

**Economics of European Countries**

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**THE IDEA OF FRANCHISE  
AS A MODERN CONCEPT  
OF ENTERPRISE MANAGEMENT:  
THE EXPERIENCE OF POLAND**

**Abstract**

Over the years, the franchise has become an attractive model for the sale of products and services, as well as a means of developing the franchisor's business. Franchising systems around the world have become very popular among franchisees, who receive an already proven cost-effective business model in exchange for payments, purchases and other services from the franchisor. These systems also bring intangible benefits in the form of encouraging the promotion of entrepreneurship in society. Polish franchise legislation has systematic nature and is based on the Civil Code, the Law on Industrial Property, the Law on Combating Unfair Competition, the Law on Protection of Competition and Consumer Rights, the Law on Copyright and Related Rights, European Code of Ethics for Franchising. Taking into account the legal regulations, the mechanism of the Polish model of franchising is revealed and the newest forms of its use in business activity are distinguished.

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**Key words:**

Franchise, enterprise, competition, franchise agreement, franchise system.

**JEL:** F63; O30; O52; P42.

**Topicality**

Over the years, the franchise has become an attractive model for the sale of products and services, as well as a means of developing the franchisor's business. Franchising systems around the world have become very popular among franchisees, who receive an already proven cost-effective business model in exchange for payments, purchases and other services from the franchisor. These systems also bring intangible benefits in the form of encouraging the promotion of entrepreneurship in society.

This true symbiosis allows many new businesses and entrepreneurs to thrive, significantly reducing the risk of starting and running a business. Given the widespread use and popularity of the system, it becomes important to generalize the principles of franchising operations from the standpoint of both regulatory and business requirements. This, in fact, was the purpose of this study, revealing the practical experience of the franchise department based on a business plan.

Franchising means freedom in managing and running your own business. The word « franchising» , which for many people is just an economic term, literally means « to be free» . The franchising system is a very convenient solution, especially, as by borrowing the history of franchisor's activities in trade, a novice entrepreneur is avoiding many mistakes that usually occur when starting a business. At the same time, the franchise gives its acquirers the freedom to run, manage and control their own company. However, where there is freedom, there must be responsibility for one's own decisions.

## **Problem statement**

This article aims to bring the theoretical approach as close to the modern concept of managing your own business as possible using the experience of the Republic of Poland.

## **Analysis of the legal basis for operation of franchising systems in Poland**

Three acts of European Union law are the pillars of the legal framework for the operation of franchise systems in Poland. They are the Treaty on the Functioning of the European Union (Official Journal of the European Union, C83/01); Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (Official Journal of the European Union, L102/01); Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (Official Journal of the European Union, L129/52). Also relevant is the Commission Notice of 13 October 2000 on the Guidelines on Vertical Restraints (Official Journal of the European Union, C291/1). All these acts affect the form of franchising agreements and agreements within the European Union and aim to harmonize the legal framework throughout the community. The unified nature of the legal framework, especially in the case of franchise agreements, which are sometimes transnational, has a strong impact on legal certainty and reduces legal risk for both franchisors, master franchisees and franchisees.

Polish law affects the nature of the franchise system through common law acts such as the Civil Code (Dziennik Ustaw, 1964 Nr 16 poz. 93), and a number of laws governing entrepreneurship in Poland: Commercial Law (Dziennik Ustaw, 2001 Nr 147 poz. 1643), Law on Copyright and Related Rights (Dziennik Ustaw, 1994 Nr 24, poz. 83), Law on Industrial Property (Dziennik Ustaw, 2003 Nr 119 poz. 1117), Law on Combating Unfair Competition (Dziennik Ustaw, 2003 Nr 153 poz. 1503), and Law on Protection of Competition and Consumer Rights (Dziennik Ustaw, 2007 Nr 50, poz. 331). Given the above legal provisions, it should be noted that Poland does not have any acts specific and devoted exclusively to the franchise system, but only regulations that generally legislate relations between the parties in various areas of business practice. In the following paragraphs of this section, we will try to present the scope of influence of this regulation on operation of franchising systems.

**Civil Code.** The Civil Code is the basis for regulating contractual relations between business entities. With regard to franchise agreements, it should be noted that areas governed by the Civil Code, such as the method of concluding a contract, possible forms of contracts, the consequences of non-performance or fulfilment of obligations or the possibility of concluding contracts, apply equally to franchise agreements and other agreements concluded in accordance with Polish law.

