

English Abstract

In the paper called “*Franchising in the Context of Competition Law*“, the author deals with a topic that has not yet been elaborated in detail in Czech legal science. As in Czech law, there is no special regulation regulating franchising, there are no more detailed studies that would address the individual issues of the franchise relationship. Franchising as a form of enterprise is being often used in the Czech Republic and the numbers of franchise chains operating here are increasing every year. Therefore, it may be assumed that urgent events from practice will generate a deeper interest of legal science in franchising in the future.

In the introductory explanation, the author clarifies the essence of franchising and distinguishes the franchise contract from the variety of contracts regulated by the Civil Code.

However, the main topic of this work is the conflict between franchising and competition law. The work examines the aspects of both public law and private law. The European Union’s regulation is taken into consideration particularly in the analysis of individual issues related to the protection of competition. The interpretation is also amended by an overview of decisions passed by the European Court of Justice, the Commission and the Office for the Protection of Competition. The study relating to the competition law is conceived in a comparative way and derives mainly from the German system of law, which has long been developed upon rich judicature.

Franchising is characterized by an extremely close cooperation of two independent entrepreneurs. In franchise, a franchisor grants a franchisee the right to use his business model to engage in independent business. However, the franchisor still protects his business model and, in the franchise agreement, he imposes a series of restrictions or obligations upon the franchisee to keep the business model in its original form, thereby ensuring a unified identity of the franchise network concerned. However, these arrangements may be problematic from the cartel law point of view.

The present study therefore introduces a regulation which must be respected in franchise business. A detailed analysis focuses on typical franchise covenants, such as price agreements, agreements to restrict distribution, and supply reduction agreements. Although all of these arrangements are likely to distort competition, they may be exempted from the general ban by a block exemption – Commission regulation no. 330/2010. The interpretation emphasizes the specific features of franchising and their taking into account when applying legal regulations.

The section dedicated to the competition law explores the possibility to attribute the franchisee’s acts to the franchisor. A separate analysis deals with selected problems often occurring within franchise systems, such as the compliance with consumer’s protection regulations and the protection of a franchise network against unfair competition acts on the part of ex-franchisees. The franchise system itself may come into conflict with the unfair competition law, as franchising has been and may be misused for frauds. One example of a franchise fraud is a franchise network conceived as a pyramid scheme.

In addition to a comprehensive interpretation of franchising and competition law, the author opens a number of other legal issues that still remain unresolved in franchising, and gives the reader an insight into independent research.