

Competition and Market Authority Report: Online platforms and digital advertising

Written response submitted by Cancer Research UK

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Outline

- A lack of market competition hinders the potential for innovative methods to better protect vulnerable users from being exposed to harmful advertising.
- A 'Code of Conduct' could help address this by improving market competition, by encouraging measures to better protect users, as well as by enabling effective monitoring and regulation of the rules set out by the code.
- However, data protection laws, as well as heightened concerns from users about their data will exacerbate existing difficulties with age verification and make it even more for platforms to correctly identify whether users are minors and should therefore not be shown some ads.
- This will mean that many young people will therefore be exposed to adverts that they should have been protected from, such as marketing for junk food.
- In order to effectively protect young people from the pervasive effects of digital junk food marketing, a comprehensive 9pm watershed should be implemented to ensure that these adverts are not shown to users during the hours of the day where young people are the most online.

About Cancer Research UK

1. Cancer Research UK is the world's largest independent charity dedicated to saving lives through research. We support research into all aspects of cancer which is achieved through the work of over 4,000 scientists, doctors and nurses. In 2018/19, we committed £546 million to fund and facilitate research in institutes, hospitals and universities across the UK. Thanks to research, survival in the UK has doubled since the 1970s so, today, 2 in 4 people survive their cancer. Our ambition is to accelerate progress and see 3 in 4 patients surviving their cancer by 2034. We work to prevent, diagnose and treat all cancers more effectively to achieve that ambition.
2. Cancer Research UK is a member of the Obesity Health Alliance (OHA).

Our work on the regulation of digital advertising

3. Cancer Research UK has produced an extensive and respected portfolio of research on the impact of the marketing of health harms, including tobacco, alcohol and unhealthy food and drink, on young people. In the past year we have focussed our research and policy analysis on digital marketing.
4. One such report is "*Lessons from the Digital Frontline: Evidence to support the implementation of better regulation of digital marketing for foods and drinks high in fat, salt and sugar*".¹ This report, drawing lessons from digital regulation in other spheres and countries, outlines a checklist of best practice that a regulatory body, whether it is new or existing, should follow in order to be effective. Whilst the report's starting point is the

advertising of unhealthy food and drink, our checklist of best practice is relevant for wider online regulation and will be useful to this report. The checklist includes:

- Introducing legislation with clear definitions: Regulation should set out appropriate, objective and sufficiently wide-ranging definitions of digital marketing, using language which is compatible with the media and marketing industries.
- Updating definitions as media evolves: Legislation design should be regularly revisited to ensure it keeps up with marketing and media developments. Definitions that are not exclusive to specific digital media channels mean that legislation can apply to new media.
- Requiring marketing to meet ‘minimum standards of design’: For the advertising of unhealthy food and drink this means having minimum standards of design, which provide information about nutritional content, consuming a balanced diet, and combining diet with physical activity can help to counter-balance the suggestive messages in marketing. Standardised mandatory health messages are an example of this.
- Sufficiently monitoring and enforce legislation: Effective regulatory design should be combined with robust independent monitoring and clear sanctions via formal processes to ensure that producers comply with restrictions and to proof against future marketing tactics.
- Regularly evaluating the effects of regulation: Legislation should be regularly evaluated to monitor the impact of marketing exposure in young people and the association with knowledge, attitudes, and behaviour.

A ‘Code of Conduct’ would help encourage platforms to better protect their users and enable more effective regulation

5. Our checklist of best practice for digital regulation recommends requiring marketing to meet ‘minimum standards of design’. The proposed ‘Code of Conduct’, which would “allow action in respect of concerns which might fall short of the test of breaching competition law but might nevertheless have an adverse effect on customers through weakening competition” could effectively act as minimum standards of design for the advertising practices of the companies it would apply to. We believe that putting in place code of conduct to govern the behaviour of platforms with market power could help better protect users from harmful content by encouraging more measures to avoid exposing vulnerable users to advertising as well as enabling better ensure better monitoring of the impact of advertising.

Increasing transparency to enable more robust monitoring

6. The ‘Online platforms and digital advertising’ interim report states that one of the principles which the regulations in the Code of Conduct would be based on is “trust and transparency”. Transparency is essential to effective digital regulation, and as our best practice checklist outlines.
7. Digital media provide unique opportunities to use real time-browsing data to inform regulation and therefore help Government more effectively protect children from the pervasive harms of digital marketing. However, there is a lack of availability of this data, as there is currently no routine requirement for marketers to disclose it. Facebook, Google and

Amazon for instance, who make up a large share of the digital media spend, each control their own user data, which they are generally reluctant to share.²

8. The 'Online platforms and digital advertising' interim report states that an expert body would be required to enforce the provisions of the code. In addition to allowing the auditability and monitoring of algorithms the chosen regulator, as suggested by the interim report, regulators should also have the power to require and publicise annual transparency reports from the platforms subject to the Code of Conduct, outlining the prevalence of harmful content on their platforms and what countermeasures they are taking to address these. In order to monitor how many children are accessing marketing content, and therefore inform regulation on digital advertising, these transparency reports must include the prevalence of children being exposed to harmful advertising for HFSS products.
9. Making this data available could also help in developing an efficient age verification system, according to a 2018 WHO report titled 'Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents'. Indeed, they argue that the first step to creating such a system would be to collect sufficient data on the extent to which children are marketed to (the report advises the use of the CLICK monitoring framework for this).³