**Commercial Law.** Doing business as a franchise does not exempt from compliance with the law for all entrepreneurs. Provisions contained in the Commercial Law, including the rules for making entries or changes to the relevant registers (the Central Register and Information on Economic Activity – CEIDG) or the registration of commercial companies in the Register maintained by the National Court Register. The requirements for franchisees are set similarly to other entrepreneurs on obtaining concessions (e.g., trade in alcohol) or permits.

**Law on Industrial Property.** The Law on Industrial Property plays an important role in the formation of franchise agreements. A typical procedure for franchising agreements is the transfer or permission for the franchisee to use logos, trademarks, non-proprietary technical knowledge, company know-how or the ability to use the franchisor's patents. The rules of transfer and the scope of intellectual property of the above elements are regulated by the aforementioned Law.

**Law on Combating Unfair Competition.** The confidentiality of the franchisor's enterprise in the case of cooperation between the parties is an important element of franchising agreements. This issue is regulated by the Polish Law on Combating Unfair Competition. The law affects a number of other aspects, such as proper labelling of the company or non-restriction of market access, but they are not as significant.

**Law on Protection of Competition and Consumer Rights.** The Law on Protection of Competition and Consumer Rights protects from unfair competition in its provisions on franchise agreements, which detail direct or indirect fixation of prices, purchase conditions, market distribution, and sale and purchase. It is important from the point of view of franchise agreements to detail some aspects of the above Law. They are expanded on in the Resolution of the Council of Ministers (Dziennik Ustaw, 2011 Nr 81, poz. 441), which excludes certain types of agreements (including franchise distribution) from the scope of the Law and indicates the prohibited and permitted provisions of franchise agreements.

**Law on Copyright and Related Rights.** With regard to franchise systems, copyright protection may be subject to an operational handbook provided to the franchisee by the franchisor or other documents, projects or contracts. Liability arising from the illegal disclosure of confidential information to third parties by the franchisees is governed by the Law on Copyright and Related Rights.

**European Code of Ethics for Franchising.** The European Code of Ethics for Franchising is a document that does not directly impose additional obligations and restrictions on franchisors, but is a fundamental guide that determines the direction of proper and ethical operation of the franchising system. It was developed as a result of cooperation between a number of franchise agencies and associations operating in Europe. It has an advisory purpose in the process of discussing and creating franchise agreements.

### **Analysis of the practical concept of franchising**

A franchise agreement is a civil law contract, like all other contracts, but its specific nature requires compliance with certain rules. Although some elements of the concept are standard, but neglect of them is unacceptable, and therefore it is necessary to analyse each stage of the concept in detail, without omitting any of its important parts. The main and primary element of the agreement is the correct definition of the parties. The structure of the contract determines the franchisor and the franchisee. Each business entity is assigned the appropriate registration data, the form of ownership, the legal address of the organization and the persons who registered it.

The franchise license is no less important as an element of the franchise agreement; it is obtained by the acquirer in order to use the provided knowledge and know-how. The same article should mention the obligation of the franchisee to use the techniques of doing business and the achievements of the franchisor in practice. The content of the previous article states the obligation of the franchisor to provide assistance to the franchisee, which can take various forms, ranging from assistance in choosing the right place to do business, to training staff working for the franchisee.

Each franchise agreement contains information about the payments that the franchisee must make to the franchisor. These fees can take many forms, but the most common are the down payment, the standing fee and the marketing fee. The down payment is intended to cover the costs of the franchisor related to the training of franchisee's employees or other costs incurred by them in connection with the beginning of the cooperation. The standing fee pertains to the use of the franchisor's knowledge and experience provided to the franchisee (for example, in the form of a directory). There are two types of such commission payments – a variable fee (for example, proportional to generated revenue) or a fixed fee (independent of the revenues or other variables). The marketing fee applies to the costs incurred by the franchisor in marketing and promotional activities for the entire network.

In addition, information on the rights, scope and frequency of supervisory actions performed by the franchisor is another important element of the franchise agreement.

The franchisor must ensure compliance with standards throughout the network, for example, by inspecting the premises or by reviewing the entity's revenue statements (if the franchise fee is determined based on the entity's profits).

If the business activity is conducted in a specific room, the agreement must contain provisions on its arrangement, design and equipment.

Network pricing policy is an important element that often requires standardization, so the franchise agreement must contain provisions on prices for products or services as per the policy of the entire franchise network.

