Ascential Price + Promo

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HFSS and the future of grocery retail

Unpacking the new rules



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1

Introduction and context



- **Healthy eating has become an accelerated priority for shoppers, retailers, brands and governments, especially as Covid-19 highlighted obesity risks**
- **New UK HFSS (high in fat, salt and sugar) laws will have a major impact on product development and assortment curation, as well as promotions and advertising in store and online**
- **The added product compliance complexity burden will fall on retailers and their suppliers**
- **Urgent changes are required to avoid falling foul of forthcoming legislation and forward-thinking businesses will take measures that go beyond compliance as a way to differentiate and attract the growing health-conscious market, to future-proof their businesses and strategies**
- **Retailers will either accept changes and risk losing revenue, call for reformulations (of own-label or in partnership with brands) or re-range**

In almost every country, health and sustainability is moving up the agenda. Growing pressure on health systems, rising rates of obesity and diet-related health conditions, and concerns over climate change have all been brought into sharp relief recently. Over the course of the past year, major studies have identified obesity and obesity-related medical conditions, such as cardiovascular disease, hypertension and type 2 diabetes, as significant risk factors in developing severe Covid-19 and requiring hospital treatment.

Scientists have suggested that obesity weakens the immune system and creates chronic inflammation in the body. A patient suffering from chronic inflammation, knowingly or not, is much more vulnerable to getting very sick with coronavirus, as well as developing long-term ill health.

Obesity and its ties to a diet high in ultra-processed – or junk – food has been a growing problem for a number of decades, particularly in countries where there is high adoption of factory-made foods high in sugars, chemicals and refined vegetable oils. But, as with many other social challenges, the recent health crisis may have served as an inflection point for grocery shoppers and governments.

Even pre-Covid-19, organic food sales in the US were on the rise, reaching $50bn in 2019, according to the Organic Trade Association (OTA). However, in Q1 2020, US organic produce sales rose by 50% year on year.

In the UK,

25%

of young British millennials say Covid-19 has made a vegan diet more appealing.

73%

of British nationals say Covid-19 has encouraged them to add more nutrients and multivitamins to their diets to support the immune system.

The trend for clean and greener eating was already gathering pace pre-2020, driven by the hyper-connected and informed millennials and their successors, Generation Z. In the US, these consumers are now the dominant shopper demographic.

More conscious about climate change and food miles, the importance of sustainability and eating tasty but nutrient-rich foods, this demographic is forcing the food and drink sector to rethink business strategies in a way that has never happened before – and major manufacturing companies and retailers are taking note.

Health moving up the boardroom agenda

Over the past two years or so, there have been increasing signs in the retail industry of brands and shops making major and costly efforts to keep customers happier and healthier, and contribute to reducing waistlines. Some have chosen to go down the route of acquisition to bolt on the right health credentials.

We have seen Unilever buying Graze, Mars acquiring Kind, Ferrero buying Eat Natural and Mondelēz acquiring the Hu brand. Plant-based innovator food companies have become particularly desirable in line with the soaring adoption of the vegan diet, which is credited with everything from reducing problems for allergy sufferers to preventing and even reversing long-term metabolic disease, which can make Covid-19 a life-threatening illness.

Others have launched relevant programmes and new products to support improved customer and public health.

Nutri-Score, a front-of-pack nutritional labelling system developed in France but now officially endorsed by many European countries, including Spain, Germany and Belgium, is increasingly being adopted by the biggest supermarkets and food companies in those countries. In May, McDonald's in France said it would adopt the five-colour system in an effort to improve nutritional transparency. Casino, Kaufland and Ahold Delhaize have all adopted the Nutri-Score system.

Carrefour, as part of its Act for Food programme, has been particularly active on initiatives that provide consumers with informed dietary choices. It was an early leader in adding Nutri-Score labelling to its private-label brands in France and has partnered with leading suppliers to promote balanced recipes. It also provides a personalised nutritional scoring system across 40,000 products on carrefour.fr, informed by a user's own food habits and goals.

The multinational retail giant recently launched an online Nutri Choice tool in Brazil to help consumers choose products that are not only more nutritionally balanced, but cheaper, too. The tool, available on the Carrefour app, is based on the Nutri-Score methodology that classifies products from A to E based on their nutritional profile. It then cross-checks, providing suggestions of items in the same category with a better or similar nutritional score and at a better price.

Major food brands are also reviewing portfolios and strategies in line with shopper trends and signs of increasing government and regulatory intervention to reset public health. Nestlé recently said it was working on a firm-wide project to re-assess its food and drink portfolio after a Financial Times report leaked an internal document revealing 70% of its food products were "unhealthy", according to the Australian Health Star Rating scale (which scores food out of five, with the three-and-a-half-star threshold used as a recognised definition of health)*.



*https://www.ft.com/content/4c98d410-38b1-4be8-95b2-d029e054f492

UK High Fat Sugar and Salt: new laws; big impact

Against this backdrop, the UK government intends to introduce new legislation to restrict the promotion of products high in fat, sugar or salt (HFSS) by location and price in retail settings. The aim of the policy is to reduce overconsumption of HFSS products that contribute to children being overweight and obese through:

- restricting bulk promotions of pre-packaged HFSS food and drink products that specifically encourage overconsumption, such as multi-buy offers (buy one, get one free) and free refills of sugary soft drinks;
- restricting the placement of all HFSS food and drink products (whether pre-packaged or not) at key selling locations such as store entrances, checkouts and aisle ends, which can lead to pester power and impulse purchases;
- banning any advertising of HFSS food and drink products pre-9pm (there is a further consultation on banning the promotion of products online, the outcome of which is yet to be confirmed[1] (expected Q2 2021).

The proliferation and integration of digital touchpoints across the shopper journey has opened up new opportunities for brands to connect physical and online media, content, advertising and promotions online. As ecommerce will account for 38% of global chain retail sales by 2025 and contribute to 57% of new retail revenue in the next five years, this is a critical channel for growth for retailers and brands[2].

It is critical for retailers to keep on top of developments and plan for the evolution of new legislation in this area and its impact on selling online. In this report, we analyse the forthcoming legal changes and what the implications are likely to be for retailers and consumer brands looking to connect with the shopper of the future.



