



The European Franchise Federation's POSITIONS with regard to EP/IMCO's FRANCHISE REPORT

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EFF POSITIONS RE IMCO's FRANCHISE REPORT

The European Franchise Federation

- Represents the interests of the franchise industry in Europe
- Promotes and speaks for franchising as a commercial development strategy which is inclusive of franchisors and franchisees **franchise network**
- **2 Founding principles**
 1. What constitutes a franchise?
 2. Relationship must be built on ethical behaviour EFF's
Co Ethics for Franchising = **Self Regulation**
- **Members**
 - National Franchise associations
 - Zor-Zee on Boards of Directors
- **Code of Ethics:** last slide

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Franchising as a strategy for business expansion

- Diversity across sectors and types of agreements
- Distinctiveness of franchise agreements
- Franchisees are independent business people required to carry out their own due diligence; they are not consumers
- Franchisors are often SMES despite the publicity given to the few super brand franchisors.

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Vertical Restraints (“VRs”)

- Validity of VRs:
 - Essential to protect know how and intellectual property;
 - Presumption that they are pro-competitive within narrow criteria – BER 330
- Role of national courts in applying and interpreting competition law in this area



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Vertical Restraints vs Unfair Trading Practices ("UTPs")

- Reg. 1/2003, Recital L 1 /2(9) 9: expressly draws a demarcation between competition law (...) and laws on UTP

Quote:

"Member States may implement on their territory national legislation that prohibits or imposes sanctions on acts of unfair trading practice, be they unilateral or contractual. Such legislation pursues a specific objective, irrespective of the actual or presumed effects of such acts on competition on the market. This is particularly the case of legislation which prohibits undertakings from imposing on their trading partners, obtaining or attempting to obtain from them terms and conditions that are unjustified, disproportionate or without consideration."

- Food Retail sector is distinct and cannot be used as evidence for wide-spread UTPs across the franchise sector.
- Amending BER 330 or GL is not the solution to UTPs



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Potentially unfair clauses in franchise agreements

- Cited evidence of problems faced by franchisees not a fair or balanced representation of franchisee sentiment across Europe;
- Examples raised:
 1. **Post termination non-compete clauses**
 - No amendment required - these are assessed at national level
 - Failure to protect Franchisor know-how could substantially deter franchising as a chosen method of business expansion
 2. **Franchisee prevented from selling his business as a going concern**
 - Not accepted that this is a common provision in franchise agreements.
 3. **Direct competition via internet selling from franchisors and suppliers;**
 - The commercial reality tends to dictate that franchisors either share proceeds of internet sales with franchisees or their franchisees fulfil orders in their territories.
 4. **Linking mandatory turnover requirements to termination provisions**
 - A commercial necessity in many vertical agreements where a degree of exclusivity is conferred.

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Limitations of the Franchise Study:

- the examples cited in the Study as alleged unfair practices are not widespread to the whole franchise industry;
- where there are misuses of the VRs these are efficiently dealt with by multitude of national laws at national level
- Due to the nature and size of most franchise systems they are most often, not “caught” by EU competition law and any issues are efficiently dealt with by **national** competition law.
- Most franchisors are SMEs too
- Incorrect and unfair to present franchising as a “David & Goliath” / “win-lose” strategy
- The language of the Study is ill founded and its findings unsubstantiated.

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Remedies suggested by the Franchise Study

- At the level of EU:
 - COMP LAW:
 - adjust BER 330 GL before 2022
 - Reconsider if BER 330 should be renewed
 - EU-level franchise specific instrument
- In addition:
- Self-Regulation for specific sectors (ie. Food supply chain, Zing)
- + EU-level reporting and complaint schemes

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EFF's positions re Remedies of Report

- EU BER 330 + GL + Reg. 1/2003: adequate
- EU-level franchise-specific instrument? Model franchise law? not in favour
- COMP or contractual issues adequately dealt with at national level (ECN, ADR, courts)
- Self-Regulation: Yes, cf EFF's CoE

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EFF's Code of Ethics for Franchising

1. Devised for the mutual interests of the franchisor and franchisee
2. Values: mutual good faith, transparency, fairness & loyalty
3. At all stages of the relationship: pre, contract, post
4. Recommends full and truthful pre-contractual disclosure of all facts relevant to the business relationship including all of the rights & obligations of both parties, during the contract and at the end of the contract
5. Supports Zor-Zee dialogue structures
6. For the industry as a whole, not just assoc. members
7. Living Code: evolves
 1. National annexes
 2. Review 2016

The background of the slide features a large, faint logo. It consists of a light blue circle containing twelve white five-pointed stars arranged in a ring. In the center of this circle, the letters "EFF" are written in a light blue, serif font.

Thank you for your attention