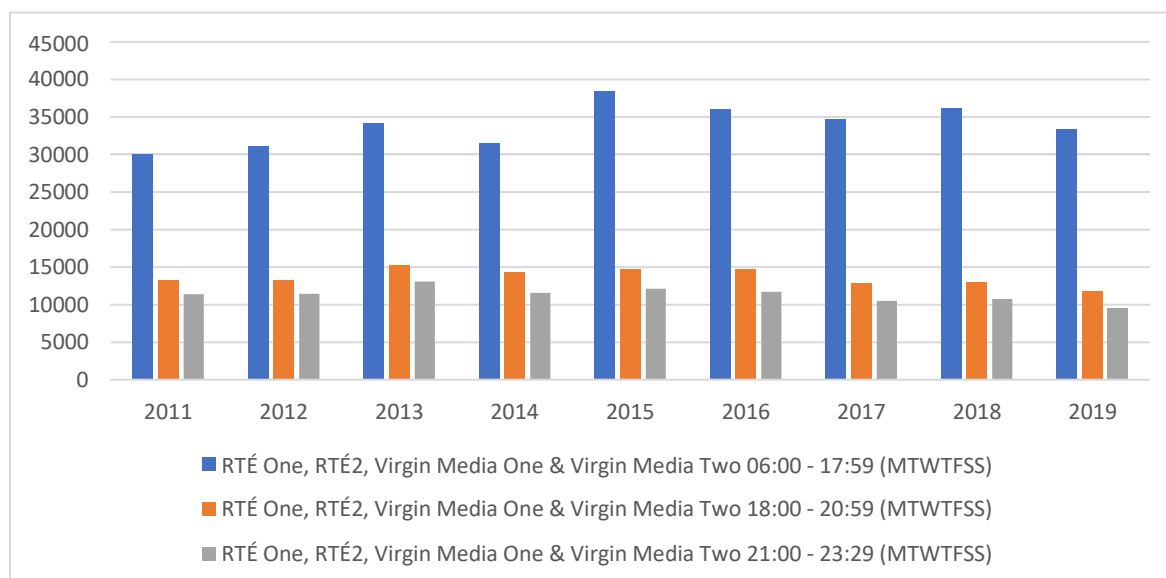
Count of All advertising spots – RTÉ and Virgin Media (2011-2019)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, No. of Spots, RTÉ One, RTÉ2, Virgin Media One, Virgin Media Two, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

In terms of the number of spots for HFSS products broadcast during times where children may have seen them, this has also remained consistent across different dayparts over the years examined.

Count of All HFSS Spots – RTÉ and Virgin Media (2011-2019)