One of the central activities of the company is advertising, so the provisions should contain information on the amount of advertising activities of the franchisor (for example, as part of the marketing fee) or the degree of interference of the franchisor in advertising and promotional materials prepared by the franchisee.

Prohibition of competition and disclosure of corporate secrets is dictated by the legitimate interest of the franchisor, who discloses the know-how to the franchisee, which is the company secret. Franchise agreements contain another integral element – information on the amount of the stipulated penalty in the event of one of the parties not fulfilling its contractual obligations, for example, if the franchisor does not provide training or operating instructions or if the franchise designs the premises improperly or violates the network pricing policy.

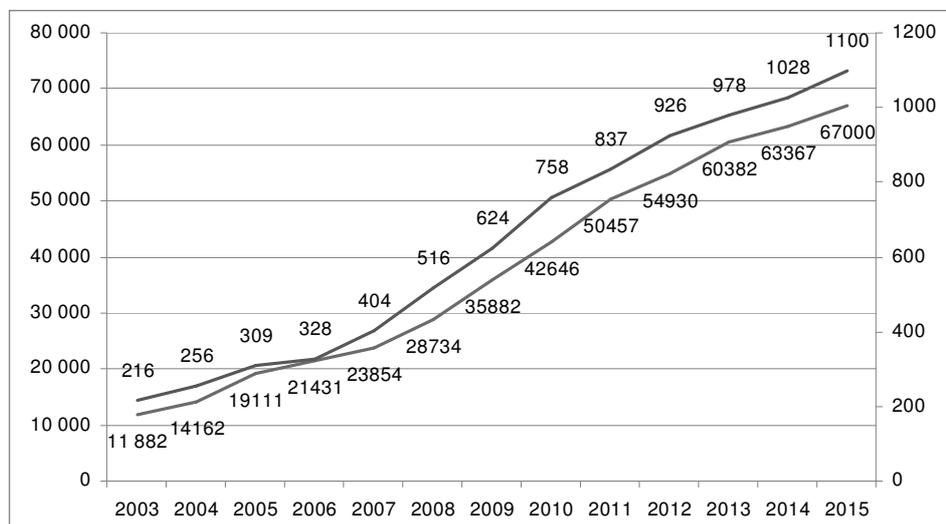
The last element to consider is the duration of the franchise agreement, which should be as long as possible so that the franchisee can recoup the investment costs associated with the launch and development of activities within the network in the form of business profits.

### **Research findings**

The franchise system in Poland dates back to 1989, when the first franchising networks appeared in the country. It was a modest start (just over 10 networks in 1992 and 50 in 1997), which began to gain momentum after 2000. The expansion started from the very beginning and continued, despite market fluctuations and the difficult economic situation in Poland at the time. The last analysed period was characterized by a decrease in the expansion of 5 percent compared to the previous period. At the same time, we can observe that the number of franchise units is steadily increasing, which indicates that Poles are interested in running their own business, while reducing the risk of failure.

Figure 1

**Number of franchise systems and divisions in Poland for 2003-2015**



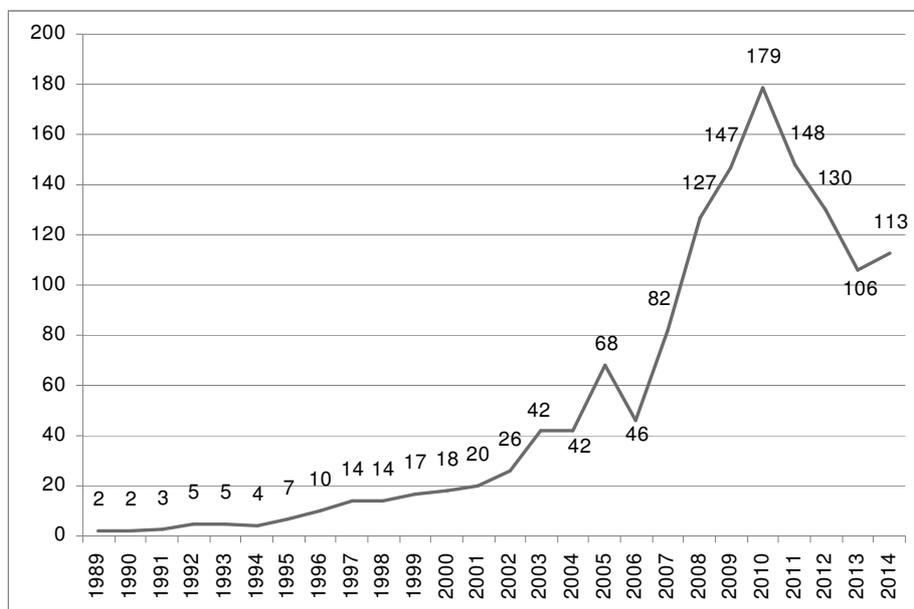
Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

