



FRANCHISING IN THE EUROPEAN UNION ERRT Position

In 2016, the European Parliament's Internal Market Committee commissioned a study to map the evolution of franchising regulation in the European Union and conduct a comparative analysis of franchising regulation in a number of European member states.¹

A workshop was organised to discuss the recommendations of the study, principally that EU competition law has a direct impact and adverse effect on the functioning of franchising contracts in the EU market.

In the context of the EU Parliament now preparing an own-initiative report on the matter, ERRT wishes to convey the following messages on franchising:

- Flexibility and variation are the key components to the continued success of franchising as a business model.
- Cooperation between strong formula and independent entrepreneurs make franchise a highly attractive business model
- Legal remedies already exist in European law for both parties of a franchising agreement.
- There is no body of evidence to suggest a European level regulatory approach would provide value.
- E-commerce presents an opportunity to further the successes of franchising as a business model.

Flexibility and variation are the key components to the continued success of franchising as a business model:

Franchising is a powerful driver for European economic growth, in terms of SME's created, employment generated, turnover, innovation and diversity across the European Union.

The attractiveness of franchising, as a business model, is that it is not exclusive to any one specific sector. It covers a range of sectors from services, the automotive industry and retail, to hospitality and real estate.

The success of this model is reliant on the diversity and flexibility available in franchising. Current arguments from franchisees and legal practitioners are that to create greater legal clarity for franchisees and allow uniformity, there should be one model franchising agreement. However, the success of the franchising business model lies exactly in its flexibility and applicability to a range of sectors, which are markedly different.

Thus, no sector-specific approach for franchising should be adopted.

Applying one model contract to the diverse range of sectors that make up franchising in Europe would stifle the flexibility that makes the franchising business model successful.

Therefore, the proposal that there could be one model franchising agreement must be rejected. It simply does not reflect the market diversity of franchising.

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¹ IP/A/IMCO/2015-05

Cooperation between strong formula and independent entrepreneurs make franchise a highly attractive business model:

The appeal of a franchising agreement for franchisees lies in the (perceived) strong position of the franchising formula from the outset, which encourages the candidate franchisee to sign up. The franchisee is then able to become a partner, use the brand name of the franchising formula, source many goods and model their shop space in line with the formula.

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In practice, a franchising agreement is the foundation for a successful business model which requires both parties to cooperate intensively. This includes a good agreement on the rights and obligations of both parties and the willingness to stick to it.

A franchising agreement involves the franchisor providing its trade secrets, trade mark/name, know-how and technical method (the formula that made it successful) to its franchisee. In return, the franchisee puts its entrepreneurial skills at work as to make the cooperation a mutually beneficial commercial success.

Legal remedies already exist in European law for both parties of a franchising agreement:

The study made on behalf of the European Parliament points to potential problems with franchising agreements. However, its focus on

amending BER 330/2010, as a potential solution, means it refuses to consider that national legal remedies to perceived problems in franchising agreements exist via REG 2003/1.

This regulation clearly states that Member States may legislate on issues relating to competition clauses in franchise contracts. For example, Member States should not under this Regulation “*be precluded from adopting and applying on their territory stricter national competition laws which prohibit or impose sanctions on unilateral conduct engaged in by undertakings. These stricter national laws may include provisions which prohibit or impose sanctions on abusive behaviour toward economically dependent undertakings.*” Furthermore, an assessment of REG 2003/1 after 10 years² concluded that, in terms of enforcement by National Competition Authorities, this specific regulation, REG 2003/1, is a major success.

Therefore, a European regulatory approach is not necessary if national legal remedies exist within Members States.

There is no body of evidence to suggest a European level regulatory approach would provide value:

The study on franchising was very thorough in its description of the evolution of franchising in EU law.

Nevertheless, the study did not provide factual evidence of problems within

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² An assessment of the Efficiency of Reg. 1/2003 ten years after its adoption 10 years of Regulation 1/2003 (may 2004-june

2013): A retrospective commissioned by the European Commission/DG COMP; Wouter P.J. Wils, King’s College London

franchising that require a regulatory approach, nor was it founded on a solid empirical basis.

The report viewed franchising relations as a problem with the transposition of EU competition policy into national private law. However, the primary purpose of competition policy is to protect the consumer and not market participants. Therefore, there is no body of evidence to suggest a regulatory approach would provide value given the variation in franchising agreements between Member States. Neither can relations between franchisees and franchisors be considered part of competition law.

E-commerce presents an opportunity to further the successes of franchising as a business model:

At present, the franchising business model represents a significant opportunity to create more jobs and growth within the EU Member States. Even more so in light of the current trend of digitalization.

Digitalization makes markets more transparent. This empowers consumers, allowing them to shop for good deals. As a consequence, within the retail sector, retailers will have to work harder to carve out a competitive niche. This will require substantial investments in e-commerce, including in transforming traditional retail businesses into omni-channel. It will also require a significant

sourcing scale, in order to buy goods at competitive prices. These changes will allow retailers to sell their goods at attractive consumer prices, while still earning a positive margin.

Against this backdrop, teaming up with a franchise formula will become increasingly attractive. Franchising allows retailers and their franchisees to profit from scale effects which smaller market participants will have great difficulty to develop on their own, if at all. Therefore, the development of greater multi-channel operations in the retail sector signifies an opportunity for franchisors and franchisees to develop more jobs and growth within the European Union.

To conclude, flexibility and variation are key components of franchising agreements that can provide jobs and growth across the European Union. Equally, cooperation between both parties of a franchising agreement is critical to growth and success of franchising in Europe. E-commerce represents another opportunity to develop franchising as a business model and our members will seek to achieve this via collaboration with their franchisees in the near future. However, what is most important to stress is that there is currently no evidence to suggest a European regulatory approach would provide value. On the contrary, legal remedies already exist for issues to be addressed.

About the European Retail Round Table (ERRT):

ERRT brings together the CEOs of Europe’s leading retail companies who share their collective experience and ideas with policy makers in view of giving Europe’s consumers better access to the benefits of the Single Market and to promote delivery of a sustainable consumption model.

ERRT Members are: Ahold Delhaize, Asda, C&A, Dansk Supermarked, El Corte Inglés, ICA Gruppen, IKEA, Inditex, Jerónimo Martins, Lidl, Marks & Spencer Group, Mercadona, Metro and Tesco.

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