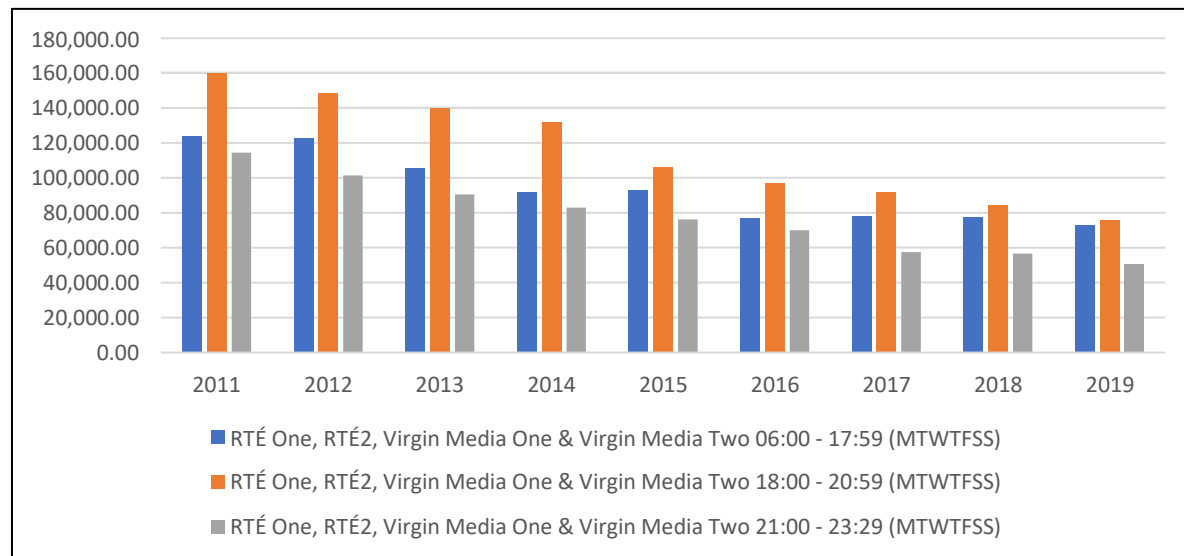


Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, No. of Spots, RTÉ One, RTÉ2, Virgin Media One, Virgin Media Two, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

However, when we examine the TVR figures rather than the advertising spot figures, we see that on both RTÉ and Virgin Media, children have a decreasing exposure to advertisements in the case of all advertising categories and in the case of HFSS food products and services across the 2011-2019 period.

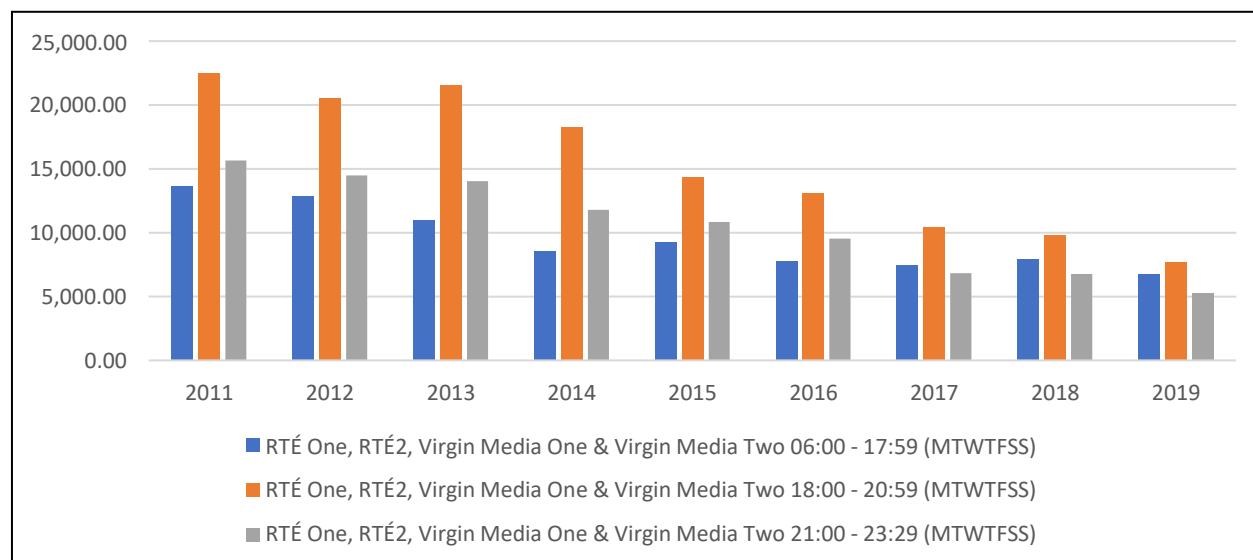
As noted above, the TVR is the percentage of a target audience viewing a programme, daypart, commercial break or advertisement. In the case of an advertising spot i.e. a single advertisement, a Children 4-17yrs TVR of 15 for an advertising spot indicates that on average 15% of Children 4-17yrs in the audience watched that single advertisement.

