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Franchising in Finland – Lessons Learned from a Multiple Case Study[1]

1. Introduction

1.1 The governance of franchising in Finland

We have probably all heard about franchise chains such as McDonalds, R-kioski, Arnolds Bakery & Coffee Shop, Specsavers, Taloasema, Laatutakuu and VMP Group. Franchising is, however, not easily defined. This is due to the fact that franchise contracts may draw on elements from several types of contracts, such as licenses, sales and rentals to mention but a few. Franchise contracts are entered into between legally and economically separate entities, and should therefore not be characterized as employment contracts. However, in some situations, similarities may also exist between a franchise contract and an employment contract. The subordinate position of the franchisee can in some situations be quite similar to the position of an employee.[2]

Typical for business format franchising – which corresponds to the normal European definition of franchising – is that the franchisee has the right, as well as the obligation, to conduct the business in accordance with the franchisor's business method.[3] Besides the franchise contract, another document important in the coop-

[1] This article was written within the scope of my Academy of Finland postdoctoral research project on Nordic franchising (September 1, 2014 – August 31, 2017). I wish to thank professor (mso) René Franz Henschel, University of Aarhus, associate professor Monica Viken, BI Norwegian Business School, and LL.D., lecturer Stojan Arnerstål, Uppsala University for their invaluable contributions to this special issue of JFT.

[2] Gölstam, Carl Martin, DCFR och franchising, Svensk Juristtidning 2012 pp. 1013–1033 (p. 1016).

[3] Tonndorf, Hans G., Framgång genom franchising, Lund 1985 p. 18, Tuunanen, Mika, Essays on Franchising in Finland. Empirical Findings on Franchisors and Franchisees, and Their Relationships, Jyväskylä 2005 p. 19, Draft Common Frame of Reference (DCFR) Full Edition Volume 3, von Bar & Clive (ed.), Munich 2009 p. 2383, Gölstam, SvJT 2012 p. 1016, European Franchise Federation, Franchising: definition & descriptions, http://www.eff-franchise.com/101/franchising-definition-description.html. Visited on March 28, 2016.

eration between franchisor and franchisee is the operations manual. The manual can be said to consist of ››all the know-how‹‹ in the form of practical instructions that the franchisee needs in order to conduct the everyday business in accordance with the franchisor's business method. The manual is therefore usually kept secret.[4]

There is no specific law on franchising in Finland. The Finnish Franchising Association (FFA), which is an organization that encourages good franchising behaviour and fair and ethical business practices in the franchise business,[5] has issued a Code of Ethics. I have, in my previous research on franchising, argued that the Code of Ethics should be considered trade custom within the field of franchising in Finland.[6] Unfair franchise contracts can also be adjusted in accordance with Section 36 of the Contracts Act. Moreover, franchise contracts are subject to competition law. One can also find provisions specifically applicable to franchise contracts in the Draft Common Frame of Reference (in Part IV.E. DCFR). The DCFR contains principles, definitions and model rules of European private law. The DCFR is an academic text.[7] Legal doctrine offers differing views on its relevance for, and impact on, the future of European private law.[8]

1.2 Cooperation between unequal parties

Literature often emphasizes the significance of a good cooperation, including open communication and mutual trust, between the parties in franchising.[9] On the other hand, franchising is also considered to be cooperation between parties of unequal bargaining power, that is between an inexperienced franchisee and a highly capable franchisor.[10] The franchise contract is also described as a chain-specific

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4 Sund-Norrgård, Petra, Tolkningen av franchiseavtal, Helsingfors 2014 pp. 57–59 and references.

5 Franchise Direct, http://www.franchisedirect.com/information/franchiseassociationsexhibitions/finnishfranchisingassociation/32/205/. Visited on May 9, 2016.

6 Sund-Norrgård 2014 pp. 63–65.

7 Draft Common Frame of Reference (DCFR) Full Edition Volume 1, von Bar & Clive (ed.), Munich 2009 p. 3.

8 DCFR and its legal status in Finland and Sweden has been discussed in, for example, Sund-Norrgård 2014 and Sund-Norrgård, Petra, Draft Common Frame of Reference i finsk och svensk rättspraxis, in Korhonen & Saranpää (ed.), Isännän ääni – Juhlakirja Erkki Kustaa Rintala 1935–31/5–2015, Helsinki 2015 pp. 525–544.

9 Tonndorf 1985 pp. 80–89, Mattila, Kimmo & Wathén, Antti & Tommila, Marja & Rinkinen, Petri, Franchising-käsikirja. Yhdistä osaaminen, yhteistyö, resurssit ja yrittäjyys kilpailueduksi, Helsinki 1998 pp. 54–55, 221–224, Laakso, Henri, Franchising. Malli yrittäjyyteen ja ketjunrakentamiseen, Helsinki 2005 pp. 8–9, 72–76.

10 Kauppa- ja teollisuusministeriön tutkimuksia ja raportteja 14/2002, Elinkeino-osasto, Yritysten yhteistyö ja franchising – sopimusriskien hallinta ja sopimusohjaus, Helsinki 2002 14/2002 p. 52, Norheim, Lars G., Franchising, avgangsvederlag og agentur. Agenturlovens regler om avgangsvederlag (goodwill-vederlag) og deres analogiske anvendelse på franchising, Oslo 2003 p. 161, Stanworth, John & Curran, James, Colas, burgers, shakes and shirkers: Towards a sociological model of franchising in the market economy, in Hoy & Stanworth (ed.), Franchising, An International Perspective, London 2003 pp. 19–45 (p. 33), Tuunanen 2005 p. 56, Gölstam, SvJT 2012 p. 1016.

standard contract drafted by the franchisor alone with very little or no input by the franchisee.[11]

From this notion one may draw the conclusion that there is a weaker contract party in need of adequate protection. However, in this connection it is important to understand that the essence of franchising is cooperation between unequal parties. It is quite easy to advocate for the franchisor's need for a position of power: In order to secure the economic efficiency of the franchise chain the franchisor must be able to control and manage the franchisees. This way the quality of the products and/or services produced, as well as the pricing, will be the same throughout the chain.[12] It is, however, not clear to what extent it is acceptable to control franchisees.[13]

1.3 Franchisees' satisfaction

The franchise business in Finland seems to function well in many respects. Franchisees' overall satisfaction is one important example. According to the FFA more than 80 % of franchisees in Finland are in fact satisfied with their business.[14] According to Tuunanen, who in his dissertation (in business and economics) among other things measured franchisees' satisfaction, ››[m]ore than six franchisees out of ten (61 %) felt that their experience had met their expectations‹‹.[15]

Case Laatutakuu, which will be discussed in more detail below, can serve as an example from this empirical research: According to the interviewed franchisor, a questionnaire survey conducted in 2015, shows that 86 % of current franchisees are satisfied with their business. Up to 91 % of them are willing to recommend joining the chain to others.

1.4 Research question

This is empirical research in the form of a qualitative multiple case study.[16] The study focuses on describing the franchisee recruitment process of the franchise chains which are included. I am looking for information on the selection of franchisees and on how the pre-contractual duty of the franchisor to inform the franchisee candidate is in practice satisfied. I am not only aiming at *getting a deeper*

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11 Sund-Norrgård 2014 pp. 55–57 and references.

12 Brickley, James A. & Dark, Frederick H., The Choice of Organizational Form: the Case of Franchising, in Hoy & Stanworth (ed.), Franchising, An International Perspective, London 2003 pp. 61–80 (p. 66), Norheim 2003 pp. 162–163.

13 See the discussion in Sund-Norrgård 2014 chapter 7.

14 Suomen Franchising-Yhdistys r.y.:n tietopaketti: Franchising Suomessa, http://www.franchising.fi/useruploads/files/SFYFranchisingSuomessatietopaketti.pdf. Visited on May 9, 2016.

15 Tuunanen 2005 p. 58.

16 Methodological questions are discussed in more detail in chapter 2 below.

understanding of how a franchisor in practice handles the pre-contractual information duty, but also on drawing some conclusions on *how it should be handled*. In other words, the main research question this article aims to answer is what are the best practices concerning the franchisor's pre-contractual information duty in Finnish franchising.

The reasoning behind such a focus is the following: The franchisor has power over the content of the franchise contract. This stems from the fact that the franchise contract, as was already explained, is a chain-specific standard contract usually drafted by the franchisor alone. In order to counteract this discrepancy in bargaining power regarding the content of the contract, it is essential that the franchisor – who is the party possessing knowledge of the franchise business in question – has a relatively extensive duty to inform the franchisee before signing the contract: Without the necessary and relevant pre-contractual information, the franchisee cannot conclude the franchise contract with full knowledge of all the relevant facts. Usually information of this kind can only be obtained from the franchisor.[17] Consequently, an extensive duty to inform the other party facilitates good, balanced cooperation between the parties in franchising.

Since the focus is on best practices concerning the franchisor's pre-contractual information duty, this study examines the pre-contractual phase of franchisors and franchisees belonging to franchise chains that can be classified as ››good chains that work well‹‹. They are permanent members of the FFA and are obliged to act in accordance with the Code of Ethics. They have also been successful in the so called Franny Awards hosted by the FFA. One criterion for success in this yearly event, ››the Oscars of franchising‹‹, is good cooperation within the franchise chain.[18] It can be noted that the FFA also elects a franchisee of the year. Every chain which is a member of the FFA can elect a franchisee of the year within the chain.[19] The chains included in my study moreover profile or market themselves as taking good care of their franchisees. Finally, these chains – namely Arnolds Bakery & Coffee Shop, VMP Group and Laatutakuu – were all considered suitable interviewees by attorney-at-law Marja Tommila, whom I know personally, and consulted in this matter.[20]

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17 DCFR Volume 3 p. 2388.

18 Information found at http://www.frannyawards.fi/taustaa. Visited on March 11, 2016.

19 Information found at http://www.franchising.fi/palkitsemistavat. Visited on March 13, 2016.

20 Best Lawyers, a leading American legal review guide that ranks lawyers in 70 countries worldwide, selected Marja Tommila for inclusion in the field of Intellectual Property Law in Best Lawyers Finland 2016. Her rankings and merits also include Senior Statesman, Intellectual Property, Chambers Global (2015), Senior Statesman, Intellectual Property, Chambers Europe (2015), Leading Lawyer, Franchise, Who's Who Legal (2015), The Golden Merit of the MARK Finnish Marketing Association (1993), and The Golden Merit of the Finnish Franchising Association (1998). Information found at Inventio Attorneys, http://www.inventio.fi/en/marja-tommila-and-pekka-takki-selected-for-best-lawyers-finland-2016/, Inventio Attorneys, http://www.inventio.fi/en/marja-tommila/. Visited on January 18, 2016.

The people I interviewed as representatives for the franchisors all have experience in, and therefore first hand information on, the recruitment of franchisees. They were therefore able to explain their existing franchisee recruitment process to me in a detailed manner.

The approached franchisees can all be described as long-term franchisees successful in their respective businesses. By choosing such people I was likely to opt out of highly dissatisfied franchisees. Such people can probably be found in every franchise chain, not least since dissatisfaction can be the end-result when franchising simply does not suit the person in question. I also opted out of inexperienced and very young people who may still be sensitive and reluctant to speak their minds. By targeting experienced franchisees I took the deliberate risk of approaching people that might not have a very detailed memory of what actually happened in the pre-contractual phase a long time ago. Long-term franchisees are also not able to tell me much about the recruitment process as it is today. This may certainly be a disadvantage if one aims to describe the present practices. Lastly, there is the possibility that competent individuals of the kind that I interviewed would have been successful in any franchise chain, no matter how well the franchise chain worked. For this reason it is certainly possible that they do not focus on difficulties and do not spot problems as accurately as less competent and less independent people might.

Since I am consciously seeking success stories in this study, I found it appropriate to target only successful, experienced franchisees. This was nonetheless a question which I seriously considered before approaching the interviewee candidates.

I was somewhat surprised to learn that the people I approached did not need any convincing: Franchisors and franchisees alike were happy to participate in this, in essence, positive study not dwelling on problems. I naturally am grateful for this.

