

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2017 - 2018

Division/Agency: Australian Competition and Consumer Commission

Question No: 47

Topic: Franchising Code of Conduct

Reference: Hansard page 118 (30 May 2017)

Senator: Rhiannon, Lee

Question:

Senator RHIANNON: A copy of a franchise agreement includes a clause that says that Domino's obtained a blanket resolution from franchisees to not audit the advertising fund for the years 2013, 2014 and 2015. Is this allowed under the legislation?

Mr Sims: The legislation has changed a bit, but again I will pass to Mr Gregson.

Mr Gregson: I am not close to the details on that. We are happy to take that on notice.

Mr Sims: I think my memory is that the law changed so that there were ways that you could do what you have just described that are now no longer possible, but we will come back to you on notice.

Senator RHIANNON: Could you clarify, because I was not sure, from the work that we had done, if it is allowed or if it is another breach of the law. So can you clarify what part of the law it is.

Mr Sims: Under the law as it then applied, it was something that they could do, which, in the later event, they could not do. But we will clarify.

Senator RHIANNON: Thank you. A copy of the audited accounts released to franchisees shows the information is scant. It also lumps in revenue from New Zealand franchisees. Is the advertising fund in breach, as it includes revenue from a country that is not subject to the legislation?

Mr Gregson: I do not have an answer on that. We are going to have to take that on notice.

Senator RHIANNON: Because you are not sure about the New Zealand aspect?

Mr Gregson: That is right.

Senator RHIANNON: Have you looked into this at all? Were you aware of this problem?

Mr Gregson: I do not believe that was a matter that was under investigation, no.

Senator RHIANNON: But the question was: were you aware of it?

Mr Gregson: I am not aware of that being in our knowledge. My investigation teams may well have been.

Mr Sims: Having read the case pretty well, I think we were aware of that issue. We did look at it. We would have to get back to you on where we got to.

Senator RHIANNON: Right. So you were aware of it. Okay, could you get back to us on if you have done anything or, if you did not do anything, why you did not do anything.

Mr Sims: Sure. Absolutely.

[...]

Senator RHIANNON: Right. We will get this on the record. Could you clarify if you have looked into this, and what conclusions the ACCC has come to with regard to these expenses.

Mr Sims: Absolutely, and I repeat again: Domino's is certainly on notice in terms of its behaviour in relation to the code.

Answer:

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 three years. During the ACCC's investigation, Domino's advised the ACCC that it had obtained the requisite number of votes from its 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.

Under the current Franchising Code of Conduct (*TRADE PRACTICES (INDUSTRY CODES - FRANCHISING) REGULATION 2014*), a franchisor does not need to have its marketing fund audited if 75% of franchisees vote in agreement to this, however, this vote only applies for one financial year.

2. The ACCC was not aware of, and did not investigate, the allegation in relation to revenue from New Zealand franchisees being paid into Domino's marketing fund. It is not clear whether this conduct would raise concerns under the Franchising Code of Conduct.