[1]https://www.gov.uk/government/consultations/total-restriction-of-online-advertising-for-products-high-in-fat-sugar-and-salt-hfss
[2]Source: Edge by Ascential Retail Insight

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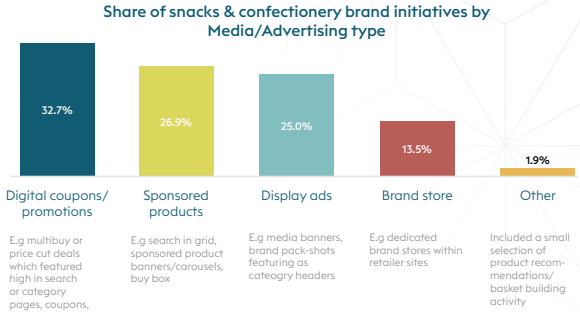
Implications for online retail



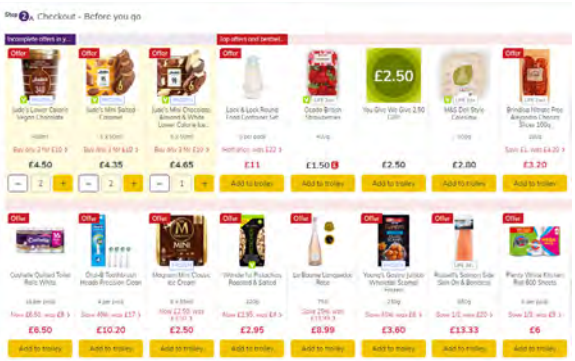
Constraints on promotion location - online

- Retailers have accelerated investment in their ecosystems, especially in the realm of the provision of media services. They have been inspired by ecosystem behemoths such as Alibaba and Amazon, who have successfully diversified their revenue streams and improved profitability through extensive media offerings. Over the course of the past year, we have seen initiatives launched by Kroger, Sainsbury's retail media platform and, most recently, Carrefour with its launch of the Carrefour Links platform.
- The HFSS regulations on promotion locations online could have significant implications on this strategic direction for retailers operating in the UK. The definition of "online advertising" by the government will determine the extent to which retailers have to go to curb the visibility of HFSS products. Advertising on the top retailers' websites is often organised by category, with some containing a far greater proportion of HFSS products than others.

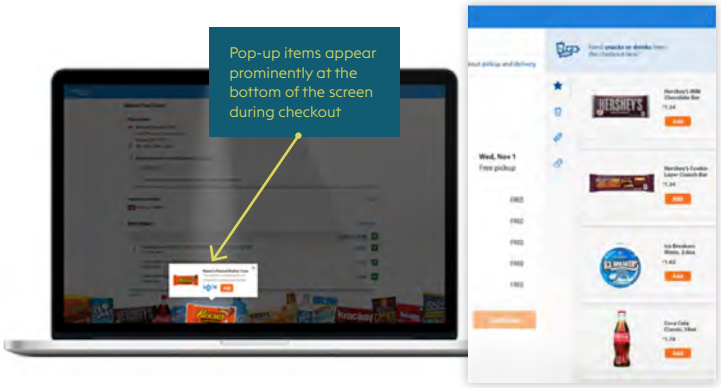
Many of the food and beverage categories affected by HFSS are some of the most prolific users of current retailer media inventory online and make up today's best-practice examples of traffic-driving activity in categories such as snacks, confectionery and beverages.



Prompts have become a key part of the online checkout process. This, along with other initiatives designed to replicate impulse online, could also be scuppered by the HFSS regulations.



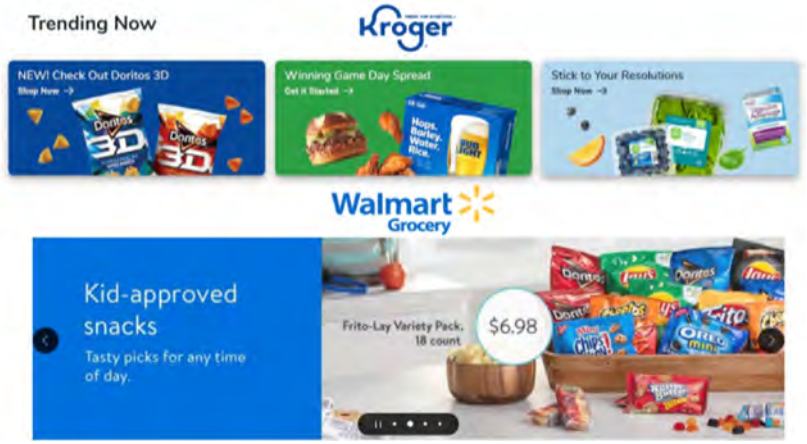
Similarly, website landing pages (which could be interpreted as the equivalent of a "store entrance" from a promotion location perspective), often host event-bundle or seasonal promotions that feature products in categories that will likely not meet the HFSS criteria.





Display and sponsored ads could also be affected by the new rules as these are two of the most common tactics through which brands drive visibility and promote new products. If the placement of these are considered to be equivalent to the end caps, or other location promotion restrictions on websites, this will call for a radical redesign of digital shelf or site navigation. If not, retailers risk significantly impacting non-HFSS brands, categories or products from featuring in what is today one of the most effective and lucrative advertising areas.

The "Kid-approved snacks" ad was part of a banner carousel on Walmart Grocery's main homepage, driving traffic directly to Frito-Lay and bypassing potential competition in the chips category.



This could result in the following:

- An advertising mix that leans heavily toward non-food and, more importantly, healthier, natural food products. Homepages and special-offer pages will change, but will these alternatives inspire click-through?
- Categories, especially those anchored around impulse purchases, will have no choice but to pivot toward HFSS-compliant alternatives when selling their advertising space – those suppliers will eagerly anticipate the development, although it could likely cause a fall in advertising revenue for the retailer, at least initially.
- The scramble for reformulation will be apparent in time. From the moment that big brands have adapted products to make them HFSS-compliant, there will be a rush to promote these.

It is essential for retailers to anticipate and get ahead of these forthcoming constraints on the online digital shelf.

3

The new rules explained: what happens next?



The new rules explained and next steps in the legislative process

In July 2020

the British government published its obesity strategy. Below is an outline of the actions it has taken since then.

In the May 2021 Queen's Speech,

the Government confirmed that it would proceed to restrict promotions on high fat, salt and sugar (HFSS) food and drink in retailers from April 2022 under the Health and Care Bill.

In addition, the government plans to use powers in the Food Safety Act 1990 to propose secondary legislation before Parliament by mid-2021. In a recent parliamentary question, health minister Jo Churchill confirmed that this position remains the same.

Michael Clarke, managing director of political research consultancy De Havilland, believes that the statutory instrument will be subject to the affirmative Parliamentary procedure. This means that it must be actively approved by both Houses of Parliament.