Encouraging the implementation of further measures to better protect children from junk food advertising

10. As an addition to the three measures of three overarching principles of 'fair trading'; 'open choices'; and 'trust and transparency', the code of conduct could also include the principle of 'protection of vulnerable users'. This principle would require companies to implement more measures aimed at protecting vulnerable users from being exposed to marketing. For instance, Facebook and Google do not have a way of currently recording whether an advert contains food and drink high in fat, salt and sugar (HFSS), which inhibits the ability to actively avoid targeting users registered as minors from seeing these adverts. However, under this proposed principle, they could be required to have advertisers tick a box indicating if their advert contains HFSS adverts. This would enable platforms and advertisers to then actively avoid showing minors those adverts that did contain HFSS; and would give a greater choice to content creators about whether they wanted such ads to appear on their channels/pages.

Sufficient monitoring and enforcement

11. As our checklist outlines, effective regulatory design should be combined with robust independent monitoring and clear sanctions via formal processes to ensure that producers comply with restrictions and to proof against future marketing tactics.⁴ This would help address existing failures in online regulation. For instance, our research has found that the system for regulating digital marketing of HFSS food and drinks in the UK has severe limitations, which prevents it from effectively protecting children from the pervasive harms of HFSS marketing.⁵ In particular, there is a compelling argument that the UK's reliance on self-regulation by industry and lack of real consequences for non-compliance is not fit for purpose.
12. This interim report includes a number of proposed measures which would meet the requirement above set out by our checklist. Firstly, it suggests giving the regulator powers to

order firms to carry out own-initiative investigations, with powers of audit, scrutiny and transparency. To ensure effective monitoring, it will be important to ensure that the chosen regulator is independent, and as mentioned earlier has access to information from relevant firms. Secondly, the report explores the possibility of subjecting breaches of order to the code to sanctions, including financial penalties. Clear sanctions, including financial ones are an important incentive for compliance and should be put in place under this new regulatory framework.

Protecting vulnerable users through increased market competition and innovation

13. As this interim report explains, a lack of market competition risks inhibiting innovation and the development of new, valuable services for consumers. Without the threat of a competitor, companies are less incentivised to break the status quo. However, this lack of innovation may in turn hinder vulnerable users being protected from seeing harmful advertising, such as advertising for tobacco and alcohol, but also unhealthy food and drink.
14. We know that children consume content popular with adults and that children falsify their age online or use parents' or shared household accounts. Existing methods to determine a user's age online are not sufficiently accurate, which means companies cannot guarantee they are not exposing children to their advert.⁶ Better market competition could lead to innovation in age verification methods and new tools and techniques to ensure that adverts do not get shown to an age-inappropriate audience. Greater competition might also give more exposure to challenger platforms and agencies who have created and are using more ethical methods to avoid marketing harmful products to children – and thus more chance that such positive innovation might be more widely adopted.

A 9pm watershed to counter increasing difficulties in determining user demographics

15. *The General Data Protection Regulation 2016/679* (GDPR) provides the general framework for the protection of personal data that applies in the UK. This legislation gives users more control over the use of their personal data and can, the website permitting, enable them to “opt-out” of personal advertising whilst using an online platform. When users chose this “opt-out” option, platforms are therefore unable to target advertising to them, potentially based on demographics. However, this means that platforms are also therefore much less likely to be able to actively *not* target them based on their age.
16. As data protection rules are rightfully further extended, including potentially through the measures outlined in this ‘Online platforms and digital advertising’ interim report, it may make it harder for online platforms to actively avoid targeting children with harmful digital advertising, such as the advertising of unhealthy food and drink products. As mentioned above, even now this is difficult for companies because age verifications methods are not sufficiently accurate. A 9pm watershed would be an effective way around some of these problems. Instead of relying on platforms to effectively identify which users are children and should therefore not receive advertising for HFSS products, an effectively policed watershed would completely remove the risk of exposure during the hours of the day where children – and especially younger children - use the internet the most.

