

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission

Question No: 105

Topic: Promotion of processed foods including milk formula for infants and young children - Monitoring compliance

Reference: Written

Senator: Kakoschke-Moore, Skye

Question:

ACCC has criteria for effective voluntary regulation. In its report (e.g. p21-22), the ACCC raise questions about the timeliness and transparency of decisions on complaints to the industry tribunal, noting the importance of decisions being published as soon as possible and indicating how processes for dealing with consumer complaints about formula industry marketing could be improved. Yet it did not require undertakings from industry to fix these important deficiencies, and the taxpayer is in effect helping staff the industry's complaints department.

Why was an undertaking not required from industry to make such improvements a condition of ACCC approval? Does the ACCC consider it a good use of taxpayer resources for the Federal Department of Health to only to filter complaints to fit the narrow criteria set by industry before passing them on to the industry tribunal? What obstacles does the ACCC see to the Australian government taking a more independent and substantive monitoring or compliance role in supporting this industry agreement? Does this agreement meet all the ACCC's own published criteria for effective voluntary regulation by industry?

Answer:

The ACCC's role in assessing applications for authorisation is to apply the relevant statutory test; that is, to determine whether the benefits of the conduct proposed are likely to outweigh any detriments from that conduct. On this basis, the ACCC determined that the application in respect of the *Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement* (MAIF Agreement) should be authorised.

The Tribunal is independent of the industry body which applied for authorisation (the Infant Nutrition Council (INC)), and is not itself a party to the arrangements for which authorisation was sought. As such, it was not possible for the ACCC to impose conditions upon the Tribunal in granting authorisation. However, the Tribunal indicated to the ACCC that it had power under its Terms of Reference to publish its decisions in the manner it sees fit, and that it was agreeable to publishing decisions as soon as they are finalised. The ACCC expects the Tribunal will publish decisions in this manner.

In relation to the role of the Department of Health in scoping complaints regarding the MAIF Agreement, the ACCC considers that the processes, scope and breadth of the arrangements for which authorisation was sought is a matter for the INC and the Department of Health. The ACCC's role is to apply the statutory test to the conduct as proposed by the Applicants. In this instance, the ACCC determined that the arrangements proposed were likely to be

effective in dealing with complaints regarding the marketing of infant formula by manufacturers. Broader issues, such as potentially inappropriate marketing of toddler milk products, were only relevant to the ACCC's assessment to the extent that they had the effect of marketing or promoting infant formula.

The ACCC considers that authorisation of the MAIF Agreement does not pose any obstacle to the introduction of any alternative monitoring or compliance regime by Government in respect of the marketing of infant formula.

The ACCC considers that the principles underpinning the MAIF Agreement and complaints handling process is generally consistent with its guidance on industry codes.