Most statutory instruments (SI), which are the means by which secondary legislation is passed in the UK, are subject to the affirmative procedure. They will be laid in the form of a draft SI and considered by the Joint Committee on Statutory Instruments, who will scrutinise the SI to ensure it is legal.

The SI will then go to the Delegated Legislation Committee (DLC), which normally has 16 to 18 members. They will consider the SI but do not have the power to stop it.

Alternatively, instead of going to the DLC, the SI could be debated in the Commons if it is of particular interest.

Once it has been debated by a committee, it will be approved by the Commons and signed by the minister, then becoming law. There is no standard timeframe for the SI to become law, but De Havilland speculates a late summer/ early autumn timeline to publish. However, implementation could be years to allow for adjustment. It is possible that the SI could be law but not actually come into force for a while.



What do the proposed changes mean for online advertising?

While the HFSS in-store guidance is very clear in respect to locations and types of promotions, the online advertising implications are not as straightforward. Online advertising restrictions need to be implemented via primary legislation as there is no existing legislation on which to build. The government decided to also implement the TV aspect through primary legislation because it is closely aligned to the online aspect.

The Health and Care Bill will include measures for banning junk-food adverts pre-9pm on TV and for a total ban online. The Bill is expected to be published in draft form around mid-June.

According to De Havilland, the Bill is likely to be contentious in Parliament, particularly in the Lords. However, the government is pushing for it to be passed into law by April 2022.

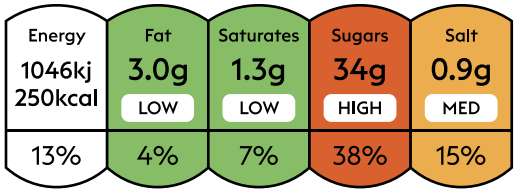
The government has also confirmed it will be laying legislation to introduce mandatory calorie-labelling for large businesses. Its consultation response is here.

If supermarkets are seen to be working around these measures outside of the spirit or directly not complying, then further regulation should be expected.

What additional or related legislation might change or be implemented in relation to healthy eating?

The government consulted on front-of-pack nutritional labelling in late 2020. It appears to want to stick with the current Multiple Traffic Light Label scheme, but has sought views on international examples including Nutri-Score and Chile's warning label.

Each serving (150g) contains



of an adult's reference intake
Typical values (as sold) per 100g: 697kj/167kcal

The government has yet to publish its response to the consultation, but any changes to the scheme are likely to take many years to introduce. It is currently still recommending the Multiple Traffic Light Label scheme.

Will there be penalties levied for non compliance?

It is too early to say. The government is due to consult on how they will be enforced by local authorities.

What is the likelihood of the government rolling out further or stricter measures?

The new rules have been on the policy agenda for many years, but successive Conservative administrations have pulled out of implementing them, despite stakeholder and official guidance that they should. The reasons are largely ideological. They centre around people being free to make their own choices and a reluctance to impose draconian regulations on businesses.

But the government mood changed dramatically after prime minister Boris Johnson contracted Covid-19 at the outset of the pandemic and fell seriously ill. His being overweight was cited as a major contributing factor for the severity of his illness. Since then, there has been increasing pressure for the government to put more effort into reversing climbing obesity rates and improving public health. This is to help people help themselves in the battle against the worst effects of Covid-19, but also to help them take better care of themselves generally through improved nutrition and diet.

It is conceivable that more policies designed to have a similar effect will be brought forward in the future by this Conservative government. If the UK were to get a Labour government (De Havilland believes this is unlikely until at least 2028), then we can expect many more restrictive measures. Labour has been calling for measures such as the above for some time.

4

Impact to retailers



Impact to retailers: The nutrient profiling model - how it works

- Retailers face challenges on assessing and tracking their entire range against HFSS' complex points-based Nutrient Profiling Model to discern which products are subject to promotion constraints
- Risk assessment will have implications on categories, brands and assortment reviews
- New product development or reformulation will be required



Nutrient profiling model

Questions for retailers:

Which categories and suppliers will bear the brunt of retailer decisions to re-evaluate their assortment on the back of HFSS regulations?

How will you keep up-to-date on changes to your competitors' product offerings, ranges and assortment reviews as HFSS regulations are introduced?

Have you assessed the consequences of the forthcoming legislation across your entire physical and digital shelf of thousands of SKUs/categories/brands?

Have you challenged your suppliers on NPD to reduce sugar and salt content or innovate to ensure borderline products do not fall foul of guidance?

Have you challenged your suppliers on innovation to align with new and emerging trends around healthy eating?

In order to determine if a product falls into a non-healthy category and will therefore be subject to HFSS regulations, the government has introduced a Nutrient Profiling Model (NPM). There are multiple steps to working out the overall score of a food or drink product using this model.

It is a points-based system that involves two steps, with a number of conditions each product needs to meet in order to determine the points allocated, and then further criteria to be met before a final score is determined. The complexity of this scoring system has and is causing retailers a challenge to manage across a range that involves thousands of SKUs. The challenge is exacerbated by the fact that the NPM factors in different scores at the individual ingredient level: fruit, nut and vegetable content (depending on the percentage present in the ingredients) are subject to different points allocations.

The model also raises questions on disclosure around ingredients. Many ready-meals and snacks have nuts and fruits included. They are listed in the ingredients, but often not in the quantities that they are added. In order to accurately calculate the NPM, manufacturers would have to go to a possibly commercially sensitive level of disclosure on ingredients make-up.

Application of the Agency's Nutrient Profiling Model

There are 3 steps to working out the overall score of a food or drink.

1. 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	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.

2. 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)

Points	Fruit, Veg & Nuts (%)	NSP Fibre ' (g)	Or AOAC Fibre ' (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	-	>2.1	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

Calculation

The amount (%) of



fruit vegtable or nuts

in 100g of a product is calculated as follows:

$$\frac{\text{(Weight of f,v\&n) + (2 x weight of dried f,v\&n*)}}{\text{(Weight of f,v\&n) (2 x weight of dried f,v\&n) + (weight of other ingredients)}} \times 100$$

Key: f = fruit, v = vegetables n = nuts

*dried fruit, vegetables and nuts includes tomato puree.

Once final points scores are calculated, food and drink are also subject to different thresholds as to what is considered "healthy" and "non-healthy". A food is classified as less healthy when it scores four points or more. A drink is classified as less healthy when it scores one point or more.

This is an added burden to retailers, who are already challenged on meeting a number of other product compliance challenges, such as legal requirements around nutritional values and ingredients being clearly stated on product pages, allergen information and quantitative ingredients declaratuon (QUID).

