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„Allocation of Rights in Franchise Contracting:
An Empirical Analysis of Austrian Franchise Contracts"

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Statutory declaration

I hereby declare that I have authored this thesis independently, and that I have not used other than the declared sources.

All material, which has been quoted either literally or by content from the used sources, has been explicitly marked.

This thesis has not been submitted either in whole or part, for a degree at this or any other university or institution.

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Vienna, October 2015 Madeleine Kern

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Abstract

Franchising has experienced substantial growth since the mid-20th-century and its popularity has not waned ever since. Therefore, it is important to have a solid, legal basis to start from in every franchise relationship. Hence, the intention of the present master thesis was to shed light on the importance of contract design including necessary contract clauses and the allocation of rights in franchising. In order to provide statistical evidence a data set of 208 franchise contracts from the Austrian franchise market is used. Prior to this, fundamental facts about franchising and the current situation in the Austrian market are given. The three most relevant methodologically cognate approaches, i.e. property rights theory, transaction cost theory, and principal-agent theory, that are grounded in the new institutional economics are taken as a theoretical basis. Consequently, hypotheses have been derived in order to provide evidence of findings and statements assumed by scholars in previous studies with an Austrian sample of franchise contracts.

Due to the fact that it is hardly ever possible to provide for all contingencies, it is rarely likely to conclude complete franchise contracts. In order to ensure that both parties are motivated to act in conformity with the system, incentives in the form of property rights are allocated to both the franchisor and the franchisee. An empirical analysis is conducted to analyse the given property rights, i.e. residual income rights, ownership surrogates, decision rights, and other constituent parts, in the available franchise contracts. Thus, the study contributes to our understanding of the importance of contract design in franchising relationships. This is done by presenting indispensable contract clauses and by highlighting the complexity in allocating property rights and decision rights to the franchisor and the franchisees in due consideration of transaction costs and possible opportunistic behaviour.

The results of the empirical analysis show that the allocation of property rights may be grounded on a far more sophisticated approach including information on the franchisors' and the franchisees' conditions as well as the franchised business itself than the mere investigation of franchise contracts. On that account and in conjunction with the contract design and the stipulated contract clauses in franchise contracts, an ample scope for further academic research is guaranteed.

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Table of Abbreviations

CI ..... Corporate Identity
F&C ..... Franchising and Cooperation
GER ..... Germany
HR ..... Human Resources
IT ..... Information Technology
KFC ..... Kentucky Fried Chicken
KS-Test ..... Kolmogorov-Smirnov-Test
Poss. ..... Possible
PR ..... Public Relations
USA ..... United States of America

1 Introduction

"Being in business for yourself but not by yourself"
(European Franchise Federation 2014)

Franchising has taken on an important role in today's world of business and "is a key tool in the entrepreneur's toolbox" (Combs & Ketchen, JR. 2003, p.443; Garg 2013, p.4). Based on the above statement by the European Franchise Federation (2014), franchising does not only help to bypass the risks of self-employment for the franchisees and provides them with a successful business concept, but enables and facilitates franchisors to expand on a national and international basis since "franchisees are an important source of innovation and local adaptation for franchisors" (Combs & Ketchen, JR. 2003, p.443; Kaufmann & Eroglu 1999, p.70).

Although franchising was unwittingly used in the Middle Ages and later on in the 17th and 18th century, the birthplace in the form as we know it today is in the United States of America during the age of industrialisation (Kaub 1980, p.8). In Austria, however, franchising did not emerge until the years of the 1970s, but it was only in the mid-1980s when it had become a prevalent channel of distribution (Center for International Legal Studies (CILS) 2013, p.AUT/1). Nowadays franchising is a well-established and extremely popular form of organisation in Austria.

For this very reason, contracts constitute the statutory basis in every franchise relationship. To put it in another way, due to the reason that a franchise relationship is based on mutual dependence between the franchisor and the franchisees, a contractual agreement in terms of rights and duties is inalienable. On that account, the aim of the present thesis can be derived: This thesis focuses on contract clauses and the allocation of rights in a franchise relationship in connection with the three main theoretical perspectives, i.e. property rights theory, transaction cost theory, and principal-agent theory. In this regard and in association with the aforementioned theories of the new institutional economics hypotheses have been derived throughout this thesis. Following this, an empirical analysis is conducted using a database of 240 franchise contracts from the Austrian market in order to analyse the allocation of property

rights and its incentive effects. In doing so, the aim is to ascertain the distribution of property rights in the franchise contracts at hand.

1.1 Structure of the thesis

This thesis is roughly divided into four main parts, namely the introduction, the theory, the empirical analysis including hypotheses testing, and finally the conclusion. In turn, these parts are then subdivided into several chapters based on *Figure 1*.

To be precise, in the second part which describes the theory part of franchising, a general overview of franchising and the system, its types, and franchising in Austria are presented. Subsequently in chapter 3, a summary of the theoretical perspectives, i.e. property rights theory, transaction cost theory, and principal-agent theory, is given. This also includes the impacts of the aforementioned theoretical perspectives on franchising. Moreover, the fourth chapter highlights the design of a franchise contract and commonly used contract clauses. In addition, the property rights, i.e. ownership rights, decision rights, and other constituent parts, of a franchise contract are presented and illustrated in detail. Furthermore, the hypotheses which are the basis for the empirical analysis are derived throughout the last two chapters.

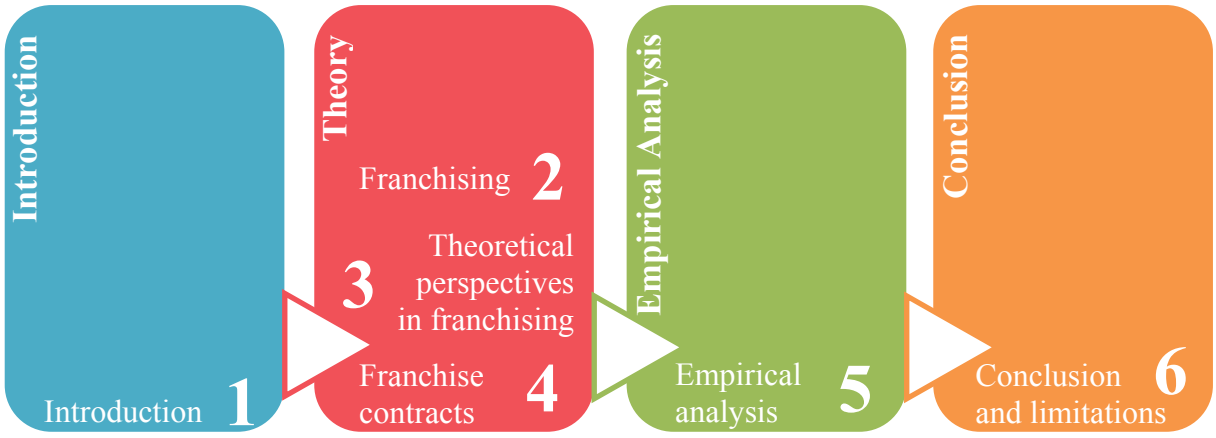

Figure 1: Structure of the thesis

The empirical analysis in chapter 5 constitutes the centrepiece of this thesis. The analysis is based on a representative sample of 240 franchise contracts which were analysed for the distribution of property rights and other constituent contract clauses. This chapter includes an overview of the research design and the hitherto derived hypotheses as well as the statistical evaluation and its results. At the end in the fourth part, a conclusion of the most essential findings and limitations of the thesis are presented.

2 Franchising

Franchising has experienced considerable growth since the mid-20th-century. Although franchising existed already in earlier years, it was not until then that franchising made the breakthrough and started becoming more and more popular in Europe. Given the fact that franchising is still an important means for companies to expand nationally as well as internationally today, the legal meanings in terms of contract design are of upmost importance. Nevertheless, in order to be able to comprehend to usage of a franchise contract and its constituent parts, franchising is explained in detail.

2.1 How it all began

The term "franchise" stems from the French "affranchir de qn de qch". This implies "to free somebody from something" (HarperCollins Publishers Limited 2015), for example to free somebody from taxes, servitude or subservience, connected with "the transfer of a privilege to collect taxes", which was very important during the time of the French absolutism (Halle & Neupert 1975, p.1202; Kaub 1980, p.7). The term dates back to the Middle Ages. Back then it was first used as a denotation for exoneration of tariffs as well as a partial abandonment of obligations by vassals to a lord or monarch. This was followed by the permission granted by lords to merchants in order to organise markets and fairs on their land during the 12th century (Schulthess 1975, p.3). However, it was not until the 17th and 18th century when it was referred to as a granting of a right to third-parties (FranchisePORTAL GmbH 2014a), which enabled them to produce and trade products for money (FranchisePORTAL GmbH 2014a; Erste Bank der österreichischen Sparkassen AG & Bernardi-Glatz 2012, p.6; Bellone & Matla 2010, p.13; Skaupy 1995, p.1).

Nevertheless, the birthplace of franchising as we know it today was in the United States of America during the age of industrialisation. Its development proceeded in two different time levels (Kaub 1980, p.8). Here, authors have not reached a consensus on which company is the predecessor of franchising. One of the first companies, however, was the American "Singer Sewing Machine Company" that provided their tradespeople with the right to sell sewing machines in their own name and on their own account in the years from 1860 to 1865 (Skaupy 1995, p.2). Conversely, Erich Kaub (1980, p.8) states that the first time level of franchising systems was formed by manufacturers. Here, Coca Cola entered into the first

existing franchise contract by concluding an agreement to distribute syrup with a company in Boston in 1892 (Kaub 1980, p.8; Gross & Skaupy 1976, p.160; Halle & Neupert 1975, p.1205). According to Bruno Tietz (1969, p.193), however, the first system of cooperation was introduced by General Motors in 1898. The second time level started in the mid-20th-century when there was an upward movement of trade and service franchising (Mack 1975, p.21). This was the start of the so-called "franchise boom" (Kursh 1969, p.4) and the evolution of franchising in Europe. However, franchising developed differently in the individual European countries, and thus cannot be compared with the success in the USA (Erste Bank der österreichischen Sparkassen AG & Bernardi-Glatz 2012, p.6).

2.2 Terminology

The term "franchising" is generally not regulated by law, however, there are some characteristics that define it in detail. In the following part the franchise system itself as well as the role of the franchisor and the franchisee will be described in more detail.

The official definition of the Deutscher Franchise-Verband e.V. (2015) for franchising was developed by Erich Kaub in the 1970s (Seidel 1997, p.27), which was also adopted by the Austrian franchise federation and quoted in its code of ethics (Österreichischer Franchise-Verband e.V. 2015, p.7):

> "Franchising is a distribution system of legally independent companies with a vertical cooperative organization, based on a continuous contractual relationship. The system participates in the market in a standardized fashion and its main characteristic is a performance program with division of labor between the system partners as well as a system of instructions and control to ensure a behaviour conforming to the system. The performance program of the franchisor is the franchise package. It consists of a concept for purchase, distribution and organization, utilization of industrial property rights, the training of the franchisee and the obligation of the franchisor to support the franchisee actively and consistently and further to develop the concept.
> The franchisee acts in his own name and for his own account; he has the right and the duty to utilize the franchise package subject to payment of a fee to the franchisor. His contribution is to provide work, capital and information." (Center for International Legal Studies (CILS) 2013, p.GER/4; Metzlaff et al. 2003, p.4)[1]

[1] cf. Kaub (1980, p.29): „Franchising ist ein vertikal-kooperativ organisiertes Absatzsystem rechtlich selbständiger Unternehmen auf der Basis eines vertraglichen Dauerschuldverhältnisses. Das System tritt am Markt einheitlich auf und wird geprägt durch das arbeitsteilige Leistungsprogramm der Systempartner sowie

Another valid definition is provided by the European Franchise Federation (2014), a non-profit organisation "that federates the legally constituted, independent and representative national franchise associations from countries in Europe", and defines franchising in part II of the European Code of Ethics for Franchising as:

> "[…] a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its individual Franchisee the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept.
> The right entitles and compels the individual Franchisee, in exchange for a direct or indirect financial consideration, to use the Franchisor's trade name, and/or trade mark and/or service mark, *know-how*, business and technical methods, procedural system, and other industrial and/or intellectual property rights, supported by continuing provision of commercial and technical assistance, within the framework and for the term of a written franchise agreement, concluded between parties for this purpose." (European Franchise Federation 2014)

In short, it can be said that franchising is the opportunity to provide business partners with a successfully implemented idea in order to copy the concept and expand the business (Österreichischer Franchise-Verband e.V. 2015).

In order to get a better overview, an integrated framework of the franchising term according to the definition by Erich Kaub (1980, p.27) is provided in the following *Figure 2*. It is divided into six different sections based on the main characteristics, namely distribution system, range of products and services, vertical-cooperative organisation, corporate design, legal independence and continuous contractual relationship.

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durch ein Weisungs- und Kontrollsystem zur Sicherung eines systemkonformen Verhaltens. Das Leistungsprogramm des Franchise-Gebers ist das Franchise-Paket; es besteht aus einem Beschaffungs-, Absatz- und Organisationskonzept, der Gewährung von Schutzrechten, der Ausbildung des Franchise-Nehmers und der Verpflichtung des Franchise-Gebers, den Franchise-Nehmer aktiv und laufend zu unterstützen und das Konzept ständig weiterzuentwickeln.
Der Franchise-Nehmer ist im eigenen Namen und für eigene Rechnung tätig; er hat das Recht und die Pflicht das Franchise-Paket gegen Entgelt zu nutzen. Als Leistungsbeitrag liefert er Arbeit, Kapital und Informationen."