Total 30sec TVRs All Spots – 4-17yrs RTÉ and Virgin Media (2011-2019)



Source: TAM Ireland Ltd/ Nielsen TAM. Based on National, Consolidated, 30 Sec TVR, RTÉ One, RTÉ2, Virgin Media One, Virgin Media Two, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

Total 30sec TVRs HFSS Spots – 4-17yrs RTÉ and Virgin Media (2011-2019)



Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVRs- RTÉ One, RTÉ2, Virgin Media One, Virgin Media Two, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

5.6 HFSS ADVERTISING PRODUCT CATEGORIES – RTÉ AND VIRGIN MEDIA

Finally, we examine the types of HFSS food categories (as defined by the BAI) that featured on RTÉ and Virgin Media services and the respective TVRs as they concern children aged 4-17 years of age. The data indicates that in terms of food categories, chain restaurants, soft drinks and confectionary are the predominant category of food advertising viewed by Children aged 4-17 years old in 2019.

RTÉ Total – HFSS 4-17yrs 30sec TVRs⁶

	2011	2012	2013	2014	2015	2016	2017	2018	2019
POTATO CRISPS & SNACKS	196.01								
BREAD & BAKERIES	760.70	928.92	504.49	680.59	437.07	374.09	170.07	31.76	141.49
CEREALS	4,737.04	4,448.77	3,762.59	1,943.43	2,142.27	1,321.68	683.19	990.54	390.83
SAUCES - COOKING & MIXES	1,448.01	1,185.22	811.06	1,055.68	1,040.96	673.40	306.44	319.61	206.73
CHAIN RESTAURANTS	8,196.43	6,488.33	5,614.85	4,857.66	4,784.31	4,629.91	4,435.55	3,494.33	3,138.82
CHOCOLATE	1,079.75	221.86	565.84	261.49	768.96	665.36	578.92	438.77	386.48
MEAT & VEGETABLE EXTRACTS	438.56	357.71	601.80	235.02	276.12	258.05	155.51	153.15	45.47
FRUIT JUICES/ STILL FRUIT DRINK	1,510.69	692.58	586.62	477.65	379.96	505.36	178.86	153.62	116.45
ICE CREAM & LOLLIES	1,381.73	515.55	262.63	648.70	338.45	243.98	253.54	212.30	89.25
CORDIALS	369.42	371.61	363.30	192.22	335.03	311.86	244.92	263.58	101.79
DAIRY RANGE	1,280.89	964.63	503.31	447.81	143.83	246.48	148.66	58.66	39.38
CONVENIENCE DESSERTS	175.73		469.87	405.89	331.40	381.94	71.04	37.00	
BUTTER	157.19	206.83	121.97	80.46		25.08	48.04	109.25	190.53
CRISPBREAD / CRACKER				146.97	212.56	60.51	77.63		
PREPARED FOOD RANGE	682.89	231.88	631.39	730.86	569.88	319.05	344.36	59.70	67.83
DEHYDRATED,CANNED READY TO EAT	574.18	218.96	187.61	184.86	280.03	79.76	88.82		57.35
CEREAL BARS & CEREAL SNACKS	782.73	802.76	1,263.37	400.36	159.68	228.50	137.11	53.50	141.65
CONFECTIONERY	1,037.45	633.20	528.83	388.73	533.18	939.72	421.34	270.90	92.48
FROZEN READY TO EAT MEALS	581.36	649.29	77.54	110.15	153.02	84.92			39.44
SLICE MEAT,MEAT/FISH SPRD,PATE	159.79	86.44	202.09	318.88	316.47	373.08	207.61	291.88	265.99
SOUP	233.46	363.78	381.89	216.32	275.31	218.33	26.22	34.14	
SPREADABLE BUTTER/MARGARINE	302.00	754.93	746.45	1,140.38	949.37	485.22	196.74	314.34	217.86
CHOCOLATE BARS & COUNTLINES	3,352.54	3,527.85	3,670.60	2,061.54	2,972.86	2,575.09	1,767.40	1,496.29	1,036.58
MEAT PIES & SAUSAGES				135.56	148.68	168.36	98.31		
BISCUITS	447.39	91.79							
CAKES, FRUIT PIES & PASTRIES									
CREAM & SUBSTITUTES				57.98	29.00	52.72	66.51	40.19	
COOKING FATS	447.34	242.21	99.55	33.86					
JAM & SPREADS	79.33	95.09	143.13	123.10	386.23	202.31	301.60	189.04	153.52
CONDIMENTS, SAUCES & DRESSINGS	445.52	731.70	510.24	418.60	439.95	304.46	333.36	195.86	172.73
CAKES & PASTRY MIXES	326.92								