Ascential Price and Promotion develops HFSS calculator

To calculate the scores of SKUs at scale, Ascential Price and Promotion has developed an HFSS Calculator. It simply ingests the nutritional data of each product across multiple retailers, categorising the ingredients and using the NPM to calculate the score and outcome, providing this to a client in a data export.

By using the NPM, the HFSS Calculator can calculate the HFSS scores of food and beverages and demonstrate which products are "healthy" and "non-healthy". Any products that are defined as non-healthy, but are not part of the government's key product list, will be eligible for promotion, placement and advertising bans.

Case study: HFSS risk assessment of leading UK grocery retailer

Our analysis on a leading grocery retailer highlighted the following classifications:

Classification	Total Products	Percentage
Healthy	5647	36.74%
Non healthy	6810	44.30%
Missing data	2914	18.96%

Classification	Total Products	Percentage
Savoury pies, pastries and quiches	234	90.60%
Table sauce	325	89.23%
Snacking	2,778	88.91%
Spreads	158	87.34%
Chilled desserts	193	86.01%
Ice cream and frozen desserts	244	84.84%
Dairy	1,004	52.69%
Food cupboard	1,610	50.25%
Slimming and sports nutrition	164	48.78%
Fresh	1,409	37.12%
Frozen meats	184	36.96%
Cold drinks	998	32.77%
Cereals	315	32.70%
Ready to go	181	32.60%
Ambient ready meals	354	30.51%
Tins and jars	704	23.58%
Ready to be cooked	487	21.56%
Hot drinks	443	20.77%
Bakery	473	17.12%
Infant feeding	508	16.54%
Pasta, rice and noodles	209	3.35%
White wine	163	0.61%
Red wine	169	0.59%

Of the total range of products stocked by this grocer, the poorest performers were in the following categories: ambient grocery (77% non-healthy), bakery (60% non-healthy) and non-alcoholic beverages (59% non-healthy).

Homing in on the categories with the largest number of products ranged, our analysis showed that the following largest categories had the highest percentage of products most at risk.

By brand, 760 of 1,445 brands the grocer sells had entire ranges that failed. The retailers' own-label brand had 45% such products, while 64.32% of own-brand premium ranges were considered to have failed. Meanwhile, slimming and sports nutrition stood out as a category having a surprisingly high percentage of its products falling foul of the NPM.

This highlights a huge potential impact to lost advertising revenue from brand suppliers at this grocery retailer. Examples of brands with the majority of their products ranged at this grocer falling into the non-healthy score, according to the NPM, are:

Cadbury	(100%)	Dr Oetker	(100%)
Mr Kipling	(100%)	Jacob's	(100%)
Galaxy	(100%)	Bonne Maman	(100%)
Nando's	(100%)	Hellmann's	(100%)
Lindt	(100%)	Schwartz	(97%)

The vast majority of the above brands all have products that fail and the HFSS Calculator and analysis can go down to a granular level on a SKU-by-SKU basis. For example, Kiddylicious is a brand that focuses on the importance of nutrition and child development. However, within the scope of the NPM, 65% of the products fail (ie, products like Kiddylicious Apple Crisps 12+ Months (48g) fail, but Kiddylicious Apple Fruit Wriggles 12+ Months (12g) pass.)

Pressure on range curation

There will be a growing requirement for innovative, differentiated and high-margin products and assortments to replace any products that become less attractive as a result of HFSS legislation and restrictions.

As competition intensifies across physical retail, emphasis on range curation will accelerate as retailers seek to differentiate assortments across formats and attract shoppers. Capturing new trends through innovation and range curation can support shopper inspiration while also opening up avenues for more profitable category growth. Range rationalisation will be a necessary consequence for less profitable or slower-growth categories.



Impact on retailers: contraints on promotion locations

- Risk of loss of revenue from promotion constraints in high-traffic, high-visibility and high-margin sites within stores
- Exacerbating in-store space reorganisation priorities to juggle fulfilment for online and HFSS promotion location constraints
- It is essential for retailers to anticipate and get ahead of equivalent constraints on the online digital shelf

Promotion Locations

There will be restrictions on advertising locations on HFSS products in the highest-traffic, highest-visibility and margin-generating areas in store, such as:

Checkouts



Store entrance displays



End caps/end of aisles



& Equivalents online (digital shelf)



Questions for retailers:

How will you reorganise store space to optimise promotions and category sales while remaining compliant with HFSS regulations?

How are you thinking about the impact to your digital shelf and potential site redesign requirements?

How are you thinking about the future of impulse for HFSS affected categories?

These promotion location restrictions will further force retailers to rethink the future of the front-end and checkouts, and reorganise in-store planograms. This will come in addition to the challenges already being faced by retailers in re-evaluating the role of the store of the future.

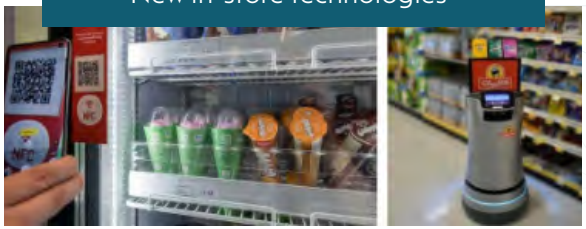
Store space already has to be reorganised to support retailers' increasingly complex last-mile operations and their digital ambitions in terms of product picking and packing, and customer pickup and returns.

As retailers re-allocate store space to accommodate their growing omnichannel shopper, up to one third of store space could be allocated to online fulfillment in major channels and larger store formats. This will put further pressure on HFSS-affected categories and brands within those categories as reallocation of traditional shelf space continues.

The Covid-19 pandemic has only accelerated the adoption of frictionless technologies as pertains in-store technology, especially at checkouts. A more friction-free checkout environment, designed for speed and convenience together with HFSS promotion restrictions, requires the concept of impulse to be rethought to prompt product selection while in store.

Retailers will also have to rethink the shopper journey in store and help consumers to adapt. This will have to account for the possible reallocation of categories and brands, as well as associated locations, possibly giving renewed emphasis to the centre aisle or accelerating other new in-store technologies. For example, Mars Wrigley's Launchpad programme trialled a self-driving robot within a US ShopRite store, helping to prompt impulse purchasing as shopping patterns shift from traditional checkouts.*

New in-store technologies



Connected packaging across products gives consumers access to digital experiences related to the brand. As well as product insights, connected packaging can also link shoppers to tutorials such as recipe ideas or promote interactive games and quizzes as shoppers walk the aisles.

