

Alliance Against Conflict of Interest (AACI)

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**The Executive Director (Compliance Strategy)
Food Safety & Standards Authority of India,
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Kotla Road, New Delhi 110002.**

Email: ed-office@fssai.gov.in

Dear Executive Director,

Sub: FSSAI's draft guidelines on "Working with the Private Sector", dated 4th Oct. 2019 (File No. 13 (36) 2019/Guidelines on Private Companies/RCD/FSSAI) for public feedback by 25th October 2019

https://fssai.gov.in/upload/uploadfiles/files/Notice_Draft_Guidelines_Private_Sector_04_10_2019.pdf

Please find the comments of the Alliance Against Conflict of Interest (AACI), which is an alliance of organisations and individuals working in various sectors – doctors, lawyers, women's and children's health groups, activists and media. AACI takes up cases with clear conflict of interest and brings them to the notice of the parties involved, the government and media. AACI aims at having a legal protection from conflicts of interests in all sectors in public policy.

We have taken a careful reading of the draft for "Working with the Private Sector" and welcome the opportunity of commenting on it.

Attached is the AACI response as Annex. AACI would like FSSAI to call a consultation meeting on this subject civil society, media and consumers, before the guidelines are finalized.

Sincerely,



**Dr. Arun Gupta
Convener Alliance Against Conflict of Interest (AACI)
arun.ibfan@gmail.com**

AACI Response

Having read the draft of the “Working with the Private Sector”, it sounds more like a facilitating the work of private sector to interfere in the public policy making rather than protecting the health and wellbeing of the consumers. Here we give the example of Singapore¹, which is very fresh action banning the advertisements that promote high sugar drinks; a more clear action expected from a regulatory body. With the proposed participation partnership with the food industry in the regulatory planning, is a fundamental and institutional conflicts of interest.

The concept of conflicts of interest is old and has been used in an English proverb: “He who pays the piper calls the tune.” There are several definitions all meaning the same.²

“Conflict of interest”, now being commonly cited, is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest. Conflict of interest situations can be institutional or personal, and can stem from financial or other interests including post-employment opportunities or during public private partnerships. Institutional conflicts of interest arise when an institution’s own financial interests or those of its senior officials pose the risk of exerting an undue influence on decisions involving the institution’s primary interests. In the case of academic institutions, such risks often involve the conduct of research within the institution and could affect the value of the institution’s patents or its equity positions or options in biotechnology or pharmaceutical companies or companies dealing in medical devices. Conflicts of interest in the creation of public policy, especially health or nutrition related policies such as the vaccine policy, tobacco control, and research related to health, can have negative impact on the lives of millions of people.

Conflicts of interest may also arise when institutions seek and receive gifts or grants from companies, for example, the gift of an endowed university chair or a grant for a professional society to develop clinical practice guidelines. Conflict of interest can stem from financial or other kinds of interests. A public official who serves on the board of a corporation or explicitly considers post-employment opportunities in the private sector certainly creates a situation of conflict of interest.

Conflict of interest also means that the expert or his/her partner (“partner” includes a spouse or another person with whom s/he has a similarly close personal relationship), or the administrative unit with which s/he has an employment relationship, has a

¹<https://www.independent.co.uk/life-style/food-and-drink/singapore-sugar-drinks-advertising-ban-ministry-of-health-a9152071.html>

²<https://ijme.in/articles/conflict-of-interest-in-public-health-should-there-be-a-law-to-prevent-it/?galley=html>

financial or other interest that could unduly influence the expert's decision with respect to the subject matter being considered.

The free web dictionary of West's Encyclopedia of American Law, defines conflict of interest as "a term used to describe the situation in which a public official or fiduciary who, contrary to the obligation and absolute duty to act for the benefit of the public or a designated individual, exploits the relationship for personal benefit, typically pecuniary".

We find this guideline in present form creates conflicts of interest at FSSAI. The current draft fails to provide an answer to prevention of conflicts of interest at all, which is worrying.

Food industry has NO business to be part of implementing nutrition action. Going by this principle food industry should not be sitting on any table that talks about **HOW** nutrition/food/diet action be implemented.

As indicated in the opening para that FSSAI is 'building a culture of self-compliance', how did FSSAI reach this conclusion as it is not a helpful strategy for the people of India. Why FSSAI were to follow self-compliance route, for which evidence exists to the contrary as the study questions self-regulation³. Interested persons could read results and conclusion from another study.⁴

“Results

All analyses were conducted in 2014. Findings indicated that no significant improvement in the overall nutritional quality of foods marketed to children has been achieved since industry self-regulation was adopted. In 2013, 80.5% of all foods advertised to children on TV were for products in the poorest nutritional category, and thus pose high risk for contributing to obesity.

Conclusions

The lack of significant improvement in the nutritional quality of food marketed to children is likely a result of the weak nutritional standards for defining healthy foods employed by industry, and because a substantial proportion of child-oriented food marketers do not participate in self-regulation. The lack of success achieved by self-regulation indicates that other policy actions are needed to effectively reduce children's exposure to obesogenic food advertising.”

AACI believes that FSSAI may in fact 'interact' with or sought opinion from food industry on some minimum standards e.g. to facilitate implementation of the regulations

³<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804645/>

⁴Evaluating Industry Self-Regulation of Food Marketing to Children

<https://www.sciencedirect.com/science/article/abs/pii/S0749379715000951>

such as labelling or marketing or else related to maintaining safety of food and ensure that no damage is done to public health. Therefore, to keep public interest in the centre, and ensure full accountability and transparency, we like to quote here “FSSAI is responsible for protecting and promoting **public health through the regulation and supervision** of food safety”.⁵We make our comments/suggestions in this context and spirit to protect public health and for FSSAI to conduct itself as a ‘supervisor’ of food safety.

