



15th February 2021

Ms. Nonkqubela Jordan-Dyani
The Acting Director-General
Department of Communications and Digital Technologies
Block A3 iParioli Office Park
1166 Park Street
Hatfield
Pretoria
By Email: aacs@dtps.gov.za

Dear Ms. Jordan-Dyani,

RE: Consumer Goods Council of South Africa Comments and Enquiries relating to the Draft White Paper on Audio and Audio-visual Content Services (AACs) Policy Framework, No. 1267, 26 November 2020

The Consumer Goods Council of South Africa (CGCSA) welcomes the opportunity to contribute to the call for submissions by the Department of Communications and Digital Technologies on the Draft White Paper on Audio and Audio-visual Content Services Policy Framework.

Background

CGCSA understands that the Draft White Paper seeks to bridge the gap between the legislative framework applicable to audio and audio-visual content services and the technological advancements that have taken place over the years.

CONSUMER GOODS COUNCIL OF SOUTH AFRICA

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The Draft White Paper contains a segment, in respect of protecting children, on possible stricter regulations limiting advertising of high fat, sodium, and sugar (HFSS) foods and alcoholic beverages.

In section 5.4.2.2, the white paper proposes that:

"to protect children, the regulator must in respect of the scheduling of adverts, make regulations for all AAVCS licensees on the advertising of alcoholic beverages and harmful foods that are high in salt, sugars, fat, saturated fats or trans-fatty acids, or that otherwise do not fit national or international nutritional guidelines."

It is understood that these restrictions aim to help prevent non-communicable diseases, as well as obesity, and that they are linked to other policies, strategies, plans, and regulations aimed at improving the health of South Africans.

CGCSA member marketing to children practices

In a recent member survey, which included 19 member companies, it was found that 32% market their products to children aged 12 years and under and that these companies abide by the Advertising Regulatory Board's (ARB) (previously known as the Advertising Standards Authority of South Africa (ASASA)) Food and Beverage Code, Appendix J. This Code is intended to regulate the advertising of food and beverage products in general, and advertising, of such products to children.

Request for a socio-economic impact assessment to be conducted ahead of implementation

CGCSA requests that a socio-economic impact assessment (SEIA) is conducted prior to the implementation of any new policies and regulations. The South African economy and the food industry are in distress, due to a range of factors, which have been aggravated by the COVID-19 pandemic.

The advertising and marketing industry remains a key economic industry in South Africa and would be negatively impacted should a national HFSS advertising and marketing ban be

implemented. This impact would be most felt by entrepreneurial start-ups and small advertising and media buying businesses.

Request that the objectives and measurement of whether these have been achieved are made clear

CGCSA requests that the Department outlines the objectives of the regulations and that how these will be measured are made clear ahead of the implementation of any new policies and regulations.

CGCSA has the following clarity-seeking questions in relation to the Draft White Paper:

1. Definition of a child

The World Health Organisation and United Nations recommendations refer to the restriction of marketing of foods and non-alcoholic beverages to children. The current Draft White Paper refers to minors (<18 years). Please provide the rationale for this age difference.

2. Regulatory framework and split threshold for compliance

Paragraph 5.4.2.2 of the Draft White Paper acknowledges that co-regulation is working via ARB, but that the framework must expand. However, it is not clear how the ARB and the regulator (Independent Communications Authority of South Africa) will intersect in terms of regulation of AAVCS advertisements. Please provide clarity on this.

In relation to the same paragraph, please provide clarity on the split threshold for compliance would be e.g. For non-eligible products, including the ones targeted to adults, must not be in TV programs where 25% or more of the viewing audience is below 12 years of age.

3. Products in scope

The Draft White Paper groups HFSS and alcohol together, yet the two product categories are different. Alcohol should not be consumed by children or minors at all, yet HFSS food and

beverages can be consumed in moderation by all age groups. Please provide the rationale for grouping these two product categories together.

4. Criteria for HFSS foods

Criteria is required to determine which foods would be high in the nutrients concerned. Please confirm what these are.

5. Alignment with other policies, strategies, plans and initiatives

The Department of Health is working on the National Strategic Plan for the reduction and prevention of non-communicable diseases, as well as updated labelling regulations. This work as well as the criteria related to this will need to be aligned with any regulations related to marketing restrictions on HFSS foods.

CGCSA members have also been reformulating their products to reduce the levels of salt, sugar and fat in their products as a result of both regulation and due to voluntary commitments as part of the Healthy Food Options Industry Initiatives platform led by the CGCSA.

It is requested that this policy framework is viewed considering these other policies, strategies, plans and initiatives.

Annexure A

Please find attached comments received from two CGCSA member companies for further details related to the above requests.

