

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2017 - 2018

Division/Agency: Australian Competition and Consumer Commission

Question No: 38

Topic: AdFund

Reference: Written

Senator: Rhiannon, Lee

Question:

1. Did the ACCC ascertain that Domino's provided unaudited AdFund statements for FY13-15?
2. Is the ACCC concerned that the AdFund statements show a decline of more than 10% in collections as a proportion of Australia and New Zealand revenue, and a large year-on-year increase in the amount of expenditure that goes directly to Dominos head office for services rendered?
3. In the ACCC's view, did the FY16 audit of the AdFund opine adequately on whether the expenses paid for out of the fund were authorised?
4. In respect of FY16, did the ACCC ascertain that corporate owned stores contributed in equal measure to franchisee owned stores as required by the Franchising Code?
5. In respect of FY16, did the ACCC ascertain independently that expenses paid for out of the AdFund were authorised under the Franchisee agreements? If not, then why not?
6. Has the ACCC investigated whether Domino's receives any rebate income from suppliers associated with expenditure relating to the AdFund? Is it concerned that these rebates are not credited to the AdFund?
7. Has the ACCC investigated whether Domino's charges a fair margin on the staff expenses that it charges to the Adfund?
8. How widespread the practice of giving new franchisees holidays from the AdFund? Is the ACCC concerned about this practice?
9. Why has the ACCC not independently audited FY16 expenditure from the AdFund?

Answer:

The ACCC does not pursue every aspect of matters coming to its attention and seeks to focus its investigations and actions on what it considers are likely to be key issues and sufficient impact to deliver broader compliance by a business and more generally within a sector.

During its investigation the ACCC established that Domino's had provided the Adfund statement for 2012-13 to franchisees within the required timeframes under the Franchising Code, but had failed to provide franchisees with the Adfund statements within the required timeframe for 2013-14, 2014-2015 and 2015-16.

The ACCC decided to issue two Infringement Notices to Domino's for failing to comply with the Franchising Code in relation to 2015-16. The Infringement Notices were issued because the ACCC had reasonable grounds to believe Domino's contravened the Franchising Code by failing to give franchisees a copy of the 2015-16 Adfund statement within the time prescribed by the Franchising Code and for failing to give franchisees a copy of the auditor's report relating to the 2015-16 Adfund statement.

This was the first time the ACCC has issued Infringement Notices for alleged breaches of the Franchising Code and was considered an appropriate enforcement response for the alleged conduct. Infringement notices can only be issued for contravening conduct within the last 12 months.

1. Clauses 17(2) and (3) of the old Franchising Code of Conduct (*TRADE PRACTICES (INDUSTRY CODES - FRANCHISING) REGULATIONS 1998*) provide that a franchisor does not need to have its marketing fund audited if 75% of its franchisees vote to agree that the franchisor does not need to do so, with such agreement to remain in force for a period of 3 years. During the ACCC's investigation, Domino's advised the ACCC that it had obtained the requisite number of votes from franchisees in 2013 and therefore did not need to have its marketing fund audited for the 2012/13, 2013/14 and 2014/15 financial years.
2. The ACCC has not received allegations in relation to these matters and has not investigated the issue.
3. The ACCC has not investigated this issue.
4. The ACCC has not investigated this issue.
5. The ACCC received an allegation that certain expenses paid for out of the Adfund did not appear to be legitimate expenses, including mystery shopping, Don Meij's website, legal fees regarding protecting Domino's trademarks and seminars at head office. The ACCC investigated these allegations and considered that the alleged conduct was unlikely to contravene the Franchising Code. In the ACCC's view, these expenses were allowed for under clause of the Franchising Code of Conduct (*TRADE PRACTICES (INDUSTRY CODES - FRANCHISING) REGULATION 2014*).
6. The ACCC has not investigated this issue.
7. The ACCC has not investigated this issue.
8. The ACCC has not investigated this issue.
9. Domino's Adfund for the 2015-16 financial year has been independent audited by a registered company auditor, as required by the Franchising Code of Conduct (*TRADE PRACTICES (INDUSTRY CODES - FRANCHISING) REGULATION 2014*). The ACCC investigated an allegation that certain expenses paid for out of the Adfund did not appear to be legitimate expenses and considered that these expenses were in accordance with the Franchising Code of Conduct.