In this introductory chapter I moreover wish to highlight a conclusion drawn in my previous research on franchising with significance also for this study: I was not convinced that there is a need to legislate on franchising in Finland.[21] The following reasons were mainly stated for such a conclusion: Firstly, Finnish law acknowledges the principle of loyalty (good faith). Good faith may require a similar pre-contractual duty to inform as can be derived from, for example, the Swedish Franchise Disclosure Act (Lag (2006:484) om franchisegivarens informationsskyldighet) regulating the duty of a franchisor to disclose information within reasonable time before a franchisee candidate signs the franchise contract. This Swedish legislation was inspired by the Model Franchise Disclosure Law (Unidroit 2002), which is a model law expressly designed to assist legislators rather than an inter-

[21] Sund-Norrgård 2014 pp. 230–233.

national convention.[22] The content and functions of the principle of loyalty – a principle which certainly also exists in Swedish law – remain somewhat vague. The fact that it exists is nonetheless relevant when evaluating whether there is a further need to regulate franchising.[23] Secondly, in considering whether to legislate, we should recall the fact that unfair franchise contracts can be adjusted in accordance with Section 36 of the Contracts Act. It is another matter that this tool for achieving balanced contracts is in practice perhaps used too rarely. Thirdly, the Code of Ethics issued by the FFA has real impact on franchising in Finland, since the (numerous) members of the FFA are required to comply with it in their practice. The Code of Ethics, which follows the European Franchise Federation Code of Ethics very closely, is upheld by the Ethical Board of the FFA. The Ethical Board issues statements based on the Code of Ethics in cases that are brought to it. Only four such statements exist from the last 11 years. There may therefore be good reason to question the *actual* impact of the Ethical Board on current best practices in Finnish franchising.[24] Fourthly, the DCFR should not be dismissed. To my mind, the said principles and model rules have real potential, especially in areas such as franchising that lack national legislation.[25]

It should be noted that not everything that is expected on the basis of the pre-contractual information duty in the Swedish Franchise Disclosure Act, and/or the Unidroit Model Franchise Disclosure Law, and/or the DCFR, is expressly required by the Code of Ethics. It is therefore quite possible that a Finnish franchise chain complying with the Code of Ethics does not fulfil the more detailed requirements of the aforementioned instruments which govern such issues. It is nonetheless interesting to try to find out whether such detailed pre-contractual information is in fact already conveyed to franchisees in Finnish franchise chains that work well. In this connection it should also be stressed that solutions adopted in practice, that are in line with the Code of Ethics, can vary due to the fact that some sections are vague and open to interpretation.

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[22] Unidroit Model Franchise Disclosure Law, Explanatory Report, Rome 2002 pp. 10–11. Sweden not only has legislation, but also a Code of Ethics for franchising, Svenska Franchisingföreningens Etiska Regler, http://svenskfranchise.se/om-oss/etiska-regler/. Visited on February 10, 2016. The Swedish association Sveriges Franchisetagare, which is working for better conditions for franchisees, is of the opinion that the Franchise Disclosure Act is a good start, although not nearly enough in order to reach a balance between the parties in franchising. Information found at http://www.sverigesfranchisetagare.se/om-oss/battre-lagar/. Visited on February 16, 2016.

[23] See the discussion in Sund-Norrgård, Petra, Lojalitet i licensavtal, Helsingfors 2011 pp. 76–95.

[24] Information on the Swedish Code of Ethics and the relatively – in comparison with the Finnish Ethical Board – active Ethical Board of the Swedish association Svensk Franchise can be found in, for example, Sagell, Dan-Michael, Handbok i franchisejuridik, Stockholm 2016 pp. 110–136. Some information can also be found at http://svenskfranchise.se/om-oss/. Visited on February 16, 2016.

[25] See also Sund-Norrgård 2015 p. 472.

1.5 Theoretical approach and structure of the article

The theoretical approach in this article is influenced by relational contract theory that, for instance, treats cooperation – which is assumed to consist of much more than the written contract – as a process,[26] and proactive contracting which, in short, is characterized by an *ex ante*-approach to contracting: conflicts are prevented through discussions and good planning and the cooperation focuses on reaching the overall goals. Proactive contracting is moreover about concluding contracts of a high quality that actually work for the intended purposes, as well as about making sure that the business is conducted in line with legal and ethical norms. A will to cooperate is the foundation for the relationship, although the law can be helpful in achieving the aims of that relationship.[27]

Methodology is discussed in more detail in chapter 2, but as was already noted, this article can be briefly characterized as empirical research in the form of a qualitative multiple case study. The sources and topic of the study are presented in chapter 3. The cases and the findings are reported mainly in chapter 4. Finally, chapter 5 consists of concluding remarks. The structure of the case study report, this article, is therefore linear-analytic.[28]

2. Methodological questions

2.1 Introduction

Legal dogmatics (traditional legal method, jurisprudence, *Rechtsdogmatik*) is

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[26] For more information on relational contract theory, see for example Macneil, Ian R., Relational Contract Theory: Challenges and Queries, Northwestern University Law Review 2000 pp. 877–907, The Relational Theory of Contract: Selected Works of Ian Macneil, David Campbell (ed.), London 2001, Macaulay, Stewart, The Real and the Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules, The Modern Law Review Limited 2003 pp. 44–79. Modern contract law – including relational contract theory – is extensively discussed in Sund-Norrgård 2011. See particularly chapter 2.

[27] For more information on proactive contracting, see for example Haapio, Helena, Sopimukset, sopimustoiminta ja juristin muuttuvat tehtävät kansainvälisessä kaupassa, in Aine & Kumpula (ed.), Kansainvälisestä kaupasta, juhlajulkaisu Tuula Ämmälä, Turku 2000 pp. 37–71, Haapio, Helena, An Ounce of Prevention… – Proactive Legal Care for Corporate Contracting Success, Tidskrift utgiven av Juridiska Föreningen i Finland 2007 pp. 39–68, Pohjonen, Soile, Law and Business – Successful Business Contracting, Corporate Social Responsibility and Legal Thinking, Tidskrift utgiven av Juridiska Föreningen i Finland 2009 pp. 470–484, Sorsa, Kaisa, Elinkeinoelämä tarvitsee ennakoivaa sopimusosaamista, Defensor Legis 2009 pp. 128–147. See also Sund-Norrgård 2011 pp. 98–100.

[28] Yin, Robert K., Case Study Research. Design and Methods, 5. edition (Kindle version), Los Angeles, London, New Delhi, Singapore, Washington DC 2014 Chapter 6: Reporting Case Studies.

the most frequently used method[29] in legal science, which is itself a science that examines the law.[30] The task for legal dogmatics can in short be defined as systematizing and interpreting the legal norms in force.[31] If one aims to find information on *how a phenomenon manifests itself in reality*, one should do empirical research.[32] By way of introduction it should be noted that empirical research is not based on a clear theoretical foundation, and its content and importance vary within the research community. Regardless of which school of thought the scholars represent, one may nonetheless describe the empirical method as an intentional and systematic attempt to collect and make use of empirical information.[33] Empirical research methods are normally divided into quantitative and qualitative methods, even though these cannot – and need not – always be clearly distinguished from each other.[34]

2.2 Case Study Research

Empirical research in the form of case study research is of particular interest for this article. Thus this research method will be discussed more extensively. Case study research is often qualitative, but it can certainly also be entirely or partly quantitative.[35] It can be defined as ››a research strategy which focuses on understanding the dynamics present within single settings‹‹.[36] The case study method can be used to

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29 For information on the concept ››method‹‹, see Strömholm, Stig, Har den komparativa rätten en metod?, Svensk Juristtidning 1972 pp. 456–465 (p. 456, p. 464), Aarnio, Aulis, Mitä lainoppi on?, Helsinki 1978 pp. 74–200, Aarnio, Aulis, Oikeussäännösten systematisointi ja tulkinta, in Juha Häyhä (ed.), Minun metodini, Helsinki 1997 pp. 35–56 (pp. 35–36), Hirvonen Ari, Mitkä metodit? Opas oikeustieteen metodologiaan, Helsinki 2011 p. 9.

30 Hirvonen 2011 p. 21.

31 Aarnio 1997 pp. 35–36, Siltala, Raimo, Oikeudellinen tulkintateoria, Helsinki 2004 pp. 5–16, 530–540, Hirvonen 2011 pp. 21–26. According to Aarnio's division, the systematization is handled by the theoretical legal dogmatics, while the practical legal dogmatics focuses on the interpretation. The theoretical and the practical branches of legal dogmatics do, however, interact.

32 Ervasti, Kaijus, Empirisk forskning, rättsvetenskap och rättens dynamiska element, Tidskrift utgiven av Juridiska Föreningen i Finland 2000 pp. 567–586 (p. 568).

33 Kultalahti, Jukka, Empiirinen metodi oikeudellisen tulkinnan apuvälineenä, in Keinänen & Kilpeläinen & Väätänen (ed.), Empiirisen oikeustutkimuksen kokemukset, haasteet ja tulevaisuus, Joensuu 2010 pp. 15–43 (p. 15). See also Lohi, Tapani, Empiirisen tiedon hyödyntämisestä jäämistölainopissa, in Lindfors (ed.), Empiirinen tutkimus oikeustieteessä, Helsinki 2004 pp. 27–40 (pp. 28–29). Lohi finds that there is little point in talking about empirical research in situations other than those where there is systematically obtained information about reality that one also strives to use systematically.

34 Ervasti, JFT 2000 pp. 568–569.

35 Eisenhardt, Kathleen M., Building Theories from Case Study Research, Academy of Management Review 1989 pp. 532–550 (pp. 534–535, 538), Stake, Robert E., Case Studies, in Denzin & Lincoln (ed.), Handbook of Qualitative Research, Thousand Oaks, London, New Delhi 1994 pp. 236–247 (p. 245).

36 Eisenhardt 1989 p. 534.

provide a description, test a theory or generate a theory.[37] According to Yin it is the preferred research method when

> ››(1) the main research questions are 'how' or 'why' questions; (2) a researcher has little or no control over behavioral events; and (3) the focus of study is a contemporary (as opposed to entirely historical) phenomenon‹‹.[38]

The case study method is particularly useful when the research questions one is seeking to answer require that a contemporary phenomenon – that is the *case* (unit of analysis) – is understood in an ››in-depth‹‹ or a ››holistic‹‹ way within its real-world context.[39] It should be noted that the concept ››case‹‹, which can be simple or complex,[40] is subject to debate and different opinions.[41]

Naturally one should choose such cases that are likely to illuminate the research questions. The definition of a case should be related to the way the research questions are defined. It is quite self-evident that the definition of the case and its limits is a critical part of a case study, since the cases may be in the form of, for example, individuals, small groups, events or entities other than individuals. Sometimes it is also rather difficult to define the beginning or end of a case.[42]

Stake puts it rather neatly in articulating that ››[t]he purpose of case study is not to represent the world, but to represent the case‹‹.[43] This is of course true, but since a case study can be seen to shed empirical light over theoretical concepts or principles, it is definitely within reach to also seek analytical generalizations, that is generalizations – for example in the form of lessons learned – that go beyond the specific case to new situations.[44] In this connection it is important to understand that a case study cannot be treated as a sample of some sort that could be generalized into statistics;[45] instead it is used in order to expand and generalize theories.[46]

Flyvbjerg treats the assertion ››[o]ne cannot generalize on an individual case; therefore, the case study cannot contribute to scientific development‹‹ as one of five ››common misunderstandings about case-study research‹‹.[47] He is of the opinion that in fact one can often generalize on the basis of a single case, and that it depends

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37 Eisenhardt 1989 p. 535.

38 Yin 2014 Chapter 1: Getting Started.

39 Yin 2014 Chapter 1: Getting Started.

40 Stake 1994 pp. 236–237.

41 See, for example, Ragin, Charles C. & Becker, Howard S. (ed.), What is a Case? Exploring the Foundations of Social Inquiry, Cambridge, New York, Melbourne, Madrid 1992.

42 Yin 2014 Chapter 2: Designing Case Studies.

43 Stake 1994 p. 245.

44 Yin 2014 Chapter 2: Designing Case Studies.

45 Yin 2014 Chapter 2: Designing Case Studies.

46 Yin 2014 Chapter 1: Getting Started. The process of building theory from case study research is discussed in Eisenhardt 1989. See especially table 1 on p. 533.

47 Flyvbjerg, Bent, Five Misunderstandings About Case-Study Research, Qualitative Inquiry 2006 pp. 219–245 (pp. 219–220).

on the case and how it is chosen whether such generalization is possible.[48]

This research is nonetheless conducted in the form of a multiple case study. The reasons for such a choice are discussed below.

2.3 Empirical research in legal science

As was already stated, legal dogmatics is the method that is most frequently used in legal science. If one reads the anthology ››Minun metodini‹‹[49] it nonetheless becomes quite clear that well-regarded Finnish researchers who contributed to the anthology have chosen different methodological solutions as well as different legal perspectives in their research. This supports Cotterell's view of ››the apparent lack of distinctiveness‹‹ of the methods in legal science,[50] as well as Hirvonen's notion that legal science can be characterized as methodologically ››open‹‹ and that there in fact are few rules concerning the methods.[51] Consequently, it should be rather uncontroversial for the legal researcher to choose whichever method(s) he or she finds appropriate for answering the research questions that are posed.[52] In terms of the methodological choices made in this article it is especially interesting that the qualitative case study should fit legal science well given the fact that lawyers deal with cases all the time. It is normal for lawyers to generalize and build theories from only a few cases, or even from just one case. Quantitative research, on the other hand, does not fit the picture as neatly; lawyers seldom rely on large numbers of data and statistics in their work.[53]

There seems to be a recent growth in empirical legal research in Finland. Legal research, which is at least partly empirical, has for example covered issues like the impact of certain legal reforms within the field of procedural law (civil procedures, the organization of district courts, court practices, trial costs),[54] actions taken to

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48 Flyvbjerg 2006 pp. 230–231. Se also Yin 2014 Chapter 2: Designing Case Studies about different situations where single case studies are appropriate.

49 ››My method‹‹, my translation, Juha Häyhä (ed.), Helsinki 1997.

50 Cotterell, Roger, Law and Sociology: Notes on the Constitution and Confrontations of Disciplines, Journal of Law and Society 1986 pp. 9–34 (p. 16).

