



Response to the Regulatory Impact Assessment on setting daily dose levels of vitamin and minerals in food supplements

The National Association of Health Stores (NAHS) is the national body representing the interests of independent health stores in the UK. It has long had concerns about the Food Supplements Directive (FSD) which we believe could have major impact on the businesses of our members. We believe that the FSD should take account of principles of proportionality, subsidiarity, and respect for consumer choice in order to square the circle to meet the need of maintaining high levels of consumer safety and allowing for a single market, whilst not disproportionately affecting the businesses of our members.

We very much welcome the opportunity to comment on this draft Regulatory Impact Assessment (RIA) and have put a great deal of effort into canvassing the views of our member stores.

NAHS Survey

It has been a long standing issue of the Food Standards Agency (FSA) that they have not been able to get reliable information from the independent health store sector about how this legislation will affect their businesses. The NAHS has attempted to plug this gap by running the largest impact survey on stores ever undertaken.

Stores were sent a letter explaining the three real options before the European Commission. The first was a 'best guess' as to what lower Maximum Permitted Levels (MPLs) might be, given our experience in lobbying in this issue. The second option was based on the UK's Expert Committee on Vitamins and Minerals report (EVM). The third was the compromise adopted by the board of

the FSA which allows for a pan-European 'common' level which would satisfy the majority of Member States (MS) but also for individual MSs to set a higher level backed up with label warning known as Advisory Statements to alert customers to the potential problems with higher doses.

The levels presented in the three options were developed in conjunction with the Health Food Manufacturers Association (HFMA) in order that our respective submissions would be harmonised. The options in full are given as an Appendix.

Store owners were then invited to evaluate the impact of each of the options on their own businesses. They were also asked to give an opinion as to whether they believed each option would erode competitive differences, restrict consumer choice, impact on staff levels, or force the closure of their stores. Extra comments were also solicited for.

In total responses covering 176 stores out of approximately 1200 independent health stores nationally were received. This gives a sample of about 15% of such businesses and can, therefore, make a good claim to being an authoritative account of the risks that the options may hold for our member stores.

Consumers affected

Q1: Information is requested on the likely impact on consumers generally as a result of the five options outlined and other potential options which may be proposed by the Commission, and specifically in terms of gender, age, health or income? Will there be an impact on disabled people, those living in different regions or in rural communities or is there likely to be an impact on racial equality issues? How informed are consumers when deciding what strength/dosage of product to buy? Do they just buy what appears to offer the most for their money?

The results of our survey of health store owners showed that they believe that Option 3 would severely affect consumer choice, with 91% of those responding agreeing with that proposition. Option 4 was only mildly better perceived as affecting consumer choice with 71% agreeing with the proposition. Only Option 5 appeared to be acceptable in terms of consumer choice with 84% **disagreeing** that it would affect consumer choice.

In terms of consumer choice we have to conclude that for the purchasers of speciality supplements choice would be severely curtailed by any option other than Option 5.

More specific consumer impacts are not commented on in this response but it would be appropriate to remark that individuals differ by health, age, ethnicity, food availability and consumption throughout the EU and that the principle of

subsidiarity which is at the heart of the FSA's compromise, Option 5, is the only one which allows consumers to fully address their own individual requirements.

Customers who buy speciality supplements in health stores are extremely well informed. This comes from a number of sources which include their own research from books, articles, the internet, on-pack Advisory Statements, and their own experience. Lastly, but by no means least, information flows from the longstanding relationships that health stores build up with their customers.

Independent health stores, which will face the brunt of this legislation, collectively have decades of experience in recommending nutrients and herbal remedies of all sorts and all strengths to consumers. This is backed up with intra-industry education about the pros and cons of specific supplementation.

It was apparent from the comments made during our survey that many retailers believe that with the continuing growth of internet sales, which would balloon if Option 3 in particular was adopted would force consumers to buy higher dose supplements in an entirely unregulated environment thus depriving many of appropriate advice about safe usage and limiting enforcement in the interests of public health. This may be a particular consideration for consumers living in rural areas who may well see their local health store close forcing them into purchase of unregulated supplements.

The NAHS does not recognise the point that customers simply buy what gives them most for their money. Undoubtedly there are some of this mentality but we believe that they are in the minority. Most consumers will consider a range of options to develop their health and wellbeing from dietary and lifestyle changes, to nutrients and herbs, and they are guided by informed staff to make appropriate choices.

Benefits

Q2: Your comments and views are requested on the benefits presented in this draft initial RIA. Detailed information is requested to identify and quantify the benefits to consumers and to industry on an annual basis for the five options outlined and other potential options which may be proposed by the Commission.

There may be potential benefits to the industry flowing from this legislation as it would reduce the media scare stories which focus on the allegedly 'unregulated' food supplements market. This would only fully benefit health stores if Option 5 was adopted.

Costs

Q3: Your comments and views are requested on the risks/costs presented in this draft initial RIA. Detailed information (please break down costs/benefits as much as possible; such as re-labelling costs) is requested on the costs to consumers and to businesses on an annual basis for the five separate options outlined and other potential options which may be proposed by the Commission.

Direct costs to health stores are not envisaged. However, the loss of turnover to health stores is elaborated on in full in the next answer.

Small firms' impact test

Q4: Information is requested on the likely impact for small businesses as a result of the five options outlined and other potential options which may be proposed by the Commission. Contact details for individual small businesses involved in the supplements industry, which are not already listed on the attached consultation list (Appendix II), are also requested.

