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Science and Technology in childhood Obesity Policy

FOOD SYSTEMS FOR HEALTH

PROTECTING CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING: POLICY BRIEF

Policy issue and context

Childhood overweight and obesity are increasing global public health problems. In 2020, 38.9 million children aged under 5 years were estimated to be overweight *(1)*, while in 2016 more than 340 million children and adolescents aged between 5 and 19 years were affected by overweight or obesity *(2)*. A major driver of the increases in obesity that have been seen in almost all countries – which in turn contribute to the increasing global burden of disease associated with obesity *(3)* – is current food environments, which feature the increasing availability, accessibility, affordability and marketing of foods that are high in saturated fats, trans-fats, sugars and/or salt and are usually highly processed *(4)*.

The United Nations (UN) Food System Summit was called to commit to bold new actions and game-changing solutions to transform today's food systems, which are failing to support the development of food environments that promote healthy diets and improve nutrition. Food environments are changing rapidly, especially in low- and middle-income countries, with the wide availability and heavy marketing of many products; in particular, those with a high content of fat, sugars or salt/sodium.

Healthy diets are being undermined by marketing practices, with a significant amount of marketing being for foods that contribute to an unhealthy diet[1]

Evidence is unequivocal that food marketing to which children are exposed alters their food preferences, choice, purchases and intake

[1] Foods include both food and non-alcoholic beverages. In the context of food marketing, a food or non-alcoholic beverage is considered to contribute to an unhealthy diet if it exceeds the thresholds established in WHO region-specific nutrient profile models or if it belongs to a category for which all marketing is prohibited (and thus no thresholds are established). Such foods are typically high in fats, sugars and/or salt and are processed. WHO regional nutrient profiles were developed for all six WHO regions: the African Region, the Region of the Americas, the Eastern Mediterranean Region, the European Region, the South-East Asia Region and the Western Pacific Region.

Healthy diets are being undermined by marketing practices, with a significant amount of marketing being for foods that contribute to an unhealthy diet[1] *(5, 6)*. Evidence is unequivocal that food marketing to which children are exposed alters their food preferences, choice, purchases and intake *(7-11)*. Food marketing also threatens children's rights, affecting their physical health as well as their emotional, mental and spiritual well-being *(12, 13)*. Therefore, as noted by the commission set up by the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the Lancet (the WHO–UNICEF–Lancet Commission) *(12)*, "commercial governance" is essential to protect children from harmful marketing that encourages unhealthy diets.

This policy brief provides policy-makers and programme managers, health professionals and advocates with information and policy options to increase protection of children from the harmful impact of food marketing by reducing the power of, and exposure to children of, such marketing practices.

Background

The need to protect children from the harmful impact of food marketing and to enable children to develop healthy food values and preferences has long been recognized. In 2010, the Sixty-third World Health Assembly unanimously endorsed the WHO *Set of recommendations on the marketing of foods and non-alcoholic beverages to children (14)*, recognizing that a significant amount of marketing is for foods high in fats, sugars or salt and is widespread across the world. Resolution WHA63.14 on the marketing of food and non-alcoholic beverages to children *(15)* urges Member States to take the necessary measures to implement the set of recommendations, and to identify the most suitable policy approach given national circumstances. As noted in the set of recommendations, governments are in the best position to set direction and overall strategy to achieve population-wide public health goals, and should therefore set the scope of a country's marketing restriction.

The set of recommendations defines marketing as "any form of commercial communication or message that is designed to, or has the effect of, increasing recognition, appeal and/or consumption of particular products and services" *(14)*. Marketing includes advertising, promotion and sponsorship. The impact of marketing is a function of exposure to marketing and the power of each exposure. "Exposure to marketing" refers to the quantity, frequency and reach of marketing communications via a growing number of communication channels, among which digital media platforms have become of particular concern *(16, 17)*. The WHO Regional Office for Europe has spearheaded the advancement of a focus on digital marketing and has developed methods to measure individual children's exposure to digital marketing across the European Region *(18)*. "Power" is the extent to which each marketing item convinces its target audience to use the product; it is affected by content design, nature and execution of communication of marketing messages.