Figure 2 illustrates the creation of new franchise systems in Poland. During the 1989-2010 period, an increase in the number of franchising systems was recorded (except for 2006, when we observe a slight reduction in the number of newly created systems), reaching a peak in 2010. In the following years, including 2013, there is a downward trend, but a year later, in 2014 we have the opportunity to note a renewed increase in the number of created franchise systems.

In last researched years, we can note significant changes in the number of closed franchise systems, as shown in Figure 3. Despite the growing number of closed systems, as evidenced by a comparative analysis of Figures 2 and 3, the difference between the number of created systems and systems that close each calendar year is positive. This indicates the continuous growth of the franchising market in Poland, as there are always companies that want to develop their distribution network using this form of conducting business. The last year of observation is a clear example, as 113 new franchise systems were created and only 63 closed, resulting in an increase of 50 new systems.

*Figure 2*

**Number of new franchise systems in Poland for 1989-2014**

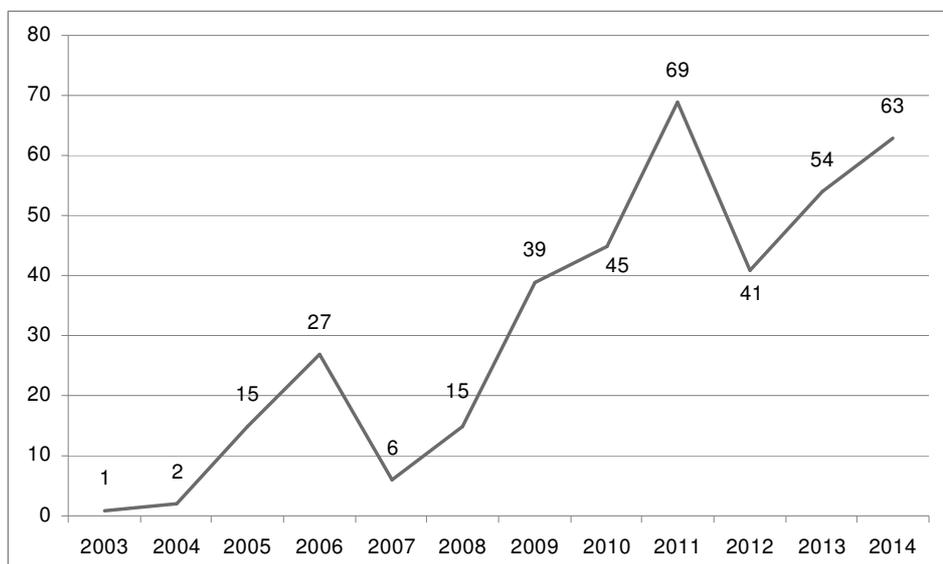


Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

The number of franchise systems is undoubtedly an important indicator of market development, but it is not the only one. The number of new franchise sites is an equally important indicator. This indicator informs us about how many new entrepreneurs are willing to cooperate with the franchisor and risk starting a business, and also illustrates how well existing franchisees cooperate with franchisors by opening new branches. As can be seen in Figure 4, in 2014 almost half (46.5%) of franchise systems recorded an increase in the number of outlets, 23.3% registered no changes, and only less than a third of entrepreneurs (30.2%) reduced the number of their units.

