



# Opinion on the report Franchising

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## Need of protecting the franchisee

Joining a franchise formula is a good option but:

- SME businesses survive if they **can be entrepreneurial**
- Lack of (pre)contractual protection
- Terms becoming one-sided
- Prohibition multi-franchising, the non-competition clause and purchase obligations
- Franchising and the digital economy: not regulated

**Position SME franchisees is being threatened**



## 1. Removing stumbling blocks in Regulation 330/2010

- Question 1: “Does the model of franchising reflect the needs of the nowadays franchise market?”

**NO: Current digital developments, e-commerce and data are not regulated**

- Question 2: “Is there any proportionality between the implementation of the rules set in Regulation and the effect on the economic position of franchisees?”

**NO: Ban on multifranchising, non-competition clause and purchasing obligations**

### Solutions

1. Forbid the non-competition clause after termination, unless the franchisor can prove there will be abuse of his knowhow
2. Intermediate adjustment of the Guidelines





## 2. Set up a low threshold review as requested by the EP in 2013

The European Commission is requested to:

“Examine price-fixing mechanisms in franchise systems and the effects of long-term competition clauses, purchase options and the prohibition of multi-franchising, and to reconsider in this respect the current exemption from competition rules for contracting parties having a market share of less than 30%.”

**Unfortunately, nothing has happened yet**



### 3. Introducing new rules related to franchising & digital economy

- Digitalisation is ignored in EU Regulation 330/2010
- E-commerce & consumer data
  - Prevent unfair competitive advantages
  - Both parties generate consumer data, use and valuation should be divided proportionally
  - Transparency is essential

**Regulation of the digital components of the franchise relationship is necessary**



#### 4. EP should request the Commission to promote good cooperation between DG Competition and DG Internal Market

DG Competition, Barnier 2011:

“It is not a competition problem as such – for example the Regulation does not allow post contractual non-competition clauses, unless severe conditions are met - but franchisors abusing the lack of level playing field. This should be addressed as an internal market issue.”

Bienkowska 2015: “I support franchise”





## 5. Is Selfregulation the Solution?

**Dutch Franchise Code (NFC):**  
a healthier and more balanced playing field is achieved

Dutch Franchisors organisation:

“We do not support the NFC as presented to the minister”

**Franchisees need legislative support**  
**This need is also proved in the study**



## 5. Is Selfregulation the Solution? (2)

- The European code of Ethics on Franchising (1972) has not fully contributed to a decrease of UTP's
- EFC 2016 is again a one sided document set up by franchisors without consulting the counterpart
- Franchise shall not embrace the EFC 2016, it is even more focused on a unbalanced position
  - 'Franchisors obligations' are altered into 'Franchisors commitments'
  - The condition in writing has been skipped (is considered as unfair practices!)

**Even balanced selfregulation needs a legal guarantee**





## 6. Introduce legal protection of the franchisee's position in the pre-contractual phase & contractual phase

### A priority!

#### •Areas for attention:

- ✓ Content of contract, side letters etc.
- ✓ Supply of correct data
- ✓ Exclusivity, e-commerce and the use of consumer data
- ✓ Purchasing demands
- ✓ Adjustment of the contract
- ✓ Position of the representative bodies of franchisees

**Establishing relevant obligations is necessary!**



## 7. Competition law versus private law

Evaluate competition law not only in light of the market integration aims  
but build blocks of private law relations

### Conclusion

Balanced franchise regulation is:

- ✓ Good for the entrepreneurs
- ✓ Good for the consumers
- ✓ Good for local suppliers
- ✓ Good for innovation
- ✓ Good for employment
- ✓ Good for local loyalty/sponsorship

**Let us not waste time!**