A policy response that provides the best protection for all children from the harmful impact of food marketing and is in line with Article 3 of the Convention on the

ABOUT WHO'S FOOD SYSTEMS FOR HEALTH

Today's food systems are simply failing to deliver healthy diets for all. In addition to the suffering this causes to individuals and families, the economic costs to society due to the health and environmental impacts of current dietary patterns are heavy, and often hidden. If food systems are transformed, they can become a powerful driving force towards ending hunger, food insecurity and malnutrition in all its forms. There is no single solution, instead it is recommended to implement coherent portfolios of policies, investments and legislation that prioritise health. At the same time, it is also important to ensure a fair price for the producer and reflect the true environmental, health and poverty costs.

WHO's Food Systems for Health narrative highlights five different ways in which food systems impact on health and embraces the interconnectedness of humans, animals, and the planet. The malnutrition pathway comprises the aspects of food systems that lead to unhealthy diets or food insecurity and therefore contribute to malnutrition in all its forms. Malnutrition and hunger pose the highest risks to human health in terms of death and illness and include obesity, micronutrient deficiencies, stunting, wasting, communicable and noncommunicable diseases and mental illness.

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Rights of the Child (CRC) to include children aged under 18 years (19), needs to be as comprehensive as possible, to reduce both the exposure of children to marketing and the power of that marketing. The WHO Commission on Ending Childhood Obesity underlines in its final report:

> "Government and society have a moral responsibility to act on behalf of the child to reduce the risk of obesity. Tackling childhood obesity resonates with the universal acceptance of the rights of the child to a healthy life as well as the obligations assumed by State Parties to the Convention of the Rights of the Child *(20)*."

This new perspective offers some potential to increase the pressure on States to effectively address the various harms associated with the marketing of unhealthy, ultra-processed food to children.

The framework for implementing the set of recommendations *(21)* proposes the following **three comprehensive policy approaches** that are considered to have the highest potential to achieve the desired policy impact:

- eliminating a*ll forms* of food marketing that is "high in saturated fats, trans-fatty acids, free sugars, or salt" to which a broad range of children are exposed;
- eliminating *all forms* of food marketing to which a broad range of children are exposed; and
- eliminating *all forms* of marketing to which a broad range of children are exposed.

The framework for implementation acknowledged that some Member States may choose to start with a narrower, stepwise policy approach, and to restrict marketing of only certain foods and of some forms of marketing through some channels. However, experience since endorsement of Resolution WHA63.14 shows that such approaches leave children inadequately protected because exposure to food marketing that encourage unhealthy diets continues *(22, 23)*. Narrow policy criteria allow for gaps that companies may use to shift their marketing investment from regulated to unregulated areas *(24-26)*. Food marketing originating from sources outside a country's jurisdiction may be beyond the scope of a current national policy. This issue of cross-border marketing already recognized in Recommendation 8 of the WHO set of recommendations, is gaining importance, especially also with increased digital marketing. Countries within the European Union can capitalize on efforts by the European Union, which – in line with the various provisions of the EU Treaties and the EU Charter on Fundamental Rights and Freedoms has significant powers to regulate cross-border marketing within its borders.

As noted in the implementation framework, ***the government's ultimate aim should therefore be a comprehensive policy approach***. In 2016, the WHO Commission on Ending Childhood Obesity noted with concern in its final report *"the failure of Member States to give significant attention to Resolution WHA 63.14 endorsed by the World Health Assembly in 2010 and requests that they address this issue" (20)*. Furthermore, in 2018, the WHO Independent High-Level Commission on Noncommunicable Diseases called for an increase in effective regulation; in particular, that *"governments should give priority to restricting the marketing of unhealthy products (those containing excessive amounts of sugars, sodium, saturated fats and trans fats) to children" (27)*.

To date, no country has implemented a comprehensive policy *(28)*, despite evolving evidence on the harmful impact that food marketing can have on children of all ages, including those aged over 12 years *(8, 9, 29)*, and despite the lack of evidence that stepwise approaches can reduce both exposure to and the power of food marketing, and have a positive impact on children's health.