Section wise analysis and comments

Section 1. Institutional Framework Sections a, b, c,e, and f

We draw your attention to the Hon’ble Supreme Court of India’s order directing that scientific panels of the Food Safety and Standards Authority of India (FSSAI) should not have representatives of the industry but independent experts in consonance with the section 13(1) of the FSSAI Act 2006. Honouring the spirit of the judgement, therefore, question does not arise that FSSAI violates its own law by including representatives of the food industry in the CAC or other frameworks.

FSSAI’s primary role is to ensure availability of safe foods to the consumers through development of robust standards and monitoring their compliance. We insist that FSSAI works according to these principles and ensures that conflicts of interests are avoided by a process in writing in its functioning. When FSSAI assesses that conflicts of interest is not avoidable, it must manage it to protect public health. The food industry continues to make pledges, but is reluctant to follow regulations. With increasing evidence of risks to public health due to high sugar and high salt foods as well as ultra-processed foods^{6,7}, there is a need to have a non-partisan, uncompromised regulator of food safety and standards in India. This is crucial to thwart the market’s influences on the way people eat by having adequate safeguards on package labeling, advertising and pricing etc.

d. Codex Shadow Committees

Codex is involved making food standards. Representatives of food industry come to these committees under the CII or other industry bodies. They also represent at the international Codex meetings as part of the official delegation of Government of India.

Section 2, 3, 4, 6, 7.

These are the activities of Government of India and FSSAI should follow it’s madate without compromising public health. Above mentioned principles to avoid conflicts of interest can be applied in developing any PPPs projects. Why should food industry

⁵ https://en.wikipedia.org/wiki/Food_Safety_and_Standards_Authority_of_India#cite_note-fssaiintro-3

⁶ <https://www.apa.org/topics/kids-media/food>

⁷ <https://www.jwatch.org/na49259/2019/06/18/health-effects-ultra-processed-food>

educate India's population on healthy diet while day in a day out it markets unhealthy diet to them. AACI believes that it is a clever strategy of the food industry to join hands with government or its agencies to look good; entirely a PR exercise. By doing this, it keeps people *confused* on what/whom to follow. That situation suits industry.

Section 5 Association with industry Centres

AACI believes that FSSAI has no reason to provide any legitimacy to such centres, it should be treated with same principles to avoid conflicts of interest. If the food industry has set up something FSSAI wanted to learn from, they can listen to them or seek reports rather than developing an 'interface'.

2. Conclusions

FSSAI should not only follow the public interest principles, it should seem to follow as well. Having any partnership of any kind with food industry is highly troublesome for public health. Such association is normally meant for manipulation⁸ by the food industry. To resist, FSSAI can only work through sound principles of avoiding conflicts of interest but not partner with the industry.⁹ FSSAI and other Government of India departments have to ensure regulation for safety of food and inform people what is right.

3. Recommendations.

Specific to the analysis above

- For any person to be a member of the CAC/other committees, FSSAI should offer a conflicts of interest declaration form and have it completed in writing. Once conflicts of interest is identified action to manage can be taken accordingly. There are guidelines available for this purpose. WHO has a declaration tool and technical guidance¹⁰. OECD also provides such tools for the very purpose. AACI recommends to identify and manage conflicts of interests¹¹. (attached conflicts of interest form of WHO). BPNI has adapted an identification tool from the OECD guidelines and attached with an example of a partnership that FSSAI developed few years back. Such tools can be used.
- In these frameworks like review of standards or other related committees, FSSAI may like to invite industry for their comments, can be through submissions oral or written. (which in any case are publicly asked). However, any meeting with the food industry be made public through minutes on the website.
- There is no reason that food industry or its allies be allowed to be a part of the official delegations of the Codex committees.

⁸ <https://pdfs.semanticscholar.org/b2d1/c9fe25f577af3b2d4d3456a24a05cbd6290b.pdf>

⁹ <https://timesofindia.indiatimes.com/india/food-regulator-sleeping-with-enemy/articleshow/71485212.cms>

¹⁰ <https://www.who.int/nutrition/publications/COI-report/en/>

¹¹ <https://www.oecd.org/gov/ethics/managingconflictsofinterestinthepublicservice.htm>

- Industry perspective may be taken as submission oral or in writing for consideration of the decision makers.
- Bio data of members of scientific panels should be put in public domain along with conflicts of interest declared by them. In fact, FSSAI should develop questionnaire seeking information from prospective members - about past and present association with private industry/sponsored research/consultancy and other association with food companies. (We share an example with you.)

Additional Recommendations

1. Government of India and FSSAI may recall its role as the regulator and move away from voluntary pledges and self-regulation towards stronger public policies and programmes to protect public health; **including a law to identify, prevent and manage conflicts of interest. As the** Private sector is well represented on the Authority by law, so there is no need to have other formal arrangements with private companies in fulfilling the mandate of FSSAI.
2. Preventing an undue influence of business sector /private sector on public policies is critical. FSSAI should follow basic set of principles enshrined in the constitution of India, guidelines for prevention /management of conflicts of interest and follow its own law. By not doing so, its credibility will be put at stake. Keeping independent from commercial interests is an important task for FSSAI.
3. FSSAI should strengthen its institutional capacity to identify/ assess potential conflicts of interests as well as manage by exclusion from participation.
4. When a PPP or any committee decides to invite partnership with private sector, FSSAI should ensure an independent assessment and evaluation of the work done and make it transparent. Hopefully FSSAI has the capacity to do this, if not better prepare for it.