Connected packaging



*Source: Edge Retail Insight

Impact to retailers: restrictions on promotion types

- Promotion and seasonal events planning will be disrupted on HFSS non-healthy products, categories and brands, requiring new strategies and approaches
- Regulations will impact pricing teams, range teams, buying teams and category planning teams, who will need to be supported and coordinated through this transition
- Ongoing and real-time dynamic monitoring of pricing and promotions at competitors is essential, especially on the digital shelf

Types of Promotions that will be subject to HFSS restrictions

i Pricing

1. Volume offers (e.g. multibuys)

ii. Reference pricing

1. Price matching between named retailers
2. Was → Now prices
3. Promo/intro prices advertising future price changes

Questions for retailers:

How are you monitoring promotions and pricing strategy evolution at your competitors relating to categories affected by HFSS?

How will you re-evaluate your promotional and seasonal events planning, as well as pricing rules, in light of HFSS and do this on an ongoing basis to ensure you remain competitive?

How will you compare your product master assortment against your competitors in light of HFSS to maintain exciting innovations and compelling, yet curated, choices for your customers?

How will you support your pricing teams, range teams, buying teams and category planning teams throughout this transition?

Keeping abreast of pricing and promotions is challenging enough in today's digital commerce-driven environment. This has only become more dynamic and real-time as a result.

Shopper loyalty is eroding. More educated and tech-savvy customers means there is almost complete price transparency, price reigns and proximity to a physical store is no longer the moat for loyalty it once was.

Meanwhile, especially in the UK, new entrants such as online pureplays and discounters have disrupted the traditional competitive landscape following decades of price-matching that have repeatedly compressed margins. Pricing and promotions are a critical driver of conversion once the hard work of driving traffic to store or your digital shelf has taken place.

HFSS regulations will only add complexity to this.

5
What the HFSS ad ban means for marketers



Thirty-five percent of 10- and 11-year-olds in the UK are overweight or obese – and the government has attributed a major share of the blame for this situation to the marketing of high fat, salt, and sugar (HFSS) products to younger audiences.

In a policy paper published in July 2020, it was argued that people's decisions about food are "shaped and influenced through advertising in its many forms." Moreover, the paper continued, "the food and drink that is advertised in the UK does not reflect the healthy balanced diet that would support us all living healthier lives."

Promotions and special offers were afforded a share of responsibility for the national obesity crisis too, as they were described as a way to "tempt us to buy foods that are not on the shopping list but are hard to resist," according to the policy document.

Based on the logic that such advertising and marketing endeavours are intended to shape what adults buy their kids and the purchase decisions made by children themselves, the government has introduced a slate of proposals that are likely, over the next couple of years, to transform the landscape for HFSS brands through introducing restrictions that apply to channels including:

- TV advertising
- online advertising
- in-store promotions

Trade groups and industry leaders pushed back against this change in the rules by:

- describing them as an attempt to grab headlines rather than achieve meaningful change;
- asserting that most ads increase brand share and don't look to grow the market;
- pointing out that the UK's existing rules are some of the toughest worldwide;
- proposing that new tech is potentially a better solution.

Such complaints, however, did not change enough minds in Downing Street or Whitehall. As such, it is now incumbent on brands and media owners to ensure they are familiar with the coming wave of regulations, and to ready the necessary plans in response.

That need is based, in part, on the importance of identifying new opportunities. Just as significant, however, is the fact that media owners will be responsible for any breaches on TV stations and streaming services under UK jurisdiction, while advertisers will be directly liable for any failures that occur online and relating to on-demand programme services outside of UK jurisdiction.



HFSS advertising by the numbers

- Research firm Kantar has estimated that 40% of spending on take-home food and drink goes to HFSS products, with 15% directed to goods impacted by the new rules.
- The UK government reported that 59% of online food and drink ads are for HFSS products, equating to a total ad expenditure of £438 million.
- The government stated that children were exposed to 15.1 billion HFSS ad impressions a year – translating to nearly 1,000 ads for every person under 18.
- Analysis during September 2019 found that 47.6% of food ads on four major TV channels – ITV1, Channel 4, Channel 5 and Sky One – were for HFSS products. That total neared 60% during the 6pm to 9pm slot when children's viewing peaked.
- Figures released by the Advertising Standards Authority (ASA), the UK's advertising regulator, revealed that 102 HFSS ads from 35 advertisers appeared on 27 websites and four YouTube channels mainly aimed at children during a three-month period last year – although, it noted, around half were for products, like cooking sauce or olive oil, not likely to appeal to kids.
- IRI, a research firm, predicted the negative sales impact from promotional limitations on HFSS products could surpass £3 billion.

New advertising rules for HFSS products

From the end of 2022, a 9pm "watershed" will be introduced for TV ads and sponsorship for these products, meaning no such messaging can run before this time each day. Brand advertising and sponsorship on TV that do not feature HFSS products are unaffected, however.

On-demand programme services under UK jurisdiction, and therefore regulated by national media regulator Ofcom, will be held to the same restrictions.

Any streaming services that carry ads but fall outside of the UK's jurisdiction will also be subjected to the new regulations.

There will be a blanket ban on the paid-for online advertising of HFSS products (but not for brand ads). This includes digital ads like:

- online display
- online video
- social media display
- influencer ads
- paid-for search listings
- paid-for comparison site or aggregator listings
- in-game advertising
- newsletter banners

The restrictions, it should be noted, only apply to paid-for advertising, and not to a brand's owned websites, blogs and social channels. In practice this means, for example, that if a brand works with an influencer, the subsequent creative could only be distributed on its owned channels, and only in an organic way, meaning it has no paid-advertising support.

Another interesting nugget from the UK government's documentation was the recognition that targeting capabilities for ads are not yet reliable enough, either for TV or online platforms. As such, a blanket ban was judged to be the more effective approach.



A wave of in-store restrictions

An announcement from December 2020 also saw the government unveil numerous prospective curtailments on price and volume promotions for HFSS products in physical and online stores.

These putative restrictions – which have not yet been fleshed out to the same extent as the ad ban – are due to enter effect in April 2022 under the official schedule, and cover the following types of promotion:

- multi-buy promotions, be it "Buy one get one free", "Three for two", "Five for £5" or "Buy four and save 10%" deals
- retailers selling products that offer "extra free", where a larger pack size is created, and on-pack messaging suggests a buyer is receiving "50% extra free", or something similar
- free refills of "sugar sweetened drinks"

The proposed rules also dictate where HFSS promotions might appear in physical and digital stores. For brick-and-mortar outlets, the prohibited spaces, under the policy's initial reading, include:

- checkout areas
- end-of-aisle displays
- store entrance displays

For digital platforms, the suggested limitations would apply to:

- website or grocery entry pages
- where customers view a basket or proceed to making a payment
- where customers are browsing product categories other than HFSS
- pages related to other product categories

While a detailed framework should emerge as the legislative process advances, marketers should be prepared for the worst-case scenario in these areas.

