

TOWARDS FRANCHISING IN INTERNATIONAL TRADE

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Key words

Franchising, franchise, franchise agreement, competition, franchisor, franchisee, Pronuptia case.

There are more definitions of franchising, but usually mean an arrangement whereby the proprietor of trade mark, trade name or other distinctive marketing presentation (the franchisor) grants to one or more parties (the franchisees) a license to use that trade mark, trade name or presentation in the supply of goods or services and to arrange their premises in accordance with the distinctive layout or format associated with the franchisor.¹ The franchisee keeps independency, all risks in trade, including financial risks and shall pay fees to a franchisor (calculated per amount, time, consumption, franchisor's expenses on marketing etc.).

The typical example of franchising company is McDonald's. As everyone knows, there are independent entrepreneurs running their canteens, but they fall under scope of uniformity, regionally same or similar products, same level of services and quality. For "outsider" all the canteens look similar or same.

We may distinguish more types of franchising than the mentioned one:

- Distribution Franchise – the franchisee sells specified goods,
- Service Franchise – the services are offered, typically restaurants and hotels,
- Manufacturing Franchises – the recipient of the franchisee is a producer of some product, example is Coca-cola.

¹ Roth, P.M., Bellamy, Ch., Child, G., European Community Law of Competition, London : Sweet and Maxwell, 2001. ISBN 0421564407, p. 503

Competition problems may arise partly from production restrictions or partly from distribution restrictions. A condition for exemption is the preservation of freedom with respect to prices and parallel supplies within the franchise system.²

There is number of clauses, which are considered as a partial or total distortion of competition. Following clauses may be considered as restrictive:

From territorial point of view: Not to sell contract goods to somebody, who would resell it in the located area (obligation for both franchisor and franchisee); not to sell contract goods to dealers outside the franchising framework; not to set up new franchisee in located area; not to change the location of shops. *Price issues:* Sell at (minimum) prices laid down by franchisor. *Direct competition:* Not to sell competing goods (or in certain extend); not to work in competing business during or after end of franchising agreement.

The case *Pronuptia de Paris*³ showed that European Court of Justice took a relatively positive attitude to franchising. In this case, Mrs. Schillgalis concluded a franchising agreement under the trade mark *Pronuptia de Paris* to sell wedding dresses.

There are always reciprocal benefits between franchisor and franchisee as well as both sides stipulations, which protect each other interest. The franchisor may extend his/her own business without running many outlets, which is very demanding on capital. The franchisee may start up business easily with no former experience, but with proved methods and know-how granted from franchisor. They both are likely to conclude an agreement with strong provisions restricting the competition. The *Pronuptia* case stated also for future, that provisions which establish the means of control necessary for the purpose of franchise network do not constitute restrictions on competition for the purpose of Article 81.

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² Ritter, L., Braun, W. D., Rawlinson, F., EC Competition Law, Kluwer Law International : Cambridge, 2000. ISBN 9041112677, chapter IV

³ Case 161/84, *Pronuptia de Paris GmbH v. Irmgard Schillgalis* [1986] ECR 353.