

Franchising in Denmark

FRANCHISING IN DENMARK

General presentation

The Kingdom of Denmark, which covers 43 098 km², is a small market, but can be considered as an entrance to many other Nordic markets representing no less than 24 million consumers with a very high buying capacity. France is the third foreign investor in Denmark after Sweden and the United States.

The Danish economy grew by 2,4% in 2006. Inflation was extremely weak representing 1,2% on the year. The Danish government has presented a 2007 budget project in excess, which has been a recurrent phenomenon for the last ten years, of an amount of € 7.5 billion, accounting for 3,4 % of GDP. Unemployment is at its lowest level (3.8% according to the Eurostat's definition for this year), and is expected to continue decreasing for finally reaching 3.4% in 2007 and stabilize in 2008.

Franchise had rapidly developed in Denmark. Today, there is between 140 to 150 networks. The turnover of franchising networks is estimated at € 7.3 billion in 2005, half coming from networks of a Danish origin. Franchise regarding distribution (retail) is superior to franchise dealing with service with nearly 4,000 sale points in franchise out of 5,500 in total. More than 50% of the foreign networks are from the United States of America (27 networks are actually operating in Denmark).

Danish franchising networks have been accurately present abroad since the last ten years, especially in the textile and clothing areas, with actually 40 networks among which, for example: Jysk (textile), Claire (clothing), Noa-Noa (clothing), Ecco (shoes), Bang & Olufsen (image and sound), Bo Concept (home equipment) or Kvik (kitchen).

Franchise legislation in Denmark : the Swedish inspiration

Actually there is no specific law dealing with franchise in Denmark. The legislation regarding contracts, competition, and marketing is applicable to franchise contracts and to relationships between franchisors and franchisees. These texts integrate the European legislation regarding distribution contracts and franchise.

However, it is important to underline a Swedish law of October 2006, 1st that compels franchisors to inform the future franchisees, as in French law. The Swedish law provides that franchisor shall inform franchisee as regards, among others: its activity, franchisees part of the network, financial contractual obligations, intellectual property rights, supply, non competition dispositions, modification or termination of the contract, disputes dispositions. It shall be pointed out that should franchisor fail to fulfill his information obligation he shall simply pay a fee in Sweden.

According to the Danish doctrine and practitioners, Danish courts are probably going to apply Danish law before trying to apply neighborhood legislation such as Swedish law. That is to say that they will apply the Danish Contracts Act that is very close to the spirit of article 1134 of the French civil Code referring to the law of the parties and many other approaching notions, except for the improbable (because not very used in common law countries from which it is originally from) "caveat emptor rule". But they may well apply articles 6 and 11 of the Danish Competition Act that are quite similar to articles 81 and 82 of the European Community Treaty, which refer to cartels and abuse of a dominant position. Finally the Courts could apply the Danish Marketing Act referring once again to the spirit of article 1134 paragraph 3 of the French civil code as regards the conduct of commercial relations in good faith. More rarely but conceivable is the application of the Danish Commissions Act that, if it is not

in itself applicable to franchise, could nevertheless inspire the courts as its system is similar to franchising.

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