51 Hirvonen 2011 pp. 7–9.

52 Kainulainen, Heini, Teemahaastattelut kriminologisessa tutkimuksessa, in Lindfors (ed.), Empirinen tutkimus oikeustieteessä, Helsinki 2004 pp. 17–26 (p. 19).

53 Ervasti, for example, also uses statistics in his research. See Ervasti, JFT 2000 p. 572.

54 See, for example, Ervasti Kaijus, Alioikeusuudistuksen seuranta. Riita-asiat tilastojen ja oikeudenkäyntipöytäkirjojen valossa, Helsinki 1997, Ervasti, Kaijus, Oikeudenkäyntikulut pääkäsittelyyn edenneissä riita-asioissa, Helsinki 1997, Haavisto, Vaula, Court Work in Transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court, Helsinki 2002, Ervasti, Kaijus, Käräjäoikeuksien sovintomenettely. Empiirinen tutkimus sovintomenettelyn edistämisestä riitaprosessissa, Helsinki 2004, Ervasti, Kaijus, Riidat käräjäoikeuksissa, Helsinki 2005, Ervasti, Kaijus, Käräjäoikeuksien riita-asiat 2008, Helsinki 2008, Tolonen, Hannele, Lapsi, perhe ja tuomioistuin. Lapsen prosessuaalinen asema huolto- ja huostaanotto-oikeudenkäynneissä, Helsinki 2015.

improve the quality of lawmaking and regulation,[55] aspects related to inter-party cooperation and loyalty in licensing agreements,[56] patent exploitation and enforcement as an autonomous business model by non-practicing entities,[57] and the critical evaluation of the Finnish utility model system.[58]

Consequently, the on-going discussion is no longer really that focused on the possibilities of also researching the ››legal world‹‹ empirically.[59] Instead, it seems as if the topic of debate nowadays is the categorization of such research (for example as sociology of law).[60] The correct labelling of this kind of interdisciplinary research I, however, leave to others.

2.4 The method in this research

When a lawyer does empirical research, the focus is not then on interpreting the law – as is the case when legal dogmatics is used – but on real-life practice. As was already discussed in section 1.4 above, this study for instance aims at getting a deeper understanding of how a franchisor in practice handles the pre-contractual information duty towards a franchisee candidate. This is in essence a qualitative purpose. When used properly, the case study method can raise awareness about, provide insight into, and even suggest solutions to a problematic real-life situation.[61] I therefore find that the qualitative case study method is a rather logical choice for this research.

I have chosen to do a multiple case study – as opposed to a single case study – with the prospect of the cases chosen giving valuable information about an even larger collection of cases. In other words, the findings can hopefully be generalized.

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55 See, for example, Pakarinen, Auri, Tapaustutkimuksia lainvalmistelun kehittämisestä ja sääntelyn toimivuudesta, Joensuu 2012, Korkea-aho, Emilia, Laws in Progress? Reconceptualizing Accountability Strategies in the Era of Framework Norms, Transnational Environmental Law 2013 pp. 363–385, Korkea-aho, Emilia, Watering Down the Court of Justice? The Dynamics Between Network Implementation and Article 258 TFEU Litigation, European Law Journal 2014 pp. 649–666, Hyvärinen, Anna, Suomen mahdollisuudet vaikuttaa Euroopan unionin lainsäädäntömenettelyyn, Turku 2015.

56 Sund-Norrgård 2011.

57 Larson, Kelli, An inside view to non-practicing entities business models: a case study, International Journal of Intellectual Property Management 2013 pp. 294–315.

58 Björkwall, Pia, Nyttighetsmodeller: Ett ändamålsenligt innovationsskydd, Helsingfors 2009.

59 For example empirical research in environmental law is discussed in Määttä, Tapio, Monitieteisyys ympäristöoikeudessa – oikeustieteen sisäiset ja ulkoiset yhteydet oikeustieteellisen tutkimuksen haasteena, Oikeus 2000 pp. 333–355 (p. 339 and references), empirical research in inheritance law in Lohi 2004 and in insolvency law in Lindfors, Heidi, Empiirinen tieto insolvenssioikeudessa, in Lindfors (ed.), Empiirinen tutkimus oikeustieteessä, Helsinki 2004 pp. 77–80.

60 Ervasti pointed this out already in 1998. See Ervasti, Kaijus, Eräitä näkökohtia empiirisen tiedon hyväksikäyttämisestä oikeustieteessä, Lakimies 1998 pp. 364–388 (p. 367).

61 Yin 2014 Chapter 6: Reporting Case Studies.

The fact that evidence based on a multiple case study is often considered more compelling than evidence based on a single case study supports this choice.[62]

It can be noted that there are no clearly defined techniques or general strategies one must use in presenting and analysing the findings in case study research. However, before trying to generalize patterns across cases, one needs to become familiar with the unique patterns of each case. When reporting multiple case studies such a within-case analysis is often followed by a cross-case analysis.[63] Since this case study contains three cases representing different lines of business, I portray the patterns of each case in chapter 4. In doing so I begin with the information received from the franchisor regarding the pre-contractual information practices. Thereafter I account for the information received from the respective franchisee regarding the quality of these practices. Lastly, in chapter 5, I summarise lessons learned from all of the cases.

3. Sources and topic

3.1 The sources and their retrieval

A case study can be based on interviews, documents such as minutes of meetings, letters and statistics, (publicly available) media texts, archival records such as organisational charts and budgets, digital materials in the form of, for example, web pages and chat conversations, physical artefacts such as trophies and awards, and so on.[64] Empirical data can be collected from one source or from several sources. In order to increase the reliability of the study it may, however, be advisable to use evidence from two or more sources. Interviews are often considered the most important source in a case study.[65] This is so in this study. I have not reviewed any franchise contracts, operations manuals or the like. Specific company information on the franchisors and franchisees in this case study that was found on the internet has been collected and analysed to some extent. Information originating in the literature, court cases, ethical rules etc. has also been used in this article.

Interviews in a case study often resemble guided conversations and can be labelled in-depth interviews. The style is unstructured or fluid rather than rigid. Some

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62 Yin 2014 Chapter 2: Designing Case Studies.

63 Eisenhardt 1989 p. 540, Eriksson, Päivi & Kovalainen Anne, Qualitative Methods in Business Research, London 2014 (First published 2008, Reprinted 2014) p. 130, Yin 2014 Chapter 6: Reporting Case Studies.

64 Yin 2014 Chapter 4: Collecting Case Study Evidence, Eriksson, & Kovalainen 2014 p. 12.

65 Eriksson & Kovalainen 2014 p. 125. See also Yin 2014 Chapter 4: Collecting Case Study Evidence.

form of semi-structured interviews may work well. In other words, there are themes to be covered, but in a fairly broad and flexible manner in order to leave enough space for the interviewees to articulate their views.[66] In line with this I did not, for example, prevent an interviewee from sharing information that, strictly speaking, did not concern the pre-contractual phase.

It should be noted that in an effort to examine the pre-contractual phase in franchising through the case study method, it would be a logical flaw in the *research design*[67] should the findings be based on interviews solely with one of the parties. To avoid such a flaw, this case study involves interviews – that could be characterized as semi-structured – with franchisors as well as with franchisees.[68]

The franchisor and franchisee of a case were interviewed separately. The franchisor was interviewed first. All interviews were conducted during spring 2016, some of them face-to-face on the premises of the particular interviewee, others over the phone. All interviewees received the main interview questions/themes to be discussed in writing and in advance. There was one set of questions/themes for franchisors and another – considerably shorter – set for franchisees. The answers given by an interviewee nonetheless often gave rise to further inquiries that did not necessarily come up during the other interviews that were conducted.

It should be stressed that the interviewees have been given the right to approve the information on them included in this article before publication. In return they have given me permission to disclose their identities.

3.2 The topic of the study

3.2.1 What we already know

Some of the issues that increase franchisees' satisfaction – and thereby presumably also act as cooperative motives in franchising – are not only economic issues like the market performance of the franchise system, but more cooperation-related

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66 Alvesson, Mats, Interpreting Interviews, Los Angeles, London, New Delhi, Singapore, Washington DC 2011 pp. 47, 51–54, Yin 2014 Chapter 4: Collecting Case Study Evidence. See also Kainulainen 2004 p. 18. According to Eriksson & Kovalainen 2014 pp. 80, 82 the guided or semi-structured interview consists of ››outline of topics, issues, or themes, but variation in wording and sequence; both 'what' and 'how' questions‹‹.

67 The research design can be defined as the plan on how to get from the initial questions to be answered, via collection and analysis of relevant data, to some conclusions on/answers to these questions. See Yin 2014 Chapter 2: Designing Case Studies. See also Eriksson & Kovalainen 2014 pp. 25–31, who point out that qualitative research does not usually follow a tightly woven plan.

68 Since an objective of the interviews is to collect information about ››facts‹‹ as regards the pre-contractual phase, some parts of them can nonetheless be more rightfully described as structured and standardized. See Eriksson & Kovalainen 2014 p. 81.

business advantages such as the franchisor's on-going support.[69]

Problems and disputes in franchising, on the other hand, often seem to originate from poor communication between the parties. For example, as a result of insufficient information given by the franchisor to the franchisee candidate, the need for franchisee investment in the business may turn out to be greater than anticipated, while the revenues turn out to be lower than expected. The initial training received from the franchisor might be less extensive than expected, and the location where the business is to be conducted less well-suited for the intended purpose than expected.[70] Information regarding other franchisees in the network may be insufficient,[71] or perhaps franchise fees are higher than expected, while support services are more expensive than expected,[72] or the workload exceeds expectations.[73] Perhaps the franchisee did not read or did not understand the franchise contract before signing it. The contract may contain unexpected or unfair clauses on, for example, limitations to contract transfer and termination possibilities,[74] arbitration proceedings,[75] liquidated damages,[76] or non-compete covenants.[77] Some franchisees moreover find it problematic to be firmly controlled by the franchisor,[78] which can also possibly be derived from a lack of insight into what it actually means to be a franchisee.

In other words, insufficient – or unclearly conveyed – information before signing a binding contract may result in disappointed franchisees who feel that they have not gotten what they paid for. This is, of course, never a good thing in coop-

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69 Tuunanen 2005, Abstract and pp. 49–50, Melasaari, Matleena, Luottamus ja sitoutuminen franchisingsuhteessa, Tampereen yliopisto 2012, http://tampub.uta.fi/bitstream/handle/10024/83762/gradu06058.pdf?sequence=1 p. 43. Visited on May 10, 2016.

70 Laakso, Henri, Franchising. Yrittäjyys, Helsinki 2001 pp. 180–181, Karhu, Kari, Kansainvälisen liiketoiminnan käsikirja, Helsinki 2002 p. 201, decisions February 17, 2003 No. 208 (S 01/435), February 17, 2003 No. 209 (S 01/436) and February 17, 2003 No. 210 (S 01/437) of Vaasa Court of Appeal, statement No. 1/2004 of the Ethical Board of the FFA.

71 This was one of the issues in, for example, decisions February 17, 2003 No. 208 (S 01/435), February 17, 2003 No. 209 (S 01/436) and February 17, 2003 No. 210 (S 01/437) of Vaasa Court of Appeal.

72 Karhu 2002 p. 201, Tuunanen 2005, Abstract and p. 49, Barringer, Bruce R. & Ireland, R. Duane, Entrepreneurship. Successfully launching new ventures, third edition, USA 2010 p. 527.

73 Tuunanen 2005, Abstract and p. 49.

74 Tuunanen 2005, Abstract and p. 49.

75 Decision December 1, 1999 No. 1387 (S 98/463) of Vaasa Court of Appeal.

76 Decision No. 634/09 of the Market Court.

77 Non-compete covenants in franchise contracts are discussed in, for example, Sund-Norrgård 2014 pp. 184–200.

78 Alam, Saiful & Rozario, Antonia, Franchising – Franchisetagarens möjligheter till förändring av varuutbudet, Södertörns högskola 2006, http://sh.diva-portal.org/smash/get/diva2:15097/FULLTEXT01, pp. 3, 32–41. Visited on May 10, 2016. Se also Stenberg, Suvi, Franchisingtoiminta, Yrittäjien kokemuksia, Tampereen Ammattikorkeakoulu 2012, http://publications.theseus.fi/bitstream/handle/10024/48468/Stenberg_Suvi.pdf?sequence=1 p. 26. Visited on May 10, 2016.

eration where success presupposes a contribution from both parties. The franchisor should also pay attention to the selection of franchisees: It might, for instance, be wise to avoid opportunistic franchisees that put their own short-term interests first. The ideal franchisee can often be defined as one that has good ideas, but can still be controlled and managed by the franchisor.[79] The problem of bad recruitment can also to a large extent be avoided through sufficiently extensive pre-contractual communication between the franchisor and the franchisee candidate so that both parties understand their commitments.

3.2.2 The franchisor's pre-contractual information duty in general

The main topic of this research is the franchisor's pre-contractual information duty. This protects the franchisee's interests and facilitates balanced inter-party cooperation.