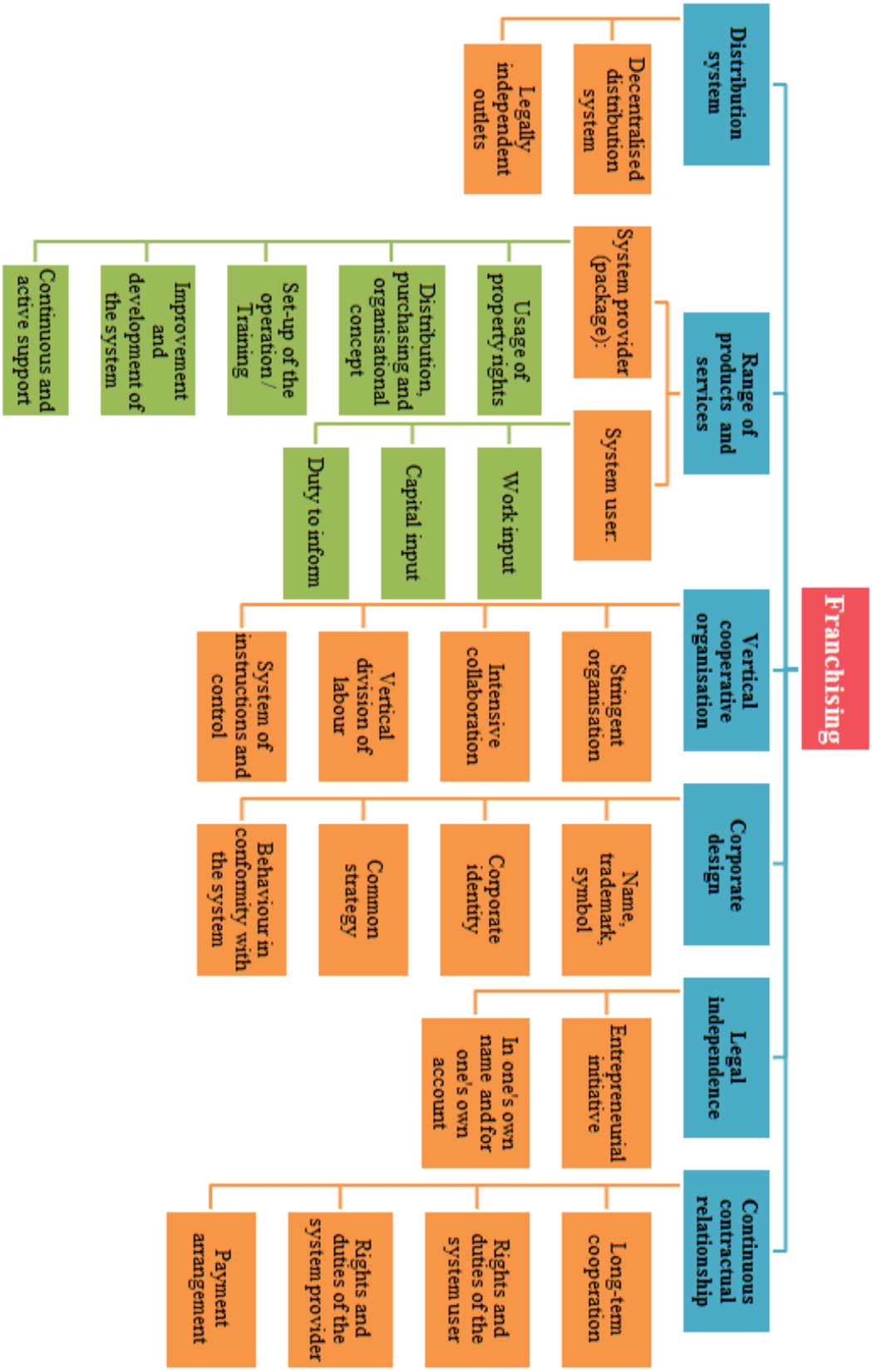

Figure 2: Integrated framework of the term "franchising". Own translation according to Kaub (1980, p.32)

2.3 The franchise system

The original franchise system in the United States was built up of a mere vertical distribution of goods according to a standardised procedure. This is reflected in the first known franchising systems operated by Coca Cola, Singer Sewing Machine Company and also by automobile manufacturers who established their distribution systems with that. This is the so-called "Product-Distribution Franchising" (Mendelsohn 1996, p.680; Skaupy 1995, p.2). In the case of the product-distribution franchising, the franchisee typically purchases the product directly from the franchisor (Hatten 2015, p.112 ff.). However, as illustrated below in *Figure 3*, the manufacture of the product is contingent upon the agreement between the franchisor and the franchisee, as it may also be assigned to the franchisee (Bellone & Matla 2010, fig.1). Another well-known denotation for this is the "Product and Tradename Franchising" (Skaupy 1995, p.2), this includes additionally the licence to use the trade mark of the franchisor (Hatten 2015, p.113).

Nowadays, the modern franchising encompass more than the mere right to sell the franchisor's product. The so-called "Business Format Franchising", which is also known as the "system of the second category" (Skaupy 1995, p.3), evolved mainly in the midst of the last century as a result of the rapid rise of the tertiary sector (Skaupy 1995, p.3; Gross & Skaupy 1968, p.11 ff.). It is a comprehensive package of well-known benefits, and includes the distribution of licensed goods or services, the combination of intellectual property, such as trademarks and/or brand names, and support with the set-up and management that enables to replicate the franchisor's system (European Franchise Federation 2014; FranchisePORTAL GmbH 2014a; Bellone & Matla 2010, p.3; Mendelsohn 1996, p.681; Skaupy 1995, p.3). In other words, a business format franchise provides the franchisee with "the entire way of doing business, including operation procedures, marketing packages, the physical building and equipment, and full business services" (Hatten 2015, p.113).

In return for both the product-distribution and the business format franchising, the franchisee is legally obligated to pay fees to the franchisor (FranchisePORTAL GmbH 2014a; European Franchise Federation 2014). More about the fees a franchisee has to pay to the franchisor will be discussed in *subchapter 4.3 Ownership rights: Residual income rights*.

In the following *Figure 3* a general overview of the differences between product-distribution franchising and business format franchising is provided. This shows that the application of a business format franchise provides a franchisee with the necessary know-how to copy a successful concept and expand the business.

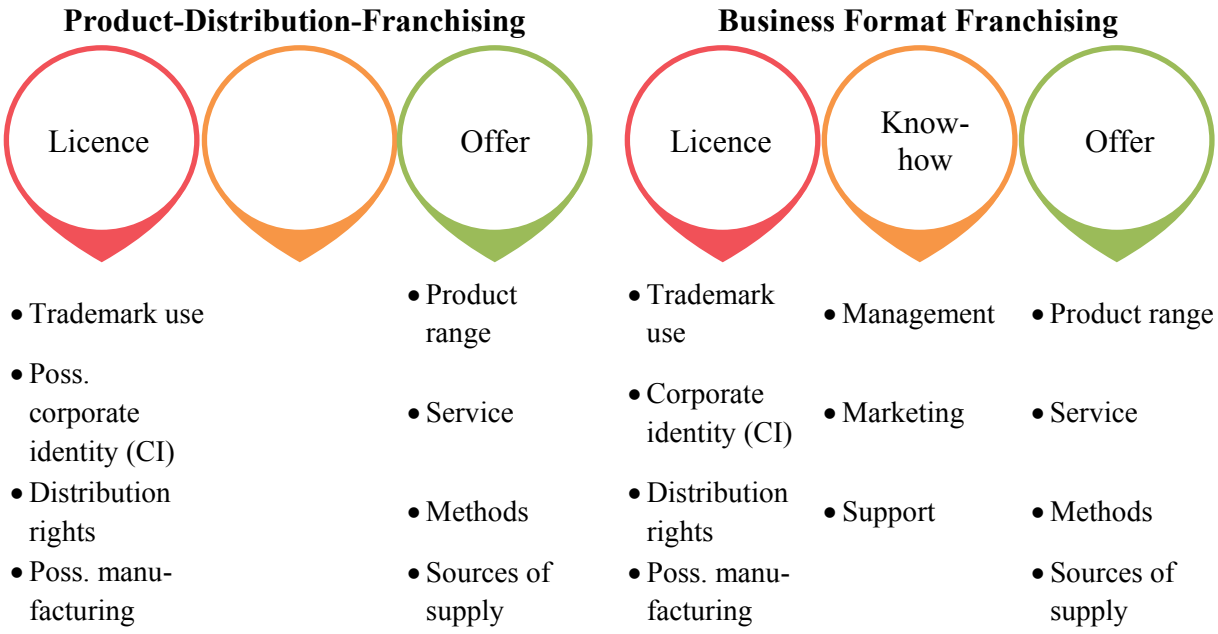

Figure 3: Product-Distribution-Franchising and Business Format Franchising Comparison. Own translation based on Bellone & Matla (2010, fig.1)

Basically, the franchise system is targeted on combining the advantages of a direct distribution and the advantages of an indirect distribution. The benefits in terms of direct distribution comprehend, amongst others, the unified brand presence and the direct brand proximity. In general, it is not noticeable for consumers to differentiate whether the shop is owned by the franchisor's company, thus a company owned outlet, or whether it is owned by the franchisee. The advantages pertaining to indirect distribution comprise, amongst others, of the commitment and the dedication a franchisee brings when operating a franchised business (Deutscher Franchise-Verband e.V. (DFV) 2015; Borggräfe & Leuchtenberg 2008).

Figure 4 illustrates the purpose of the franchise system and summarizes the advantages of the direct and indirect distribution.

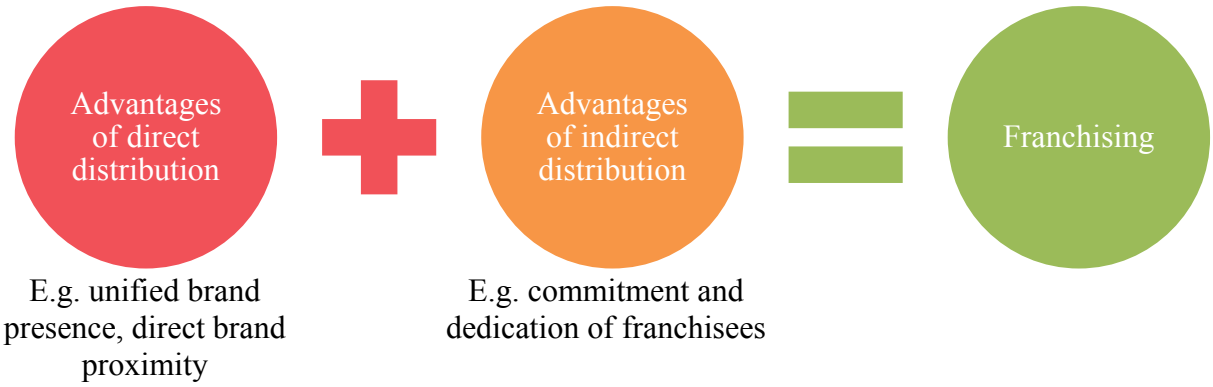

Figure 4: Purpose of the franchise system (own illustration based on Deutscher Franchise-Verband e.V. (DFV) (2015) as well as Borggräfe & Leuchtenberg (2008))

2.3.1 Types of franchising

Franchise systems can be differentiated into diverse categories. The most common and reasonable one, however, is the classification based on the subject of activity of the franchise. This is also consistent with the European Commission which distinguishes between the three following types (FranchisePORTAL GmbH 2014b) based on "the decision of the European Court of Justice in the case of Pronuptia de Paris GmbH (Frankfurt am Main) and Pronuptia de Paris Irmgard Schillgalis (Hamburg)" (UNIDROIT 2012, p.1; European Union 1986). Fundamentally, they do not deviate from the two previous stated franchise systems, i.e. product-distribution-franchising and business format franchising, in terms of licence, know-how or offer; nevertheless, it is important in legal terms. Hence, a franchise can distribute one or more goods, supply services, or can produce and distribute one or more manufactures. In other words, the main categories of franchising in practice, and with the main focus in this thesis, are product, service, and distribution franchising (Skaupy 1995, p.30 ff.). In the following, these types are going to be discussed in more detail.

First, production franchising implicates that the franchisor allocates the necessary know-how for producing, manufacturing, and processing a good to the franchisee. Additionally, the franchisee receives the right to distribute the products according to precise instructions. The advantage of production franchising is that the production site is located near the point-of-sale in order to reduce transportation costs. A typical example for this type of franchising is the beverage production, like Coca Cola or Pepsi (FranchisePORTAL GmbH 2014b; Garmaier 2009, p.14; Herrfeld 1998, p.20; Skaupy 1995, p.32 f.).

Secondly, service franchising is the most common type of franchising. This type allows the franchisee to use the successfully established service concept of the franchisor including the franchisor's trade name, trademark, logo, etc. The services have to be carried out on the basis of the franchisor's know-how and according to rules and guidelines specified in the franchise contract (franchise-net GmbH 2010; Garmaier 2009, p.14; Herrfeld 1998, p.20; Skaupy 1995, p.32). Popular service franchising companies are, amongst others, McDonald's, Burger King, KFC, Holiday Inn, language schools, coiffeurs, and many more.

Lastly, distribution franchising implies, as the name suggests, the distribution of one or more goods. These goods can either be procured from the franchisor (see *subchapter 4.4.3 Tying arrangement*) or from another party according to the agreement in the franchise contract. In this type of franchising, the franchisee offers the franchisor's products under the trade name and the logo of the franchisor. Here, two types of distribution franchising are available, the distribution of goods of a manufacturer or the distribution of goods from a wholesaler (FranchisePORTAL GmbH 2014b; Garmaier 2009, p.14; Herrfeld 1998, p.20; Skaupy 1995, p.31 f.). Typical companies that apply distribution franchising are, amongst others, Bofrost or Eismann, Yves Rocher or The Body Shop, and others.

In practice, a range of hybrid forms exist. Mostly, hybrid forms consist of a service franchising in combination with another type. For example, a franchisee of a service franchising type, e.g. KFC, is obligated to purchase certain products directly from the franchisee and sell it to one's own customer. This is a typical example of a hybrid form between a service franchising and a distribution franchising (Garmaier 2009, p.15; Skaupy 1995, p.33 f.). In any case, this type of franchising will not be discussed in detail in this thesis.

2.3.2 Scope of application

According to the statement of a French host at a franchise congress "Tout est franchisable" – everything is franchiseable, a short overview of possible branches of business is provided. Basically but with certain restrictions, nearly all forms of business, i.e. retail, service, production, distribution, come into consideration for franchising (Skaupy 1995, p.46 ff.). Below a list of possible franchised businesses is provided in *Table 1*. The highlighted (*) business give an overview of some business fields included in the empirical analysis of this thesis.

Gastronomy and hotel industry	Groceries and beverages	Beauty, health, personal hygiene	Cleaning service
•Fast food outlets* •Ice cream palours •Speciality restaurants* •Bakeries* •Pizza palours / delivery* •Steakhouses* •Hotels •Motels* •etc.	•Grocery* •Specialist shops* •Candy stores* •Grocery and beverage home delivery* •Wine delivery •Tea shops* •Catering •Vending machines* •etc.	•Beauty and hairdresser's salons* •Fitness centres •Cosmetics distribution* •Solaria* •Slim studios* •Dental service and supply* •Hearing aid studios •Optical services* •etc.	•Textile care* •Textile rental services •Cleaning contractors •Railway and aircraft cleaning services •etc.
Furnishings	**Business aids and services**	**Construction, house and garden**	**Education and training**
•Children's furniture •Office furniture •Furnishings distribution •Refurbishment of furnishings* •Furniture repair* •Room setup services* •Carpentry* •etc.	•Consulting / business systems* •Representation •General office management* •(Temporary) employment agencies* •Printing shops* •Computer business* •Property agencies* •etc.	•Construction materials* •Renovations* •Prefabricate houses* •Garden centres* •Kitchen centres* •System of security services* •Janitorial services •Energy management services* •etc.	•Language schools* •Coaching* •College of music* •Education and training* •Driving schools* •etc.
Travelling, entertainment, recreation	**Apparel, footwear and accessories**	**Various (trade) services**	
•Travel agencies* •Campsites •Sports goods •Photo shops* •(Consumer) electronics* •Toys •etc.	•Shoe shops* •Clothes shops* •Clothing rentals •Leather goods •Wedding gown boutiques* •Children's fashion shops* •Textile printing •etc.	•Gift and souvenir shops •Pet shops* •Bookshop* / stationery* •Hardware and tools equipment* •Shoe repair and key services •Petrol stations* •Video film production* •Car dealer* / rental* •Dating agency* •etc.	

Table 1: Scope of application in franchising adapted from Skaupy (1995, p.46 ff.)

In order to get a more thorough understanding of all the particularities in a franchise system, the following subsection gives attention to the role of a franchisor and a franchisee in more detail.

2.4 Franchisor and franchisee

As for every business company economic success is crucial; therefore also for a franchising business. In order to increase a company's chances of success, a systematised and coordinated cooperation of both partners, the franchisor and the franchisee, is necessary. Hence, both contractual partners need to be able to achieve benefits from the system. In principle, trust, openness and an equal allocation of authority lay the foundation stones of a successful business (Skaupy 1995, p.52).

