

June 2006

TELEVISION ADVERTISING OF FOOD & DRINK PRODUCTS TO CHILDREN

A response by Voice of the Listener & Viewer (VLV) to Ofcom's Consultation Paper of 26 March 2006: Options for new restrictions

Introduction and Context

- 1.1 VLV welcomes Ofcom's Consultation and Options for New Restrictions on Television Advertising of Food and Drink Products to Children, and the opportunity to state its view on this important issue. VLV has been concerned about the quality of children's television and the impact it has on the quality of children's lives for more than 20 years. Hitherto, these concerns have focused on the impact that television has on the intellectual, cultural and social development of children. We are pleased now to consider its impact on the physical health of children.
- 1.2 VLV is also pleased to be responding at a moment when the National Heart Foundation has apparently withdrawn its request for a Judicial Review of Ofcom's Options Paper following Ofcom's re-think on its consultation options, and when there is an apparent readiness to find a regulatory solution agreeable to sincerely conflicting interests in this complex issue.
- 1.3 We note that Ofcom, since the publication of its initial consultation, has also made available an updated Regulatory Impact Assessment [RIA] which includes estimates of how the revenues of various commercial broadcasters would be affected by differing degrees of restriction on advertising and sponsorship. We note too, the Food Standards Agency [FSA] data on the benefits they state would accrue from restrictions on food and drink advertising to children's health – in particular the advertising of HFSS (high fat, salt or sugar) products. These restrictions would apply to programmes intended for pre-school children (widely regarded as the most vulnerable) through various age-groups up to 15-year olds, where there remain significant disagreements on the appropriateness and proportionality of regulatory restrictions.
- 1.4 Ofcom has included in its RIA the FSA estimates of the social/health benefits to children resulting from a range of controls or interventions. Ofcom lists arguments for and against the 'nutrient profiling' of food and drink products which underly requests by the FSA and some prominent consumer groups for a total ban on all HFSS product advertising to children under 16 at any time before the 9 o'clock watershed. In assessing the benefits the FSA uses so-called 'value of life measures' although we note that the measure are themselves subject to debate.
- 1.5 Ofcom has indicated that a total pre-watershed ban would conflict with its other regulatory objectives: including
 - * sustaining the resource base of a range of broadcasters;
 - * responding but not over-reacting to parents' concerns;

* preventing adults from viewing advertisements for food and drink which are legitimately aimed at them in a free market context

1.6 The options that Ofcom has put forward are focused around the banning of (at a minimum) all HFSS products and (as a more stringent alternative) all food and drink products in (a) programmes made for pre-school children (b) programmes made specifically for children and (c) programmes of particular appeal to children up to 9-years old. Ofcom also specifies no sponsorship by food and drink companies of programmes in those three categories and the application of the content rules endorsed by the industry self-regulatory body, the BCAP [Broadcasting Committee of Advertising Practice]

1.7 Ofcom recognizes the steps that have already been taken by the advertisers and the broadcasting industry to reduce the volume of HFSS advertising, but considers that self-regulation alone will not be adequate to deal with the issues now presented. More broadly, VLV has the impression that the stance adopted by the FSA and some consumer groups does not stem solely from the HFSS issue but rather from a culmination of other issues where there have been unmet demands for more forceful intervention by government and regulators.

1.8 The strongest of Ofcom's three options [Package 3] would, in addition to the controls mentioned in 1.6 above, also limit the volume of such advertising at times when children are most likely to be watching television to:

- 30 seconds per hour between 0600-0900 and 1500-1800 on weekdays: 0600-1300 at weekends
- 60 seconds per hour during the evening peak (1800-2000) and weekend afternoons (1300-2000)
- a 'blanket' limit for children's channels throughout the 24-hour day of 30 seconds per hour for food and drink advertising or sponsorship, (except for pre-school channels where the limit would be zero).