The franchisor's pre-contractual information duty based on Article 3.3 of the Code of Ethics is anything but specific: In order to ensure that the franchisee has all the necessary data for signing a binding franchise contract, the franchisee is to receive a copy of the Code of Ethics and, in due time before the franchise contract is signed, such transferable written data that applies to the franchise relationship in question. This case study aims to shed some light upon what this requirement might entail in practice.

The pre-contractual information duties based on the Swedish Franchise Disclosure Act, the DCFR and the Unidroit Model Franchise Disclosure Law are much more specific and detailed: A clear difference in drafting technique can be observed. According to Section 3 in the Swedish Franchise Disclosure Act a franchisor shall, in due time before a franchise contract is concluded, give the franchisee clear and understandable written information on *at least* the items individualised in the said Section. According to Article IV.E. – 4:102 DCFR the franchisor is required to *in particular* ››provide the franchisee with adequate and timely information concerning‹‹ certain items as well.

In the Unidroit Model Franchise Disclosure Law the information to be disclosed is divided into two groups. First there is information that a franchisor, in accordance with Article 6(1), must provide in writing (Article 4) in a disclosure document, to which the proposed franchise agreement must be attached, at least fourteen days before the earlier of the signing of an agreement relating to the franchise (except for a confidentiality agreement) or the payment of non-refundable fees relating to the acquisition of the franchise (Article 3). Such items of information are normally

[79] Mattila et al. 1998 p. 54, Laakso 2001 p. 180, Laakso 2005 p. 168, Tuunanen 2005 p. 102, Barringer & Ireland 2010 p. 520, Melasaari 2012 p. 50.

not included in the franchise contract. Second, there is information that the disclosure document should contain, but which in accordance with Article 6(2) may be omitted in case the contract provides that information in adequate detail. These are items of information that are normally included in the franchise contract. If they are included in the contract, a reference to the relevant section of the franchise contract should be made in the disclosure document. Where these fundamental items of information are not included in the proposed franchise contract, that fact is also to be stated in the disclosure document in order to alert the prospective franchisee of this fact.[80]

As noted above, this study aims to describe the recruitment process of the franchise chains which were chosen, including the selection of franchisee candidates and the franchisor's pre-contractual information duty. In connection with the franchisor's pre-contractual information duty I wish to highlight a few items of information that are explicitly included in the pre-contractual information duty of at least two – and in most cases all three – of the aforementioned Swedish Franchise Disclosure Act, the DCFR and the Unidroit Model Franchise Disclosure Law. These can be crucial for good cooperation. These items of information are, however, *not* expressly mentioned in the Code of Ethics. Despite this, it is certainly possible that all – or at least most – of them are in fact conveyed to franchisees as normal practice in Finnish franchise chains that work well.

These items of information, which are presented below in section 3.2.4, were specifically discussed during the interviews with the franchisors. The, in relation to the franchisors, subsequently interviewed franchisees, were informed – beforehand in writing – of the fact that such themes had been discussed with the respective franchisor. The themes that were discussed with the franchisees are presented in section 3.2.5.

3.2.3 Franchisee selection discussed with the franchisors

Before illuminating the *items of information* discussed with the interviewed franchisors, it can be noted that franchisors were also specifically asked about their *criteria for selecting franchisees*. Franchisee selection is an interesting question in itself. Moreover, it is of interest also from the point of view of the pre-contractual information duty. It is, for example, likely that an inexperienced franchisee who is recruited externally needs substantially more information than somebody who is recruited internally.

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[80] See also Unidroit Model Franchise Disclosure Law, Explanatory Report p. 27.

3.2.4 Items of information discussed with the franchisors

3.2.4.1 The franchise that the franchisee is to run

According to Section 3.1 of the Swedish Franchise Disclosure Act the pre-contractual information duty of the franchisor includes ››a description of the franchise that the franchisee is to run‹‹. The same goes for information concerning ››the particular franchise method and its operation‹‹ in Article IV.E. – 4:102(1)(e) DCFR.[81] Article 6(1)(D) of the Unidroit Model Franchise Disclosure Law requires that ››a description of the franchise to be operated by the prospective franchisee‹‹ is to be included in the disclosure document.

In this context the articles on information in the recruitment of franchisees in the Code of Ethics should be noted: Based on Article 3.1 recruitment advertising is not to include equivocal or misleading expressions. In case the data, advertisements or brochures used in the recruitment of franchisees directly or indirectly refer to possible future results, figures or profit such information must, according to Article 3.2, be objective and may not be misleading. There is therefore no pre-contractual information duty per se in the Code of Ethics concerning such items of information, but information which is in fact conveyed to a franchisee candidate may not be misleading.

3.2.4.2 The franchise network

››[I]nformation on other franchisees with which the franchisor has concluded an agreement within the same franchise system and the extent of their business‹‹ is part of the pre-contractual information duty of the franchisor based on Section 3.2 of the Swedish Franchise Disclosure Act. According to Article IV.E. – 4:102(f) DCFR ››the structure and extent of the franchise network‹‹ is also to be conveyed to franchisees.[82]

The information on the franchise network to be included in the disclosure doc-

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[81] According to the comments, such information ››should include a general explanation of the system of business to which the franchise refers, the characteristics of the 'know-how' and the assistance to be provided by the franchisor, as well as an estimate of the investments and expenses which are necessary for conducting a typical business‹‹. Moreover, ››[i]f the franchisor is to provide the potential individual franchisee with sale forecasts or trading results, these should be based on experience or studies and should be sufficiently justified‹‹. See DCFR Volume 3 p. 2389.

[82] Such information should, according to the comments, include ››the form of the organisation of the franchise network and the number of establishments, distinguishing those exploited directly by the franchisor from those operated by other franchisees, the place where they are located and the number of franchisees which have recently ceased to belong to the network, stating whether such a cessation occurred due to the expiry of the contractual term or due to other causes for termination‹‹. See DCFR Volume 3 p. 2389.

ument in accordance with Article 6 of the Unidroit Model Franchise Disclosure Law is rather extensive. It includes information on issues like ››the total number of franchisees and company-owned outlets of the franchisor and of affiliates of the franchisor granting franchises under substantially the same trade name›› (Article 6(1)(I)), ››the names, business addresses and business phone numbers›› of the aforementioned entities (Article 6(1)(J)), as well as information about those of the aforementioned entities ››that have ceased to be franchisees during the three fiscal years before the one during which the franchise agreement is entered into, with an indication of the reasons for which the franchisees have ceased to be franchisees of the franchisor›› (Article 6(1)(K)).

3.2.4.3 Fees to be paid to the franchisor

According to Section 3.3 of the Swedish Franchise Disclosure Act ››[i]nformation on the compensation that the franchisee shall pay to the franchisor and other economic conditions for the franchise activity›› is part of the pre-contractual information duty.[83] ››[T]he fees, royalties or any other periodical payments›› are also part of the pre-contractual information duty in the DCFR (Article IV.E. – 4:102(g)).

Those ››financial matters›› that in accordance with Article 6(1)(N)(i) of the Unidroit Model Franchise Disclosure Law must be provided in the disclosure document include ››an estimate of the prospective franchisee's total initial investment››. ››[T]he initial franchise fee›› (or entrance fee),[84] on the other hand, is listed among those items of information that, in accordance with Article 6(2)(H) of the Unidroit Model Franchise Disclosure Law, may instead be included in the franchise contract if the disclosure document refers to the relevant section of the contract. The same concerns those ››other fees and payments›› referred to in Article 6(2)(I), the most important of which are advertising fees to be paid to the franchisor.[85]

3.2.4.4 Intellectual property rights

In accordance with Section 3.4 of the Swedish Franchise Disclosure Act ››information on the intellectual property rights that will be granted the franchisee›› is part of the pre-contractual information duty of the franchisor. The same goes for ››the relevant intellectual property rights›› based on Article IV.E. – 4:102(1)(b) DCFR.

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[83] See Swedish legislative preparatory work Lagrådsremiss Förstärkt skydd för franchisetagare, Stockholm 26 januari 2006 p. 27, based on which one may draw the conclusion that the said requirements are intended to be equivalent to Article 6(1)(N) and Article 6(2)(H) of the Unidroit Model Franchise Disclosure Law.

[84] Unidroit Model Franchise Disclosure Law, Explanatory Report p. 39.

[85] Unidroit Model Franchise Disclosure Law, Explanatory Report p. 39.

Moreover, ››information regarding the franchisor's intellectual property to be licensed to the franchisee, in particular trademarks, patents, copyright and software›› is to be included in the disclosure document in accordance with Article 6(1)(L) of the Unidroit Model Franchise Disclosure Law.

3.2.4.5 Obligations to buy or rent goods

Section 3.5 of the Swedish Franchise Disclosure Act includes ››information on the goods or services that the franchisee is obliged to buy or rent›› as part of the pre-contractual information duty. Also according to Article 6(1)(M) of the Unidroit Model Franchise Disclosure Law ››information on the categories of goods and/or services that the franchisee is obliged to purchase or lease›› is to be included in the disclosure document. Such items of information are not among those explicitly listed in Article IV.E. – 4:102 DCFR.[86]

3.2.4.6 Non-compete covenants

››[I]nformation on covenants not to compete that will apply during or after the term of the franchise agreement›› is included in the pre-contractual information duty based on Section 3.6 of the Swedish Franchise Disclosure Act. This is the case also for ››in-term and post-term non-compete covenants›› under Article 6(2)(G) of the Unidroit Model Franchise Disclosure Law. These may be included in the franchise contract if the disclosure document refers to the relevant section of the contract. Such items of information are not among those explicitly listed in Article IV.E. – 4:102 DCFR.[87]

3.2.4.7 Term and termination of the contract

The pre-contractual information duty based on Section 3.7 of the Swedish Franchise Disclosure Act includes ››information about the term of the agreement››, and ››conditions for … prolongation and termination of the franchise agreement››.

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[86] It is, however, possible that they might be included in the listed item ››terms of the contract›› in Article IV.E. – 4:102(h) DCFR. According to the comments, this information should, in principle, ››include the rights and obligations of the respective parties, the duration of the contract, the fee system, the conditions for termination and, if applicable, for the renewal thereof, economic considerations, exclusivity agreements, and restrictions on the free disposal of the business by the franchisee››. See DCFR Volume 3 p. 2390.

[87] It is, however, possible that they might be included in the ››terms of the contract›› in Article IV.E. – 4:102(h) DCFR. See DCFR Volume 3 p. 2390 and footnote 86 above.

Based on Article 6(2)(A) of the Unidroit Model Franchise Disclosure Law, ››the term and conditions of renewal of the franchise, if any›› are among those items of information that may be contained in the franchise contract if the disclosure document refers to the relevant section of the contract. The same goes for ››the conditions under which the franchise agreement may be terminated by the franchisor›› in accordance with Article 6(2)(D) of the Unidroit Model Franchise Disclosure Law.

These items of information are not listed in Article IV.E. – 4:102 DCFR. However, according to Article IV.E. – 4:102(1)(h) information on ››the terms of the contract›› is part of the pre-contractual information duty. Based on the comments, ››the duration of the contract››, ››the conditions for termination and, if applicable, for the renewal thereof›› are among those items of information that this article is intended to cover.[88]

3.2.4.8 Dispute resolution

Section 3.8 of the Swedish Franchise Disclosure Act includes ››information on how a dispute under this agreement shall be resolved and about the liability for the cost of such dispute resolution›› in the pre-contractual information duty of the franchisor. ››[A]ny selected dispute resolution processes›› are among those items of information that, in accordance with Article 6(2)(L) of the Unidroit Model Franchise Disclosure Law, may be contained in the franchise contract if the disclosure document refers to the relevant section of the contract. Such items of information are not among those explicitly listed in Article IV.E. – 4:102 DCFR.

3.2.4.9 The most important item of information and additional information possibly conveyed

The franchisor was asked to specify the item of information which is most important to convey to franchisee candidates in order to facilitate cooperation.

Finally, the franchisor was asked about other possible important items of information normally conveyed to franchisee candidates before concluding the franchise contract that had not yet been discussed during the interview.

3.2.5 Themes discussed with the franchisees

Franchisees were asked about their own background. The focus was on the interviewee's education and possible previous experiences from the said business field and/

88 DCFR Volume 3 p. 2390.

or general entrepreneurial experience along with their reasons for becoming a franchisee.

The specific experiences from the pre-contractual phase with the franchisor was discussed: Was the information received sufficient? Was it understandable? Was there something in particular on which the franchisee would have required more information? What information is, according to the interviewee, generally the most crucial to receive at that stage? Finally, the franchisee was asked if there is something more that he or she would like to add.

4. Cases and findings

4.1 General information on the cases

A case in this study is limited to the pre-contractual phase in franchising. The focus in this pre-contractual phase, the recruitment process, is on franchisee selection and on the information duty of the franchisor. As was already explained in the introductory chapter, each and every one of the three cases in my study is an example of good collaboration between franchisor and franchisee. One of the three cases, Case VMP, in fact consists of *two separate franchise chains* belonging to the same group of companies. For this reason two franchisors, as well as two franchisees, were interviewed within the frame of that particular case. Otherwise I interviewed one representative for the franchisor and one franchisee per case.

Specific references to the interviews are not made each time information originating from them is used below. It can moreover be noted that sometimes the same information is also publicly available on the internet.