17. Cancer Research UK is calling for the UK Government to implement a comprehensive 9pm watershed on HFSS products across linear TV, catch-up and TV on-demand services and also to adverts online and on social media. This would reduce children's exposure to harmful advertising, provide a consistent approach for industry, and minimise the risk of displacement of HFSS marketing to other media

Why this matters for the reduction of preventable cancers

Obesity and Cancer

18. Obesity is the biggest preventable cause of cancer after smoking in the UK. It is linked to 13 types of cancers.
19. An obese child is around five times more likely to remain so as an adult⁷ – so acting early is critical.
20. Children have the right to be healthy and given the best start in life. But too often they are denied that right, not given the opportunities and protection they need to stay a healthy weight and avoid an increased risk of cancer as an adult – especially children from more deprived and some ethnic minority backgrounds where obesity rates are higher.^{8 9}

Tackling obesity related health inequalities

21. There is strong evidence that obesity is linked to social class, which has significant consequences for health inequalities.¹⁰ The highest prevalence of excess weight is found among low socio-economic groups for both men and women,¹¹ and these adults are more likely to have a higher sugar intake compared to all other income groups.¹²
22. Obesity is more than twice as prevalent among the most deprived 10% of children in England¹³ compared to the most affluent 10%, with similar patterns across Scotland¹⁴ and Wales.¹⁵ Moreover, the obesity gap between the most deprived and least deprived areas has increased in the last decade.¹⁶
23. Tailored interventions for specific groups may only lead to behaviour change among more affluent groups, but population-level activity often benefits the most deprived communities where obesity rates are highest. Research indicates that obesity-related interventions which restrict or modify the choices available to the consumer are most effective at changing behaviour,^{17 18} whilst interventions which rely on voluntary behaviour are not only less effective but also seem more likely to increase health inequalities.¹⁹

Junk Food Marketing is harmful to children and young people

24. There is overwhelming evidence that marketing for HFSS products impacts children's eating habits.^{20 21 22} Advertising influences the type of food children choose, how much of it they eat,²³ and can lead to them 'pestering' parents to buy unhealthy products.^{24 25}

25. Marketing (both online and offline) could explain 5% of young people's total energy intake from junk food, or the equivalent of 50 calories per day.²⁶ According to Public Health England, overweight and obesity is often caused by consuming a relatively small number of excess calories daily²⁷ (as little as 48 to 71 extra calories).²⁸ Thus, even a small daily reduction in energy intake, which could be precipitated by reducing exposure to junk food marketing, can play an important role in reducing children's risk of weight gain and obesity.
26. Online marketing both reach and appeal to children and young people, who have difficulty recognising subtle forms of digital marketing, which can leave them more vulnerable to their influence.²⁹
27. Junk food adverts, both on TV as well as from on-demand and streaming sites are a clear risk for poor diet.^{30 31 32} Lower recall of junk food marketing has also been found to be linked to a significantly lower risk of being obese. According to our research, children say that they feel that HFSS marketing is pervasive and specifically targets them.³³
28. Our recent report, *'Still under pressure; but pressing for change'* builds on a previous study from 2016 which ran focus groups with 11 to 19 year olds to discuss factors impacting their diet and weight. However, three years later our research shows that children still say that feel that HFSS marketing is pervasive and specifically targets them. They could also recall examples of when HFSS marketing had directly influenced their purchasing behaviours, either by buying HFSS products themselves or pestering their parents to buy them.³⁴

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¹ Nathan Critchlow, Kathryn Angus, Martine Stead, Ellen Saw, Jessica Newberry Le Vay, Malcolm Clark, Emily Whiteside, Alizee Froguel, Jyotsna Vohra (2019) "Lessons from the digital frontline: Evidence to support the implementation of better regulation of digital marketing for foods and drinks high in fat, salt and sugar."

² World Health Organisation Europe. (2018). 'Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents'. http://www.euro.who.int/_data/assets/pdf_file/0008/396764/Online-version_Digital-Mktg_March2019.pdf?ua=1

³ World Health Organisation Europe. (2018). 'Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents'. http://www.euro.who.int/_data/assets/pdf_file/0008/396764/Online-version_Digital-Mktg_March2019.pdf?ua=1

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⁵ Nathan Critchlow, Kathryn Angus, Martine Stead, Ellen Saw, Jessica Newberry Le Vay, Malcolm Clark, Emily Whiteside, Alizee Froguel, Jyotsna Vohra. (2019) Lessons from the digital frontline: Evidence to support the implementation of better regulation of digital marketing for foods and drinks high in fat, salt and sugar."

⁶ Nathan Critchlow, Kathryn Angus, Martine Stead, Ellen Saw, Jessica Newberry Le Vay, Malcolm Clark, Emily Whiteside, Alizee Froguel, Jyotsna Vohra (2019) "Lessons from the digital frontline: Evidence to support the implementation of better regulation of digital marketing for foods and drinks high in fat, salt and sugar."

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⁹ Public Health Wales (2019) Child Measurement Programme for Wales 2017/18 ([pdf](#))

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- ¹² Public Health England. (2015). 'Sugar reduction – the evidence for action' cited in paragraph 14, House of Commons Health Committee. (2015) 'Childhood obesity – brave and bold action. First report of session 2015-16'. ([website](#))
- ¹³ NHS Digital (2018) National Childhood Measurement Programme for England – 2017/18 School Year ([website](#))
- ¹⁴ [Scottish Index of Multiple Deprivation](#), Scottish Public Health Observatory.
- ¹⁵ Public Health Wales (2019) Child Measurement Programme for Wales 2017/18 ([pdf](#))
- ¹⁶ Barker, Carl. (2018). 'Obesity Statistics'. House of Commons Library Briefing Papers SN03336. ([website](#))
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