In general terms, the franchisor establishes a business concept or a product and provides the franchisee with the business concept, grants the licence to use know-how, trademarks, brand names and so forth. With this, he is aiming at several advantages. Firstly, a higher penetration on the market or a faster expansion into other, foreign markets can be achieved. By this action, the franchisor may ensure his market leadership position on the market. Thus, market development and agglomeration of the network lead to more secure sales, and an increase in brand awareness and persuasive power give a competitive edge to the franchisor. Additionally, by expanding with franchising, the franchisor outflanks the problem of finding appropriate personnel. Secondly, since the business is only noticed as "one business with a number of outlets" (Adams et al. 1997, p.33) from the point of view of third-parties, the franchisor has the possibility to profit more efficiently in terms of marketing (e.g. in matters of the sales mix, etc.). In the majority of the cases, the franchisee is only engaged in working for the franchisor and aims to make profit with the business. Hence, the franchisee displays all the information for the customers and in return receives information from them which he communicates to the franchisor, resulting in a two-way alternate flow of information. Additional advantages that accrue when operating a franchise network are bulk purchase savings and economies of scale, if tying arrangements and/or exclusive dealing clauses are incorporated in the contract. Lastly, franchising serves as a sort of financing for the franchisor. In order to be able to become a franchisee, he covenants to pay a unique entry fee when the contract is concluded, and continuous franchising fees. The entry or initial fee serves as an initial payment to the franchisor for the set-up of the market, the system and the

awareness of the system on the market. Together with the continuous franchising fees, so-called royalties, that cover the services rendered by the franchisor, they constitute the source of finance for the franchisor (Österreichischer Franchise-Verband e.V. 2015; FranchisePORTAL GmbH 2014b; Skaupy 1995, p.52 ff.).

Nevertheless, when an entrepreneur commits to engage himself in a franchising, he is also bound by contract to certain duties. These duties include, amongst others, frequent support to the franchisee and constant development of the concept (Österreichischer Franchise-Verband e.V. 2015; Vinturella & Erickson 2013, p.264). A more thorough overview of all the franchisor's duties is provided in *Table 2*.

Just as the franchisor, also the franchisee gains leverage from the franchise system. A well-known quote about franchising is: "Being in business for yourself but not by yourself" (European Franchise Federation 2014). This mirrors that the franchisee is self-employed but supported by the franchisor and the established system and support, thus major risks of self-employment can be bypassed. Additionally, franchisors provide continuous training for the franchisee. Other major advantages for the franchisee are, amongst others, the advertising and sales promotion which the franchisor executes on a nationwide basis, and thus guarantees an increase in brand awareness and sales revenue (Österreichischer Franchise-Verband e.V. 2015; FranchisePORTAL GmbH 2014b; Skaupy 1995, p.57 ff.).

However, in order to be able to profit from the franchise system, the franchisee is obligated to implement the transferred concept as agreed upon. The franchisee as an independent partner is responsible for a specified area and takes advantage of the expert knowledge as well as the advantages of the franchise system. These can include help in site selection, provision of business premises, favourable conditions for office furniture and equipment as well as insurance through the medium of the franchisor, and others (Skaupy 1995, p.62 ff.). In exchange and as mentioned above, the franchisee pays an entry fee and continuous royalties to the franchisor and provides him with labour, capital and information (Österreichischer Franchise-Verband e.V. 2015).

In the following *Table 2*, a summary of all the franchisor's and franchisee's duties is provided.

Franchisor	Franchisee

• Provision of a well-established business concept and licences
• Set-up of the franchise system (contract design, franchise operations manual, etc.)
• Foundation support
• Developing and improving the business concept in order to guarantee quality
• Improving the business format offered to the franchisee including:
  • Purchasing options for goods and services
  • Training for management and sales staff
  • etc.
• Being responsible for (inter)national marketing activities (including advertising campaigns, sales promotion, etc.) and the overall development strategy of the business
	• Entrepreneurial engagement
	• Providing labour, capital and information
	• Readiness to assume risk
	• Sale of franchisor's products
	• Offering optimal service to customers
	• Optimising sales personnel and results
	• Complying with regulations and conditions as defined in the franchise contract
	• Active collaboration in further enhancements of the system
	• Loyalty towards the franchisor
	• Payment of the initial fee and the royalties

Table 2: The role of the franchisor and the franchisee (own illustration based on European Franchise Federation (2014) and Ehrenmüller et al. (2011, p.15))

2.5 Franchising in Austria

Franchising in Austria debuted in the years of the 1970s. However, it was only after approximately 15 years when franchising had finally become popular as an independent distribution channel in the mid-1980s (Center for International Legal Studies (CILS) 2013, p.AUT/1). Shortly after this, in the first years of the nineties, Austria's franchise market soared. This resulted from the accession to the European Union, on the one hand, and from the opening of the borders to Eastern Europe, on the other hand. However, the major reason of the expansion was the increase of Austrian home-grown franchise systems (Glatz & Chan 1999, p.23). Back then, there were approximately 140 franchise systems and 1,700 franchisees, respectively operating in Austria (Erste Bank der österreichischen Sparkassen AG & Bernardi-Glatz 2012, p.10). Until 2014, the popularity of franchising has not waned; instead the number of franchise systems rose to 463 systems with 9,760 franchisees that operate around 9,726 sites in Austria. Furthermore, the net total turnover of the franchise systems in Austria amounts to approximately 8.8 billion Euros (Scharitzer 2015, p.3).

The following *Figure 5* represents that most of the franchised companies that are still active in Austria, entered the market during the year of 2000 until 2014. Hence, the great majority comprehends of young businesses (Scharitzer 2015, p.7). Here, another interesting fact is that before 1980 internationally active franchise systems were present in higher numbers on the Austrian market (Hajek & Siegl 2012, p.6). Today, however, 62 % of the active franchised businesses on the Austrian market are also originated in Austria (Scharitzer 2015, p.8).

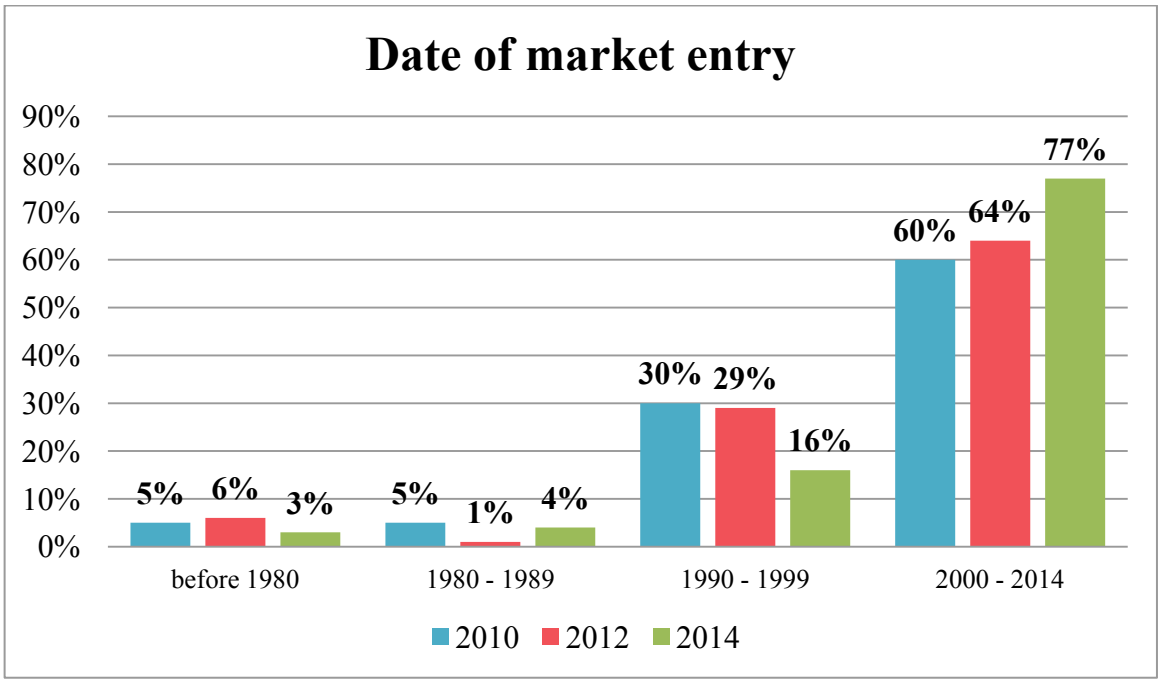

Figure 5: Date of market entry adopted from Scharitzer (2015, p.7)

As *Figure 6* shows, the current distribution among types in franchising is with about 49 % more service-oriented. This mirrors the offer of franchising systems on the market, and encompasses, amongst others, gastronomy, hotel, business, cleaning, beauty, and education services. Service franchising is followed by distribution franchising with 32 %, and lastly 19 % of the franchise systems in Austria have their main focus on production (Scharitzer 2015, p.6). In recent years, the distribution of franchising types has slightly changed. In the year of 2012, service franchising had still accounted for 51 % of Austria's franchising market, followed by distribution franchising with 43 % and only 6 % of production franchising (Hajek & Siegl 2012, p.5).

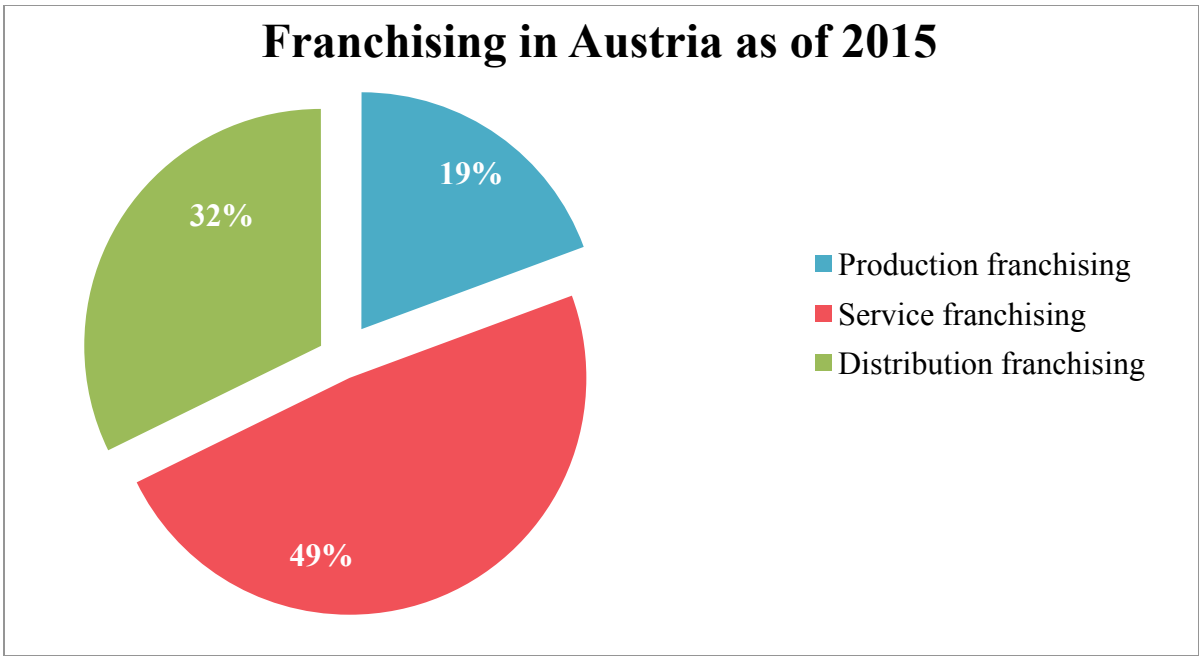

Figure 6: Franchising in Austria as of 2015 - Distribution among types (Scharitzer 2015, p.6)

Franchising is still on an upward movement in Austria. According to the latest report from the Austrian franchise federation (Österreichischer Franchise-Verband e.V. 2015), more than every second franchise system that actively operates in Austria has opened at least one new branch in 2014. Although a decline in admission of new franchisees is noticeable (2010: 85 %, 2012: 75 %, 2015: 71 %), each franchisor is still planning to associate about five new franchisees in 2015 (Scharitzer 2015, p.3).

2.5.1 Franchise platform in Austria

The Austrian franchise federation (Österreichischer Franchise-Verband e.V.) represents the platform for franchisors and franchisees in Austria. The Austrian franchise federation was founded in 1986 over the initiative of the European Franchise-Federation (EFF) (Österreichischer Franchise-Verband e.V. 2015).

The following tasks can be ranked among its main functions of the Austrian franchise federation (Österreichischer Franchise-Verband e.V. 2015):

- Centre of excellence and service department for all members
- Information centre for the public and interested parties about franchising
- Enabling contact between franchisors and interested parties of franchising
- Franchise lobbying with regard to legislative authority and executive authority
- Safe-guarding of franchise quality in Austria
- Promotion of entrepreneurship in Austria
- Promotion of exchange of experiences among members
- Entering cooperation with credit institutions to financially support founders of a new business
- Intermediary in case of differences and misunderstandings between the franchisor and the franchisee
- Organisation of franchise events
- Collaboration with other franchise federations and public institutions

Furthermore, the Austrian franchise federation provides certifications of quality to its members. This so-called system-check is conducted by an independent association, the international centre for franchising and cooperation (F&C) in Münster, Germany, and is valid for three years. The system-check encompasses the assessment of the franchise contract and the franchise manual according to minimum standards of quality for enterprise networks. In addition the concept of the system, the offered products and services, the strategy and management, and random interviews with franchisees to assess satisfaction are taken into account for evaluation (Österreichischer Franchise-Verband e.V. 2015; Internationales Centrum für Franchising und Cooperation (F&C) 2015). With this evaluation, the quality of the system is certified and provides a competitive edge over its competitors.

3 Theoretical perspectives in franchising

Picot (1991, p.144) already stated that there is an enormous interwovenness of economic questions and organisational problems. Economic problems arise by reason of scarcity which is attempted to be reduced by continuous specialisation and exchange of skills, know-how and information. Thus, regulation and coordination of tasks represent the root of the matter. Just as the term for organisation is the term for institutions a broad one. Hence, institutions include the business venture, the market, the money, the language, and social norms as organisational regulations as well as legal institutions as for instance basic law, contractual forms, and proprietorship (Picot 1991, p.144). According to North (1990, p.3), "institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction". An examination of institutions is applied by the field of research known as the new institutional economics which can be traced back to Ronald Coase's report *"The Nature of the Firm"* (Coase 1937). The new institutional economics as extension of the neoclassical theory is aware of organisational problems and includes property rights and transaction costs to ascertain how they influence individual incentives and the human behaviour in economics (Furubotn & Richter 1991, p.1). In short, its chief activity depicts the effect of institutions like those described above on human behaviour, particularly with regard to the efficiency of designs of institutions (Picot, Dietl, et al. 2008, p.45 f.). Hence, the new institutional economics embrace the following propositions (Cory 2004, p.121; North 1992, p.2; Furubotn & Richter 1991, p.3 ff.):

- **Utility maximisation**: "Individuals are assumed to seek their own interests and to maximize utility subject to the constraints established by the existing organizational structure." (Furubotn & Richter 1991, p.4).
- **Bounded rationality**: This references the fact that "individuals have only limited ability to acquire and process information" (Furubotn & Richter 1991, p.4). Thus, it is not possible to have "all economic exchange […] organized by contract and market" (Furubotn & Richter 1991, p.4).
- **Methodological individualism**: Individuals pursue own objectives in order to maximise the own utility.

- **Opportunistic behaviour**: This refers to Williamson's concept of opportunistic behaviour (1975) as "some individuals (either principals or agents) are likely to be dishonest in the sense that they may disguise preferences, distort data, deliberately confuse issues, etc." (Furubotn & Richter 1991, p.4).

Although there is no consistent theoretical structure of the new institutional economics, the most relevant, methodologically cognate approaches (Picot, Dietl, et al. 2008, p.46) are the property rights theory, the transaction cost theory, and the agency theory which are going to be discussed in the following subchapters. Furthermore, the first hypotheses for the subsequent empirical analysis have been derived in this chapter.