> Some of this information can be found at the FFA website http://www.franchising.fi/jasenesittelyt?jasen, and/or the website of the respective company. Information on trademarks registered to the companies in question can for instance be found in the trademark database of the Finnish Patent and Registration Office, http://tavaramerkki.prh.fi/en/web/tietopalvelu/haku.

4.2 Case Arnolds

4.2.1 A short presentation

Arnolds is a well-known coffee chain in Finland offering freshly made donuts, bagels and the like.[89] It has been in business since 1991,[90] which is also the year the

[89] Information found at http://arnolds.fi/en/company. Visited on January 18, 2016.
[90] Information found at http://arnolds.fi/yritys. Visited on January 18, 2016.

Helsinki-based Finnish franchisor, that is Hermen Oy, was founded.[91] All of the currently more than 30 franchisees conduct their business in Finland. Arnolds received the FFA ››Franchise chain of the year›› –Franny Award in 1999 and 2011.[92]

The information that makes up Case Arnolds in this study was mainly obtained through interviews with Jussi Laurila, CEO of Hermen Oy, and long-time successful Arnolds franchisee, Raija Sunell, Sundorelli Oy, Arnolds Trio, Lahti.[93]

Jussi Laurila was interviewed by telephone on January 18, 2016. Raija Sunell was interviewed by telephone on February 2, 2016.

4.2.2 The recruitment process and the pre-contractual information duty in practice (Laurila)

Since the franchisees are extensively educated throughout the cooperation, it is not considered necessary for a franchisee candidate to have previous experience from that field of business. It is more important to be friendly, customer-oriented, thorough and able to commit to the business. A typical franchisee is not *too* creative. He or she is someone who is comfortable with being directed by the franchisor.

There are no clear preferences in the recruitment of franchisees in terms of gender or age, although the current franchisees include more women than men. The youngest person to be recruited was 17, the oldest around 60. Fairly many franchisees are recruited on the basis of recommendations by existing franchisees, others through recruitment which is open to all. As a rule franchisees are not encouraged to run more than one franchise. It is a totally different thing to manage several franchises compared to running one franchise. Not everyone it cut out for it.

Generally very little pre-contractual information is given to a franchisee candidate over the phone. The franchisor and the franchisee candidate meet later on several occasions before concluding the franchise contract. During these face-to-face meetings, the franchisor believes in openness and trust. Extensive, precise information is therefore given about many important issues. This practice has evolved over time: nowadays a franchisee candidate receives more pre-contractual information than in the early days. During the pre-contractual phase the franchisor informs the franchisee candidate of what franchising actually is. It is not possible to, for example, solely focus on issues specific to the Arnolds franchise network, since experi-

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91 Information found at http://www.kauppalehti.fi/yritykset/yritys/hermen+oy/08644409. Visited on January 18, 2016.

92 Information found at FFA website, http://www.franchising.fi/palkitsemistavat. Visited on March 13, 2016.

93 Information on Raija Sunell can be found at http://www.ess.fi/P_ij_t-H_n/2014/04/19/donitsit-maistuvat-yha-pitkaaikaiselle-arnolds-yrittajalle. Visited on February 5, 2016.

ence has shown that the difference between being an entrepreneur and being an employee is not necessarily clear to an applicant. The fact that an entrepreneur usually needs to work more hours in order to be successful is especially highlighted. The franchisor also emphasizes that franchising is by no means a path to riches. Such issues are considered very important to discuss in order to avoid future problems. Franchisee candidates that are not familiar with economics or law are welcome to bring experts to the discussions. Some do so.

A franchisee candidate is given instructions of different kinds, some of them in writing. The Code of Ethics of the FFA is discussed. However, no copy of the franchise contract is given to the franchisee candidate. The wish to avoid its duplication is the main reason for such a practice. Another reason is a wish to avoid confusing franchisee candidates. Nonetheless, the content of the contract is made clear to a franchisee candidate, since all of its clauses are carefully discussed before signing. The session where the contract of 20–22 pages is reviewed takes up to four hours. A franchisee candidate that does not wish to go through the contract in detail is generally not considered suitable to run a franchise. After signing, the contract usually ends up in a drawer from where it is removed only in case of problems. The business is instead conducted on the basis of the operations manual, which is updated by the franchisor as required. Sometimes more updates are needed, and sometimes less. For the most part, the updates relate to product development. The principles for customer service etc. generally do not change. The franchisees, who must follow the operations manual closely in the daily business, are welcome to suggest changes to the operations manual. Such suggestions are nonetheless rare.

A franchisee candidate is not given any precise sale or profit estimate or the like for the particular franchise. Instead the revenue and profit for existing franchises of the same size, or for franchises situated in equivalent locations, are provided as *examples* so that the franchisee candidate is able to get a realistic picture of the profitability of the business. The different existing franchise fees (initial fee, cooperation fee and marketing fee), as well as details on what these fees include, are discussed thoroughly with every franchisee candidate before concluding the franchise contract. This is a basic requirement in order to avoid surprises among franchisees.

Detailed information on the right to use the franchisor's intellectual property rights, such as trademarks and logos, is found in the franchise contract. This is thoroughly discussed in the pre-contractual phase.

The franchisor decides upon the premises from which the franchise is to be run. If the franchise will be situated in a new location unfamiliar to the franchisor, experts are consulted in order to find suitable premises. The future franchisee may be – and has in reality been – one of these experts. The rental agreement is nowadays concluded between the owner of the premises and the franchisor, who thereafter subleases it to the franchisee. Such an arrangement is generally considered safer and is therefore preferred by landlords.

The franchisor is responsible for negotiating the contracts of purchase of raw materials. Sometimes the franchisor is also involved in the actual buying of raw materials. However, usually the franchisee buys them directly from the producer or seller. It is very important that the franchisee only uses such raw materials that the parties have agreed upon. If the franchisee gets the equivalent product cheaper elsewhere, it is another matter. In reality the terms of the contracts of purchase are favourable, and better prices will not be found. The rental practices or the procurement of raw materials do not come as surprises to franchisees: a franchisee candidate is thoroughly informed of these issues in the pre-contractual phase.

The franchise contract includes a non-compete clause that is valid during the contract term and one year thereafter. In an appendix to the franchise contract the franchisee also accounts for his or her affiliations, such as interests in other businesses as well as the amount of time that will possibly be used conducting another business. The reason for this practice is the franchisor's wish to enjoy (at least close to) 100 % of the franchisee's working hours. Experience has shown that such monitoring is needed in order for the franchise to produce a good result. Non-solicitation clauses are not used.[94]

The franchise contract is concluded for fixed periods of five years; the initial period and the subsequent periods are of the same length. About 1/3 of the franchisees are currently on their third five-year period, 1/3 on their second and 1/3 on their first. About a year before a contract period is about to end, the parties start discussing whether there is a mutual desire to cooperate for another five years. During the fixed period the franchise contract can be terminated only as a remedy for breach of contract; in the history of Arnolds this has happened only once. The rental agreement for the premises is concluded for similar five-year periods. The negotiations therefore also consider renovations, possible rent increases etc. In general, the terms of the franchise contract are not altered to any great extent between contract periods.

Problems are solved through negotiations between the parties. A clause of this kind is also found in the franchise contract, along with an arbitration clause, which includes no stipulation as to the liability for the costs of such dispute resolution. There has been no need to obtain a statement from the Ethical Board of the FFA, although the franchisor finds that this may be a useful possibility: During the history of the Arnolds chain there have been only two real disputes with a franchisee. Both were resolved through arbitration proceedings. The franchisor finds it important to try to avoid disputes with franchisees. They take too much energy, cost a lot of money and usually lead to nothing good.

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[94] A non-solicitation clause could, for instance, restrict a franchisee's possibilities to, for a period of time, solicit other franchisees or the franchisor's employees if leaving the chain.

4.2.3 The franchisee's view (Sunell)

Sunell, with a background in the restaurant business as barmaid and waitress, applied for a job as coffee shop worker when the Arnolds chain opened its first franchise in Lahti in 1996. The main reason for applying was the fact that it was hard to combine motherhood with her late working hours in the bar. After nearly three years as an Arnolds employee she took over the franchise in October 1999 (The previous owner moved to a new location where she opened a new Arnolds franchise.) Sunell is currently on her fourth contract period as an Arnolds franchisee.

Due to almost three years of experience as coffee shop worker in the said franchise, Sunell already possessed a lot of practical knowledge when she became franchisee. Not much training was needed in baking donuts and the like. She even felt that she had gotten some insight into the actual running of the business. The idea of becoming an entrepreneur was not in itself an unfamiliar one either. She loves working with people and had previously dreamed about opening a small pub in Lahti. She found the transition from employee to franchisee fairly easy. Nonetheless, with the new role came much more work and also new responsibilities – many of them of a financial nature – in which she needed to be educated. She felt that she received a sufficient degree of education and support. In Sunell's opinion the franchisee support system in Arnolds works well overall: The education is generally thorough and when there is a problem, you will always get help if you ask for it. Difficulties and problems that have occurred over the years have always been solved through discussions with the franchisor. Sunell does not mind product updates and the like, as long as not too many new products are launched during a short time period. Development is needed if the chain wants to be successful.

Sunell finds that providing a franchisee candidate with a realistic picture of the profitability of the business is the franchisor's most important pre-contractual task. Another essential task is making sure that the appointed location is suitable for the intended business. The franchisor must also highlight the importance of the franchisee's work contribution, since a franchisee cannot be successful unless he or she is willing to put in a lot of working hours.

In the early days Sunell herself had the clear advantage of taking over an existing franchise in which she had even worked. She had therefore seen the flow of customers with her own eyes and she was also able to acquaint herself with the actual figures of the franchise before signing the franchise contract.

4.3 Case VMP

4.3.1 A short presentation

Two of the four companies belonging to VMP Group, namely Varamiespalvelu-Group Oy (hereafter Varamiespalvelu) and Alina Hoivatiimi Oy (hereafter Alina), are of interest for this research. Varamiespalvelu is a company specialized in staff leasing and recruitment services. It has acted as a franchisor since 1997.[95] There are currently 21 franchisees in Finland belonging to the Varamiespalvelu chain. Alina is a company specialized in home care, health care and similar services.[96] It has acted as a franchisor since 2006,[97] and has been a part of VMP Group since 2013.[98] Today the Alina chain includes 30 franchisees in Finland, and the number increases by approximately 10 franchisees per year. The final goal is set at about 50 franchisees. The Varamiespalvelu chain received the FFA ››Franchise chain of the year›› –Franny Award in 2005.[99] It can be noted that in the 2015 Franny Awards VMP Group, as well as the Alina chain separately, were among the three finalists (Suomen Taloasema was, however, elected winner).[100]

The information that makes up Case VMP in this study was mainly obtained through interviews with four people. As representatives for the franchisor I interviewed Jani Suominen, Deputy Managing Director of Varamiespalvelu, and Ilpo Toivonen, CEO of Alina together on the premises of VMP Group in Turku on January 27, 2016.

The Varamiespalvelu franchisee Riku Loman, Rimark Oy, Lohja, was interviewed by telephone on February 5, 2016. He is one of the two VMP franchisees that were selected ››Franchisee of the Year 2015›› in the Franny Awards. (The other one is Loman's partner in Rimark Oy, Markus Sippo, whom I have not included in my study.)[101] In order to achieve symmetry in Case VMP, I also interviewed an Alina franchisee, the successful entrepreneur Riitta Varis, from Joensuu. She was awarded ››Alina franchisee of the year›› by the Alina chain at the Franny Awards 2015.[102] I interviewed Riitta Varis by telephone on February 7, 2016.

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95 Varamiespalvelu history, https://www.vmp.fi/historiikki/. Visited on March 15, 2016.

96 Alina service concept, http://www.alinahoivatiimi.fi/alina-palvelut/. Visited on January 29, 2016.

97 Alina history, http://www.alinahoivatiimi.fi/alina-hoivatiimi/341-2/. Visited on January 28, 2016.

98 VMP Group history, https://www.vmp.fi/historiikki/. Visited on January 29, 2016.

99 Information found at FFA website, http://www.franchising.fi/palkitsemistavat. Visited on March 13, 2016.

100 Information found at http://www.alinahoivatiimi.fi/alina-hoivatiimi-ehdolla-vuoden-2015-franchising-ketjuksi/. Visited on March 13, 2016.

101 Information on Riku Loman can be found at http://news.cision.com/fi/havas-worldwide-helsinki/r/vuoden-franchising-yrittajiksi-valittiin-vmp-groupin-riku-loman-ja-markus-sippo,c9744458 and http://www.ykkoslohja.fi/?q=node/32786. Visited on February 5, 2016.

102 Information on Riitta Varis can be found at http://www.alinahoivatiimi.fi/riitta-varis-palkittiin-franny-awardilla/ and http://www.alinahoivatiimi.fi/alina-hoivatiimi-ehdolla-vuoden-2015-franchising-ketjuksi/. Visited on March 13, 2016.