*Figure 3*

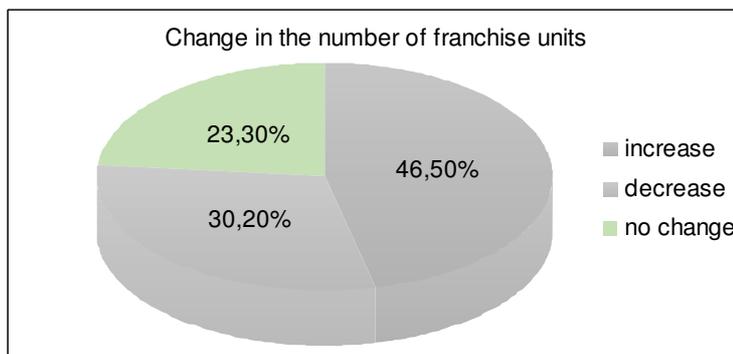
**Number of closed systems in Poland for 2003-2014**



Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

*Figure 4*

**Change in the number of franchise units in Poland in 2014**

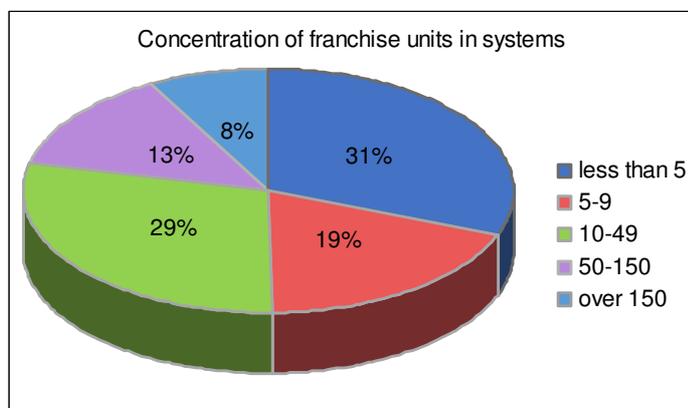


Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

It is worth noting that the units of the franchise business are not distributed proportionally in the systems. We can note that some systems are more popular than others are, as indicated by the large number of franchisees in that system. As can be seen from Figure 5, most franchisees – about a third (30.7%) – are concentrated in «small» systems with up to 5 franchise units, 28.9% belong to systems that range 10-49 units, 19.1% franchisees are with 5-9 units in the system, 50 – 150 units in the system correspond to 13.3% of franchisees, and only 8% franchisee are in large systems with more than 150 units.

Figure 5

**Concentration of franchising units in Polish systems in 2014**



Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

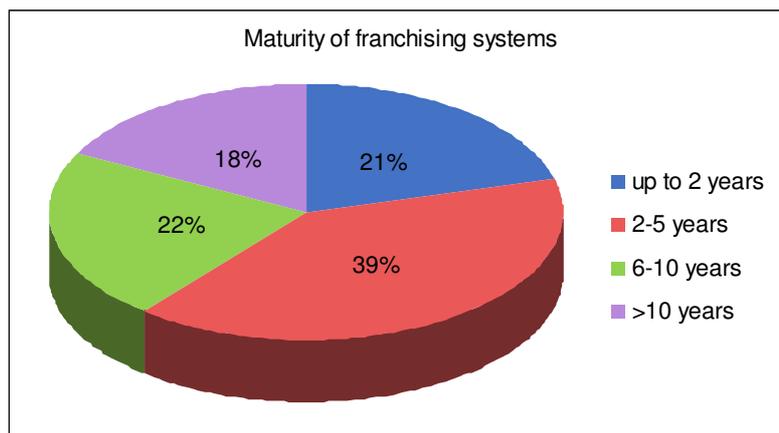
The maturity of franchising systems also affects the structure of the entire industry. From Figure 6 we can conclude that more than 40% of systems exist for 2-5 years, 21.6% – for 6-10 years, 20.8% exist up to 2 years, and 17.5% have existed for than 10 years. This structure, as can be seen, is fairly evenly distributed between already mature systems and systems under development, and systems that are just beginning to function in the market.

The last element that is taken into account in this section is the origin of franchising systems. Figure 7 shows that the vast majority of systems are of Polish origin (79.6%) compared to the 20.4% of foreign systems. One of the hypotheses that we can make on the basis of these data is that Poles feel more

confident in establishing cooperation with their compatriots and prefer Polish legislation to foreign legislation and cooperation with foreign partners.