In our survey of retailers they were invited to say whether each of the three latter options would have either a Minor Impact (<5% of total turnover), a Significant Impact (5-15%), High Impact (15-25%), or a Serious Impact (>25%). The other more subjective questions are expressed as a percentage agreeing with the proposition.

Option 3

Average Percentage Loss of Turnover	Average Loss of Turnover per store	Erosion of Competitive Difference	Loss of Consumer Choice	Impact on Staff Levels	Likely Closure of Business
25.8%	£68,000	94%	91%	76%	59%

Option 4

Average Percentage Loss of Turnover	Average Loss of Turnover per store	Erosion of Competitive Difference	Loss of Consumer Choice	Impact on Staff Levels	Likely Closure of Business
14.9%	£39,000	60%	71%	36%	15%

Option 5

Average Percentage Loss of Turnover	Average Loss of Turnover per store	Erosion of Competitive Difference	Loss of Consumer Choice	Impact on Staff Levels	Likely Closure of Business
3.9%	£10,200	12%	16%	2%	0%

Option 3 is clearly the most unacceptable of all the options. Based on the responses this could cause the closure of over 700 independent health stores nationally, over half of the total number. The loss of sales from this option is calculated to be £82.08m. If all the stores that fear closure do close this would be a total loss of business calculated at £188.7m.

This would cause a knock-on effect to manufacturers, both small and large, and would force many of suppliers who are focused on independent health stores to close. As the independent health store has an extremely long and proud heritage in being foresighted, nurturing and bringing through exciting new product categories this would harm the whole of the retail sector as small and innovative products may never reach the wider market. Health stores in the last hundred years have brought through vegetarian, vegan, gluten free, GM free, organic, and fair traded foods, as well as cruelty free bodycare, proprietary herbal remedies, probiotics, Omega 3 fatty acids, and many others. Well known brands such as Jordan's, Green and Blacks, Innocent Smoothies, Ecover, and Alpro all started off in health stores. The lack of independently owned health stores, each able to take their own decisions about stocking policy, would seriously inhibit small producers from making it through to the mass market.

As the supplements and remedies component of our member's businesses does carry both a higher price point and greater margins than food and beverages the effect of Option 3 would be very severe indeed.

The erosion of competitive difference plays out in a number of different ways. Consumers would recourse to the internet, possibly buying other products which are still available in store, for example, herbal remedies, at the same time, thus multiplying the loss of turnover. Other consumers would see the new reformulated products at a discount in the high street pharmacies, multiple retailers, and supermarkets and choose to buy their supplements there instead. Option 3 provides consumers with plenty of excuses to take their business elsewhere.

The impact on staff levels has not been fully quantified but could under Option 3 certainly lead to hundreds of job losses in independent health stores.

Option 5, by contrast, would lead to no store closures and virtually no job losses. Many members have concerns about the wording of the Advisory Statements and we already know that they can dissuade some consumers from purchasing the products in the face of informed advice from staff. However, the NAHS would have to lend its full support to this strategy as it minimises impact on business, protects consumer choice, and fulfils the principles of proportionality and subsidiarity.

Competition Assessment

Q5: Your comments and views are requested on the assessment of the market competition presented in this draft initial RIA. Information is requested on the impact on competition within industry on an annual basis for five options outlined and other potential options which may be proposed by the Commission.

The competition benefits that would come from Option 3 would not accrue to independent health stores. They would benefit only large scale, multinational manufacturers and would add nothing to the vibrant retail mix which our members stock.

Option 5 is the only option which allows the wishes of the majority of MSs for low MPLs, creates a single market, and still would still allow national regulation if a MS thought it was justified.

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**John McKee
National Association of Health Stores**

Appendix

The Options

- **Option 1** is our best guess as to what lower levels might be. This is a real option and we could easily end up with this. These would be the harmonised pan-European levels.
- **Option 2** is based on the report of the UK Expert Committee on Vitamins and Minerals (EVM) in 2003. The levels are higher than in Option 1 but do contain some levels like 10mg of B6 which we disagree with. However, you have to realise that our options are now very severely narrowed. As the only authoritative report by any European country in the last ten years it stands some chance of being adopted by Europe. These could also be the harmonised pan-European levels.
- **Option 3** is based on EVM with allowing countries to set higher levels if they want with the relevant Advisory Statements. In the case of B6, for example, we could lobby for levels similar to what we currently stock. In all other Member States the EVM levels in Option 2 would apply.

Nutrient		Option 1	Option 2	Option 3
Vitamin A	mcg	400	800**	800**
Beta Carotene*	mg	5	7	7+
Vitamin D	mcg	15	25	25
Vitamin E	mg	30	540	540
Vitamin C	mg	180	1000	>1000+
Thiamin (B1)	mg	7	100	100
Riboflavin (B2)	mg	8	40	40
Nicotinamide*	mg	54	500	500
Nicotinic acid	mg	9	17	>20+
Vitamin B6	mg	5	10	100+
Folic Acid	mcg	400	1000	1000
Vitamin B12	mcg	3	2000	2000
Biotin	mcg	450	900	900
Pantothenic Acid	mg	18	200	200
Calcium	mg	800	1500	>1500+
Magnesium	mg	200	400	>400+
Phosphorus	mg	200	250	>250+
Manganese*	mg	0.5	4	4+
Boron*	mg	3	6	6
Copper	mg	1	1	1
Iodine	mcg	150	500	500
Iron	mg	7	17	>20+
Molybdenum	mcg	200	N/A	N/A
Selenium	mcg	200	350	350
Zinc	mg	10	25	>25+

* No RDA

** To be set: realistic assessment

+ If accompanied by an Advisory Statement