1.9 We note Ofcom's updated 'guesstimate' of the revenue impact from its own proposed advertising restrictions on various companies. These include the terrestrial broadcasters (ITV, Channel 4, Five, GMTV, S4C) most of whom originate most of their children's programmes in the UK. It also includes satellite operators such as Boomerang, the Cartoon Network (Turner), Pop/Tiny Pop, Nickelodeon, Trouble, Disney and Fox Kids, none of whom produce a significant amount of original UK programming. These estimated impacts range from around 3% up to 8% of total revenues with the specialist children's channels being more severely impacted. Ofcom estimates revenue losses for commercial broadcasters at £30 million annually for the lesser intervention options (Packages 1 and 2); and up to £90 million for the more severe (Package 3). That latter figure is around 3% of total revenues although Ofcom indicates the figure would be higher for dedicated children's channels. According to estimates produced by the FSA which are published, although not endorsed, by Ofcom, the health benefits to children would be in the range of £60 million to £300 million annually.

1.10 VLV considers that a much closer analysis is required of the many factors driving advertising revenue, its proven impact on children, and of the figures published by Ofcom and the FSA.

2. VLV's Approach and Long Interest in Children's Programming

2.1. In responding to Ofcom's consultation and in seeking a reasonable outcome to a complex debate, VLV starts with its own mission, values, objectives and record as a citizen group dedicated

to sustaining and strengthening quality and diversity in broadcast programming, across the full range of genres, including children's television, with funding from a variety of sources.

2.2. As a citizen group we believe that access to, and enjoyment of, a diverse range of high quality programming is vital to a fulfilled, active and informed citizenship in a democratic society. Our approach rests on a broader value-based framework which includes, for example, support for those with disabilities, opposition to discrimination, and a commitment to the welfare of children in the broadest sense – medical, educational and cultural.

2.3. VLV's particular concern is with broadcast programmes of all kinds: national and regional, news, documentaries and high quality entertainment which includes a high proportion of original, indigenous production. We argue for policies and structures which encourage or ensure a guaranteed supply of high quality, diverse programmes across all genres and from a plurality of sources, including both the commercially-funded broadcasters and the publicly funded BBC.

2.4 It was in response to fears about the sustainability of commercially funded children's television that VLV held its first conference on the subject in 1995 and established its Forum for Children's Broadcasting. VLV has held annual conferences on this issue each year since, with leading speakers from the industry, academia, consumer and carers' groups. Each has recorded increasing pressure on the programme makers and commissioners as competition from foreign-owned satellite and cable channels has grown. These channels bear no positive public service obligations in regard to the range, source or diversity of the programmes they show. They are almost all subsidiaries of powerful multinational corporations based in the USA and broadcast mainly US programming, much of it animation. Their growth has made the UK the most competitive market in the world for young viewers and more than 20 channels now compete for the child audience. The penetration of satellite and cable channels is highest in homes with children. Their impact on ITV has been particularly hard, adding to the pressure on programme makers and commissioning editors both to cut costs and to deliver more populist programme genres.

2.5. High quality programmes contribute to the mental health, social and intellectual development of children and to the creation of an informed younger citizenship. We believe it is essential that young viewers in this country continue to have access to a wide range of high quality, diverse programmes which reflect their own language, values, culture and environment, and which meet their particular cultural and social needs. Unless they do, there is a real danger that Britain's rich cultural heritage will be eroded and that future generations will have access only to a 'Disneyfied' view of their culture, history and the world. Whilst we acknowledge the excellent work the BBC is doing, including with its dedicated digital children's channels, we believe the BBC needs competition to keep it on its toes. The kind of competition for high quality indigenous programming that meets the needs of young British viewers will not, however, be forthcoming from foreign-owned satellite and cable channels.

2.6 We would point out that the importance of maintaining a wide range of quality indigenous programmes for children into the digital age was widely debated and endorsed as agreed public policy during the passage of the 2003 Communications Bill. As a result, ITV's obligation to provide a range of quality children's programming on its mainstream channel was specifically enshrined in the 2003 Communications Act.

2.7. The UK is renowned throughout the world for the quality of its children's television programmes, both BBC and ITV. They represent one of the jewels in the crown of British television. We consider it is vitally important both to young British viewers and to the broadcasting

industry that this unique and valuable production base of highly skilled and dedicated people is sustained and nurtured into the digital future.