*Figure 6*

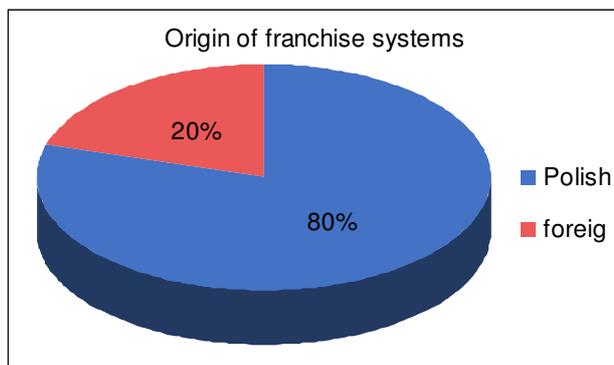
**Maturity of franchising systems in Poland in 2014**



Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

*Figure 7*

**Origin of franchise systems in Poland in 2014**



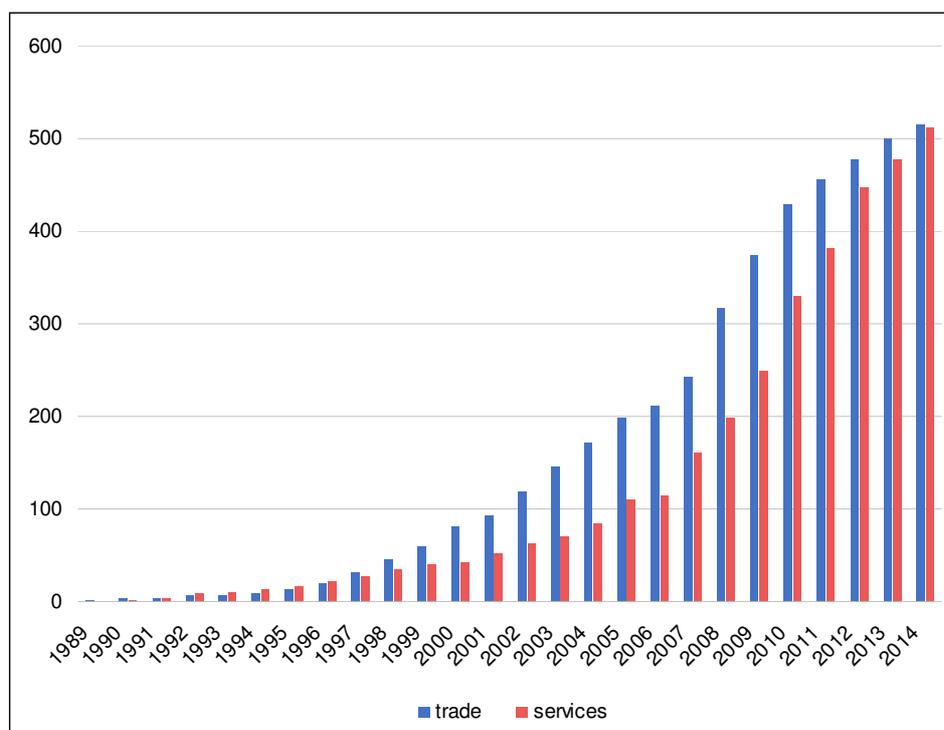
Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

### Sectoral structure of franchising systems

The study of the structure of the franchising market would not be complete without an analysis of the industries that make it up. In general, we can distinguish two large groups of franchising systems in terms of industry – commercial systems (trade) and service systems (services). As can be seen from Figure 8, the number of systems in those groups in 2014 was similar with a slight predominance of systems in the service sector. However, in almost all previous years, commercial systems played a dominant role.