⁶ Please note Repetition/ overlap of categories in both tables as they relate to Potato crisps & Snacks and biscuits - is due to the way they appear within certain classes in Arianna.

PIZZA FRESH/FROZEN	585.82	815.22	445.25	140.68	362.73	211.52	76.49	114.01	203.30
PREPARED/CONVENIENCE FOOD GENL			109.60	56.45	33.63	51.76	119.66	202.91	84.39
SOFT DRINKS	2,902.33	1,898.38	2,192.95	2,615.24	2,011.80	1,730.66	1,214.54	1,208.39	1,254.33
SPORT/ENERGY/HEALTH DRINKS	1,325.42	1,087.02	819.13	735.27	297.49	704.92	394.90	783.53	498.67
BAKERY GOODS GENL				325.57	114.49				
CRISPBREAD/CRACKERS	58.59	116.66	123.11	168.91	197.59	27.25	20.19		
BISCUITS	504.13	551.68	565.18	439.13	533.39	478.50	209.72	118.12	78.49
POTATO CRISPS & SNACKS	375.88	880.67	821.38	324.32	517.23	468.21	289.74	240.04	166.41

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVRs, RTÉ Total, Virgin Media Television, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

Virgin Media Total – HFSS 4-17yrs 30sec TVRs

Virgin Media Total, 4-17 Year Olds, 30" TVRs	2011	2012	2013	2014	2015	2016	2017	2018	2019
POTATO CRISPS & SNACKS	74.15								
BREAD & BAKERIES	378.54	302.91	261.55	262.46	291.99	286.70	154.27	31.56	115.27
CEREALS	2,323.81	2,324.43	2,624.22	1,580.49	1,743.60	1,193.23	654.63	783.80	378.21
SAUCES - COOKING & MIXES	738.94	819.64	680.18	548.92	742.19	421.83	255.18	287.20	206.69
CHAIN RESTAURANTS	4,474.19	5,895.44	6,247.97	5,840.84	4,966.56	4,483.09	4,384.99	4,836.58	4,391.79
CHOCOLATE	464.78	227.62	323.56	219.26	788.11	815.26	739.95	727.44	513.82
MEAT & VEGETABLE EXTRACTS	209.35	365.88	402.00	166.65	222.03	332.22	202.21	228.89	71.21
FRUIT JUICES/STILL FRUIT DRINK	482.14	328.93	391.02	297.96	281.43	369.44	110.43	193.48	119.05
ICE CREAM & LOLLIES	635.03	519.58	410.76	337.70	293.35	215.55	315.29	303.44	95.68
CORDIALS	134.71	130.00	230.94	86.85	245.76	255.77	239.03	303.13	185.99
DAIRY RANGE	608.54	401.47	391.90	359.71	75.03	287.85	187.40	127.93	161.86
CONVENIENCE DESSERTS	115.57		283.27	400.92	313.96	272.28	92.05	36.06	
BUTTER	63.06	89.78	203.95	117.29		42.00	49.02	78.74	109.28
CRISPBREAD / CRACKER				72.27	170.07	98.05	87.77		
PREPARED FOOD RANGE	337.25	376.79	313.61	481.61	753.84	519.62	404.18	250.34	166.08
DEHYDRATED,CANNED READY TO EAT	358.17	197.85	171.95	65.70	249.69	80.22	110.55		61.05
CEREAL BARS & CEREAL SNACKS	478.27	1,084.14	1,168.61	449.58	219.27	167.33	157.69	126.40	257.50
CONFECTIONERY	290.58	295.72	370.44	423.49	402.69	778.78	420.03	338.82	144.18
FROZEN READY TO EAT MEALS	303.18	318.98	24.22	62.00	122.54	83.88			34.49
SLICE MEAT,MEAT/FISH SPRD,PATE	68.48	52.39	117.67	542.44	596.12	477.25	346.87	407.19	337.22
SOUP	186.04	343.97	255.84	179.10	233.64	236.02	29.37	21.08	
SPREADABLE BUTTER/MARGARINE	90.95	436.13	351.87	740.31	883.92	522.81	252.81	451.43	299.18
CHOCOLATE BARS & COUNTLINES	1,307.78	1,707.51	1,962.17	1,188.85	1,968.74	2,463.17	1,465.57	2,009.56	1,609.13
MEAT PIES & SAUSAGES				111.15	106.48	249.88	157.19		
BISCUITS	124.59	44.60							
CAKES, FRUIT PIES & PASTRIES					67.11		113.70		
CREAM & SUBSTITUTES				0.87	27.19	18.79	26.16	13.78	
COOKING FATS	158.89	129.64	64.03					57.34	