Way forward

CGCSA requests that the issues we have raised are addressed prior to the implementation of any new policies and regulations in this regard. We also request a meeting with the Department and the CGCSA, as well as any other relevant stakeholders to discuss this further.

We look forward to your response.

Best Regards,



Gwarega Mangozhe
CEO

Annexure A

TEMPLATE FOR COMMENTS:

DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL CONTENT SERVICES POLICY FRAMEWORK, NO. 1081

PUBLISHED ON 9th OCTOBER 2020

Organisation name: Member A

DOCUMENT SECTION NUMBER & PAGE	PROPOSED CHANGE	MOTIVATION/JUSTIFICATION FOR CHANGE
5.4.2.2. Page 117	In terms of the regulatory framework, our company recommends 'co-regulation'.	With 'co-regulation' <ul style="list-style-type: none"> • a level playing field is created. • the Advertising Regulatory Board 'ARB' is appointed and funded by industry, and ARB is referenced by legislation as authority recognized by government (i.e. underwritten by state power). Government will review the ARB Code and comment. • ARB is recognised by regulators even non-members will be monitored and need to comply. • state/government sets the basic objectives through policy initiatives and leaves it to the relevant industry role-players to translate these goals into specific guidelines, to report back to the authorities on the progress achieved and to do so on a voluntary basis.

<p>5.4.2.2. Page 117</p>	<p>Define the cut-off age for 'children'. Our company recommends that children be defined as persons under the age of 12 years.</p> <p>Most studies done in younger age groups. The evidence of the impact on children is therefore greater for this younger age group (<12 years) than for older age groups (i.e. age groups of 12–18).</p>	<p>WHO Guidelines on marketing to children (2012) states that "The evidence is not conclusive regarding a definite "cut-off" age at which children understand the persuasive intent of marketing and adopt the necessary critical stance. Available research studies have focused predominately on marketing to younger children (i.e. children under the age of 12) rather than adolescents, and those studies have been carried out mainly in developed country contexts. The evidence of the impact on children is therefore greater for this younger age group than for older age groups (i.e. age groups of 12–18)."</p>
<p>5.4.2.2. Page 117</p>	<p>Define what the split threshold would be for compliance.</p>	<p>It is understood that an audience can never be 100% of whatever age is deemed within scope.</p> <p>For example: For non-eligible products, including the ones targeted to adults, must not be in TV programs where 25% or more of the viewing audience is below 12 years of age.</p>
<p>5.4.2.2. Page 117</p>	<p>Non-alcoholic and alcoholic food and beverages to be separated where children are mentioned.</p>	<p>Ideally children are not legally allowed to consume alcoholic beverages. In South Africa, the legal age for drinking alcoholic beverages is 18 years.</p>
<p>5.4.2.2. Page 117</p>	<p>Align section 5.4.2.2. with:</p> <ul style="list-style-type: none"> • the Department of Health's Nutrition Division's strategic objectives, and • the CGCSA's Healthy Food Options voluntary industry initiative. 	<p>The Department of Health is working on:</p> <ul style="list-style-type: none"> • the National Strategic Plan for the reduction and/or prevention of obesity and non-communicable diseases, • front-of-pack labelling, • R429 regulations. <p>This work as well as the criteria related to it will impact the nutrition criteria for 'high fat, sugar, and salt foods', hence the alignment with section 5.4.2.2. is important.</p>

<p>5.4.2.2. Page 117</p>	<p>Define the criteria for 'harmful' and 'high fat, sugar and salt foods'.</p>	<p>The WHO defines Nutrient Profiling as “the science of classifying or ranking foods according to their nutritional composition for reasons related to preventing disease and promoting health” . Nutrient Profiling has been recognized by WHO as a useful tool for a variety of applications and is considered to be a critical tool for the implementation of restrictions on the marketing of foods to children.</p> <p>Our company recommends the use of a Nutrient Profile Model to set a qualifying criteria for foods that are considered 'harmful', 'high in fat, sugar and salt' by classifying these foods based on their nutrient composition.</p> <p>The Nutrient Profile Model is to complement and support food-based dietary guidelines.</p>
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Organisation name: Member B

RESPONSE TO DRAFT WHITE PAPER ON AUDIO AND AUDIO-VISUAL CONTENT SERVICES POLICY FRAMEWORK

1. INTRODUCTION

Our company welcomes the opportunity to contribute to industry responses to the call for submissions by the Department of Communications and Digital Technologies on the Draft White Paper on Audio and Audio-visual Content Services Policy Framework.