Figure 8

Number of franchising systems, by industry sector in Poland for 1989–2014

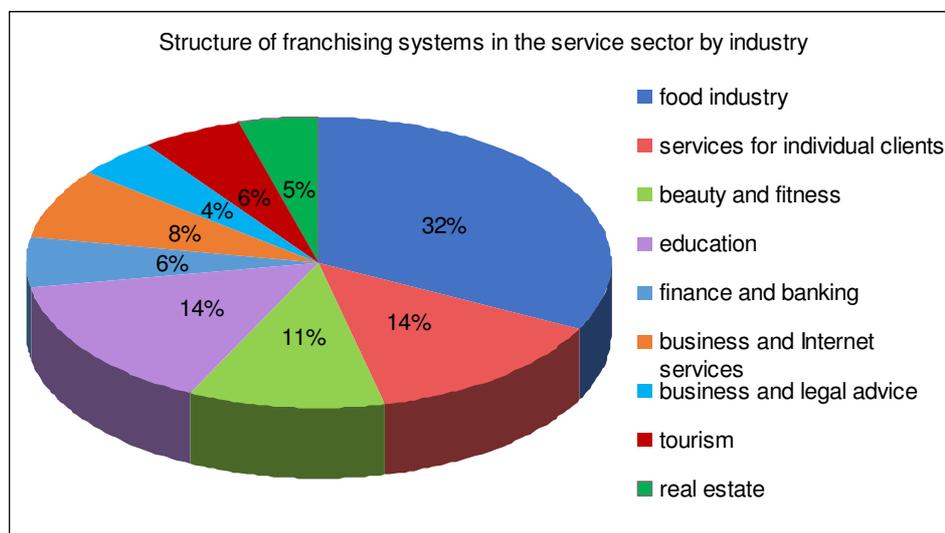


Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

As part of the group of franchising systems that offer services, we can identify the following industries, indicating the share in the total number of franchise systems in this group. The most numerous systems, as much as 32.5% of all service systems, are the systems of the food industry. Services for individual clients with a share of 13.9% are the second most important group. Beauty and fitness systems account for 10.9%, and education – for 14.9%. Business and Internet services – 7.8%, finance and banking – 5.6%, business and legal advice – 4.3%, tourism – 5.6% and 4.5% – in real estate.

Figure 9

### Structure of franchising systems in the service sector by industry in Poland in 1989-2014



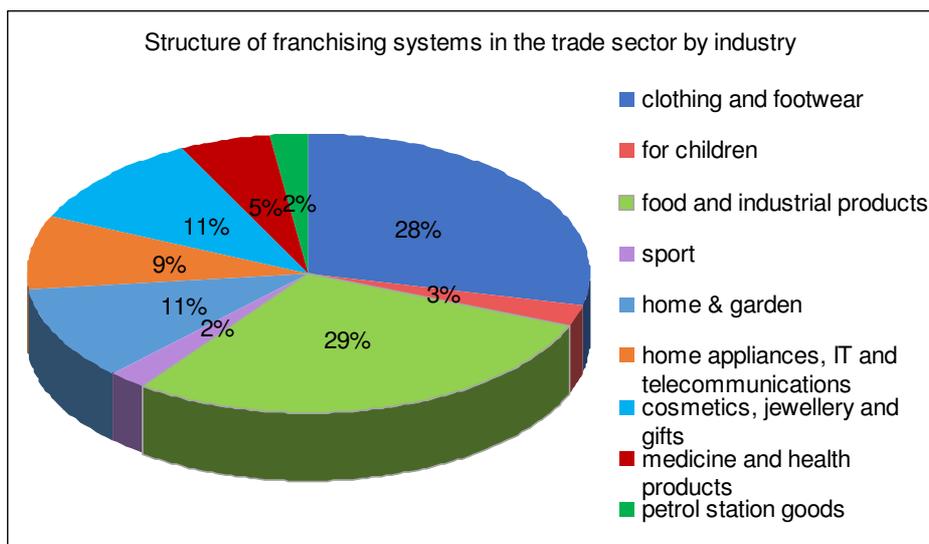
Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

The share of individual franchise systems in the field of trade, presented in Figure 10, clearly illustrate the situation in this group. The largest share falls on franchised systems of food and industrial products (28.9%), the smallest, only 0.4%, on the systems of clothing and footwear. In descending order are other systems: cosmetics, jewellery and gifts with a share of 10.9%, as well as items

for home and garden; 8.6% – home appliances, IT and telecommunications; 5.1% – medicine and health products; 2.3% – petrol stations; 2.1% – sporting goods.

Figure 10

**Structure of franchising systems in the trade sector by industry in Poland in 1989-2014**



Source: Created by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

Summarizing the information on the sectoral structure of the system, we can say that the Polish franchise market is very diverse and creates favourable conditions for the creation and development of new enterprises for entrepreneurs.

**Franchisee's investment structure.** Naturally, the opening of a franchise facility is associated with investment, and its amount depends on the industry in which the system operates. From the data given in table 1, we can determine the limits of the average and higher medians of investments required to open franchise services in individual industries. Among the group of trade franchise sys-

tems, the average investment was PLN 200,800.00 and the median PLN was 80,000.00. At the same time, the largest amount of capital was spent on investing in the opening of gas stations (average – PLN 2473,500.00, median – PLN 2,550,000.00), and the least on the opening of enterprises selling household appliances, electronics, information technology and telecommunications (average – PLN 42,600.00, median – PLN 37,000.00).