3.1 Property rights theory

The property rights theory can be tracked back to Ronald Coase's paper *"The Problem of Social Cost"* (1960) and was subsequently extended by Alchian & Demsetz (1973), Barzel (1989) and Eggertsson (1990) (Mahoney 2005, p.109). According to Mahoney (2005, p.109 ff.), the main focus of attention lies in increasing economic efficiency in the long run through universality, exclusivity, and transferability of property rights. In this context, universality stands for the entire range of scarce resources which are possessed by someone. Exclusivity signifies that property rights are exclusive, and lastly transferability denotes that all attributes of the "resources can be allocated from low to high yield uses" (Mahoney 2005, p.109).

In principle, the good's value is determined by its property rights, and not by the mere physical characteristics (Picot, Dietl, et al. 2008, p.46). Hence, property rights consist of a bundle of both tangible and intangible attributes that determine the value of each good (Furubotn & Pejovich 1972, p.1139). Intangible assets of knowledge are know-how "that cannot be codified and easily transferred to other agents" (Windsperger 2003, p.291 f.) because of the fact that they consist of a significant tacit integral part (Windsperger 2003, p.291 f.; Nelson & Winter 1982, p.73). Pejovich (1990, p.27) defines property rights as "relations among men that arise from the existence of scarce goods and pertain to their use". A good's property rights are divided up into the following four constituent parts (Picot, Reichwald, et al. 2008, p.40; Pejovich & Furubotn 1974; 1972; Alchian & Demsetz 1973; 1972):

- “The right to use a good (usus);
- The right to alter a good’s form and substance (abusus);
- The right to acquire gains arising from a good and the responsibility to assume any losses that may result (usus fructus);
- The right to sell a good to third-parties (capitalization and / or liquidation rights)”.

Pejovich (1990, p.28) classifies usus and abusus as classical decision rights, whereas the two latter ones, namely usus fructus and the capitalisation and / or liquidation rights, as ownership rights. In principle, any change in the system of property rights distribution must have a bearing on how people behave, and subsequently also on the resource allocation, on the output composition, on the income distribution, and on many other factors (Furubotn & Pejovich 1972, p.1139).

Property rights are also of particular importance when it comes to residual claimancy from either assets or diverse sorts of processes as claimancy may be shared with other economic actors. Nevertheless, as a general rule and in order to maximise a right’s value, the residual part of an economic actor should depend on his or her contribution. Hence, the share should increase when the contribution increases and decline when the contribution declines (Barzel 1997, p.3 f.). This is associated with so-called diluted property rights that are used in contracts.

In general, there are two modalities. Firstly, not all property rights may exist simultaneously, or secondly property rights may be allocated to only one or more individuals at the same time (Picot, Dietl, et al. 2008, p.46 f.). As can be seen in the following *Figure 7*, it depends on the way property rights are distributed; they can be either defined as concentrated or diluted property rights. Pursuant to Geraldi (2007, p.4) it is alleged that the higher the dilution of property rights, the higher is the degree of control, and consequently transaction costs will be high whereas utility will be low (Ebers & Gotsch 2014, p.203 ff.).

		Number of property rights held by individuals	
		Low	High
Degree of completeness of property rights allocation	High	**Concentrated property rights structure** E.g. individual enterprises	**Diluted property rights structure** E.g. public limited company
	Low	**Diluted property rights structure** E.g. foundation	**Strongly diluted property rights structure** E.g. large association

Figure 7: Two dimensions of property rights dilution based on Picot, Dietl, et al. (2008, p.47)

The dilution of property rights is especially of utmost significance in franchise systems. More information about the property rights in franchising is provided in *subchapter 3.1.2 Property rights theory in franchising*.

According to Picot, Dietl, et al. (2008, p.47 f.), the efficiency of an agent's action depends on the completeness of property rights allocation. The interconnection of rights, that is to say usus, abusus, usus fructus and capitalisation and / or liquidation rights, leads to the sole responsibility of an agent, and thus stimulates the agent to use resources most efficiently which is a decisive factor for no welfare losses. However, given the fact that in the majority of the cases a complete allocation of all property rights is impossible, so called external effects or externalities arise. External effects emerge due to an agent's activity that does not only have an impact for him but also for other economic participants. Here, negative and positive external effects can be distinguished. On the one hand, negative external effects result in a diminution of utility due to higher social costs in comparison with the agent's personal costs. In other words, if the utility for the agent is higher than his own personal costs, he will not show interest in changing his actions. On the other hand, positive external effects follow from a preponderance of social costs as against personal costs, resulting in an increase of utility (Picot, Dietl, et al. 2008, p.48 f.). In summary and in accordance with Picot, Dietl, et al. (2008, p.48), external effects and their associated welfare losses depend on the extent to which the consequences of one's actions can be explicitly assigned to that individual (Demsetz 1967, p.348; Coase 1960, p.8).

Furthermore, transaction costs have to be borne in mind when speaking of property rights. In compliance with Picot (1985, p.224), the main focus of transactions in property rights theory as well as in transaction cost theory is placed on the single rights of each good or service. This, however, is in contrary to the neoclassical economy where goods and services are the integral components of every transaction. In order to specify, monitor, negotiate and enforce property rights, economic participants have to bear the costs for this, so-called transaction costs (Michaelis & Picot 1987, p.89; Tietzel 1981, p.211; Pejovich & Furubotn 1974, p.2). In opposition to the neoclassical theory, the property rights theory assumes positive transaction costs due to the fact that not all property rights may be fully assigned to economic participants (De Alessi 1983, p.66). Hence, it can be seen that property rights and transaction costs are closely related (Taheri 2002, p.13 ff.). Based on this and the previous paragraph, the most efficient allocation of property rights minimises both transaction costs and welfare losses generated by external effects (Picot 1991, p.145).

3.1.1 Assumptions of the property rights theory

The behavioural assumptions of the property rights theory (Picot, Dietl, et al. 2008, p.50) are the same as for the new institutional economics presented in the introduction to the theories (see *chapter 3 Theoretical perspectives in franchising*), namely bounded rationality and utility maximisation. As elaborately explained in the following *subchapter 3.2 Transaction cost theory* environmental assumptions with regard to bounded rationality and utility maximisation have an impact in defining, transferring and implementing property rights.

However, there are situations when it is impossible to assign concentrated property rights to agents (Picot, Dietl, et al. 2008, p.50 ff.). Firstly, team production may make the output of a manufacturing process incapable of measurement. This is the case when output can only be accomplished with collaboration of individuals and single contributions are unreliable to measure, which in turn makes room for shirking. Secondly, leverage effects, which intensify the outcomes of an agent's actions, render the creation of institutions that allocate the entire outcome to a single agent impossible (Picot, Dietl, et al. 2008, p.51). Lastly, ownership surrogates are important to consider. According to Picot, Dietl, et al. (2008, p.52) ownership surrogates correspond to factors that are similar to ownership itself, as they provide comparable incentives for agents. From this it can be concluded that owners of a good will perpetually act in an efficient way. Additionally, ownership surrogates are introduced to

minimise external effects, and thus also welfare losses both resulting from diluted ownership rights. Moreover, possible opportunistic behaviour of economic agents is prevented due to the implementation of ownership surrogates (Picot, Dietl, et al. 2008, p.52; Picot 1981, p.164). Generally and in pursuance of Picot, Dietl, et al. (2008, p.52), Picot & Kaulmann (1989, p.299), Picot & Michaelis (1984, p.259 ff.), and Picot (1981, p.160 ff.), relevant ownership surrogates include cultural factors and disciplining consequences of competition. Cultural factors may encompass, amongst others, friendship among members of a team as well as what fairness is to social and religious groups. The factor for competition is of particular importance in the case of public limited companies where managers have to follow profit maximisation in order to avoid risking the existence of the company as well as his own position (Picot, Dietl, et al. 2008, p.52).

3.1.2 Property rights theory in franchising

As mentioned in the franchising section, a general franchise relationship includes the sharing of intangible assets divided among the franchisor and the franchisee (Caves & Murphy II 1976, p.573). From a franchisor's point of view, intangible assets include, amongst others, the brand name (Klein & Leffler 1981, p.629), the awareness and the know-how of the system. From a franchisee's perspective, the main intangible asset is his local knowledge. Therefore, under the terms of positive transaction costs, property rights and their allocation are crucial for an efficient assignment of resources if intangible assets are included, and thus results to some extent in uncontractibility (Windsperger 1996, p.131 f.; Demsetz 1966, p.64). In this case, contracts are incomplete and some residual rights will remain which are not expressed in the contract (Windsperger 1996, p.131 f.).

In the context of the property rights theory, the major question is how to divide property rights among parties. In franchising, the governance structure corresponds to the organisation of decision and ownership rights (Baker et al. 2008, p.152 ff.). According to Windsperger (2013, p.522 f.), decision rights reference "the transfer of authority over the use of system-specific assets and local market assets through franchise contracts", whereas ownership rights correspond to "outlet ownership […] and residual income rights (royalties), as well as ownership surrogates" (Windsperger 2013, p.522 f.; Windsperger 2003, p.298). Ownership surrogates refer to terms in a franchise contract that assist both the franchisor and the franchisee to be compensated for the diluted residual income rights (Windsperger 2013,

p.523; Windsperger 2003, p.295). Essentially, the most important characteristic in order to determine ownership structure is an asset's intangibility (Caves & Murphy II 1976, p.583). This is in accordance with the property rights theory, where the composition of both residual decision rights and ownership rights are contingent upon the knowledge asset's intangibility (Windsperger 2003, p.294; Hart & Moore 1990, p.1150; Barzel 1989). In general, just as in every corporate organisation, decisions that are influenced by intangible know-how can be distinguished between strategic decisions, which are principally undertaken by the franchisor, and operative decisions such as, amongst others, marketing, human resource or accounting decisions, which are shared between the two parties in a franchise relationship (Windsperger & Yurdakul 2007, p.72 ff.). At bottom, it can be stated that the party who is in possession of the intangible knowledge assets which render "the residual income stream should have residual decision rights to maximize the residual surplus" (Windsperger 2003, p.294). For this reason, residual income rights are divided among the franchisor and the franchisee by the payment of royalties, and consequently, ownership rights are attenuated. Therefore and in order to counteract possible problems of, amongst others, underinvestment, ownership surrogates are divided too. Ownership surrogates that offer an incentive for franchisees are clauses such as exclusive territory, exclusive customer, and "the right to control network entry as well as lease and alienation rights" (Windsperger 2003, p.295). For franchisors a tying arrangement clause, a resale price maintenance clause, a lease control clause, an exclusive dealing clause as well as "option rights such as buy back arrangement and approval rights, and termination rights" (Windsperger 2003, p.295) are used as a mitigation of diluted residual income rights (Windsperger 2003, p.295). A more thorough explanation of all integral parts including income rights, ownership surrogates, decision rights, and other constituent parts is provided in the following *chapter 4 Franchise contracts*.

As aforementioned, property rights and their allocation are crucial for an efficient assignment of resources if intangible assets are included. This is especially the case because the composition of residual decision rights and ownership rights are contingent on the knowledge asset's intangibility (Windsperger 2003, p.294; Hart & Moore 1990, p.1150; Barzel 1989). Based on this and the propositions of Windsperger & Yurdakul (2007, p.79) and Windsperger (2002, p.135), the following hypotheses have been developed in order to test it on the present data set:

H1a: A high amount of intangible knowledge assets leads to a significantly greater amount of residual decision rights for the franchisor than a low amount of intangible knowledge assets.

H1b: A high amount of intangible knowledge assets leads to a significantly greater amount of incentivising ownership surrogates for the franchisor than a low amount of intangible knowledge assets.

More generally, and with reference to the property rights theory, franchisors should hold those decision rights where they have a comparative advantage, and consequently franchisees should hold those in which they have a comparative advantage (Windsperger 1996, p.131; Ridgeway 1957, p.478 f). In other words, residual decision rights and ownership rights are interrelated. To be precise, decision rights in a franchise relationship should be allocated depending on the intangible know-how of the two parties in the relationship and its division among each other. Ownership rights, in turn, should be assigned in accordance with residual decision rights (Windsperger & Yurdakul 2007, p.72).

3.2 Transaction cost theory

The transaction cost theory can mainly be traced back to Coase (1937), and subsequently was extended by Williamson (1971; 1979) as well as Arrow (1974) (Mahoney 2005, p.86). Arrow (1984, p.134; 1969, p.48) defined transaction costs as "costs of running the economic system". A more precise definition was provided by Hyman (1992, p.134) who clarified that transaction costs are costs "incurred in enforcing property rights, locating trading partners and actually carrying out the transaction" (Hyman 1992, p.134; Hinde 2001, p.3).

The basic assumption of the transaction cost theory is to provide explanations why companies exist, why they expand or outsource certain activities to external providers. In addition, the essential prerequisite of every firm is to make companies minimise their internal and external costs. Internal costs are realised within a company, so-called bureaucratic costs of exchange, whereas external costs are costs of resource exchange with the external environment. Therefore, it is the task of every company to consider and weigh the costs incurred internally against those incurred externally (BusinessMate.org 2014).

In principle, transaction costs result not merely from the purchase of goods or services, beyond that ex ante, i.e. prior to a conclusion of a contract, and ex post, i.e. after a conclusion of a contract, transaction costs are included which add up to higher costs for goods or services than its actual prices on the market . Expenses that are incurred ex ante include information and search costs as well as costs arising in connection with negotiating and setting-up a contract (Williamson 1985, p.20 f.). Ex post costs comprise mismatching, haggling, bonding, as well as "setup and running costs associated with the governance structures (often not the courts) to which disputes are referred" (Williamson 1985, p.21). Nevertheless, the total amount of the costs incurred may fluctuate greatly depending on the situation. This, in turn, makes the question arise whether there are factors that allow determining the degree of cost fluctuation. For this purpose Williamson (1985, p.52) developed a theory with three main dimensions for characterising transactions, namely asset specificity, uncertainty, and frequency.

First, McGuinness (1994, p.69) explains asset specificity as:

> "the extent to which the resources used in a transaction have a value therein that is higher than in any other use or to any other user. Highly specific assets are ones whose values elsewhere are comparatively low and, consequently, whose owners have a strong interest in continuing the transaction because of the high quasi-rents they receive."

Considering different types of specificity, Williamson (1991, p.281) differentiates between:

- **Site specificity**, e.g. the construction of a supplier plant within spitting distance in order to reduce transportation and inventory costs;
- **Physical asset specificity**, e.g. machines that only produce specialised squeeze mouldings;
- **Human asset specificity**, e.g. learning of not or only less standardised techniques;
- **Brand name capital**;
- **Dedicated assets**, e.g. increase in capacity in order to execute orders of a particular customer; and
- **Temporal specificity**, e.g. seasonal goods, just-in-time production.

Hence, it follows that, on the one hand, specific investments allow companies to produce in an optimised way. On the other hand, however, it can also be concluded that the more specific the relevant transactions, the stronger is the dependency from the transaction-specific partner, and hence the higher are the transaction costs.

Second, Williamson (1985, p.57 ff.) distinguishes uncertainty between parametric uncertainty and behavioural uncertainty. Parametric uncertainty can be referred to as exogenous disturbances, more basically it is "the nature of the environment of a firm" (König 2009, p.41). Behavioural uncertainty in turn specifies "the unpredictable behaviour of other market participants" (König 2009, p.41), and thus, the possibility "of opportunistic behaviour by the transaction partner" (König 2009, p.42). In short, it can be concluded that a high the degree of uncertainty results in high transaction costs.

