

IAB UK
Response to CAP consultation on 'less healthy food and drink' advertising
guidance
7th February 2024

1. The IAB welcomes this draft guidance from CAP which will help the industry to prepare effectively for the online ban on less healthy food and drink (LHFD) advertising that will come into force in 2025. We also welcome the extensive programme of industry engagement delivered by CAP ahead of and since the publication of this draft guidance.
2. Having discussed with members, we believe that the draft guidance is clear and we are content that it reflects the provisions in the relevant legislation, with one exception.
3. We are concerned that the guidance does not provide sufficient clarity about which parties are responsible and accountable for compliance with the LHFD product advertising rules.
4. The proposed wording of CAP Code rule 15.19 states that *'paid advertisements in online media for identifiable food or drink products that are classified as "less healthy" are prohibited'*. The text then goes on to define what 'paying' means, and says that this *'includes providing any consideration whether monetary or non-monetary'*.
5. While we recognise that the amended Communications Act 2003 does not define 'advertiser' for the purpose of the ban, this wording is vague and could be interpreted to bring into scope businesses in the programmatic chain that 'pay' for ads upstream from the direct advertiser.
6. It is our understanding that it is the Government and Parliament's intention that advertisers solely are subject to the prohibition on 'paying' for in-scope ads, responsible for compliance, and liable for any breaches. We also understand that it was not the policy intention to bring in-scope providers of technical intermediary services procured by advertisers to enable campaigns, or any other businesses involved in delivering online ads.
7. For the avoidance of doubt, it is essential that the regulator makes this position clear. The IAB will also be writing to the Government separately with a request for confirmation that this is the case.
8. The guidance and the corresponding wording of the relevant proposed rule should be amended to make clear that the prohibition itself, and the responsibility for complying with it, applies to businesses that act as the primary advertiser client, procure advertising services and determine the creative and targeting of a campaign, and not other businesses in the digital advertising supply chain that may be involved in delivering that ad.
9. This clarity is essential to provide businesses in the wider supply chain with the certainty that they will not be liable for inadvertently being involved in delivering or hosting prohibited LHFD ad content.