4.3.2 The recruitment process and the pre-contractual information duty in practice (Suominen and Toivonen)

Generally the attitude – such as being persistent and sure of oneself, but not too greedy – is considered the most important criteria in franchisee selection, along with local knowledge and networking competences. If you are not able to cooperate locally, you will not succeed as a VMP franchisee. Moreover, the geographical area in question may require special knowledge. Sometimes a franchisee in the Varamiespalvelu chain needs to be familiar with the running of a hotel business, sometimes with a certain branch of industry etc. In other words it is crucial that a franchisee candidate fits the franchise in question. The particular knowledge and special skills needed in staff leasing and recruitment services are, however, mostly gained through extensive education during the franchise cooperation. In the Alina chain the franchisee must also have a suitable education, such as the qualification of a registered nurse or practical nurse.

There are no clear preferences in the recruitment of franchisees in terms of gender or age, although the franchisor finds it somewhat problematic during the start-up phase if the franchisee has small children to take care of etc. In the Alina chain all but one of the franchisees are female. In the Varamiespalvelu chain 60 % of current franchisees are men and 40 % are women. Franchisees are between the ages of 35–61 in both chains; the youngest ever recruited was aged 25.

Franchisees in the rather mature Varamiespalvelu chain are often recruited internally: The majority of current franchisees have previously worked either in the organisation of the franchisor, or in the organisation of a franchisee. They are therefore already familiar with the business and the operations within the organisation. It is considered less risky to recruit internally. Open recruitment has nonetheless occasionally been used (such as electronic applications, advertisements in local newspapers). In the younger Alina chain franchisees have been recruited externally. The Alina chain is still expanding geographically, which means that a new franchisee must start from scratch and focus on the rather tough and time-consuming task of acquiring the required customers for an area. The franchisee must therefore be utterly persistent as a person. Sufficient support from the franchisor is crucial. The franchising network of Varamiespalvelu is geographically complete. A new franchisee therefore takes over an existing franchise, and is generally faced with fewer obstacles.

In spite of these differences, the *recruitment process* in both chains include in principle the same stages, although more detailed pre-contractual information is needed in a situation where the franchisees are recruited externally (as in the Alina chain). At every stage several people representing the franchisor are involved. More senior people, such as the CEO, participate at later stages. At *stage one* applications are reviewed in order to find franchisee candidates that will proceed to the initial

face-to-face interview at *stage two*. During this interview the main goals are to get to know the franchisee candidate as a person, get information on his or her reasons for wanting to become a franchisee and give the franchisee candidate some – fairly general – information on the concept of franchising, the franchise network in question and its business as well as the later stages in the franchisee recruitment process. The franchisor highlights the need to stress that franchising really is entrepreneurship. In other words, in order for the business to be successful the franchisee must put in a lot of hours and effort, since the franchisor can only give support. This must especially be highlighted in the recruitment process of the Alina chain, where the franchisees generally have a background as employees in a hierarchical environment such as a hospital where taking initiative is not commonplace.

If both franchisor and franchisee seriously consider the possibilities of future cooperation, the franchisee candidate proceeds to *stage three*, the second face-to-face interview. At this stage the actual franchise business is discussed in much more detail. The discussion concerns issues like the operations manual, financial administration and other executive support systems/IT-systems that are used, business development plans, permissions and quality certificates. The franchisee candidate therefore signs a non-disclosure agreement. According to the franchisor the non-disclosure agreement, which in itself is a sign of the recruitment process being handled professionally, is important at this stage: it is always possible that someone approaching the franchisor is looking for information on how to develop his or her own business without any intention of becoming a VMP franchisee.

The process between signing the franchise contract and the actual opening of the franchise is also discussed during this interview. The discussion includes the franchisee's right to receive training from the franchisor. The events that can be expected during the first year as VMP franchisee are also presented. Some of the issues included in the franchise contract, such as the different existing franchise fees (initial fee, cooperation fee and marketing fee) and details on what these fees actually include, as well as some rights and duties of the parties, are also discussed thoroughly. The Code of Ethics of the FFA is reviewed and an exemplar five-year budget based on the average VMP franchise is presented. A franchisee candidate is not given any precise sale or profit estimate or the like for that particular franchise. In the Varamiespalvelu chain, with its fairly long history, the revenue and profit for a successful existing franchise and a less successful franchise (or one that has just started) of a same size location are, however, (anonymously) provided as examples. A potential franchisee is thus able to get a realistic picture of the profitability of the business. This is considered very important in order to avoid disappointments among franchisees.

A franchisee candidate that has passed the stage three interview proceeds to *stage four*, where the idea is to thoroughly acquaint oneself with the franchise contract. During this session the contract is in fact *read out loud* in its entirety to the

franchisee candidate. This is a long-standing tradition that prevents franchisees from later on alleging that they received the contract but did not actually read it or did not understand it. During this franchise contract reading session the franchisee can ask questions. Clauses that are possibly unclear are discussed in detail. At the end of the session a preliminary date for signing the contract is decided and the franchisee receives a copy of the contract. During this ››engagement period‹‹ following stage four, the franchisee candidate, who may still contact the franchisor with additional questions when needed, finally decides whether he or she wants to commit.

Particularly in the recruitment of franchisees to the Alina chain, an aptitude evaluation assessing the suitability of a franchisee candidate is used where needed. Depending on the franchisee candidate's background, the evaluation is done either after stage three or after stage four in the recruitment process.

Altogether the recruitment process takes about 20 hours (including meetings with the franchisee candidate and preparations for such meetings). On average each meeting lasts two to three hours. The franchisor, who believes in openness, fairness, quality and ethics, considers it crucial to put a lot of time and effort into the recruitment process: It is devastating for both franchisor and franchisee if later cooperation does not work out due to a party's unfounded expectations. Disappointed franchisees are dissatisfied franchisees who blame the chain for their misfortune. As a result cooperation between the franchisee and franchisor weakens. This makes it more difficult for the franchisor to manage the chain. Financially, such a development is bad for franchisors and franchisees alike.

Franchisee candidates are also encouraged to speak with existing franchisees before signing the franchise contract in order to really understand what it means to be a VMP franchisee. Franchisee candidates have generally not been assisted by lawyers or other specialists during the pre-contractual phase, although the franchisor does not oppose such a practice.

The franchisor describes the franchise contract as an insurance policy that resembles the edges of the sandbox, while the operations manual includes the information needed to actually conduct the business. The current franchise contract of the Varamiespalvelu chain is nonetheless lengthy, consisting of 54 pages, whereas the contract of the Alina chain is about 25 pages. It is considered important to have a shorter contract at this stage in the Alina chain in order for it not to become an obstacle for franchisee recruitment. The contract safeguards the franchise concept and states some crucial rights and obligations, but in many cases reference is simply made to the operations manual that includes more thorough information on the subject matter. The franchisor believes that the Alina franchise contract will probably in time also become longer: Additional clauses and other kinds of contract alterations are usually made as a reaction to real-life events. The contract is, however, never altered during an on-going contractual period. The same contract is therefore usually used for five-year periods.

The Varamiespalvelu franchise contract has been renewed on several occasions, but the alterations made are usually not significant. They may, for instance, relate to specifications of sales targets. The current, ninth version of the contract has been in use for about three years. Due to the length of the contract period and that it does not start on the same date for every franchisee, three or four versions of the franchise contract are simultaneously used within the chain. The franchisor's aim is, nonetheless, not to renew the contract often, since the several different contract versions make it more difficult to manage the chain. The franchisor highlights the problem with important updates included in a newer version of the contract that must be separately negotiated with franchisees doing business in accordance with an older version of the contract. Multiple contract versions also slow down decision making due to the fact that the content of a specific contract must be checked every time. There is, however, a follow-up system in place, which makes it easier to grasp the differences between contract versions. In the Alina chain the third contract version is the most recent.

According to the franchisor the management of a franchise chain demands skills and willingness to ››coach‹‹, motivate and support franchisees. A franchise chain cannot be led by, for example, throwing contract stipulations at franchisees whenever there is a problem. Such behaviour would weaken cooperation and likely lead to an ››Italian strike‹‹ –situation among franchisees, where nobody does more than the minimum required by the contract. Consequently, the contract is normally not in active use during the contract period.

The operations manual is altered when needed. In the Alina chain, which is currently in a stage of rapid growth and development, this is done every year or every other year. In the Varamiespalvelu chain the operations manual is almost completely rewritten every three or four years. Smaller alterations are also made. Besides the operations manual there are nowadays also chain instructions that override even the operations manual. These instructions are in the form of ››daily‹‹ notices and announcements needed in order for the chain to be up-to-date with new regulations, changes in business models or the practices of customers. The aim is to regularly include these notices also in the operations manual. According to the franchise contract the franchisee must act in accordance with the chain instructions.

The right to use the franchisor's trademarks and domain names are thoroughly discussed in the pre-contractual phase. So are the rights of franchisees to use IT systems/executive support systems needed in the business, the number of which has increased lately. The franchisor licenses the systems that the franchisees have the right to use. Sometimes the costs of such use are included in the cooperation fee, at other times the franchisee pays an additional fee.

The franchisee rents the premises in his or her own name. The franchisor approves the location, floor plan and the like, but does not take part in the negotiations with the landlord. As part of the franchisor's risk management in the Varamiespalve-

lu chain, the franchisor nonetheless demands that the franchisee's rental agreement includes a clause in accordance with which the premises can be transferred to the franchisor if the franchisee ceases his or her business. The same is demanded also of the telephone subscription. Measures such as these enable a controlled transfer of the business to a new franchisee or the chain if needed.

The franchise contract includes a non-compete clause that is valid during the contract term and one year thereafter. Non-solicitation clauses are not used.

The franchise contract is concluded for a fixed period of five years; the initial period and the subsequent periods are usually of the same length, although the franchisee in the Varamiespalvelu chain may alternatively choose a subsequent period of three years. In the Alina chain the initial period as well as the subsequent periods are five years, although the franchisor may accept shorter subsequent periods if this is the franchisee's wish.

Well before a contract period is about to end the parties start discussing whether they mutually desire to continue the cooperation. If they so desire, the parties negotiate and discuss, for example, the current state of the franchise in question. Both parties may bring forward ideas and thoughts, and highlight possible needs for improvement. Minutes are kept and are subsequently signed by both parties. The new franchise contract is concluded only after this. A franchisee in the Varamiespalvelu chain has on average been with the chain for ten years. However, three franchisees are currently on their first five-year period, while some are already on their fourth. In the Alina chain almost all franchisees are currently on their first five-year period.

The franchisor generally acknowledges that in order for the cooperation to function well, the franchisees need enough possibilities to influence the actual work in the chain. Such mechanisms have recently been increased and improved, especially in the Varamiespalvelu chain. This kind of development is also underway in the Alina chain. For instance, an entrepreneurial management board is to be established in the near future consisting of representatives for both the franchisor and the franchisees. This cooperation body, the equivalent of which has already existed in the Varamiespalvelu chain for more than ten years, will act as an information channel, and will moreover be of assistance in the development of the business. In addition, franchisees are nowadays also included in the executive board of the Varamiespalvelu chain.

During the fixed period the franchise contract can be terminated only as a remedy for breach of contract. In both chains this has happened twice. One of the Alina cases was subject to judicial proceedings. Problems – which according to the franchisor have been rather few over the years – are generally solved through negotiations between the parties. A clause of this kind is also found in the franchise contract, along with an arbitration clause (which includes no stipulation as to liability for the cost of such dispute resolution). Account claims or sales receivables may also be demanded through court proceedings. There has been no need to obtain a

statement from the Ethical Board of the FFA. There have occasionally been cases, albeit not in recent years, where franchisees have received warnings and have been summoned to negotiations with the franchisor. During such discussions minutes have been kept which state the improvements that are needed. Both parties have signed the minutes. Such a process has proven useful when its goal is to improve the level of cooperation.

In case the problems are unresolvable, the franchisor prefers concluding *a termination contract* with the franchisee (that includes a non-compete clause), the purpose of which is to set a date for amicably ending the franchise cooperation. Up until that date the franchisee commits to fully cooperate in accordance with the franchise contract, and also to assist the franchisor in the transfer of the franchise to a new franchisee. Concluding a termination contract is better for the franchisor's reputation than simply terminating the franchise contract.

A termination contract is also concluded in situations where the parties agree to prematurely terminate the franchise contract due to other reasons than breach of contract. This may, for instance, be the case when the franchisee wishes to quit his or her business for personal reasons.

4.3.3 The franchisee's view (Loman)

Loman, a Bachelor of Business Administration (BBA) in entrepreneurship and marketing, had planned to become an entrepreneur at some point in his life. When he joined the Varamiespalvelu franchise in Tammisaari in 2008 it was nonetheless as an employee, a regional manager. At the time it was already known to him that the franchisee in question was about to quit. About one and a half years later, in September 2009, Loman set up Rimark Oy with his long-time personal friend Markus Sippo, who also at the time happened to be a Varamiespalvelu regional manager in a different location. They took over the franchise together. In the pre-contractual phase there were, however, thorough discussions with the franchisor concerning whether the franchise in fact could be run by two people. An ownership of 51 % – 49 % between Loman and Sippo was also demanded in order to avoid leadership paralysis. When Loman and Sippo took over the franchise in 2009, the chain was probably living its worst economic time ever. Rimark Oy has nonetheless done well economically and its owners are still good friends.

