Book review

Elizabeth Crawford Spencer, *The Regulation of Franchising in the New Global Economy* (Edward Elgar, 2010), xii + 365 pp

Phillip Johnson

Barrister and Visiting Senior Fellow, Queen Mary

The modern franchise business began in 1851 with the distribution franchises of the IM Singer Sewing Machine company. These were followed in the 1880s by franchises for supplying utilities and streetcars. But it was the adoption of franchising by oil companies and soft drinks bottlers which led to it really taking off. The business model was therefore well known by the beginning of the twentieth century. Yet fast food franchises, which are probably the best known, only began with 'Howard Johnson's' roadside stands in the 1930s. However, it is Roy Kroc and his McDonald's franchise which is credited with starting the post-war boom in franchise businesses. Today, the range of franchises is vast – from postal services (Mail Boxes Etc) to coffee (Starbucks); from pest control (Rentokil) to convenience stores (7-Eleven). Franchises are truly everywhere. Yet there is little research into the regulation that governs this ubiquitous business form.

Despite the pervasiveness of franchises, many countries such as the United Kingdom do not independently regulate them. This has limited the potential for books on the subject, with leading textbooks mainly considering the intellectual property and contractual elements of the business model.¹ In contrast, Australia has much greater regulation of franchises and so it unsurprising that a systematic consideration of why franchises should be regulated, how they are regulated and how they *should* be regulated comes from an Australian author in the form of Elizabeth Crawford's *The Regulation of Franchising in the New Global Economy*.

After introducing franchising, the book moves on to examine what she calls the 'new learning' on the governance of franchises. She briefly explains the evolution of regulatory theory, although at times her summaries of particular aspects are possibly too brief for the less seasoned reader. For example, she explains public interest theory in a few lines and capture theory in only a paragraph. This makes the section little more than a glossary. Once the basic terminology is explained, the book continues by looking at the various layers of governance. The author identifies the first layer as 'market regulation', the second layer as 'contract', the third being the court's interpretation and the fourth and final layer being statutory intervention. This is followed by an examination of the regulatory process and other aspects of regulation theory.

The second chapter continues this theoretical scrutiny by examining franchising through its legal definition, its functional features as well as the social, cultural and

1. Eg M Mendelsohn, *Franchising Law*, 2nd edn (Richmond 2004); J Adams, J Hickey and KV Prichard Jones, *Franchising*, 5th edn (Totell 2006).

economic conditions which led to it flourishing or failing. It looks at the motivations for creating a franchise and for franchisees taking it. It is at this point that it becomes clear why the regulation of franchises is so important. Crawford looks at the claims made by those selling or promoting franchises and then considers the information behind those claims that is usually not revealed to the potential franchisee. For example, it is commonly claimed that the support and benefits provided by a franchise system greatly reduce business risk. Yet, as the author points out, there is research suggesting that franchises are more risky when the franchise brand itself is new.² Similarly, the claim that a franchisor provides a knowledge base developed from their own experience and that of other franchisees is true, but, once more, Crawford removes the gloss and points out the seemingly obvious fact that there is often no obligation for this information to be passed on. In many ways, it is this aspect of Crawford's book which is so refreshing. She looks at the problems with franchising and how they might be solved by regulation; rather than merely examining the law as it is, she considers how it should be, something few other texts even attempt.

A contract is always central to the regulation of the franchise relationship. Accordingly, it would be impossible to study the regulation of franchising without looking at the contractual aspects. Crawford devotes a chapter to this angle, including discussion of some of the clauses commonly found in franchise agreements. She does not look at the drafting of these clauses, but rather she considers it at the regulatory level – in other words, why the rule exists and therefore what it needs to control or prevent.

After a chapter considering the UNIDROIT Model Franchise Disclosure Law comes the most ambitious part of Crawford's book. In this worldwide survey of franchise laws, she looks at every country that has a specific franchise law. She adopts a similar format for each country. This begins by setting out the countries' population, its gross-domestic product, an estimate of the sales from franchises and then a brief summary of the regulation that applies within the country. It is rare that a comparative survey includes countries like Kyrgyzstan, Georgia and Moldova.³ Yet this inclusion shows that the survey is not only global but comprehensive. Each entry is anywhere from half a page to a few pages, but the discussion of the law is only in a skeletal form, sufficient to explain the relevant context of the regulation. After this survey, the information it provides is applied to look at the regulation of the negotiations and formation of the franchise agreement and then the regulation of the performance and exit from that contract.

Crawford argues strongly for proper rules to regulate franchising, and most particularly, disclosure requirements and her hypothesis is well researched and convincing. Also, in addition to this central argument, *The Regulation of Franchising* provides tables and charts further opening the door on comparative research into franchising law. In summary, the book is interesting and well thought out and anyone interested in franchising law should read it.

2. She cites, RD Blair and F Lafontaine, *The Economics of Franchising* (University of Illinois 2005) 44.

3. But not the United Kingdom as it has no relevant law.