Similarly, while a transition period is expected to accompany the introduction of some of the new rules, brands should endeavour to achieve compliance sooner rather than later.



The logic behind the laws

The new regulations are premised on a few key principles:

1. The aim is to reduce overconsumption of HFSS products by children, based on the assumption that enduring dietary habits are formed early in life – with the correlative result that 63% of adults in the UK are now overweight or obese.

2. The goal, it is argued, is not to hurt businesses for the sake of it; rather, it is to encourage the reformulation of product ingredients, which many brands are already working on.

3. The policy seeks to move beyond the limitations of earlier regulations for advertising to children, which presupposed that kids watched TV during the hours when broadcasters aired shows directly aimed at this young audience.

   Research by media regulator Ofcom, though, found that the 6pm to 9pm period is the family viewing slot when the largest number of children are watching television.

It's also important to note that most consumers are on board with the proposed measures: a survey by research firm YouGov, for example, revealed that 58% of British adults support a ban on TV ads promoting junk food, a total standing at 57% for online advertising. Similarly, the UK government's consultation on promotions found tighter limits were supported by 57% of individual respondents.

The viewpoint from inside the marketing world is understandably conflicted. A poll of audience members for Campaign, an advertising industry media title, outlined in August 2020 saw 60.6% of respondents – a cohort likely made up of executives working in, or adjacent to, the advertising industry – oppose the regulatory steps favoured by the UK government.

However, a recent survey of executives from the Chartered Institute of Marketing, the industry group, found that 54% of its panel – albeit from a small panel of 50 respondents – supported greater regulations for HFSS products.



These duelling impulses reflect an internal qualitative debate around the industry's financial and ethical basis alike. In one corner, it is argued that underplaying the role of ads in stimulating demand among children is morally questionable and diminishes the overall power of advertising. In the other, it is argued the "draconian" measures will do economic harm and no social good.



Whatever viewpoint a client, agency or media owner internally adheres to, resistance to the provisions may not ultimately be a viable option from a public relations perspective, even if enforcement is likely to be limited to a slap on the wrist rather than significant punishment.

What you are allowed to do

The good news is that some room for manoeuvre exists if marketers are ready to adapt their strategies.

Creative and media

Brand advertising: Key to the new rules is the distinction between brand advertising, on the one hand, and promotions, on the other.

More specifically, the latter strategy is the main focus of the HFSS legislation. Brands will be allowed to advertise on TV and streaming services at any time, and be able to sponsor any event or website, "provided there are no identifiable HFSS products in the adverts," the government's documentation said.

"The inclusion of a product(s) would mean sponsorship/advertising could not be used online or on TV before 9pm. By 'identifiable' we mean that a food or drink product is recognisable to the extent the public would recognise what HFSS product was being advertised."

Effectively, this means a silver lining for large brands with logos, characters, and other distinctive assets that are well-established in people's memories.

And certain brands have shown a way forward for pure brand advertising, as shown by chocolate brand Cadbury's award-winning gorilla ad carrying no depiction of a chocolate bar. More recently, some McDonald's TV advertising has focused on its support of grassroots football, avoiding depiction of any products, but especially of HFSS products.



More broadly, this means that post-9pm TV advertising could be focused on more immediate objectives like driving trial for certain products. Longer-term objectives that seek to move the dial on awareness, affinity, or perceptions of quality will become the more important lever for pre-watershed TV to pull.

It is also worth noting that this exemption is likely to be targeted by the health lobby as a "get-out clause" for major advertisers.

Audio: Brands will be able to advertise HFSS products using online audio, be it online radio or podcasts, as children's exposure levels to this content remain unclear, but in all likelihood are quite low.

Brands may also advertise on broadcast radio, albeit only because the existing codes are thought to be strict enough.

Sponsorship: This facet of TV advertising faces the same restrictions as television spots – i.e., showing a HFSS brand is fine before the watershed; showing a HFSS product is not permitted until after 9pm.

Similarly, while brands may previously have supplemented their sponsorship programs with product-focused ads on publisher or social-media websites, that option must now give way to brand-building initiatives.

More broadly, the dynamics in the sponsorship market, such as for football rights and properties, are fluctuating, which could give HFSS brands a new means for reaching consumers as their options are pared back elsewhere.

"Gambling is starting to lose its hold on sport sponsorship, which is going to leave a gaping hole. There's a great opportunity to take those [sponsorship] places," Jeremy Thompson, CEO of caytoo, a sponsorship intelligence company for brands and rightsholders, said.

Despite that opportunity, such high-profile placements might prompt further government scrutiny, Thompson warned, as has been the case for gambling brands involved in football sponsorship.



Other prospective snags could arise around product fit – as shown by a high-profile incident during the Euro 2020 football tournament when Cristiano Ronaldo, a star player for Portugal, moved a bottle of Coke during a press conference and encouraged people to drink water (temporarily denting Coca-Cola's stock price).

"There is always a risk trying to force a connection between a snack product, like drinking a bottle of Coke, and what Ronaldo does on a football pitch for 90 minutes," Thompson said.

"There needs to be an obvious, genuine fit, otherwise it isn't a great message for snack food brands. There's nothing wrong with the association of having snacks and drinks during a game, but if the rightsholder presents it as being good for kids, then you might have a problem."

Owned channels: Brands can promote products through non-paid posts on their own websites or social channels.

Transactional content: This exemption aims to recognise the importance of online channels to people's shopping habits, and the UK government says it wants to place no limits on the point of purchase, where consumers should have full product information.

This area will be subject to further guidance. For now, though, the government has given the following example: "We would make clear that adverts with a 'click now to buy' button or 'swipe up to buy' function would not be allowed as they are not the point of purchase, [but] instead designed to push people to actively seek out products.

"In contrast, if a user searches for a HFSS product on an aggregator's website, the aggregator will be able to list information about that product because users have actively visited the site in order to purchase goods."

Broader considerations

Small brands: Companies with fewer than 250 staff can advertise as they please, a carve out that has already received some opposition. Similarly, the fact that retailers which have fewer than 50 employees are exempt from rules concerning promotions has been called into question by public health advocates.