Loman, who calls franchising ››entrepreneurship light‹‹, since so much support is given by the franchisor, finds that the transition from employee to franchisee was very easy. He already had most of the information he needed in his new role. He obtained the missing parts along the way. The franchise contract was also thoroughly discussed in advance with the franchisor. Its content was made crystal-clear before signing.

Loman considers the economic realities of the franchise as the single crucial issue on which a franchisee candidate must receive accurate information before signing the franchise contract. In other words, it is essential that the franchisor does not paint too rosy a picture of the business in the pre-contractual phase. The rest can more or less be learned along the way with the help and support of the franchisor. Nonetheless, it is also important for a franchisee candidate to understand the issues with which you can receive help as opposed to those that you, as an entrepreneur, must handle yourself.

Loman himself had the clear advantage of taking over an existing franchise. He could therefore acquaint himself with the actual figures of the same.

4.3.4 The franchisee's view (Varis)

Varis, a public health nurse, had a long career in public health care before she started a supportive housing business in 2006. She was approached by the Alina chain in 2009, with whom she concluded the franchise contract in 2010. She has been a full-time Alina franchisee, dealing in home care, since 2013 when she sold her aforementioned business.

Since Varis knew the healthcare field well, and already fulfilled the required formalities (certificates, permits and the like), her transition was easy. She values the fact that the chain takes care of issues like IT and marketing even though the franchise fees are rather high. The franchise contract was thoroughly discussed before signing. In the beginning of the cooperation she received such education and support as she needed. She has nonetheless understood from more recent franchisees that nowadays even more information and support is given.

Varis does not mind updates and changes; she is happy that she can focus on her core business while other people take care of tasks needed in order for the chain to stay competitive and up-to-date. She is also generally satisfied with the franchisee support system in Alina, although she has one criticism: due to the expansion which the chain is currently undergoing the people that should support the franchisees are very busy. This sometimes means that help is not always available immediately.

Even though Varis finds it difficult to highlight any specific item of information as the most important one before concluding the franchise contract, getting a realistic picture of the franchise business is essential. The franchisee needs to know the content of the everyday work and be aware of his or her obligations towards the franchisor. When Varis joined the Alina chain, she was familiar not only with the content of the work, but with the workload as well. She moreover already knew that it was no path to riches. If faced with the choice today, she would join the chain again.

4.4 Case Laatutakuu

4.4.1 A short presentation

Suomen Laatutakuu Palvelut Oy (hereafter Laatutakuu), founded in 1993,[103] is nowadays a part of the facility services company ISS Palvelut Oy, which in turn is a part of the international ISS Group.[104] The Laatutakuu chain specialises in cleaning services and janitorial services. The idea of the cleaning services is that companies and housing cooperatives get their own cleaner for office and business premises (OmaSiivooja). In janitorial services, housing cooperatives and companies get their own caretaker (OmaTalonmies).[105]

There are 150 Laatutakuu franchisees at the moment, all of them in Finland. This makes the Laatutakuu chain one of the largest franchise chains in Finland in terms of the number of franchisees. Less than 20 of the said franchisees work in janitorial services, and the rest in cleaning services. Laatutakuu received the FFA ››Franchise chain of the year›› –Franny Award in 2007.[106]

The information that makes up Case Laatutakuu in this study was mainly obtained through interviews with Marja Kaario, Head of Recruitment at Laatutakuu, and long-time successful Laatutakuu franchisee Robert Karlman, RK–Kiinteistöpalvelu Oy, Turku–Parainen.[107] Karlman was awarded ››Laatutakuu franchisee of the year›› at the Franny Awards 2015 by the Laatutakuu chain.[108]

I interviewed Marja Kaario in person on the premises of Laatutakuu in Vantaa on February 19, 2016. Robert Karlman was interviewed by telephone on February 23, 2016.

4.4.2 The recruitment process and the pre-contractual information duty in practice (Kaario)

A franchisee candidate does not need any particular education, although educa-

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[103] Information found at http://www.laatutakuu.fi/yhteystiedot/tietoalaatutakuusta/. Visited on March 13, 2016.

[104] Information found at http://www.laatutakuu.fi/yhteystiedot/tietoalaatutakuusta/, in English at http://www.fi.issworld.com/Iss-palvelut-in-brief. Visited on March 7, 2016.

[105] Information found at http://www.laatutakuu.fi/siivooja/ and http://www.laatutakuu.fi/talonmies/. Visited on March 8, 2016.

[106] Information found at FFA website, http://www.franchising.fi/palkitsemistavat. Visited on March 13, 2016.

[107] Information on RK-Kiinteistöpalvelu Oy can be found at http://www.kauppalehti.fi/yritykset/yritys/rkkiinteistopalvelu+oy/27188103, https://www.asiakastieto.fi/yritykset/rk-kiinteistopalvelu-oy/27188103/yleiskuva and http://www.rkhuolto.fi/. Visited on February 18, 2016.

[108] Information on Robert Karlman can be found in Laatutakuu 3/2015 p. 14, http://www.laatutakuu.fi/attachements/2016-04-15T11-44-1115.pdf. Visited on May 11, 2016.

tion and/or previous experience is considered an advantage, especially in janitorial services, which often include handling different machines and the like. In the cleaning service you nonetheless generally benefit from experience in sales and customer service, and you need enough language skills (Finnish) to communicate with the customers; the actual cleaning and knowledge on how to, for instance, make offers to clients can be learned with the support and training that is provided by the franchisor. It is more important than education and experience that the franchisee candidate fits the assignment: he or she needs to, for example, be enthusiastic, gutsy and a hard worker – preferably not afraid of physical labour – since a franchisee cannot expect workdays that last from 8 a.m. to 4 p.m. Networking, decision making, planning and organising skills are also essential due to the fact that the expectations of the customers need to be met at all times.

There are no clear preferences in the recruitment of franchisees in terms of gender or age. In the janitorial services the franchisees are nonetheless all male. The youngest franchisee recruited to the Laatutakuu chain was 22 years, the oldest close to retirement age. An interesting fact is that 21 different nationalities can be found among the franchisees in the cleaning services. They include both women and men. By way of curiosity, it may be mentioned that the franchisor has had particularly good experiences with eager and hard-working Estonians.

Franchisees are generally recruited externally, although the franchisor finds that internally recruited people, who already know a lot about the business, usually make very good franchisees. The franchisor finds that there is fierce competition for good franchisee candidates among different franchise chains. On the other hand, the current situation with many part-time jobs and unemployment to some extent facilitate franchisee recruitment. Nowadays some franchisees are recruited with help from the Employment and Economic Development Office (TE Office), Finnish Enterprise Agencies (Suomen Uusyrityskeskukset ry),[109] or the franchisee recruitment service at Ketju.fi.[110] The franchisor has co-hosted franchisee recruitment events. The franchisor pays existing franchisees a ››finder's fee‹‹ for suggesting suitable franchisee candidates to the franchisor with whom contracts are later concluded. During the recruitment process the franchisor also calls those who act as references for franchisee candidates, and uses a work style assessment conducted by Personalhuset Staffing Group.[111]

The franchisor finds it important to proceed cautiously and step-by-step in the recruitment process in order not to scare away suitable franchisee candidates. At

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[109] Information found at http://uusyrityskeskus.fi/, in English at http://uusyrityskeskus.fi/sites/default/files/Opas_englanti_2015_web_0.pdf. Visited on March 8, 2016.

[110] Information found at http://www.ketju.fi/index.php?node_id=12617. Visited on March 7, 2016.

[111] Information on Personalhuset Staffing Group can be found at http://www.personalhuset-sg.fi/tyonhakija/. Visited on March 8, 2016.

stage one applications are reviewed in order to find franchisee candidates that will proceed to the initial *stage two* interview over the phone. Basic issues like credit information, Finnish language skills, a residence permit – which in practice must be permanent in order to be granted a loan from the bank – and a driver's licence (normally required) are discussed over the phone. A franchisee candidate that seems suitable enough based on the telephone interview advances to the *stage three* face-to-face interview. The franchisor underlines the importance of recruiting a suitable person, since no franchise chain is better than its franchisees. During this first face-to-face interview the main goal is to make sure that the franchisee candidate understands the concept of franchising. Many people applying do not understand this. Another goal is obtaining information on the franchisee candidate's background and experience. It is also important to discuss his or her current life situation, since stability (such as no pending divorce proceedings, back-up at home in case of small children) is required in order to become a successful franchisee.

Regional managers as well as sellers assist the franchisees. A franchisee joining the Laatutakuu chain can buy an existing clientele from the franchisor. In practice just about everybody chooses to do so when joining. In order to pay for the clientele, consisting of five to ten clients, the franchisee usually takes a loan from the bank. The loan period is four years. Partly due to the length of the loan period the franchise contract's initial fixed period of five years is not negotiable, although young franchisee candidates sometimes find it intimidating to commit for such a long time. Subsequent contract periods are for two years. More than 50 % of current franchisees have continued in the chain after the expiration of the initial five-year period.

Since the clientele of the cleaning services or janitorial services is bought, the actual figures of the franchise are in fact already known before signing the franchise contract. The client contracts are valid until further notice, and the franchisor gives the franchisee a six-month warranty for them. In other words, if the franchisee loses one of the bought clients during the said six-month period the franchisor is obliged to find him or her a compensatory client. In addition to the bought clientele the franchisees also normally acquire new clients, and/or extend the services offered to existing clients during the contract term. The figures of the business, for example the different franchise fees (initial fee, cooperation fee, marketing fee and administration fee, which includes the fee for accounting services) and what you actually get for them as a franchisee, are already discussed during the stage three interview if the franchisee candidate seems able to consider them at this point. The franchisor stresses that franchisee candidates often have difficulties grasping financial issues. Therefore these must be especially thoroughly discussed, and exemplified, before signing the franchise contract. The possibilities of getting an enterprise allowance (starttiraha) from the TE Office, are also discussed.

During the *stage four* interview (that is the second face-to-face interview),

where the franchisee candidate signs a non-disclosure agreement, the franchisor is represented not only by the head of recruitment, but by the regional manager as well. At the latest during this session, the concrete figures of the franchise are explained to the franchisee candidate in the form of a calculation in order to make sure that he or she understands what profit can be expected after the payment of franchise fees, loan costs, insurance fees, taxes and other fixed expenses. It can be noted that in the Laatutakuu chain the monthly franchise fee actually decreases when the franchisee's turnover increases and a franchisee that adequately tapes up his or her light-coloured car gets a discount on the marketing fee.

This discussion also includes the right to use the franchisor's trademarks, the content of the Laatutakuu brand and other issues explained in the operations manual. It can be noted that the operations manual is used in the daily business to a much higher degree than for instance the franchise contract. Accounting services and other support service systems used in the chain, insurances needed by franchisees, and the Code of Ethics are also discussed. In addition, the franchise contract is reviewed in detail. The franchisee candidate also gets a copy of the contract which he or she is expected to read for a minimum of two weeks before possibly signing it on the date agreed upon during this interview. In case of additional questions, the franchisee candidate is encouraged to call the franchisor before the signing date. It is also considered useful if the franchisee candidate reads the franchise contract together with somebody, such as a spouse or a lawyer. In addition, the franchisee candidate is to acquaint him- or herself with the content of an information folder which includes for example the Code of Ethics and the financial calculation of the franchise. During the two-week period before signing, the franchisee candidate is moreover supposed to determine his or her possibilities to get a bank loan or an enterprise allowance (starttiraha) from the TE Office.

During the said stage four interview the results of the work style assessment conducted by Personalhuset Staffing Group, which is used as a supporting tool in the recruitment of new franchisees, are also reviewed. It is a self-assessment electronically sent to a franchisee candidate who has advanced from the first face-to-face interview at stage three in the recruitment process. In between the interviews at stages three and four in the recruitment process the franchisor also, with the franchisee candidate's permission, calls at least two people that act as his or her references.

The franchisor stresses that a franchisee candidate can pause the recruitment process at any time if he or she needs a break to think things over. A franchisee candidate can moreover terminate the process anytime before signing the franchise contract in case of a change of heart.

The franchisor is currently in the process of creating a so-called Franchise Pro-

spectus.[112] This means that in the future the pre-contractual information duty will be handled even more effectively. For instance, some of the information that is currently usually conveyed to a franchisee candidate at stage four in the recruitment process (that is during the second face-to-face interview), will already be provided at stage three (during the first face-to-face interview).

It can be noted that the Laatutakuu business is not tied to a particular location. The franchisees usually have their offices at home. Sometimes premises such as warehouses and the like must be rented for machines. In these cases the franchisee can discuss different options with the franchisor who is nonetheless not a party to such deals.

The franchise contract includes a non-compete clause that is valid during the contract term and one year thereafter. Non-solicitation clauses are not used.

During the fixed period the franchise contract can be terminated only as a remedy for breach of contract. According to the franchisor there have been few disputes and other problems with franchisees over the years. Those that occur are generally solved through inter-party negotiations. A clause of this kind is also found in the franchise contract, along with an arbitration clause. Sometimes problems are solved with more support from the franchisor. The franchisor stresses that both franchisor and franchisee are simply people who want the cooperation to work. Despite this, a few disputes have been solved in arbitration proceedings. The franchisor nonetheless stresses the importance of trying to avoid such proceedings.