2. BACKGROUND CONTEXT

The Department of Communications and Digital Technologies published its Draft White Paper on Audio and Audio-visual Content Services on 9 October 2020. The Draft White Paper seeks to bridge the gap between the legislative framework applicable to audio and audio-visual content services and the technological advancements and trends which have come with the global digital revolution.

The Draft White Paper contains a segment (in respect of protecting children) on possible stricter regulations limiting advertising of high fat, sodium and sugar (HFSS) foods and alcoholic beverages.

In section 5.4.2.2, the white paper proposes that:

"to protect children, the regulator must in respect of the scheduling of adverts, make regulations for all AAVCS licensees on the advertising of alcoholic beverages and harmful foods that are high in salt, sugars, fat, saturated fats or trans-fatty acids, or that otherwise do not fit national or international nutritional guidelines."

In South Africa, the Department of Health is in the process of developing regulations (R429) on the consumption of various food groups to address lifestyle diseases and the associated burden of disease among all population groups. Guideline 14 of the Regulation 429 proposed in 2014 a ban on all advertising by "fast foods".

Our company in South Africa submits that any policy proposal needs to take the likely socio-economic impact of the regulations into account and it will be important for the Department to conduct a socio-economic impact assessment (SEIA) before implementation of any proposed changes. The South African economy and the beverage industry are in distress, due to a range of factors, which have been aggravated by the COVID-19 pandemic.

Furthermore, it is important for the Draft White Paper, as it relates to possible marketing and advertising restrictions, to outline the objectives of the regulations. Are they meant to address lifestyle challenges, or are they attempting to change consumer behaviour? And how will the regulations measure whether the objectives have been achieved? Will there be any validation of methods?

3. OUR COMPANY POSITION AS IT RELATES TO THE WHITE PAPER'S PROPOSED EFFORTS TO ADOPT MARKETING RESTRICTIONS FOR FOOD AND NON-ALCOHOLIC BEVERAGES

Our company supports government's health objectives by diversifying our portfolio to give consumers a greater choice of products and the information they need to make informed decisions about their product selection.

Our company has always taken seriously its commitment to market responsibly, in every country and across all advertising media. We have been a leader in the area of Responsible Marketing, particularly with regard to responsible marketing practices when children are present. Since 2010 we have followed the principles set out in our Global Responsible Marketing Policy.

3.1. Responsible Marketing Policy

Our Responsible Marketing Policy states that we will respect the role of parents and caregivers by not marketing directly to children 12 years and under. Specifically, this means we will not advertise on:

- Any media platforms which directly target children 12 and under, such as shows, print media, websites, social media, movies, and SMS/email marketing.
- We define media platforms that directly target children 12 and under as media in which 35% or more of the audience is composed of children under 12, where this information is possible to obtain.

Our approach to marketing is consistent with the international Chamber of Commerce Marketing & Advertising Code and its Framework for Responsible Food and Beverage Marketing Communication and the World Federation of Advertisers (WFA). In South Africa, our company abides by the Advertising Regulatory Board's Food and Non-Alcoholic Beverage Products Marketing Communication to Children Code Appendix J (previously known as the Advertising Standards Authority of South Africa (ASASA)). This Code is intended to regulate the advertising of food and beverage products in general, and in particular advertising of such products to children. In this regard, our company supports self-regulation of marketing and advertising content.

3.2. Schools as commercial free zones

Under our Company's Global School Guidelines, our company has undertaken to not commercially advertise in primary schools or combined primary and senior schools. In this regard, we have removed over 90% of branded signage at primary schools nationwide across South Africa. As of July 2017, products

that are consistent with nutrition guidelines available at primary schools where we sell directly. If requested to sell particular products by school authorities, we respond to such requests in a manner consistent with both the Global School Guidelines and local commitments.

4. ISSUES FOR CLARIFICATION

Question 1: The regulatory mandate: WHO and UN calls on industry to reduce children's – not minors – exposure to HFSS ads

Whether we talk about regulation, co-regulation, or self-regulatory rules to reduce the exposure of children to HFSS food ads, the consumers in need for protection are referred to as children, not minors. The WHO policy objective to reduce the exposure to children of food products high in fat, sugar and salt is clearly set out in the 2010 WHO set of recommendations on the marketing of foods and non-alcoholic beverages to children.

Similarly, the revised EU Audiovisual Media Services Directive (2018) specifically refers to children, in the context of reducing exposure to 'HFSS' advertising, and minors, in the context of regulating exposure to alcohol advertising. Finally, the political declaration, TIME TO DELIVER: Accelerating our response to address NCDs of the health and well-being of present and future generations, adopted by the General Assembly of the United Nations on 27 September 2018 refers to children, not minors.

