The Dutch Franchise Code

Jeannine de la Bursi-Franssen
Ministry of Economic Affairs
Start of policy involvement

• 2014/2015
• media attention for franchise court cases
• signals from our national and european network
• similarities with issues in payment delays and unfair trade practices
• interviews with franchisors, franchisees, representative organisations, (legal) service providers
2 different problems

- fraud under the guise of franchise
- offers directed at unsuitable 'entrepreneurs'
- often recently laid off with a severance pay
- business model aimed at 'cleaning out' the franchisee

- problems in 'real franchise'
  - differing goals and ambitions (e-commerce)
  - skewed balance of power
  - lack of up-front transparency about the rights and duties

Overall: high levels of distrust
2 round tables

1. discuss the fraud issue to 'break the ice' and hand it over to public prosecution
2. discuss the dream: franchise in 2020, how does that look and how do we get there.

Unanimous conclusion:

• need for a code of conduct written by franchisors and franchisees together
• need for a system of out-of-court dispute resolution
Project NFC

Support by Minister of Economic Affairs
• 2 people support staff
• budget for research and expert advice

Sector input for writing committee
• 2 members appointed by Dutch Franchise Association NFV
• 2 members chosen by franchisees
• think tanks on both sides
First draft NFC

- mid 2016 consultation about first draft
- 150 reactions
- half franchisees: positive and mostly short response
- half franchisors: more technical, legal and more negative comments
- september 2016: consultation-debate to resolve conflicting preferences; massive resistance by a group of franchisors
A deeper look at the franchisors

• resistance based on fear of restrictions to develop business, make profit
• in part unwillingness to allow 'outside involvement' with 'their business'
• but also: a quiet majority of franchisors that doesn't care because the NFC is in line with their practice
• some franchisors find they can 'code proof' their contract with minor adjustments
So what is this NFC?

• very flexible to accommodate pluriform sector
• (precontractual) transparency requirements
• items that should be addressed in the contract
• guidance on the content of those items
• guidance on procedures for collective decision making
• how to end the franchise cooperation with respect to all interests involved
• comply or explain
Franchise dispute resolution

• all ADR options studied
• a 'blue print' has been established
• sector needs to create a neutral platform to house this dispute resolution system
Next steps

• sector needs to declare adherence to the code
• neutral platform needs to be established
• dispute resolution needs to be developed
• if progress is too slow: legislative push