Non-HFSS products or variants: Assessing exactly which products in a portfolio are subject to the new rules is critical. While a soft-drink product like regular Coca-Cola will face restrictions, for example, Coca-Cola Zero Sugar will not. For brands and retailers that need to assess which products these new rules concern, Ascential Price and Promotion has developed an HFSS Calculator capable of establishing nutrient profile model scores at scale as well as benchmark performance across categories.

Product reformulation is another option, with Kellogg, the food company, announcing it will cut sugar in kids' cereals to make sure they are no longer classed in the HFSS bracket.

In the last five years, McDonald's has also successfully weathered complaints that its Happy Meal ads were targeting children with HFSS ads, in part thanks to the reformulation of its popular Chicken McNuggets product which brought it under the ASA's threshold.[2]

Business-to-business: The government says it is not interested in impeding business activity where its purpose is not encouraging children's consumption of HFSS food and drink. As a result, it's likely this distribution channel will become a more important lever to pull for certain businesses.

In fact, this trend is already playing out in the market, agency sources tell WARC, with a significant proportion of clients diverting more spend into trade marketing in anticipation of restrictions on consumer-facing activity.

In-store: If certain areas of physical stores become subject to promotional limitations and certain types of promotional messaging are made off-limits for brands, the role of packaging will change, as it could become an area where greater differentiation is needed to cut through at-shelf.

Unlike the online and TV ad restrictions, the results of the consultation on the promotional ban have not yet been made clear, but brands will likely begin adapting their agreements with retailers based on the probability that aisle-end and point-of-purchase placements will no longer be allowed. Other methods of raising visibility in-aisle remain a possible option.

HFSS products in the firing line might also benefit from looking to categories such as frozen food, which have always needed to work within certain shelf constraints.

Where we're unclear

The new rules inevitably leave a few grey areas that marketers will need to be aware of as they move ahead.

Retailer e-commerce media

Despite the rise of retailer e-commerce media, pioneered by US enterprises like Amazon, Walmart, and, latterly, Kroger, the proposed UK policy is quite light on detail in this regard. However, it's likely that retailers would shoulder the liability for these limitations, similar to in-store activity.

Many UK retailers are building out these capabilities, and with HFSS products among the most prolific users of this channel, according to Edge by Ascential, the definition of what exactly constitutes "online advertising" will determine how much of a hit there will be to these retail-media owners.

"The HFFS restrictions on digital retail media are not fully clear yet but indications suggest that on-site search" – and possibly, therefore, sponsored products ads – "will be exempt," noted Jonathan Lewis-Jones managing director of Publicis Commerce, a unit of Publicis Groupe focused on helping brands thrive across various retail channels.

"This means that brands will need to focus on pulling all the levers they can to increase their visibility across e-retail, like optimising their product detail page content and product descriptions."

Product placement

Similarly, the proposed legislation lacks definitive guidance on product placement. Here, presumably, the government feels that Ofcom's existing guidance – that product placement of HFSS products is not allowed in UK TV shows, and is banned in all forms for childrens' TV programmes – is sufficient.

However, the government's acknowledgement that lots of children watch TV during family viewing hours (6pm to 9pm) could well lead to a tightening of these particular regulations. At the same time, the fact many programmes made outside the UK feature product placement of HFSS items means that enforcement is unlikely to be all-encompassing.



Influencer marketing

Under the new rules, any creative featuring an influencer can appear on the brand's owned channels but not receive paid-for ad support. Influencer retweets and shares of this owned content will likely constitute a grey area, but caution is the best approach, as the ASA has already issued warnings to influencers who fail to label advertising content, and as advertisers – and not influencers – will be held liable for any failures.

Liability and enforcement

The liability for infractions of the HFSS rules diverges by channel:

TV and streaming rules: Broadcasters and streaming services under UK jurisdiction will be held responsible for maintaining the 9pm watershed.

Online and non-UK streaming: Advertisers will be liable for breaches of the ban here, whether for regular online ads or influencer content that breaks the rules.

While the regulator – likely the ASA – will come out with a more robust definition of an "advertiser", the working definition reads as follows: "the entity who pays (either monetary or other reciprocal benefit) for the placement of an advert ... will be liable for compliance with online restrictions for paid HFSS advertising."

The government is counting on negative PR, based on errant advertisers being named and shamed publicly by the ASA, as the primary disincentive for flouting the rules – and it's worth noting again the majority support for the new HFSS policy among consumers.

Should banned advertising activity continue, the next step is a takedown request. Finally, repeated breaches or refusals will pass to Ofcom, the media regulator.

What about non-UK based marketing communications?

For the most part, the law assumes an advertiser has a full UK presence. If they do not, it's likely they will have a European presence, which would mean the self-regulatory system of the European Advertising Standards Alliance (EASA), which the UK's ASA is part of, should kick in.

In other words, complaints made from the UK regulator will be heard even against an advertiser based elsewhere in Europe.



Quantifying the cost of the new regulations

Ultimately, this HFSS legislation will hit both sales and adspend levels, because that's the point of the new rules.

Online platforms

The UK authorities provided some stark estimates regarding the potential financial impact of the tightened HFSS rules. Firstly, it was predicted that online platforms – which served 15 billion junk-food ads to under-16-year-olds in 2019, versus 700 million in 2017 – would lose some £4.6 billion in revenue.

Television broadcasters

Turning to television, Keith Welling, managing partner at agency UM London, predicted that broadcasters like Channel 4, ITV and Sky could lose over £200 million a year in terms of revenue. "On TV, HFSS products account for 8% of market expenditure, 70% of which is before the proposed 9pm watershed," he said.

"We predict that 5% of total spend, or circa £200 million, would be lost to TV because of this ban. Post-9pm campaigns would see their viable weights halved and reach efficiency reduced by 10%."

Traditional media channels

On the flip-side of the ledger, the official analysis pointed to £3.7 billion in "additional revenue" for other media channels – likely to favour traditional channels other than TV – as adspend is moved away from online platforms as the new legislation takes hold.

Advertising agencies

Advertising agencies, the government's report noted, would see a £66 million revenue hole open up when the stricter provisions go into effect. Given that 91% of agencies reported a negative impact on revenue due to the COVID-19 pandemic, the timing of the new HFSS rules is economically unfortunate at best.



Retailers and manufacturers

For retailers and manufacturers of HFSS goods, the government's prediction was a £27.5 million dip in profits. Yet its official "Evaluation Note" also presented a flip-side to this gloomy figure by predicting £879 million in "advertising cost savings" for these organisations – a questionable idea given that brands may reinvest these resources into other types of marketing activity.