Question 2: Definition and age of a child/HFSS

The White Paper prioritises the need to ensure measures to protect children from harmful content also to ensure that consumers can make informed viewing and listening – see section/para 5.4.2.2 and 5.3.8. However, the White Paper is not clear on:

- **What the proposed definition of the age of a child is**

Most academic reviews recognize that by the age of 12 children develop their behaviour as consumers, effectively recognize advertising and are able to adopt critical attitudes towards it

There is a strong degree of academic consensus that by the age of 12 children are fully capable of understanding the persuasive intent of advertising and have the necessary cognitive tools to critically assess it

- **What the definition of a HFSS product is or what is a healthy or unhealthy product**

There will be a need for an evidence-based approaches and in this regard we are aware of the Department of Health's commissioning of the "Total Dietary Study" (TDS) which seek to identify sources of calorific load and other details and this should inform the scope of HFSS products, many products may have low nutrient value and contribute to calorific load. The results from the TDS need to be taken into consideration when determining the scope of HFSS products.

Further, there is no real-world evidence to our understanding that demonstrates any reduction in obesity resulting from advertising restrictions

- Why in certain instances, there is a conflation of "protecting children" and "ensuring that consumers can make informed viewing and listening" in the same sentence. There needs to be a distinction in the White Paper between a child and or consumers in relation to proposed marketing restriction.

Question 3: Regulatory precedent and best practice: HFSS ad restrictions draw the line between ages 12 and 16

Looking at 'HFSS' advertising restrictions around the globe – statutory, co-regulatory or industry-led – there are very few precedents applying to minors (under 18). There is a clear preference for setting the age somewhere between <12 and <16. Very often, restrictions that expand into the teenage space are not advertising prohibitions, but rather qualitative requirements on the content of the ad. There are a number of countries across the development spectrum that have signed up to a voluntary pledges or industry codes not to marketing to children 12 years and under.

Question 4: self-regulation vs. co-regulation

Para 5.4.2.2 of the White Paper acknowledges that co-regulation is working via Advertising Regulatory Board (ARB), but the framework must expand. However, it is not clear how the ARB and the regulator (Independent Communications Authority of South Africa) will intersect in terms of regulation of AAVCS advertisements.

Over and above our own Responsible Marketing Policy, including our stance that schools are commercial free zones; it is further submitted that the ARB processes already allow for a healthy balance between what is in the public good and civil liberties. And ARB process provides society with a mechanism to self-regulate and or determine what is suitable content.

When laying a complaint, the ARB process specifically directs that when making a complaint the interested party must identify or provide the following details: “what was the advertisement promoting?”; “what was the product being advertised?”; “State your complaint about the content of the advertisement.”

Question 5: Delinking HFSS from alcohol

The Draft White Paper seems to link HFSS and alcohol. Restricting food marketing of foods and beverages high in fat, sugar, or salt (‘HFSS’) to all minors would mean regulating HFSS products in the same way as alcohol.

However, the two product categories are fundamentally different: alcohol is a product that should not be consumed by minors, and alcohol advertisers have no right nor interest in advertising to them. Robust rules, both regulatory and self-regulatory, are in place to make sure that minors are not exposed to alcohol ads. Food and beverage products, on the other hand, can very well be consumed by children and minors in moderate quantities as part of a balanced diet.

OUR COMPANY’S PROPOSALS TO AVOID UNINTENDED CONSEQUENCES

The advertising and marketing industry remains a key economic industry in South Africa and would be negatively impacted should a national ban HFSS advertising and marketing be implemented. This impact would be most felt by fledgling black-owned and entrepreneurial start-ups and small advertising and media buying businesses. This is particularly true in an already pressurised economy.

Similar to advertising regulations in markets such as tobacco and alcohol, the aim of restricting “junk food” advertising is to lower consumption. The World Health Organization (WHO, 2010) published the recommendation that the “overall policy objective [of an advertising ban] should be to reduce both the exposure of children to, and the power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt”.

One effect that advertising has on consumer demand is to lower consumers’ sensitivity to price. Banning advertising therefore leads to toughening price competition. Banning advertising may also constitute a barrier to entry, new entrants will struggle to compete against existing competitors who would have been allowed to build their brand equity prior to the banning.

In this regard, our company recommends the following as proactive actions to address the potential impact from the proposed marketing and advertising restrictions

1. Delink HFSS from alcoholic beverages
2. Advocate for self-regulation via ARB for children 12 years and under (accompanied by commitment on responsible companies to ensure their marketing communications support, rather than undermine, healthy lifestyles)
3. Undertake to fund consumer awareness campaigns - proactively drive the messaging that we support government's health objectives
4. Volunteer an EU-type pledge – voluntarily limit exposure of marketing and advertising to 13 and under. The pledge will be externally verified, and breaches will attract penalties.