Lastly, the frequency is an important dimension. The more frequently transactions are completed, the more likely it is to make use of economies of scale, experience curves and synergistic effects, ceteris paribus (Ebers & Gotsch 2014, p.231). Hence, by way of example, with more transactions executed, other things being equal, the more favourable will be production and transaction costs per single transaction.

Summing it up, Williamson (1985, p.72 ff.) concludes that transactions are specified by its investment characteristics and its regularity, i.e. frequency, which take place in uncertain environments. Investment characteristics can be either nonspecific (i.e. purchasing standard equipment or material), mixed (i.e. purchasing customized equipment or material), or idiosyncratic (i.e. specified purchases). Taking into consideration the frequency of the transaction, it can either be occasional or recurrent, meaning that it is a repeated transaction. Based on this, in the following *Figure 8* Williamson (1985, p.73) characterises six types of transactions that result in efficient business processes.

		Investment characteristics		
		Nonspecific	Mixed	Idiosyncratic
Frequency	Occasional	Purchasing standard equipment	Purchasing customized equipment	Constructing a plant
	Recurrent	Purchasing standard material	Purchasing customized material	Site-specific transfer of intermediate product across successive stages

Figure 8: Illustrative transactions (Williamson 1985, p.73)

3.2.1 Assumptions of the transaction cost theory

Moreover, the transaction cost theory relies on three behavioural assumptions, namely bounded rationality, opportunism, and risk neutrality (Williamson 1985, p.388 ff.). First, bounded rationality refers to intended but limited rationality (Simon 1961, p.xxiv) of individuals in default of capacity to absorb and process information. Second, in order to maximise their individual utility, economic participants tend to act opportunistic (Williamson 1985, p.44 ff.). Williamson (1985, p.47) depicts opportunism as:

> "[…] self-interest seeking with guile. […] More generally, opportunism refers to the incomplete or distorted disclosure of information, especially to calculated efforts to mislead, distort, disguise, obfuscate, or otherwise confuse. It is responsible for real or contrived conditions of information asymmetry, […]."

Given a situation that is characterised by uncertainty, complexity and small numbers, bounded rationality and opportunism intensify the consequences (Geraldi 2007, p.6) as can be seen in the following *Figure 9*.

Lastly, risk neutrality is, in opposition to the first two behavioural assumptions, a rarely mentioned one, and deals with the risk propensity of transaction participants. In principle, the transaction cost theory imputes risk neutrality to its participants (Williamson 1985, p.388 ff.; Ebers & Gotsch 2014, p.227).

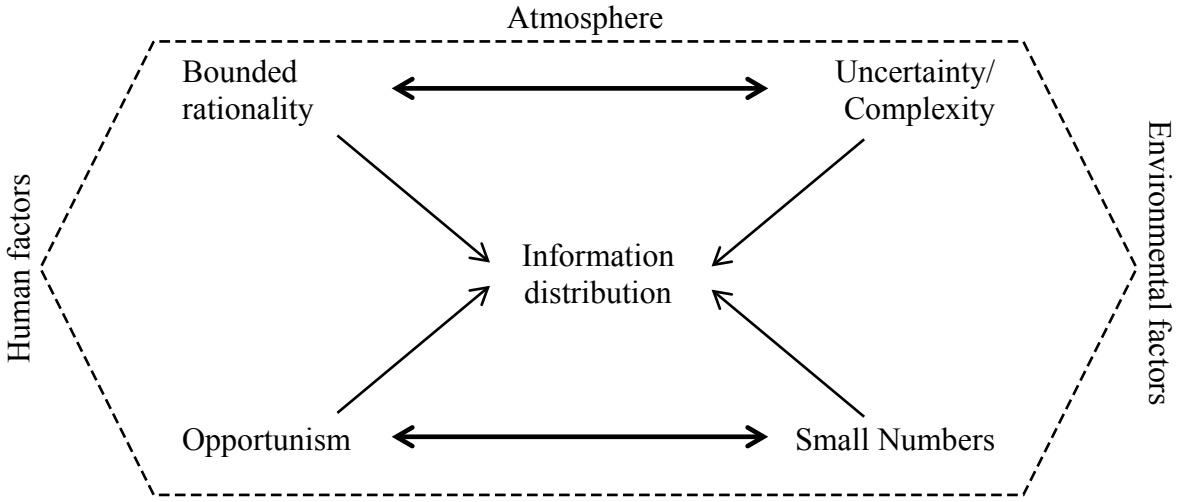

Figure 9: Influencing factors on transaction costs based on Williamson (1975, p.40), Picot, Dietl, et al. (2008, p.58), and Geraldi (2007, p.6)

In short, the transaction cost theory contemplates "transactions involved in the concentration and dilution of Property Rights, and these respective costs and optimal design of organisational interfaces between market and hierarchy" (Geraldi 2007, p.5). Nevertheless and as mentioned in the previous *subchapter 3.1 Property rights theory*, there exists a close connection between property rights and transaction costs as the entire handling including development, application, etc. of goods incur transaction costs. Hence, a collective consideration of property rights and transaction costs is indispensable (Michaelis 1988, p.123; Barzel 1997, p.4).

3.2.2 Transaction cost theory in franchising

As aforementioned, the chief task of transaction costs assists with selecting the most efficient form of organisation by minimising production and transaction costs (Williamson 1985). In principle, the transaction cost theory has two extreme cases with a number of hybrid organisational forms in between (Williamson 1996, p.1). On the one hand, an organisation undertakes exchange solely via the market, or on the other hand, an organisation utilises a centralised, hierarchical organisational form. In the case of franchise systems, a franchisor will choose a franchisee to apply the market organisational form if transaction costs are low. If, however, transaction costs are high, company-owned outlets will be preferred over franchises (Fladmoe-Lindquist & Jacque 1995, p.1238 ff.).

Fundamentally, the principle components of a transaction are intangible knowledge assets. For the franchisor, on the one side, intangible knowledge assets comprise of specific system know-how and brand equity. On the other side, local market knowledge contributes to the intangible knowledge assets of every franchisee (Windsperger 2004, p.1361; Küster 2000, p.69 f.). Generally and as mentioned before, transaction costs may arise at the conclusion, monitoring or implementation of the franchise contract. This, however, may be influenced by transaction-specific investments and environmental uncertainty (Windsperger & Hendrikse 2011, p.5; Williamson 1985; 1975), which can be classified as determinants of transaction costs in franchising.

The transaction cost theory (Williamson 1985; 1975) has a major impact in contract design in terms of the governance structure (Windsperger & Hendrikse 2011, p.5). First, when considering the determinant of transaction-specific investments, the transaction cost theory argues in accordance with Williamson (1985), Heide & John (1988, p.24) and Klein et al. (1978) that less dependent transaction partners can dispossess quasi-rents resulting from transaction-specific investments (Windsperger & Hendrikse 2011, p.5). In franchising, however, both parties in a franchise relationship have to realise high investments in order to be able to set up the business. Therefore, an interdependence is created (Windsperger 1994, p.126 ff.). Hence when transaction-specific investments of both partners yield high quasi-rents, possible hold-up gains may be outbalanced. Hold-ups usually occur when unforeseeable occurrences happen and "place the contractual relationship outside the self-enforcing range" (Klein 1996, p.444). Consequently, this "increases the self-enforcing range of contract and reduces the requirements for specifying detailed contract terms" (Windsperger & Hendrikse 2011, p.5 f.; Klein & Murphy 1997; Klein 1996). In other words and based on the proposition of Mumdziev & Windsperger (2013, p.174), the self-enforcing effect "decreases the costs related to controlling and monitoring franchisees, thereby reducing the franchisor's need to exercise more control over franchisees' actions" (Mumdziev & Windsperger 2013, p.174). Control, on this note, relates to the decision rights a franchisor may assign to the franchisee or exercise them himself. According to this, the following hypotheses have been derived in order to ascertain the allocation of decision rights in terms of transaction-specific investments in the case of the data set at hand:

H2a: The amount of transaction-specific investments is positively related to the amount of residual decision rights assigned to the franchisee.

H2b: The amount of transaction-specific investments is positively related to the amount of residual decision rights assigned to the franchisor.

Secondly, environmental uncertainty stems from various uncertainties in the market, such as political and currency risk (Fladmoe-Lindquist & Jacque 1995, p.1241), the culture or from the institution itself (Windsperger & Hendrikse 2011, p.5). According to Windsperger & Hendrikse (2011, p.5), it is virtually impossible to formulate a detailed contract including all terms due to environmental uncertainty. As a result, ex-post alignments are essential in order to be able to fully allocate all residual decision rights (Windsperger & Hendrikse 2011, p.5).

In summary, the application of transaction cost theory is indispensable in a contractual relationship between a franchisor and a franchisee, both aiming at an efficient decision rights allocation. Here, also trust can be mentioned to have an impact on the division of decision rights (Mumdziev & Windsperger 2013, p.170 ff.). In this thesis, however, trust is not going to be discussed in more detail.

3.3 Principal-agent theory

The beginnings of the agency theory lie in the 1960s and early 1970s. At this time economists examined the allocation of risk between single persons or groups (Eisenhardt 1989, p.58; Wilson 1968, p.119 ff.). Later, the agency theory also included "the so-called agency problem that occurs when cooperating parties have different goals and division of labor" (Eisenhardt 1989, p.58; Jensen & Meckling 1976, p.308 ff.; Ross 1973, p.134 ff.). Fundamentally, the principal-agent theory is closely allied with the transaction cost theory (Picot, Dietl, et al. 2008, p.72). However, in contrast to the transaction cost theory where the agents' performance relationship takes centre stage, the principal-agent theory is aimed at investigating the performance relation between a principal and an agent. The basic principle of a principal-agent relationship is that actions of either the agent or the principal have an effect on both the agent's and the principal's economic well-being (Picot, Dietl, et al. 2008, p.72). The principal delegates specific tasks as well as the competence of decision-making to

the agent (Eisenhardt 1989, p.58; Eisenhardt 1988, p.490; Jensen & Meckling 1976, p.308), which is stipulated in the contract between the principal and the agent (Hass 2010, p.56; Sydow 1994, p.101). Jensen & Meckling (1976, p.310) summarise this contractual relationship as "[…] the essence of the firm, not only with employees but with suppliers, customers, creditors etc.".

However, information asymmetry, uncertainty, and risks are prevailing in the environment where contracts are closed (Geraldi 2007, p.7; Ross 1973, p.134 ff.). In a principal-agent relationship the outcome of this is that there is scope for agents to act to the disadvantage of the principal by using hidden action, hidden information, hidden characteristics and hidden intention in a strategic way in order to maximise the own utility. In other words, "agency problems result from information asymmetries and goal divergence between principals and agents, […]." (Shaw et al. 2000, p.612; Lambert et al. 1993, p.438 ff.; Anderson & Oliver 1987, p.76 ff.). Hence, as a counter action and in order to guard against the agent's scope of action, principals use monitoring and control mechanisms (Picot, Dietl, et al. 2008, p.72 ff.; Geraldi 2007, p.7 f.). The costs incurred for the aforementioned mechanisms are according to Jensen & Meckling (1976, p.308) named agency costs and defined as the total amount of bonding costs of the agent, monitoring costs of the principal, and residual welfare loss.

3.3.1 Assumptions of the principal-agent theory

The behavioural assumptions of the principal-agent theory are basically the same as of the transaction cost theory; to be precisely the assumptions are bounded rationality, opportunism, and individual maximisation of utility. In addition to those behavioural assumptions, the risk appetite of actors is included (Picot, Dietl, et al. 2008, p.74). Depending on the risk appetite of the two parties, the basic orientation of risk distribution is diverging (Eisenhardt 1989, p.58). Therefore and in pursuance of Picot, Dietl, et al. (2008, p.74), deviant risk appetites of actors in a principal-agent relationship lead to the requirement of carrying out an investigation on institutions with regard to an efficient risk allocation. Generally, according to Eisenhardt (1989, p.60 f.), agents are rather risk averse whereas principals are rather risk neutral. This stems from the statement that, on the one hand, it is impossible for the agent to diversify his employment, on the other hand, however, the principal is able to diversify his investment (Eisenhardt 1989, p.60 f.).

Taking the environmental assumptions into consideration, three problems arise which have specific coordination and motivation problems as a basis. These are adverse selection, moral hazard, and hold-up (Picot, Dietl, et al. 2008, p.74 ff.). Firstly, "adverse selection refers to the misrepresentation of ability by the agent" (Eisenhardt 1989, p.61). To be more precisely, in this case the principal does not know about or is unable to perfectly verify inalterable characteristics of the agent or the agent's offered abilities before the conclusion of the contract. Hence, it is an ex ante information problem of hidden characteristics by the principal (Picot, Dietl, et al. 2008, p.74 f.; Herrfeld 1998, p.84; Eisenhardt 1989, p.61). Secondly, "moral hazard refers to lack of effort on the part of the agent" (Eisenhardt 1989, p.61). Contrary to adverse selection, moral hazard takes place ex post, i.e. after the conclusion of the contract. In this case, it is not possible for the principal to monitor or evaluate the agent's actions, which as a result leads to an information disadvantage for the principal due to hidden action and hidden information as he or she cannot be sure whether the agent acts in an opportunistic way (Picot, Dietl, et al. 2008, p.75; Küster 2000, p.108 ff.; Shane 1998, p.719; Eisenhardt 1989, p.61). Moral hazard also includes shirking and free-riding of an agent (Shane 1998, p.719; Eisenhardt 1989, p.61). Thirdly and lastly, hold-up does not underlie a usual information asymmetry per se, which is between the principal and the agent, but between the parties to a contract and third-parties. Basically, the parties are able to observe opportunistic behaviour but on grounds of the dependency resulting from specific investments, it is not possible to prevent it (Picot, Dietl, et al. 2008, p.75 f.). This is in addition to former literature from Picot, Dietl, et al. (2002, p.89 f.) where hold-up is displayed in a principal-agent relationship due to hidden intention. In this case, the principal is not aware of the agent's intentions ex ante, but they manifest ex post. If the agent derives benefit from the principal's situation, who lacks to apply sanctions against the agent's opportunistic behaviour, it is spoken about hold-up (Picot et al. 2002, p.89 f.). In general, hold-up problems may not be important to be talked about if contracts were complete and explicit. This, however, is in contrast with reality as it is hardly possible to cater for every circumstance (Picot, Dietl, et al. 2008, p.75). For the sake of completeness, it has to be stated that the explained hold-up problem in the principal-agent theory is closely related to the problem of transaction-specific investment in the transaction cost theory (Picot, Dietl, et al. 2008, p.76; Picot et al. 2002, p.89).