Table 1

**Average and median investments in franchise companies by industry in 2014**

Sector	Average amount of net investment in 2014 (thousand PLN)	Median amount of investment in 2014 (thousand PLN)
trade	200,8	80,00
clothing and footwear	199,4	130,00
for children	87,7	70,00
food and industrial products	102,7	60,00
sport	140,4	100,00
home & garden	176,4	80,00
home appliances, IT and telecommunications	42,6	37,00
cosmetics, jewellery and gifts	107,4	50,00
medicine and health products	181,7	67,50
petrol stations	2 473,5	2 550,00
services	975,7	48,00
services excluding hotel business	109,3	45,00
food industry	213,5	123,50
services for individual clients	79,8	35,00
beauty and fitness	108,6	85,00
education	26,7	10,50
finance and banking	32,7	10,00
business and Internet services	43	15,00
legal advice	30,9	10,00
tourism	16 788,3	42,50
tourism excluding hotel business	31,9	35,00
real estate	47,7	40,00

Source: Compiled by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

In the group of franchise systems specializing in the provision of services, the average investment amounted to PLN 975,700 and the median was PLN 48,000. Here, the most capital was spent on investment in opening a holiday home / hotel (tourism subgroup) (average PLN 1,678,300.00, median – PLN 42,500.00), and the least – for the opening of an educational institution (average – PLN 26,700.00, median – PLN 10,500.00). It should be noted that the overall figures are eschewed by the large investments related to the construction of hotel and restaurant complexes, which is why investments in tourism services are presented separately from the hotel business in the table, giving a more realistic representation of the situation in the service sector.

Table 2

**Average and total employment in Polish franchise companies in 2014**

Sector	Average employment in Polish franchise companies in 2014	Employment in the industry in 2014
trade	4,5	271855
clothing and footwear	3,6	13561
for children	2,8	1739
food and industrial products	6,2	199783
sport	3,2	1318
home & garden	4,8	9240
home appliances, IT and telecommunications	4	17820
cosmetics, jewellery and gifts	3	7404
medicine and health products	3,2	8115
petrol stations	10,4	12875
services excluding hotel business	6,1	69251
food industry	7,6	20345
services for individual clients	4,7	20290
beauty and fitness	8,1	9072
education	4,9	10741
finance and banking	2,3	3360
business and Internet services	2,4	1445
legal advice	2,4	811
tourism excluding hotel business	2,3	1301
real estate	4,4	1786

Source: Calculated by the author on the basis of Franchise Report in Poland 2015 (Profit system sp. z o.o., Warszawa 2015).

In the services sector, the average employment was 6.1 in 2014, while the total employment in the sector was 69,251. The largest number of employees per system was registered in the field of beauty and fitness, and the smallest – in finance and banking, and tourism (excluding hotel business).

## Conclusions

In summary, on the basis of a cross-sectional analysis of the operation of the franchise system in Poland, both legally and economically, we conclude that the regulations for conducting this form of business are quite comprehensive. In our opinion, meticulous detailing of the principles of cooperation through bilateral agreements between the franchisor and the franchisee significantly strengthens the foundation of future business. Meanwhile, the demands that franchisees face when they start doing business, encourage potential entrepreneurs to analyse their operating strategies in order to achieve better financial results. Of course, there are failures, but the legal component of the system guarantees greater confidence in the effective operation and development of entrepreneurial activity. The future of franchising systems looks unshakable, and the progressive actions of regulators, which increase the stability of Poland's economic activity, undoubtedly contribute to even greater stability.

The analysis of the operation of such institutions suggests that along with the economic development, there is a dynamic growth of both franchise systems and the number of franchise units, which means that both start-ups and business veterans are increasingly willing to enjoy the benefits of franchising networks. It can also be determined that franchise systems and the number of franchise units do not experience significant fluctuations. After the economic crisis in 2008, there was a steady increase in the number of both franchise systems and divisions. Thus, doing business in a franchise system really gives a greater chance to achieve economic success for the company regardless of the economic situation on the market.

The next noteworthy fact is the change in the industry structure of franchise systems and divisions. In recent years, we have been able to observe an equalization of the share of units in trade and services, which is not always the result of the strategy of franchising systems, but in fact may be a policy dictated by large commercial and retail chains, which reduces growth. The operation of an entrepreneur working in such an « association» allows them to use the achievements of the entire network, while offering high quality services to local consumers. The service sector offers, on average, a larger margin than that of purely commercial activity. Taking into account all the above factors influencing the franchise market in Poland, it can be stated that in the coming years it should show stable growth, while strengthening the position of systems offering services.

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