As of May 2022, a total of 60 countries have adopted policies that restrict marketing of food and nonalcoholic beverages to children, especially in the Region of the Americas and the European Region. Twenty of these countries have mandatory marketing restriction policies and another 18 mandatory policies in the school setting. Several countries have multiple approaches, mandatory and voluntary and there is great variation in scope, such as channels or settings covered. Some policies cover all food and beverage products, others restrict marketing of products based on their nutrient content, and some focus on a specific product such as energy drinks or SSB. Furthermore, many countries have policies that do not cover children up to 18 years of age.

Elements to consider when implementing a comprehensive policy to protect children from the harmful impact of food marketing

Given that the impact of food marketing is a function of exposure and power, all policies should **reduce both the exposure** of children to marketing **and the power** of that marketing. From the outset, it is crucial to clearly define the objectives of the marketing restrictions, to increase transparency and support for the policy. Governments are in the best position to define the scope of the policy and its components *(14)*. Parliamentarians also play a unique role in advancing policies, including those to protect children from the harmful impact of food marketing through their mandates of representation, legislation, budget and oversight *(30)*.

The policy should consider the following elements *(21)*, in the best interests of **all children**, aged under 18 years *(19)*:

- What **foods** are to be restricted from marketing?
- What marketing **types, techniques and channels** are to be restricted?

Determining foods to be restricted

A critical step is to clearly define nutrient criteria or thresholds for foods to be restricted from marketing. To support countries in determining foods to be restricted from marketing, WHO has developed regional nutrient profile models *(31-36)* in line with international dietary guidelines, which governments can adopt and adapt, depending on their respective country contexts. The stricter the criteria and thresholds, the more foods are restricted from marketing. Models developed by the food industry as part of self-regulation tend to be less strict than those developed by WHO or national governments *(37)*, and therefore provide less protection to children from the harmful impact of food marketing. Policies that have an underlying nutrient profile models may be more effective *(38)*. Food marketing restrictions may be part of a wider package of policies to promote healthy diets; hence, although every policy will have its own distinct regulatory objectives, it is important to ensure alignment between policies – in particular in relation to the set nutrition criteria and thresholds.

Determining marketing types, techniques and channels to reduce power and exposure

Marketing types include advertising, promotion or cross-promotion, and sponsorship. Techniques include the use of licensed or brand-equity characters, celebrity endorsers and incentives (e.g. toys), whereas channels include print, outdoor, broadcast and the Internet. Combining marketing types, techniques and channels can powerfully reinforce commercial messages, which makes it important to ensure the **broadest possible policy scope**. For example, "advergames" use engaging video games to advertise brand-name products by featuring them as part of an online game; direct advertising uses targeted emails or app notifications to children; influencers advertise and promote brand-name products by featuring them in online videos; and brand-name products are shown prominently during sponsored events.

Country experiences

To date, no country is implementing any of the three comprehensive policy approaches proposed in the framework for implementation. Therefore, there is no available evidence on the effectiveness of a comprehensive approach.

Stepwise policy approaches are the most commonly implemented; they include both mandatory regulation and voluntary approaches, such as industry pledges. Examples of stepwise mandatory approaches include regulations of TV advertising for defined foods, marketing restrictions on children's channels during children's programmes or during a short, defined time-period where children make up the majority of the audience. Stepwise, or voluntary industry pledges that typically only restrict marketing directed to children aged under 12 years and are likely to have less strict nutrient criteria and thresholds. Such stepwise approaches only partially protect children *(26)*, and are less likely to be effective *(38)*.

Some countries are now broadening the scope of their policies and are implementing stronger policy elements that help to better protect children from the harmful impact of food marketing. These country examples which are provided in Table 1, can serve as an inspiration to other countries.