3.3.2 Principal-agent theory in franchising

In terms of franchising, the franchisor takes the role of the principal and the franchisee is in the position of the agent, which constitutes a contractual relationship between both parties (Combs & Ketchen, JR. 1999, p.196). However, in contrast to a salaried employment, both the franchisor and the franchisee work as independent contractors. As aforementioned, the actions of principals and agents always have an impact on the other party. This holds also in a franchise relationship, where the actions of a franchisee have a bearing on the franchisor. The main objective of a franchisor is the uniformity of the system as well as system-wide adaptations (Bradach 1997, p.282). Uniformity is important in order to measure up to customer's expectations, regardless where the outlet is located, whereas system-wide adaptions are crucial factors to survive in an increasing competitive market environment (Bradach 1997, p.282). This was already stated by Rubin (1978, p.230):

> "[…]. It appears that one major advantage of a franchise is the information it provides to consumers: when I take my family to a McDonald's I know what to expect, no matter where it is located. Thus, it would be worthwhile for McDonald's to spend a fair sum to maintain this situation and to curtail any local variation. […]"

The franchisee, however, pursues the goal of individual profit maximisation in own outlets; sometimes also by putting upon other parties' efforts as a free-rider (Hass 2010, p.65; Shane 1998, p.719; Carney & Gedajlovic 1991, p.609). This represents a conflict in objectives (Shane 1998, p.719). In addition, the franchisor takes advantage of the local knowledge of franchisees. Hence, the franchisee's specific knowledge provides him with an information advantage over the franchisor. In general terms and in accordance with the principal-agent theory, there are information asymmetries, and motivation and coordination problems respectively between a franchisor and a franchisee (Dant & Nasr 1998, p.5 f.; Sydow 1994, p.101). On the one hand, the franchisor may not have the possibility to completely monitor the actions of the franchisee. On the other hand, the franchisor cannot be sure about the origin and development of the rendered services. Thus, since the compensation of franchisees is directly connected to the system's performance, adverse selection and deficient effort is minimised, hold-up problems and free-riding, however, may be incentivised (Shane 1998, p.719; Jensen 1983).

Dant & Nasr (1998, p.7 f.) state that due to the assumption both the franchisor and the franchisee will act in self-interest. In terms of agency theory, the principal has the option of either monitoring the agent's behaviour as an "input control mechanism" or providing output control mechanisms by offering incentives of "residual claims to the […] profits" in order to reduce shirking (Dant & Nasr 1998, p.8; Kaufmann & Dant 1996, p.345 f.; Bergen et al. 1992, p.3 ff.). Hence, besides the transaction costs theory, the agency theory depicts another viewpoint of monitoring and its associated costs in franchising. In pursuance of Rubin (1978, p.233) the problem of monitoring may be reduced or even eliminated by assigning property rights to both parties. As a result, allocating property rights in an optimal way in the franchising contract and implementing certain control mechanisms result in incentives that are in conformity with the system. In other words, Diaz-Bernardo (2012, p.169) states that "Agency Theory explains that the franchising system reduces the principal-agent problem because the franchising contract aligns the interests of both the franchisor and the franchisee and sets a common goal that both share".

In addition, Manna et al. (2006, p.23) claim that the degree of control also depends on the amount of initial fees paid by the franchisee to the franchisor at the beginning of the relationship. According to this, no incentive is provided for the franchisor to control the franchisee if the franchisor receives a high, well counterbalanced initial fee. On the other hand, if the initial fee is rather low but the ongoing royalties promise good compensation, monitoring is more likely. Consistent with this proposition, the following hypothesis has been derived:

H3: A high initial fee paid to the franchisor is negatively related to a high incentive for control of the franchisor.

3.3.3 Excerpt

A recent example was the case of Burger King in Germany in 2014, where the franchisee, namely the Yi-Ko Holding, repeatedly violated the stipulated conditions of employment as well as hygiene requirements causing considerable loss of sales and reputation. As a result, Burger King terminated the business relationship with the fast food restaurants operated by the Yi-Ko Holding, and thus lead to the closing of 89 of their almost 700 restaurants in

Germany. This shows the complexity of agency problems arising from information asymmetry and the complexity of monitoring (BURGER KING® PRESSEBÜRO 2014).

3.4 Summary of all theoretical perspectives

Below a summary of all theoretical perspectives is provided in order to have a comprehensive overview of the three previously described methodologically cognate approaches (Picot, Dietl, et al. 2008, p.46).

	Property right theory	**Transaction cost theory**	**Agency theory**
Object of study	Distribution of property rights	Transaction	Principal-agent relationship
Criteria of efficiency	Transaction costs and external effects	Transaction costs	Agency costs: • Bonding costs • Monitoring costs • Residual welfare loss
Criteria for optimisation	Ascertaining optimal allocation of property rights by considering the trade-off between transaction costs and externalities	Minimising transaction costs by taking into account behaviour and environmental factors	Compatibility of incentives between principal and agent, as well as trade-off between offering incentives and risk allocation, respectively
Influencing factors	• Bounded rationality • Individual maximisation of utility • Team production • Leverage effect • Ownership surrogates	• Bounded rationality • Opportunism • Individual maximisation of utility • Uncertainty/ Complexity • Small numbers • Atmosphere of transaction • Frequency • Asset specificity	• Bounded rationality • Opportunism • Individual maximisation of utility • Risk appetite of actors • Unknown quality features • Non-observable efforts • Incomplete contracts
Management tools	Dilution and concentration of property rights	Definition of strength of relationship between market and hierarchy	Instruments for overcoming information asymmetry, for harmonisation of interests and for risk allocation

Table 3: Summary of all theoretical perspectives based on Ebers & Gotsch (2014, p.195 ff.), Geraldi (2007, p.2) and Picot, Dietl, et al. (2008, p.45 ff.)

4 Franchise contracts

In the following chapter, basic constituent parts will be presented and subsequently, contract clauses are described in detail. Moreover, as in the previous chapter, hypotheses for the subsequent empirical analysis have been derived.

4.1 Contract design in franchise contracts

The basis for a business relation between a franchisor and a franchisee is the franchise contract which constitutes the legal fundament. In this contract the extent and the modality of all rights and duties for both the franchisor and the franchisee should be clearly and bindingly defined (FranchisePORTAL GmbH 2014a).

In practice, franchise contracts are set up by the franchisor and his legal advisors. Thereafter, the contract will be presented to the franchisee who has then the possibility to suggest minor modifications (Chanut et al. 2013, p.2). All costs arising in conjunction with the setting-up of a franchise contract are mostly borne by the franchisor, or partly compensated by the franchise fee (WKO Gründerservice 2013). Basically, contracts differ in terms of constitution and formulation based on the branch and the company itself (WKO Gründerservice 2013). Nevertheless, there are certain components that are essential in every franchise contract. Therefore, an overview of the basic constituent parts is provided below according to the Austrian FranchisePORTAL GmbH (2014a) and WKO Gründerservice (2013):

- **Recitals:**
  A franchise contract starts with recitals that regulate the required qualifications of both the franchisor and the franchisee. In addition, the field of activity, the corporate identity of the franchise system as well as shared objectives are specified therein. In case of any matter of dispute, recitals serve especially as interpretation of the intention of the parties.
- **Subject of the contract:**
  Here, the content and extent of the franchise relationship, the territory, and the usage of the vested industrial property rights are regulated.

- **Legal position of the contracting parties:**
  In this section, it is specified that both franchise parties are independent contractors as well as the fact that franchisees act on their own name and on their own account.

- **Liability:**
  In this section, all parties to a contract agree to assume full responsibility for the performance of their incurred liabilities.

- **Franchisor's and franchisee's obligations:**
  Duties that a franchisor and a franchisee have to carry out are specified in this section. The franchisor is obligated to hand the franchise manual over to the franchisee as well as to perform all other duties as agreed on. Furthermore, the duties of a franchisee are listed in great detail. This may include, amongst others, the utilisation of the franchise concept as stipulated in the contract, the supply of work, capital, and information, the obligation to maintain confidentiality, and so forth. A detailed overview of all duties is provided in *subchapter 2.4 Franchisor and franchisee*.

- **Business operations and remuneration:**
  In this section, regulations regarding the franchised business outlet, e.g. location, shop design, the franchisor's managerial authority and right of control are provided. In addition, the remuneration, i.e. initial fee, royalties, advertising fees, is defined.

- **Contract period, termination, and its consequences:**
  Most franchise contracts are concluded for five to ten years, more detailed information on the contract duration can be found in *subchapter 4.6.2*. A franchise contract may be terminated either by expiration, rescission or by termination before the expiry date. Possible consequences of a contract termination may include the acceptance of unsold goods and promotion material as well as the obligation to return confidential documents, e.g. the franchise manual. Here, non-competition clauses after the expiration are often imposed as restrictions on franchisees (see *subchapter 4.4.6 Competition clause*).

- **Final clause:**
  In this section, standard provisions are provided which affect the validity of a contract, if particular parts are legally void. In addition, it regards the general sufficiency of the franchise contract, the place of fulfilment and jurisdiction, the applicable law as well as the requirement that the contract must be in written form.

- **Appendix:**

  In most cases, reached agreements in a franchise relationship are provided as appendices, e.g. the franchise manual including the franchisor's standardised know-how.

4.2 Contract clauses in franchise contracts

In a traditional business format franchising, the franchisor hands the entire concept over to the franchisees. In doing so, the franchisor assists in the establishment of the outlets, provides his know-how in doing business as well as continuing services as, e.g. national advertising, to franchisees. On the other hand, franchisees make a contribution to the system by being in charge of the management of their outlets and by providing local services. The focal point of this relationship is to share profits by having franchisees pay fees to the franchisor. In this sense, contract clauses in a franchise relationship are important to ensure efficiency and to determine the duties and responsibilities of both parties. Therefore, property rights are important to be allocated among the contracting parties. Franchise contracts consist of ownership rights, namely residual income rights and ownership surrogates, decision rights, and other constituent parts. An overview of property rights is provided in *Table 4* below.

Residual income rights	Ownership surrogates	Decision rights	Other constituent parts
• Initial fees • Royalties • Advertising fee	• Exclusive territory • Resale price maintenance • Tying arrangement • Exclusive dealing • Exclusive customer clause • Franchisor's lease control • Franchisee's lease right • Franchisee's outlet option right • Approval and buy back rights • Alienation and inheritance rights • Competition clause	• Marketing decisions • Advertising decisions • Production decision • Accounting system decision • HR (recruitment and training) decision • Investment and financial decision • Procurement decision	• Advisory board • Contract duration • Franchisor is the owner or tenant of the franchisee's premises • Minimum turnover and minimum quantity • Specific investments and capital

Table 4: Contract clauses in a franchise contract

These property rights, which are of central importance to the following empirical analysis of this thesis, are explained in greater detail in this chapter. First, ownership rights divided in residual income rights and ownership surrogates are characterised. In doing so, incentive effects of ownership surrogates are also taken into consideration and attributed to either the franchisor or the franchisee. Following this, decision rights and other constituent parts are presented.

4.3 Ownership rights: Residual income rights

The distribution of residual income in a franchise relationship is a crucial point in every franchise contract. In order to determine the allocation of the residual surplus between the franchisor and the franchisee, several clauses are used whereupon a differentiation between fixed fees and variable fees should be taken into account. In general, a franchisor aims for a great part of residual income rights that award him a high amount of the residual income, whereas a franchisee prefers the opposite, i.e. a franchisee aims for low fees. The following fees are part of the residual income rights:

4.3.1 Initial fees

The initial fees are paid to the franchisor and represent the compensation for the transfer of the system-specific know-how to the franchisee after acceding to a franchise contract. The amount of the fee is determined according to the intangible assets of the franchisor at the beginning of the contract duration (Windsperger 2001, p.221). The higher the intangible assets, the greater is the impact of the franchisor's know-how on the generated rents, hence the higher is the entry fee by the franchisee (Windsperger & Yurdakul 2007, p.72 ff.; Windsperger 2002, p.132 f.). As a matter of principle and in order to guarantee a consistent quality and value of the entire franchise system, more system-specific investment is needed with a high brand name as an intangible asset on the side of the franchisor (Windsperger 2002, p.132 f.; Klein & Leffler 1981, p.629). To recover this sunk investments, franchisors pass on a part of the costs to the franchisees as initial fees (Windsperger 2002, p.132 f.; Dnes 1992a, p.251 ff.). This is of particular importance if system-specific knowledge is pivotal for the franchise's success (Windsperger 2002, p.133; Hussain & Schromm 2009, p.12). Moreover, initial fees are also used for restraining franchisees from withdrawing unexpectedly or appropriating quasi-rents. If initial fees will not be refunded at the end of the

contract period, franchisees will tend to act in a loyal way in order not to risk his payments on account (Skaupy 1995, p.135). Hence, “the initial fee that the franchisee pays thus serves as a bond” (Sen 1993, p.177).

4.3.2 Royalties

In addition to the lump-sum payment of the initial fees at the beginning of the franchise relationship, franchisees are engaged to effect a regular periodic payment. This monthly royalty is a variable fee that is contingent on the franchisee’s total revenue. According to Dnes (1992a, p.260), royalties are not the same for all franchisees, rather royalties vary with conditions for demand and cost. From a property rights theory point of view, the royalty should mirror the input of intangible assets by the franchisor and the franchisee. This is in accordance with Agrawal & Lal (1995, p.220), who state that “the optimal royalty rate is hypothesized to balance the incentives to the franchisor and the franchisee to invest in their respective inputs.”. Hence, the more important the intangible investments of the franchisor, i.e. the brand name, promotion, and services, are as against to the intangible investments of the franchisee, i.e. local service, the more residual income is created by the franchisor. Thus, royalties should be higher and contracts are more likely to include clauses such as the exclusive dealing clause, the tying clause, and resale price maintenance (Windsperger 2001, p.221 f.; Windsperger 1996, p.139 f.; Sen 1993, p.178 f.; Rubin 1978, p.227). In summary and pursuant to Windsperger (2003, p.295 f.), royalties offer a double incentive: On the one hand, the incentive for investment in the franchise system of the franchisor is positively related to the amount of the royalty; whereas on the other hand, the incentive for investment of the franchisee is negatively related to the amount of the royalty (Windsperger 2003, p.295 f.).

4.3.3 Advertising fee

In addition to the initial fees and the royalty, the majority of franchisors also charge an advertising fee in order to cover the expenses for the advertising on a nationwide, regional and/or local basis that is undertaken by the franchisor himself. This is done by collecting the entire advertising fees from all franchisees that are then paid into a fund specified for advertising purposes only (Lafontaine & Blair 2009, p.408 f.; Desai 1997, p.1401). In the case of local advertising, specific conditions of minimum contributions may be incorporated into the contract, as for example: “the franchisor requires that the franchisee spend at least

x percent of its sales revenues, or at least $x, on local advertising" (Lafontaine & Blair 2009, p.408). Generally, there are two different types: Either advertising fees are collected as a fixed amount similar to the initial fees or they are collected as a percentage of the gross turnover of a franchisee such as the royalties (Desai 1997, p.1401 f.). By taking the principal-agent theory into consideration, a fixed amount of advertising fee is more advantageous than charging a percentage rate based on sales. This is due to the fact that the franchisee's price and service choice may be adversely impacted as it reduces the franchisee's marginal benefits. Nevertheless, in practice a sales-based advertising fee is extensively preferred by franchisors because it enables them to link their level of advertising to the price and service decisions of their franchisees (Desai 1997, p.1412). Moreover, they dispose the franchisees to reach better decisions about the latter (Desai 1997, p.1401 ff.). According to Desai (1997, p.1409), there is a special case where franchisors provide "matching contributions" in terms of extra monetary input in order to increase the total advertising money. Nonetheless, there are cases where franchisors do not differentiate between royalties and advertising fees (Lafontaine & Blair 2009, p.411 f.). In general, according to Blair & Lafontaine (2005, p.75), royalties and advertising fees are paralleled. However, since franchisors may develop a consistent campaign across areas in order to advertise a uniform brand image, nationwide advertising is a determining factor to the channel in the case of franchising (Desai 1997, p.1403; Bond 1989).

4.4 Ownership rights: Ownership surrogates

In addition to the dilution of residual income rights, franchise contracts also include complementary contract components, so-called ownership surrogates. These ownership surrogates are compensations for the diluted residual income rights of both the franchisor and the franchisee (Windsperger 2013, p.523; Windsperger 2003, p.295). Moreover, the allocation of property rights provides encouragement to maximise profits resulting in advantages for both parties (Mathewson & Winter 1994, p.192). This is in accordance with Windsperger (2003, pp.292, 301, 308), who states that there is a "substitutability between residual income rights and ownership surrogates". Hereupon, the following hypothesis has been derived in order to ascertain the relationship between incentivising ownership surrogates and residual income rights in the present data set.