JAM & SPREADS	23.70	24.29	82.76	95.29	312.11	180.99	303.77	176.61	116.18
CONDIMENTS, SAUCES & DRESSINGS	208.99	324.25	278.33	271.65	357.91	313.71	433.76	199.56	194.96
CAKES & PASTRY MIXES	152.87	147.08							
PIZZA FRESH/FROZEN	217.95	291.13	241.33	143.48	239.95	295.41	73.28	135.60	305.52
PREPARED/CONVENIENCE FOOD GENL		25.05	55.11	153.28	30.36	65.91	79.78	198.26	85.51
SOFT DRINKS	858.62	910.87	1,502.05	1,691.26	1,274.59	1,173.72	1,261.35	1,480.75	1,363.76
SPORT/ENERGY/HEALTH DRINKS	653.27	558.63	715.85	422.61	423.59	571.60	475.89	929.34	635.96
BAKERY GOODS GENL				139.86	33.47				
CRISPBREAD/CRACKERS	30.74	61.74	93.00	103.74	173.10	47.38	36.79		
BISCUITS	190.68	228.29	312.58	317.09	573.24	447.97	263.93	460.75	125.86
POTATO CRISPS & SNACKS	521.51	795.29	1,012.55	452.30	874.24	651.99	355.55	315.41	428.14

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, 30 Sec TVRs, RTÉ Total, Virgin Media Television, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59

APPENDIX 1

TV UNIVERSE

The TV Universe refers to the total population of a particular audience category. Universes are based on television homes in Ireland (For example, Individuals = all persons aged 4 and-over who live in a home with a working TV set and a standard reception type).

National, Consolidated, All Platforms, Total TV, Mon-Sun 03:00-26:59 Universe

Universe	Individuals 4+	Children 4-5	Children 4-6	Children 4-14	Children 4-17
2011	4086	125	189	682	849
2012	4118	147	208	714	883
2013	4102	132	203	699	873
2014	4145	147	220	737	915
2015	4111	155	223	729	905
2016	4098	130	209	731	909
2017	4188	138	213	741	922
2018	4268	141	204	742	927
2019	4343	142	208	750	936

Source: TAM Ireland Ltd / Nielsen TAM. Based on National, Consolidated, Total TV, Universe, 1st January 2011 - 31st December 2019, Mon-Sun 03:00 - 26:59