Table 1. **Country examples of policy elements to achieve stronger protection of children from the harmful impact of food marketing**[2]

Policy elements to consider when implementing a comprehensive policy	***Country examples***
Protecting all children aged under 18 years	Restrictions for unhealthy food marketing in Ireland and Turkey apply to children aged **under 18 years.** In Ireland, commercial communications for unhealthy food products and/or services are not permitted in children's programmes, and shall not include licensed characters. Children's programmes are defined as those where more than 50% of the audience is aged **under 18 years.** In Turkey, the Regulations on Principles and Procedures of Broadcasting Services protect children aged **under 18 years**, and restrict advertising of unhealthy food and beverages before, during or after children's television programmes. If such food is advertised during non-children's programmes, health promotion messages must be displayed.
Restricting a broad range of foods by applying strict nutrient profile models	The Turkish broadcasting regulations apply restrictions on the marketing of unhealthy foods to children based on the WHO Regional Office for Europe nutrient profile model (31). Specific food categories – including chocolate and candies, energy bars, sweet biscuits and waffles, potato chips and sugar-sweetened beverages – are prohibited from being advertised during children's programming.

[2] Adapted from a forthcoming WHO/UNICEF publication titled *Implementing policies to protect children from the harmful impact of food marketing: a child rights-based approach.*

Policy elements to consider when implementing a comprehensive policy *cont.*	***Country examples*** *cont.*
Restricting the power of marketing	Chile's Food Labelling and Advertising Law includes a ban on advertising for unhealthy foods where **advertising appeals to children** by including characters, toys or other strategies considered to be "directed to children". The Law Promoting Healthy Eating for Children and Adolescents in Peru includes restrictions for advertising **through any medium**. Companies are prohibited from using real or fictional characters, gifts or prizes or other incentives to market unhealthy foods and beverages.
Including a broad set of marketing communication channels	In Quebec, Canada, the Quebec Consumer Protection Act bans **any commercial advertising** (directed at children aged under 13 years), including of foods and nonalcoholic beverages on television, radio, print, Internet, mobile phones and signage, as well as the use of promotional items.
Adopting an effective enforcement mechanism	In Quebec, Canada, the Office for Consumer Protection enforces the Consumer Protection Act in three principal ways: notifying the actors concerned of the rules that apply to their activities; negotiating with said actors to voluntarily change their practices; or filing criminal proceedings against the actors for violating the Act. Fines can be levied on any actor in the advertising process (from the conception phase to its distribution), ranging from 600 to 100 000 Canadian dollars.

A review of contextual factors relevant for the implementation of policies to restrict food marketing *(39)* identified studies that described elements affecting the overall feasibility of such policies. Facilitators included strong political leadership, supporting evidence, intersectoral collaboration and community support *(40-44)*. Challenges or barriers included complexity of the regulatory processes, conflicting interests, lack of financial and human resources, industry interference, a weak evidence base, and ambiguous categorization of, or lack of criteria for, foods to be restricted or banned *(40-50)*.

The review of contextual factors also showed a wide range of literature reports on industry opposition to government action on developing or implementing policies to restrict food marketing to children *(40-43, 49, 51-53)*. Obtaining buy-in to implement a comprehensive policy that best protects children from the harmful impact of food marketing is likely to be challenging. To identify possible opposition, submissions received during transparent public consultations provide valuable insights *(54-57)*. Acceptability of stakeholders on a comprehensive, mandatory policy approach to marketing restrictions varies greatly *(39)*. The food industry opposes mandatory measures and offers voluntary measures that would only partially protect children from the harmful impact of food marketing *(54-57)*. Table 2 provides possible arguments against food marketing regulation, as well as counterarguments.

Table 2. Examples of common arguments from opponents and counterarguments[3]