H4: The amount of royalty to be paid by the franchisee differs when more incentivising ownership surrogates are assigned to the franchisor or the franchisee, respectively.

In this subchapter the most important ownership surrogates and their accompanying incentive effects which emanate therefrom are explained. A short overview of the incentive effects of both parties is provided in the following *Figure 10*.

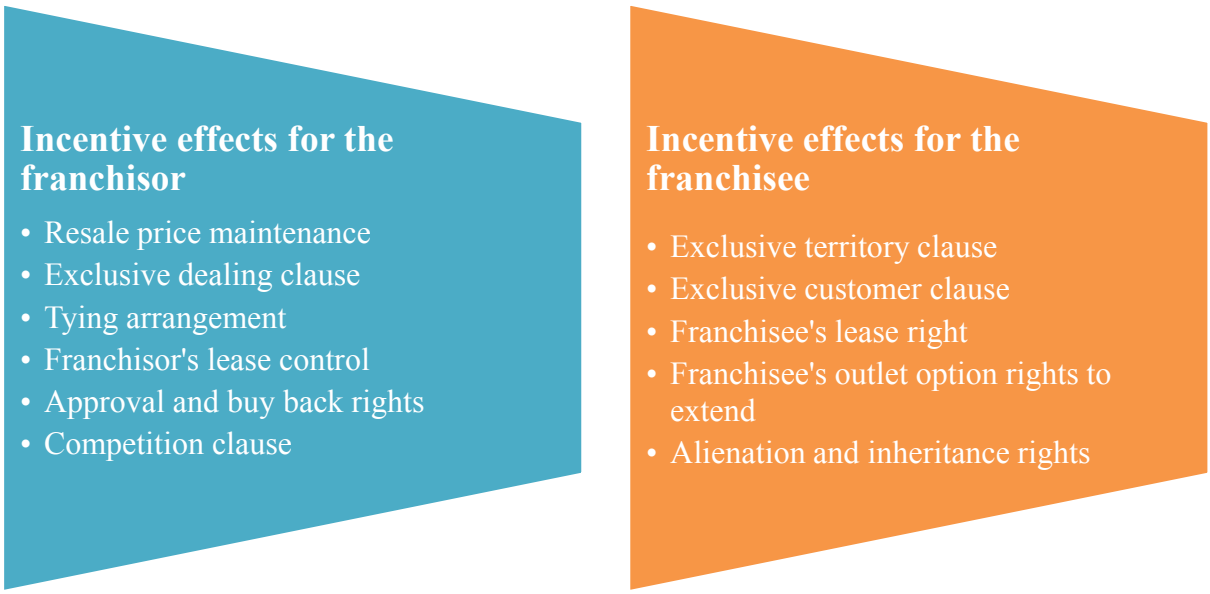

Figure 10: Incentive effects of ownership surrogates (Windsperger 2002)

4.4.1 Resale price maintenance

By the use of resale price maintenance, franchisees have to adhere to the retail price that is predetermined by the franchisor. In pursuance of Mathewson & Winter (1998, p.58; 1983, p.342), it can be differentiated between a final retail price, a price floor indicating a minimum retail price, or a price ceiling as a maximum retail price. Most contracts analysed for this thesis include a price floor resale price maintenance clause.

Bowman Jr. (1955, p.831) explains this stipulation that "effective opposition to resale price maintenance has come from retail dealers whose sales policies are predicated upon high turnover, bargain prices, and limited service facilities. Resale price maintenance prevents this kind of merchandising of price-maintained products." In other words, franchisors want to prevent franchisees from concentrating on rather low prices while neglecting additional

services, which may result in deterioration of the brand image or the quality of the products and services. To be more specific, a free rider problem may arise as franchisees may profit by marketing and sales efforts of another franchisee. Due to the resultant higher costs and prices of this franchisee, customers may prefer obtaining the necessary service features from this franchisee but buying from franchisees that do not invest in promotion and local services, and thus are able to offer lower prices (Windsperger 1996, p.139; Mathewson & Winter 1986, p.213 ff.; Goldberg 1982, p.461 ff.; Telser 1960, p.89 ff.). This is of paramount importance for franchise systems; since their major advantage is the standardised and uniform image where all franchisees base themselves on one common brand image and one common concept, it is crucial to offer products and services to a uniform customer perception. Therefore, more or less explicit resale price maintenance clauses are mostly agreed by contract in franchise relationships in order to prohibit free riding among franchisees which in turn increases the franchisor's willingness to make intangible investments in marketing (Gorovaia & Windsperger 2013, p.186; Windsperger 2002, p.133 f.; Marvel & McCafferty 1984, p.346 ff.).

4.4.2 Exclusive dealing clause

The exclusive dealing clause corresponds to the situation when franchisees assume an obligation to solely carry the franchisor's brand and products in the line of goods. With this contractual clause, the franchisor wants to ascertain that he derives advantage from the investments made to promote and foster his brand. In other words, the franchisor's incentive to invest in the brand and the system will be minimised if there is neither an exclusive dealing clause nor fees or royalties paid from the franchisee (Windsperger 1996, p.138). In general terms, an exclusive dealing clause is implemented to deter franchisees from appropriating gains resulting from intangible investments undertaken by the franchisor. Hence, exclusive dealing clauses are used to enjoin franchisees from selling products of the competition and/or from opening new outlets. This results in the representation of a property right to the marketing investment of the franchisor (Windsperger 2002, p.133; Windsperger 1996, p.138; Goldberg 1984, p.745; Marvel 1982, p.7).

But why should franchisees accept this clause in their franchise contracts? On the one hand, it is said that franchisees benefit from the franchisor's investments in marketing and advertising because a higher return is yielded. On the other hand, in many cases the exclusive dealing

clause is implemented jointly with resale price maintenance and exclusive territory clause that are used as a compensation for franchisees, e.g. franchisees abandon the right to sell competitive products due to the fact that the stipulated exclusive territory clause eliminates the competition among franchisees from the same franchise system (Taheri 2002, p.65 f.).

4.4.3 Tying arrangement

Tying arrangements lead to deliberate payment flows between the franchisor and the franchisee. According to Ferguson (1965, p.552), "in a tying agreement, the seller agrees to sell one product to a buyer only if the buyer also agrees to purchase another product from the seller.". In a franchise relationship, a tying arrangement is a common clause that binds franchisees to buy all or at least certain products directly from the franchisor or from a contractor stipulated by the franchisor (Klein & Saft 1985, p.345). Therefore, a tying arrangement is of particular importance when the brand name is crucial for the residual surplus creation and when quality control is expensive or sheer impossible. Hence, it is used in order to perpetuate the value of the brand name and quality standards (Windsperger 2002, p.133; Windsperger 1996, p.138; Frasco 1991, p.44 f.; McCarthy 1970, p.1110 f.).

Moreover, when having a tying arrangement expressed in the franchise contracts, franchisees are prevented from taking advantage of purchasing cheaper products at the expense of quality. So as to ensure quality among all franchisees, "franchisors can use tie-in sales to police franchise quality at the lowest cost" (Wollenberg 1987, p.754). Furthermore, due to centralised purchasing of products from a stipulated supplier, more favourable conditions can be achieved through economies of scale. However, franchisors may short-change franchisees by creating a monopoly which binds franchisees to buy above market price resulting in an advantage for the franchisor. Hence, clauses that promote monopoly positions are illegal (Klein & Saft 1985, p.353 ff.). In order to counteract possible quality free-riding by franchisees and to avoid a monopoly situation, Klein & Saft (1985, p.353) propose to have not only one specified supplier but "a group of authorized suppliers".

In summary, besides being an efficient instrument for quality assurance of the whole franchise system, a tying arrangement represents an incentive effect for the franchisor to invest in intangible assets which assures minimum quality demand throughout all his franchised outlets (Windsperger 2003, p.297; Windsperger 1996, p.138; Klein & Saft 1985, p.349).

4.4.4 Franchisor's lease control

The lease control clause binds franchisees by contract to cede the business premises to the franchisor upon termination of the contract (Hershman & Caffey 2008, p.67 ff.; Windsperger 2002, p.134).

In general, a lease control clause entails continuous quality control and puts franchisees in a hostage situation. In the case of a franchisor's lease control, it provides a spur for the franchisor to undertake specific investments conditional upon the provided hostage function (Windsperger 2002, p.134; Dnes 1992b, p.487 ff.; Klein 1980, p.356 ff.). Moreover, specific investments placed by franchisees function as hostages to bar them from possible free-riding (Bercovitz 1999, p.36 ff.). This is due to the fact that franchisees would be negatively impacted at the termination of the franchise contract as they would not benefit from the undertaken specific investments. In case the contributions made by the franchisee are useful and valuable to the franchisor, a high risk of asset seizure may lead to an increase in hold-up risk for the franchisee (Windsperger 2003, p.297 f.; Dnes 1993, p.373 f.). In addition, a lease control clause leads to the situation that a franchisee will be unwilling to undertake specific local investments. Nevertheless, this is not applicable when a profit may be expected (Windsperger 2003, p.297 f.; Windsperger 2002, p.134; Adams et al. 1997, p.260).

If lease control is stipulated by contract for the franchisor, the franchisee has to be compensated with incentivising ownership surrogates in order to encourage him to undertake specific investments (Windsperger 2003, p.297 f.; Windsperger 2002, p.134).

4.4.5 Approval and buy back rights

Approval and buy back rights ascertain that in case of a termination of the franchise relationship the franchisor has the privilege to acquire the franchised business outlet prior to any other party either by himself or by an appointed third-party (Tietz 1987, p.523). In the event of a refusal, the franchisee needs to find a suitable successor for the establishment within a reasonable period, who the franchisor has to approve. If, however, the franchisee cannot find a purchaser, the franchisor has the right to present one. In any case, so-called transfer costs are incurred, which are higher if the franchisor introduces a suitable successor due to the accrued search costs (Dnes 1993, p.380).

Fundamentally, approval and buy back rights protect the franchisor from possible opportunistic behaviour of franchisees. Additionally, provided that the franchisor has an interest in acquiring the franchised business outlet, this contract clause offers an inducement for the franchisor to make system-specific investments and fulfil all contractual obligations as he will be able to generate payment surpluses in the future (Taheri 2002, p.68 f.; Vortmann 1996, p.18 ff.). The mere intention to acquire the franchisee's outlet takes the same effect as an ownership surrogate for the franchisor (Taheri 2002, p.68 f.). In addition, a franchisor who has the right of first refusal is granted "total control over an outlet by matching any third-party offer for it" (Windsperger 2003, p.298; Dnes 1993, p.380). For franchisees, however, approval and buy back rights constitute a weaker ownership position due to the fact that he cannot dispose of the total quasi-rents yielded by investments specific to the outlet (Windsperger 2003, p.298).

4.4.6 Competition clause

Franchisees are usually enjoined from establishing a rival business, taking a share in a rival business, being a consultant to a competing company, or selling competitive products during the entire contract period and/or after one year of the termination of the contract. However, non-competition clauses are generally illegal, if the franchise contract is closed for an indefinite time or for the duration of more than five years (WKO Gründerservice 2013). An exemption for this purpose is the business premises, in which the franchisee carries on the trade, is owned or hired by the franchisor. In this case, non-competition clauses are valid for the duration of the contract (WKO Gründerservice 2013).

In franchise relationships, non-competition clauses after the expiration of the contract are legal for the duration of one year at the franchisee's location in order to safeguard the transferred know-how of the franchise system against unauthorised trade (WKO Gründerservice 2013; European Union 1986). Furthermore, a post-contractual restraint of competition regarding a prohibition of production, acquisition, and distribution is in accordance with Article 5 (b) of the Vertical Restraints Block Exemption Regulation legal, if it affects the protection of system know-how according to Article 1 ibidem: "a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified." (FranchisePORTAL GmbH 2014a; European Commission 2010). When having stipulated a non-competition clause after the expiration of

the franchise contract, a franchisee is entitled to a reasonable compensation for the duration of the restraint of competition (FranchisePORTAL GmbH 2014a). This is required as the franchisee has to be provided an opportunity to build a new life for himself and to safeguard the future while refraining from working in the former contractual territory (Vortmann 1996, p.30 f.).

In essence, the stipulation of a competition clause is aimed at the protection of the franchise system, the know-how, and its clientele against possible free-riding of a franchisee (Liebscher & Petsche 2002, p.156). Generally, competition clauses prevent an undesirable drain of knowledge and know-how by the franchisee. Additionally, it increases the franchisor's incentives to invest in further development and in the transfer of know-how which cannot be patented (Kubitschek 2000, p.200). However, the intensity of the incentive effect of non-competition clauses depends on the importance of the specific know-how. Hence, the more important the non-patentable know-how, the less incentivising are competition clauses for the franchisor (Kubitschek 2000, p.201).

In summary, competition clauses, as explained above, are aimed to protect the franchise system, the know-how, and the clientele of the franchise from the possibility of free-riding of a franchisee (Liebscher & Petsche 2002, p.156). In principal, when there are non-competing clauses stipulated after the expiration of the contract, a franchisor is more willing to invest in the development and in the transfer of non-patentable know-how (Kubitschek 2000, p.200 f.). Furthermore, Rubin (1978, p.231) predicted that competition clauses after the expiration of the franchise contract are more likely to be contracted when the franchisor provides a significant number of training days. Hence, the following hypothesis has been derived to test it with the data set at hand:

H5: The higher the number of training days, the more likely it is to have a competition clause after termination stipulated.

4.4.7 Exclusive territory

The exclusive territory clause assures franchisees the sole distribution right in a predefined territory. The predefinition of the territory may be determined either through specific postcodes or through a region map that is enclosed in the franchise contract (Gloger 1997,

p.59 f.). In doing so, the franchisor pledges not to open another outlet and not to authorise other franchisees to open outlets in this geographical area. This represents an incentive for the franchisee to invest in intangible assets as the franchisor provides security which is in accordance with Windsperger (1996, p.138), who states that:

> "A franchisee will be unwilling to make specific intangible investments and to commit himself to pay franchise fees, if no restriction exists that prevents the franchisor from locating another franchisee next to him once the investments have been made."

In principle, the exclusive territory clause has two main angular fields. Firstly, it protects franchisees from possible opportunistic behaviour, e.g. impropriating returns, by the franchisor. This may happen especially if franchisees made major investments to establish the market. Secondly, given that competition is prevailing among franchisees, the exclusive territory clause corrects or eliminates resultant distortions (Lafontaine & Slade 2008, p.392 ff.; Mathewson & Winter 1994, p.181; Rubin 1978).

Since a possible threat from franchisees of the same system is corrected or in the best case even eliminated, exclusive territory clauses minimise so-called intrabrand free riding. Thus, franchisees compete more actively against other brands (Windsperger 1996, p.138; Steuer 1983, p.115). More generally, exclusive territory clauses lead to the formation of a property right in intangible assets and are conducive to the franchisee's earnings resulting from investments in advertising and services to promote the local market (Windsperger 1996, p.138).