Separately, IRI has forecast a £192 million sales loss for manufacturers and retailers once the ad ban is implemented. It also outlined several tactics that marketers might consider as they set about scenario planning:

1. Shift HFSS adspend to after 9pm, and suffer a £112 million sales decline.

2. Transfer advertising expenditure to other channels, leading to a £96 million sales drop.

3. Use ads to promote low fat, sugar and salt (LFSS) brands – an option available to an estimated 78% of manufacturers. The result? An anticipated sales loss of £80 million to £100 million.

4. Reformulate HFSS products to be compliant with the government's nutritional parameters, with a projected sales loss coming in between £30 million and £75 million.



What next?

An important part of the planning process will involve considering how TV and online advertising will continue to play a role for HFSS products, as these channels still boast enormous potential scale and engagement capabilities. Heightened levels of competition should be expected for timeslots after 9pm, while brand-building ads will also play a more important role before the watershed.

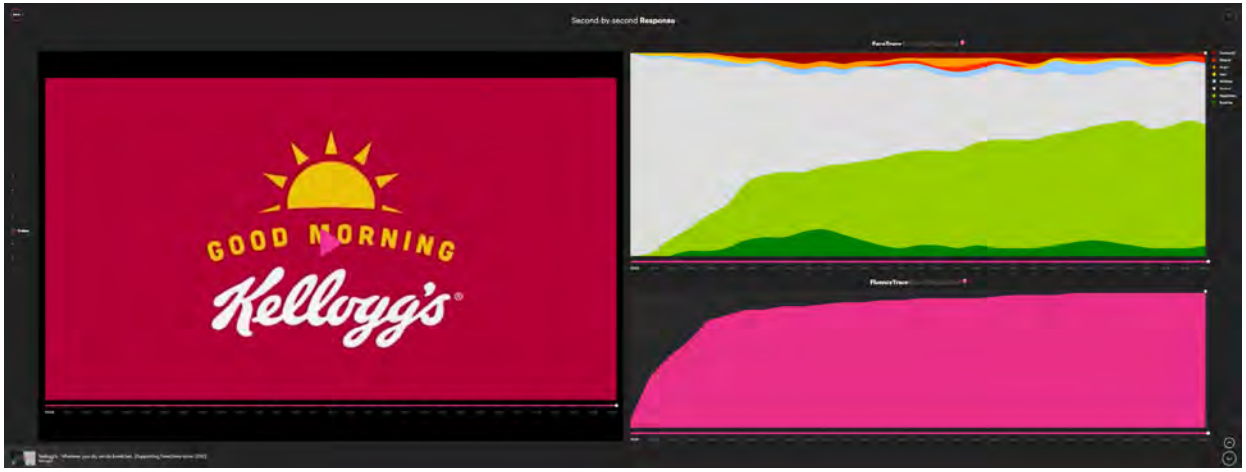


"On TV, the restrictions will undoubtedly put pressure on the post-9pm daypart from both a spot and sponsorship perspective, which will likely mean increased prices for brands," explained Lee Lythe, chief investment officer at media agency Spark Foundry.

"To ensure TV remains a cost-effective medium, advertisers and media owners will need to be flexible, and consider measures such as the relaxation of clash categories – i.e., more than one HFSS brand in a break – amending programming schedules and increasing break minutage.

"While this won't solve the problem for brands, it will certainly ease the pressure."

UM's Welling recommended thinking now about how the media environment will look at the end of 2022, and whether the requisite test-and-learn measures are in place. "We recommend focusing on three key areas: portfolio management, sponsorship and content, and addressable TV," he said.



Recommendations

As HFSS brands react to the new wave of regulations, they should consider a blend of possible solutions:

Assess which products fall under the policy's remit. It's important to remember this is not a junk food ban; products that do not appear to be HFSS at first glance can fall foul of the government's NPM scores.

Adapt media strategies to take the new rules into account, planning for the tightest possible restrictions.

Find a balance between pre- and post-watershed television ads so that core brand metrics are maintained and product demand stays robust.

Transform online content strategies so they prioritise organic, viral sharing among consumers over paid-for exposure.

Potentially **embrace new channels** that have not always been so prominent in the marketing mix.

Champion distinctive, **brand-led advertising strategies,** which have the potential to deliver long-term growth.

Rethink in-store activation and shopper marketing, with the goal of pushing consumers into the right shelf in the right aisle.

Reformulate existing products to ensure they escape the new HFSS constraints, and/or **introduce new variants** that meet this description.

Model sales and return on investment based on a range of different strategies and expenditure scenarios.

Introduce safeguards to protect from failure and so avoid liability for any breaches of the rules, which could require working with legal and compliance teams.

Questions for brands:

- Owned media will likely become more important, so how can you drive sign-ups or followers to those channels?
- Can packaging occupy a more ambitious strategic role for brands as consumers are shopping in-store?
- What channels outside of TV and online present the greatest opportunities for reaching and connecting with consumers?
- Have you mapped out various scenarios that reflect the numerous possible responses to the HFSS ad ban?
- Does your innovation pipeline contain enough innovative, differentiated and high-margin products that could make up the restriction-induced revenue shortfall?

Questions for media owners:

- For online platforms and TV broadcasters, do HFSS brands make up a significant share of revenue – and, if so, what strategies might fill the demand for pre-watershed inventory?
- Could bundled deals, featuring inventory for LFSS products before the watershed and ad space for HFSS products after the watershed, be a viable strategy?
- If media owners operate outside online and TV channels, have they developed a compelling case for attracting HFSS brands looking to spend elsewhere?
- New brand advertising opportunities are opening up, but do you have a proposition in place that can help brands achieve this type of long-term growth?
- Are there opportunities for different partnerships – say, using media owners' content-creation skills – to develop online material that brands can spread organically?

Questions for agencies:

- More restrictions require the advertising you produce to have, and show, more impact for the long term. Is your business model set up to deliver, then capture, this type of demand?
- Auditing is likely to become extremely important to certain clients who are set to be affected by these changes. Are you prepared to fulfil this role before they look to a consultancy?
- For clients, business rather than brand or creative metrics are on the line; are you able to speak their language in terms of sales and profitability during another knock to their business?
- Can you offer valuable consulting advice on how to adapt to the new rules, the legal ramifications, and the best ways that marketers can respond?
- Are there learnings from other clients in highly-regulated industries, from alcoholic drinks to finance, that can be employed to help HFSS brands?

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