Common arguments from opponent	*Counterargument*
Parents and caregivers are responsible for what their children eat. This should not be decided either by the government or by businesses.	The majority of food marketing undermines dietary recommendations and encourages unhealthy diets. Marketing negatively influences food values and preferences, and undermines efforts of parents and other caregivers to encourage healthy eating. The overabundance of such marketing also distorts the information landscape, impacting children directly and making it more difficult for parents to navigate. Restricting food marketing is an important policy action to improve the food environment to support children in making it easier to make healthier decisions, and to support parents in providing better care for their children *(13, 58)*.
There is no proof that the marketing of unhealthy food and beverages is linked to children's health outcomes, such as overweight and obesity.	This argument is no longer sustainable. A large body of consistent and independent evidence has determined that marketing influences children's food preferences, purchase requests and dietary intake *(7-9)*, and ultimately impacts their health.
The ministry of health is not the appropriate actor to determine how food marketing to children should be regulated.	Governments have a legal obligation to protect child rights, including those that are threatened by harmful marketing. All relevant governmental sectors should be involved in drafting, adopting and enforcing regulations on food marketing. Whether or not the ministry of health has the legal authority to regulate food marketing varies between jurisdictions and is a matter for each government to determine based on its domestic legislation. In some countries, marketing restrictions were passed under a food law (as in Chile), or under a broadcast regulation (as in Ireland and the United Kingdom of Great Britain and Northern Ireland). The ministry of health will typically take the lead on the process, given the health objective of food marketing restrictions, but needs to be supported by the appropriate governmental bodies and agencies, to ensure that legislation or regulations are issued by the appropriate government body, following required procedures. In the United Kingdom, the Department of Health and the Department for Digital Culture, Media and Sport have worked closely on the development of marketing restrictions.

[3] Adapted from a forthcoming WHO/UNICEF publication titled *Implementing policies to protect children from the harmful impact of food marketing: a child rights-based approach.*

Table 2 *cont*. **Examples of common arguments from opponents and counterarguments**

Common arguments from opponent	***Counterargument***
The food industry is better placed than the government to reduce the harmful impact of food marketing: the adoption of industry-led, self-regulatory pledges is more efficient and less costly than the imposition of mandatory restrictions of business practices.	Research has established that voluntary actions by industry, such as pledges to promote food "responsibly" to children, contain significant gaps that prevent them from reducing the exposure of children to food marketing. These gaps relate to limitations in the age ranges of children protected; exemptions in the marketing techniques, media and programmes used; and weaknesses in the categorization of foods that contribute to an unhealthy diet. Industry-led initiatives are also not effectively enforced, monitored and evaluated; as such, they cannot be substituted for a mandatory, child-rights compliant implementation of the WHO set of recommendations *(14)*.
Sweeping restrictions are excessive: they limit business activity too much and infringe on the ability to market food to adults. A stepwise approach, starting with more narrowly defined approaches, would be better.	The WHO set of recommendations recognizes that a comprehensive approach is most effective in ensuring the broadest possible coverage and a high level of public health protection against food marketing *(14)*. Stepwise approaches may be perceived as representing small and cumulative gains over time, but research has shown that they can have counterproductive effects and can lead to an increase (rather than a decrease) in children's exposure to such marketing. Gaps in restrictions encourage companies to shift their marketing investment to unregulated programmes, media, marketing techniques and settings *(24, 59)*. As a result, a stepwise approach does not sufficiently protect children from exposure to commercial practices that negatively impact their rights, as enshrined in the CRC *(19)*.
Marketing restrictions are unlawful.	Business actors have invoked different legal arguments challenging the validity of food marketing restrictions. These arguments can be rebutted, particularly where a government has considered the likelihood of legal challenges in the development of the regulations. Governments that have ratified the CRC have an obligation to ensure the enjoyment of the highest attainable standard of health for all children in their territories. In upholding this right, they have a broad margin of discretion in determining how to do this most effectively, including through the use of regulations.

CRC: Convention on the Rights of the Child

Call to action

To mitigate the harmful impact of food marketing on children, governments are called upon to implement comprehensive policy approaches to **restrict marketing of foods that contribute to an unhealthy diet**, to reduce children's exposure to such marketing and to reduce the power of such marketing, offering the best possible protection to all children. Comprehensive policy approaches have the potential to be sufficiently broad to restrict all forms of food marketing to which children are exposed, including cross border marketing.

In view of the increasing concern of digital marketing, and in line with the general comment on children's rights in relation to the digital environment *(60)*, policies to protect children from the harmful impact of food marketing should also include digital marketing restrictions.

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