4.4.3 The franchisee's view (Karlman)

Karlman, with a vocational school degree and a work history at technology company Nokia, joined the janitor services of the Laatutakuu chain in 2005. At the time he was mostly motivated by a wish to leave Nokia in order to avoid a possible move to Asia. He admits that as a franchisee candidate he was somewhat sceptical towards the whole idea of franchising, the detailed franchise contract, and the test he had to complete. Nonetheless, his franchise business was quickly on track as a result of getting the enterprise allowance (starttiraha) from the TE Office and buying his first clientele from Laatutakuu. Overall he is satisfied with the help, support and education he received from the franchisor both in the start-up phase as well as thereafter. He stresses that the content of the franchise contract was made crystal-clear to him before signing. There was also a focus on the Code of Ethics in the pre-contractual phase.

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[112] FranCon Franchise Prospectus, http://www.francon.fi/index.php?node_id=16152. Visited on March 18, 2016. Information on FranCon can be found at http://www.francon.fi/index.php?node_id=16231. Visited on March 20, 2016.

After a decade in the chain – Karlman is currently on his fourth contract period as a Laatutakuu franchisee – the cooperation with the franchisor is an easy-going open dialogue. Karlman feels that the franchisor generally listens to his many ideas – albeit not always implementing them in practice – and he values that the franchisor is open to negotiations when needed. For example the current system where the monthly franchise fee decreases when the turnover of the franchise increases, is a result of discussions between franchisees and franchisor. Apart from this change in the monthly fee, there have been few changes in the franchise contract over the years. The operations manual has only been updated when needed in order to stay ahead of competitors.

Karlman generally thinks franchising is a good choice if one does not have a brilliant business idea of one's own. However, a franchisee is also an entrepreneur and must therefore be prepared to put in a lot of working hours. He suspects that people who are dissatisfied franchisees have not entirely understood what franchising is about.

According to Karlman, a realistic picture of the profitability of the franchise is the most important item of information a franchisee candidate needs before signing the franchise contract.

5. Best practices in the pre-contractual phase: What lessons did we learn?

Before providing concluding remarks in the form of some lessons learned from this case study, I want to briefly pay attention to the franchisee recruitment study conducted by FranCon Franchise Consulting in late 2015. The study, in the form of a questionnaire, was answered by 52 franchise chains in Finland. One conclusion drawn by their study is that the recruitment of new franchisees is only seldom handled in accordance with a well-planned and continuous process.[113] This is *not* an impression that I received from my case study. Therefore, it is quite possible that the well-organized chains included in my study cannot in this respect be viewed as representative of Finnish franchising.

One lesson learned from the case study is that *franchisors must put a lot of effort, resources and time, into the process of recruiting suitable franchisees*. In short, hard-working and eager but manageable people are generally considered suitable franchisees. A particular education or extensive experience from the field in question is usually not a decisive factor. The work can be learned: training and support is extensively provided by the franchisors in the start-up phase as well as thereafter.

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[113] Franchise News 1/2016 pp. 7–8, http://netpaper.lonnberg.fi/francon/franchise_news_1_2016/#/1/. Visited on May 11, 2016.

Nonetheless, the interviewed franchisors also speak highly of internal recruitments, which in itself underlines the value of experience, at least experience from within the franchise chain. One lesson learned is therefore that – where possible – *a workable strategy for minimising risk from the point of view of the franchisor is to recruit franchisees internally*.

When having to recruit *externally*, it may be wise for the franchisor to invest in the process of sorting out potential candidates. For example in Case Laatutakuu the franchisor at times uses external help (from TE Office etc.) in the recruitment of franchisees, participates in franchisee recruitment events, and has a ››finder's fee‹‹ for existing franchisees whose tips lead to the conclusion of new franchise contracts. Case Arnolds also shows that fairly many franchisees are in fact recruited on the basis of recommendations by existing franchisees.

Also from the point of view of the franchisee, it may – where possible – be a very good idea to start one's career in the chain *by working as an employee in the organisation of either the franchisor or a franchisee*. This way the transition to franchisee is likely to be smooth. Furthermore, *if one takes over an existing franchise* at this point – *perhaps even the same one where one has been employed* – the transition is likely to be even smoother. In addition to all the practical know-how gained through the work, the actual figures of the franchise in question are known at the time. The importance of receiving financial information is discussed in more detail below.

The case study shows that *the franchisee recruitment process* of the franchise chains *is lengthy, well-organized and thorough*. The process involves several face-to-face meetings where the parties get to know each other, the concept of franchising is discussed, financial issues are reviewed in detail, the Code of Ethics is highlighted, contract clauses are read out loud, the content of the operations manual is reviewed etc. The franchisor is often represented by more than one person in this process and, although this seldom happens, the franchisee candidate is free to use the help of a lawyer or some other expert. One certainly gets no impression of franchisee candidates being rushed into signing the franchise contract. For example the franchisor in Case Laatutakuu stresses that a franchisee candidate can pause the recruitment process at any time if he or she needs a break to think things over. A franchisee candidate can moreover terminate the process anytime before signing the franchise contract in case of a change of heart. In Case Laatutakuu, as well as in Case VMP, an ››engagement period‹‹ (wording used by the VMP franchisor during the interview) follows when the franchisee candidate has received a copy of the franchise contract. During this period the franchisee candidate is to think things over and finally decide whether to commit.

The conclusion is that the current practices in the franchise chains which were studied work very well. This conclusion is supported by findings from the interviews conducted with franchisees: They were all satisfied with the pre-contractual

information that they received, although each and every one of them probably received less information, in a less structured manner, than new franchisees who are recruited to the said chains today.[114]

Based on this study a lesson learned is that *it is a workable strategy for a franchisor to openly and generously convey accurate information* to the franchisee candidate in a clear and structured process before signing the franchise contract. In fact, nothing in this study suggests that any relevant information is intentionally left out by a franchisor. To the contrary, in all the cases the franchisors stress the importance of informing a franchisee candidate thoroughly and openly in plain language in order to avoid future problems in terms of unrealistic economic expectations and the like. The vast amount of information conveyed covers, for instance, more or less all those items of information discussed above in section 3.2.4. To me it was in fact somewhat surprising to learn that so much information is conveyed pre-contractually to a franchisee candidate in such a well-organized manner.

It was especially easy for me – as a lawyer – to grasp the current practices of conveying information to a franchisee candidate in Case VMP. The process seemed professional, well-planned, clear, structured and thorough.[115] Information on the same was logically, coherently and effectively presented to me by the interviewees, Toivonen (also a lawyer) and (executive MBA) Suominen. The equivalent process in Case Laatutakuu – which was openly shared with me in a friendly manner – also certainly gave an impression of being organized and structured, focusing on explicit and sufficiently detailed information to suffice even in situations where the franchisee candidate is a foreigner unfamiliar with the business culture in Finland. All in all, the practices of Case Arnolds were convincing as well, perhaps with some hesitation due to the fact that the franchisee candidate does not have the possibility of getting a copy of the franchise contract to read on his or her own before signing.

Since a structured pre-contractual process, based on the study, obviously means that the franchisor *proceeds from conveying information of a more general nature to conveying information of a more specific nature*, another lesson learned is that it may be wise for the franchisor to, at some point in the recruitment process, *make the franchisee candidate sign a non-disclosure agreement*. This way it might be even easier to trust the franchisee candidate. This facilitates the transfer of more sensitive information before signing, such as a copy of the franchise contract. In Case VMP and in Case Laatutakuu this is the current practice.

The case study shows that *it is especially essential for a franchisee candidate to get a true picture of the finances* of the business before concluding the franchise

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[114] All interviewed franchisors were of the opinion that their practices in the pre-contractual phase have improved over time.

[115] During the interview the franchisor also highlighted that as a result of refining the practices during almost 20 active years – that has included successes as well as failures – in the franchising business, the ››art of franchising‹‹ is, in fact, nowadays considered its core know-how.

contract. For instance franchisees Loman, in Case VMP, Karlman, in Case Laatutakuu and Sunell, in Case Arnolds, identified realistic information on the figures/profitability of the franchise as the single crucial item of pre-contractual information that a franchisee candidate must receive in order to understand what he or she is getting into. Franchisee Varis in Case VMP also informed me that when she joined the Alina chain, she did not have too rosy a picture of the figures either. Every interviewed franchisor highlighted the importance of delivering realistic financial information if one wants to avoid future problems with franchisees. The franchisor in Case Arnolds even stresses in the pre-contractual phase that being an Arnolds franchisee is no path to riches, although one can certainly make a living as a franchisee.

In relation to new franchisees joining the chain, Case Laatutakuu stands out in the following respect: due to the fact that a new franchisee can buy a ready clientele it is in fact fairly easy not only to get accurate *information* on the figures of the business, but also to make a profit in the first place. Naturally this may otherwise take some time in the start-up phase (with the self-evident exception of those new franchisees that take over an already existing, profitable franchise).

In other words, it can be concluded from this case study that the task of conveying sufficient financial information, in a sufficiently clear manner, sufficiently early in the pre-contractual phrase to a franchisee candidate is handled well. However, no such pre-contractual information is explicitly required on the basis of the Code of Ethics. As discussed, Article 3.3 of the Code of Ethics simply demands that the franchisee candidate is to receive a copy of the Code of Ethics and, in due time before the franchise contract is signed, such transferable written data that applies to the franchise relationship in question. The articles on recruitment advertising were also noted: According to Article 3.1 recruitment advertising is not to include equivocal or misleading expressions. In case the data, advertisements or brochures used in the recruitment of franchisees directly or indirectly refer to possible future results, figures or profit, such information must, according to Article 3.2, be objective and may not be misleading. In other words, as was already stated, there is no pre-contractual information duty per se in the Code of Ethics concerning such items of information. In those cases where information of this kind is in fact conveyed to a franchisee candidate it may not be misleading.

What conclusion could then, in legal terms, be drawn from the study? First and foremost it can certainly be argued that since the case study shows that a substantial amount of information, for instance on financial issues, is given pre-contractually to a franchisee candidate, the Code of Ethics – despite its general wording – seems to be working in a satisfactory manner in this respect. When contemplating this issue, one should nevertheless bear in mind that my small qualitative case study was consciously targeting chains that work well. The study therefore does not give us

much insight into the current pre-contractual practices of franchise chains that are less exemplary. After all, there are more than 250 franchise chains in Finland,[116] among which franchisee candidates who need more information may certainly exist. It is therefore possible to advocate that more precise ethical rules, or perhaps even Finnish legislation, on the pre-contractual information duty of the franchisor would be useful. Such measures might result in a clearer understanding among franchisors of the amount of information that should be conveyed before signing. This might increase the number of franchisee candidates actually getting access to vital – financial or other – pre-contractual information. It is, however, not possible to know based on this case study alone whether or not more precise norms on the subject matter are needed in Finland. What we do know based on this study is that franchisors in Finnish franchise chains that work well are very generous with information that is conveyed to franchisee candidates. As a result, there is a good chance that franchisees joining such chains are knowledgeable people who are up to the task and have realistic expectations of what the future may bring. This is a good basis for workable cooperation, and is naturally the reason for establishing such practices in the first place. In other words, for franchise chains that work well it really makes no difference if we follow Sweden and introduce some kind of minimum level legislation on the franchisor's pre-contractual information duty. The best practices already in place in these chains include much more information than such legislation requires.

Lastly, I want to refer to the theoretical approach discussed in section 1.5 in the introductory chapter. The findings of this case study are in line with a modern, flexible view on contracts as processes. Such a view is based on, or at least influenced by, the relational contract theory, and can moreover be labelled proactive contracting. In short, it is about an *ex ante*-approach to contracting where parties act responsibly, conflicts are prevented through discussions and good planning, and cooperation, which is in line with legal and ethical norms alike, focuses on reaching the overall goals.

For instance, although the franchise contracts are lengthy and detailed, the case study shows that they are not in active use during the contract term. The stronger franchisor is clearly more focused on making the cooperation work than on reading contract clauses in detail. Problems are generally solved through discussions and negotiations, and the franchisors also value the opinions of franchisees: The franchisor in Case VMP, for instance, acknowledges that in order for the cooperation to function well, the franchisees need enough possibilities to influence the actual work in the chain. Such mechanisms have thus recently been increased and improved upon. The franchisors in both Case Laatutakuu and Case Arnolds also articulate

[116] According to Franchise News, http://www.franchisenews.fi/index.php?k=225252, there are currently 250–300 franchise chains in Finland. Visited on February 18, 2016.

the importance of cooperating well with the franchisees, and franchisee Karlman in Case Laatutakuu points out that the current system in the chain where the monthly franchise fee decreases when the turnover of the franchise increases is a result of discussions between franchisees and franchisor.

In fact, nothing in this case study supports the conclusion that the weaker franchisee is exploited in any way. To the contrary, one may conclude that both parties understand that the relationship is in essence a process of giving and taking, albeit ultimately – and rightfully so – controlled by the franchisor who owns the business method in question.

Before this cooperation between franchisor and franchisee even begins, the franchisee must be informed of important issues in order to really understand to what he or she is committing. This prerequisite for good cooperation is undoubtedly understood by the franchisors included in my case study.