2.8. We are both aware of and share concerns about the health risks associated with increasing obesity in children and the adverse effect upon children of the consumption of unhealthy food and drink. We also recognise that television advertising has an impact upon those watching, including children. However, in forming a judgement on this issue we believe it is also necessary to consider the wider context and to assess the role that HFSS programme-linked advertising plays within the total exposure that children have to advertising in an environment which includes their home, their school and shopping experiences. We believe it is necessary to consider very carefully any potentially detrimental effect of anything less than a total pre-watershed ban. This needs to be weighed against the risk particularly of ITV reducing or withdrawing from children's programming, with a consequent serious reduction in the quality and diversity of programmes on offer across the board.

2.9. It has been reported that if a total ban on food and drink advertising before 9pm is imposed ITV1 will cease broadcasting children's programmes altogether because it will apply the consequent reduction in income to the production of children's programming. We understand that the current offer of pre-school programming from Five will also be under threat if the level of advertising it attracts is reduced. Since ITV and Five are the only commercial channels commissioning significant amounts of original indigenous programming such an outcome could create a waste-land between the programmes produced by the BBC and the imported populist programming broadcast by satellite stations such as Disney, Nickelodeon, Cartoon Channel and Fox Kids.

2.10. The actual impact of advertising is very difficult to gauge but Ofcom has given a figure of 2% as the estimated impact that television advertising of unhealthy food and drink has on children. The broadcasters acknowledge this impact and have shown their willingness to accept restrictions on HFSS food and drink advertising. As a result of recent pressure, some advertisers have already taken steps to reduce their spend on television advertising in order to move into other media. We believe that further pressure and tighter regulatory controls need to be imposed. We also believe, however, that too precipitate a ban on this type of advertising will inevitably lead to a reduction in the funding of children's programming and a consequent loss of valuable content. It is important therefore that the new restrictions are both proportionate and phased in over a period of time in order to allow the broadcasters to seek alternative sources of funding and the market to adjust to the new situation.

3. The Example of Tobacco Advertising

3.1. Consumer groups have rightly pointed to the prior example of restrictions being placed on tobacco advertising and sponsorship of motor sports and darts. These examples show how the promotion and advertising of harmful products can be successfully dealt with. It is of key importance, however, that the restrictions were introduced over a period of time, which allowed broadcasters and programme makers to seek alternative sources of funding.

3.2. It was correctly recognised that the introduction of short term advertising restrictions would have an immediate economic impact. In the long term, however, these could be mitigated. The range of restrictions were agreed but phased in over a number of years. We agree with the consumer groups that this is an excellent approach. As ITV and Five will be the most affected by following the tobacco advertising model, they will need the most time to adjust, not less.

3.3. VLV is as concerned as anyone about the health and well-being of children but we believe that this involves mental and intellectual as well as physical aspects. In the digital multi-channel and

new media age the maintenance of quality content which stimulates mental development, health and well being, and which reflects the child's own culture and environment, will be increasingly important. There is a real danger that too precipitate action will cause irreparable damage, both to the choice and quality of programmes on offer and to the production industry. The unintended consequence could be the loss of indigenous programmes from all channels except the BBC.

4. VLV's View

4.1. VLV considers that restrictions on the advertising of HFSS foods and drink products should be imposed and carefully framed so as to give maximum protection to children from the advertising of harmful food and drink. At the same time the restrictions should be proportionate and introduced in a structured manner over a period of time that will allow the broadcasters to find alternative advertising. In particular, we urge that ITV and Five be given more, rather than less, time to make the adjustment as they are the only commercial channels currently producing significant quantities of high quality indigenous children's programmes. VLV therefore supports Ofcom's 'middle-way' approach of regulatory options which address concerns over child health but are not so severe as to destroy the revenue base available to non-BBC programme-makers.

4.2. Whilst we are not experts in the science of nutrition, we believe that a proportionate and balanced approach is required to deliver the overall mental and physical health of children. Whatever regulations are introduced therefore must deliver not only a reduction in child obesity but also assist in the mental and intellectual development of children by delivering quality children's programming.

4.3. We believe that a total pre-watershed ban on HFSS advertisements would be disproportionate. Of Ofcom's three Options, therefore, we believe that the proportionate response lies somewhere between Options 2 and 3.

5. The Need for Regular Monitoring

5.1. VLV considers it essential that a balanced approach will also require regular monitoring, so that the content supported by continued advertising revenue can be properly evaluated against the health risks resulting from the retention of limited advertising of these products..

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Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British broadcasting system. VLV does not handle complaints.