4.4.8 Exclusive customer clause

Basically, an exclusive customer clause provides franchisees with the exclusive right to customers of their territory. Hence, active sales to a clientele that is assigned to other franchisees or for whom the franchisor has reserved the right to sell to are forbidden. Active sales include addressing customers in territories of other franchisees by advertising effort, mailing, telephone, or field staff. Especially, governmental, national, and regional organisations are typical examples that franchisors reserve as customers (Hershman & Caffey 2008, p.65). Furthermore, it is illegal to entice customers away from other franchisees. Nault & Dexter (1994, p.413) state that "franchisees cannot solicit each other's customers" when having an exclusive customer clause stipulated by contract. However, passive sales where

franchisees are proactively contacted by customers from other territories including via online stores must not be prohibited (FranchisePORTAL GmbH 2014a). Consequently, an exclusive customer clause represents an incentive effect for the franchisee as it guarantees that the franchisee's intangible investments only benefit his outlet and customer base.

4.4.9 Franchisee's lease right

In contrast to the franchisor's lease control, a lease right for the franchisee enables the control over the business premises also after the termination of the contract. In this case, franchisees are free to open another business at the same location.

As mentioned above, if a lease control for the franchisor is expressed in the contract, incentivising ownership surrogates have to be agreed upon in order to compensate the franchisee and to encourage him to invest in specific assets. If, however, outlet-specific investment undertaken by the franchisee is more essential regarding the residual surplus generation in comparison with the system-specific investment from the franchisor, the lease right should be assigned to the franchisee. This would result in an increase of motivation to invest in the franchise outlet (Windsperger 2003, p.297 f.; Windsperger 2002, p.134).

4.4.10 Franchisee's outlet option right to extend

Just as a franchisor, franchisees may also be provided with a right of pre-emption. This is used particularly in case when the franchisor plans an extension of the franchise system in the exclusive territory of the franchisee. Thus, the franchisor has to offer the new franchise outlet to the franchisee prior to any third-party (Tietz 1987, p.523). For franchisees, the right of first refusal in the event of an extension acts as a stimulant to fulfil all stipulated duties. Therefore, with this contract clause franchisees are provided a security in order not to suffer a loss in sales. Similarly as a franchisor is encouraged to make system-specific investments when having an approval and buy back right stipulated by contract, this clause provides an inducement for the franchisee to invest in outlet-specific assets and sales promotion (Taheri 2002, p.69 f.).

4.4.11 Alienation and inheritance rights

A stipulated alienation right allows a franchisee to sell the franchised business outlet, and thus delegates the outlet's ownership with all its rights and duties to a successor. This may also be valid when the franchisee dies.

An alienation right may be applied either after the termination of the contract or during an existing franchise relationship on personal, health, compassionate, or other grounds (Skaupy 1995, p.141). An inheritance right in a franchise contract determines that relatives or descendants of the franchisee are eligible to take over the franchised business outlet (Windsperger 2003, p.298). In most cases, however, the franchisor has the right to approve the suggested candidate for both alienation and inheritance rights (Skaupy 1995, p.141).

Nevertheless, there are two sides of the same coin when taking an alienation right into consideration. On the one hand, a franchisee is incentivised to behave in conformity with the system and invest in outlet-specific assets due to the fact that he will be compensated by the rents earned with these investments. On the other hand, however, this may have an adverse effect on the franchisor's motivation to invest. The fact that the franchisor cannot entirely appropriate the rents resulting from both system-specific investments and investments in the local market may be a disincentive (Windsperger 2003, p.298).

4.5 Decision rights

As already mentioned in *subchapter 3.1.2 Property rights theory in franchising*, a basic definition is that "decision rights refer to the transfer of authority over the use of system-specific assets and local market assets through franchise contracts" (Windsperger 2013, p.522). In principle and according to the property rights view, the intangibility of knowledge assets determine the structure of both residual decisions rights as well as ownership rights (Windsperger 2003, p.294; Hart & Moore 1990, p.1150; Barzel 1989).

But how are residual decision rights allocated? Windsperger & Yurdakul (2007, p.72 ff.) differentiate between strategic decisions on the one hand and operative decisions on the other hand. Strategic decisions are usually taken by the franchisor, whereas operational decisions, e.g. marketing, human resource and accounting decisions, are mostly divided between the two

parties to a franchise contract (Windsperger & Yurdakul 2007, p.72 ff.). Hence, decisions in a franchise relationship are rather centralised or decentralised. The centralisation or decentralisation depends on the costs of knowledge transfer. To be precise, the more expensive it is to transfer specific knowledge to the franchisor, the more likely it is to have decentralised decision-making (Windsperger & Yurdakul 2007, p.72 ff.). What this all amounts to is that decisions can either be taken by the franchisor, the franchisee or after internal communication by both of them.

Essential decision rights, which are partially taken into account within the framework of this thesis, are:

- **Marketing decisions:**
  Decisions concerning the price, the distribution, and the offered franchised product or service itself.
- **Advertising decision:**
  Decisions concerning the promotion in order to boost sales of the franchised product or service. This is mostly divided between the franchisor and the franchisee. The franchisor is in charge of national and/or regional advertising, whereas the franchisee is responsible for local advertising.
- **Production decision:**
  Decisions concerning the production of the franchised product or service. If the franchisee is in charge of producing the franchised product or service, precise guidelines are specified by the franchisor in the majority of the cases.
- **Accounting system decision:**
  In many cases, the franchisor determines a particular accounting system. However, the mere fulfilment of basic, local accounting requirements does not constitute a decision in this regard.
- **HR (recruitment and training) decision:**
  Decisions concerning the recruitment as well as the training of a franchisee's employees. Training decisions include the date and frequency of training that employees of a franchisee are obligated to attend in order to be thoroughly trained.

- **Investment and financial decision:**
  Franchise contracts may specify investments that a franchisee has to make, e.g. invest in renovation, refurbishment, etc. Financial decisions concern decisions about an adequate amount of financial resources which to employ in the franchised business outlet, the raising of funds, and so forth.
- **Procurement decision:**
  Decisions concerning the procurement pinpoint, amongst others, what, where, when, how much, and how often a franchisee has to order goods.

4.6 Other constituent parts

In addition to the previous stated ownership and decision rights, other constituent parts may be stipulated in the franchise contract. Commonly used contract clauses, which were also analysed for occurrence in the provided franchise contracts, are mentioned below:

4.6.1 Advisory boards

In order to assure active cooperation between the franchisor and all franchisees, an advisory board is stipulated in many franchise contracts. It consists of representatives of franchisees, the franchisor, and optionally also external experts. Essentially, the main function of an advisory board is to provide a consulting service for important decisions in the franchise system. In addition, an advisory board takes active part in the franchise system's further development and its implementation (Martius 2009).

4.6.2 Contract duration

According to the WKO Gründerservice (2013), franchise contracts are normally concluded for a duration of five years, which indicates the validity of the franchise relation between the franchisor and the franchisee. Generally, fixed-term contracts are solely cancellable upon good cause shown from both parties. A good cause in order to be able to terminate the contract may be gross negligence of either party, e.g. non-compliance to the behaviour in the franchise network or failure to pay the stipulated royalties by the franchisee (Chanut et al. 2013, p.3). In addition, a franchisor may offer a franchise agreement for an indefinite duration with including mutual termination options. This, however, is stipulated rarely in practice (WKO Gründerservice 2013). Instead, franchisors provide the possibility to extend the

contract for another predefined period if both parties wish to continue their cooperation (Chanut et al. 2013, p.3).

But what determines contract duration? According to Blair & Lafontaine (2005, p.259), a key determinant is the total investment. The higher the investment, the longer should be the contract in order to be compensated for the investment amount claimed. Evidence shows that short-run contracts are closed "for transactions that involve highly specific assets" (Chanut et al. 2013, p.4; Yvrande-Billon 2003, p.161). In contrast, when a hold-up risk is in all probability, long-term contracts are used (Chanut et al. 2013, p.4 f.; Crocker & Masten 1988, p.338). In order to test this relationship with the data set at hand, the following hypothesis has been developed:

H6: A higher total initial investment of the franchisee is positively related to a longer duration of the franchise contract.

In addition, the larger and the more expert a franchisor is in the franchise business, the longer contracts will be closed (Brickley et al. 2006, p.175). Furthermore, Brickley et al. (2006, p.175) show that the duration of a franchise contract is positively related to the investment a franchisee has to make. This includes not only physical investments but also human investments which is measured in the amount of training days (Chanut et al. 2013, p.5). This question is also going to be taken into consideration with the available data set, as the following hypothesis is formulated:

H7: The number of training days to be completed by the franchisee is positively related to the duration of the franchise contract.

4.6.3 Control rights

Mostly the franchisor is entitled to exercise specific control rights. For this purpose the franchisee has to allow inspection conducted by the franchisor. The aim of this inspection is to check whether the franchisee complies with regulations stipulated by contract. To do so, the franchisor visits the franchisee's premises and checks the way how the franchisee carries on business by taking into consideration the quality standards and important methods.

Furthermore, the franchisor is granted access to the franchisee's accounting system and books in order to ascertain exact sales figures and current expenses (Hesselink et al. 2006, p.255). In general, inspection can take place with advance or no notice, or via special computer programs.

4.6.4 Franchisor is the owner or tenant of the franchisee's premises

A franchise contract may include a clause which stipulates that the franchisor is the owner or the tenant of the premises where the franchisee operates the franchised business outlet.

A typical example for this contract clause is that the franchisor is the proprietor of the whole premises which is rented to the franchisee. However, fixtures and furnishings were bought and are in possession of the franchisee. In this case, the franchisor is able to control the franchisee. Hence, if the franchisor discovers a violation of the franchise contract, the franchisor is able to withdraw from the contract and dispossess the franchisee of his investment in system-specific fixtures and furnishings (Taheri 2002, p.72). In other words, the aim of this contract clause is to guarantee efficient actions of both franchise parties. Hence, the ownership of the premises should be allocated so as to encourage both contracting parties to an efficient behaviour in conformity with the franchise system (Taheri 2002, p.71).

4.6.5 Minimum turnover or minimum quantity

The franchisor may decide to introduce a contract clause regarding a minimum turnover of sales as an objective for the franchisee during a specific period. A further clause may stipulate a minimum quantity that the franchisee has to purchase from the franchisor or from a predefined third-party. In case the franchisee is unable to fulfil the requirements, the franchisor may impose a fine on the franchisee.

4.6.6 Specific investments and capital

In many cases franchisees are demanded to undertake specific investments at the beginning of the franchise relationship. The franchisor may commit the franchisee to purchase custom-built fixtures and furnishings for the franchisee's outlet. On the one hand, these specific investments are irrecoverably lost at the end of the relationship or at a notice of cancellation.

On the other hand, they avoid opportunistic behaviour, and thus ensure the efficiency of both parties to a contract (Klein & Saft 1985, p.352; Klein 1980, p.358).

Furthermore, the franchisor may demand the franchisees to provide evidence of sufficient liquid funds in the form of a bank guarantee or the like. This is done to guard against possible illiquidity of the franchisee.

4.7 Mrs. Sporty - Franchising in practice

Mrs. Sporty was first established as a pilot club in Berlin in 2004. Its successful concept was already elaborated by health and fitness experts in the previous year with the objective to establish a concept that is particularly designed and geared to the needs of women. The uniqueness of the concept is shaped by its 30 minutes circuit training and additional individual service in training and nutrition. Having managed to achieve particular success in the first year, a franchise concept was developed in corporation with Stefanie Graf, the former German tennis player, in 2005. By the end of the year 2007, Mrs. Sporty was operating 85 fitness clubs in Germany with more than 18,000 members and 175 franchise partners. In the same year, it was chosen as the "franchise-newcomer of the year" and by then it was counted among the 20 best franchise systems in Germany. In 2008, franchise partners in Austria, Italy, and Switzerland were affiliated to the system, and thereupon the Austrian economic journal "GEWINN" announced Mrs. Sporty as one of the five best franchise systems in Austria by the end of 2009. In 2012 and the following two years, it was awarded as the best franchise system in Germany. Nowadays, due to the continuous growth in the target group and the ongoing change to meet the needs of the market, more than 200,000 women take the opportunity and work out in one of 550 clubs operated by 430 franchisees in Germany, Austria, Italy, Switzerland, Slovakia, Poland, the Netherlands, and Spain (Mrs. Sporty GmbH 2015).

4.7.1 Nature of the franchise and franchise contract

Mrs. Sporty as a franchisor provides continuous support throughout the operation. Prior to the opening, the club supports franchisees with the establishment of business plans, and help them with financial issues as well as with the location decision. Franchisees as well as their employees are educated at the Mrs. Sporty Academy in terms of entrepreneurship, fitness, and nutrition in this industry. During the entire business operation, franchisees are provided with

further benefits, such as marketing and PR campaigns, business analyses on a regular basis, knowledge data bases for know-how transfer, in-house coaching, and system checks as well as audio and video conferences.

On the other hand, each franchisee has to be a certified coach prior to the opening of the club. This should guarantee the quality requirements of the concept in all clubs.

The franchise contract between Mrs. Sporty as a franchisor and its franchisees is concluded for five years with option to prolong for further five years. Mrs. Sporty grants each franchisee exclusive territory in order to ensure the efficiency of every club (Mrs. Sporty GmbH 2015).

The following *Table 5* shows the main basic contractual terms in a franchise relationship of Mrs. Sporty.

Beauty health and personal hygiene	
Franchise	Mrs. Sporty
Type	Fitness centre
Franchisor	Mrs. Sporty GmbH, 10587 Berlin (GER)
Initial investment	min. 49,000 € incl. entry fee
Entry fee	17,900 €
Monthly royalty	5.7 % of total turnover, min. 345 €
Monthly advertising fee	2.3 % of total turnover, min. 145 €, plus 45 € online support fee
Contract duration	5 years

Table 5: Basic contractual terms in a franchise relationship of Mrs. Sporty

5 Empirical analysis

The aim of this chapter is to describe the research design and the empirical analysis of this master thesis. First, information about the data set is provided, followed by a summary of hypotheses which have been formulated throughout this thesis. Third, the operationalization of the variables, which are going to be used in the analysis, is provided, and finally results and findings of the hypotheses are presented.

5.1 Research design and data collection

The data set used for this empirical analysis was made available by Ao. Univ.-Prof. Dr. Josef Windsperger from the University of Vienna and was primarily provided by the antitrust court in Vienna in the year of 2006. Initially, it consisted of 240 franchise contracts that are designed for the Austrian market as of 1990, and differ in terms of branch and type.

First of all and in order to be able to examine the contracts and their clauses more closely, all contracts were scanned and due to the great quantity divided among five students. Subsequently, the contracts were checked for correctness and completeness according to predetermined guidelines. After having done so, 208 franchise contracts were taken into account in the empirical analysis of the present master thesis.

As a second step of the analysis and in order to be able to conduct a statistical analysis, 47 variables have been filtered out, and subsequently examined regarding the aforementioned variables. These are, amongst others, the company name, the residual income rights, ownership surrogates, decision rights, and other constituent parts as explained in the previous chapters. A more thorough overview of all variables is provided in the *Appendix C: Supplementary data*.

5.2 Descriptive statistics

First of all, in this subchapter descriptive data will be provided in order to gain an insight into the data set.

Below the left side of *Figure 11* shows the distribution of the franchise types in the data set at hand. 50 % of the 208 franchise contracts have their main focus on service franchising, e.g. gastronomy, hotel, business, and so forth. 44.2 % can be assigned to distribution franchising and only 5.8 % of the contracts constitute product franchising businesses. This mirrors almost the same situation as statistics have shown it in the year of 2012, as can be seen in *subchapter 2.4 Franchisor and franchisee*. Back then service franchising represented the first place with 51 % of the Austrian franchising market, 43 % of distribution franchising, and lastly 6 % of the franchising companies work in the production field (Hajek & Siegl 2012, p.5). Due to the fact that the data set comprehends contracts from the 1990s onwards, it also makes sense to compare the data with former statistics. Hence, the correspondence constitutes a high explanatory power.

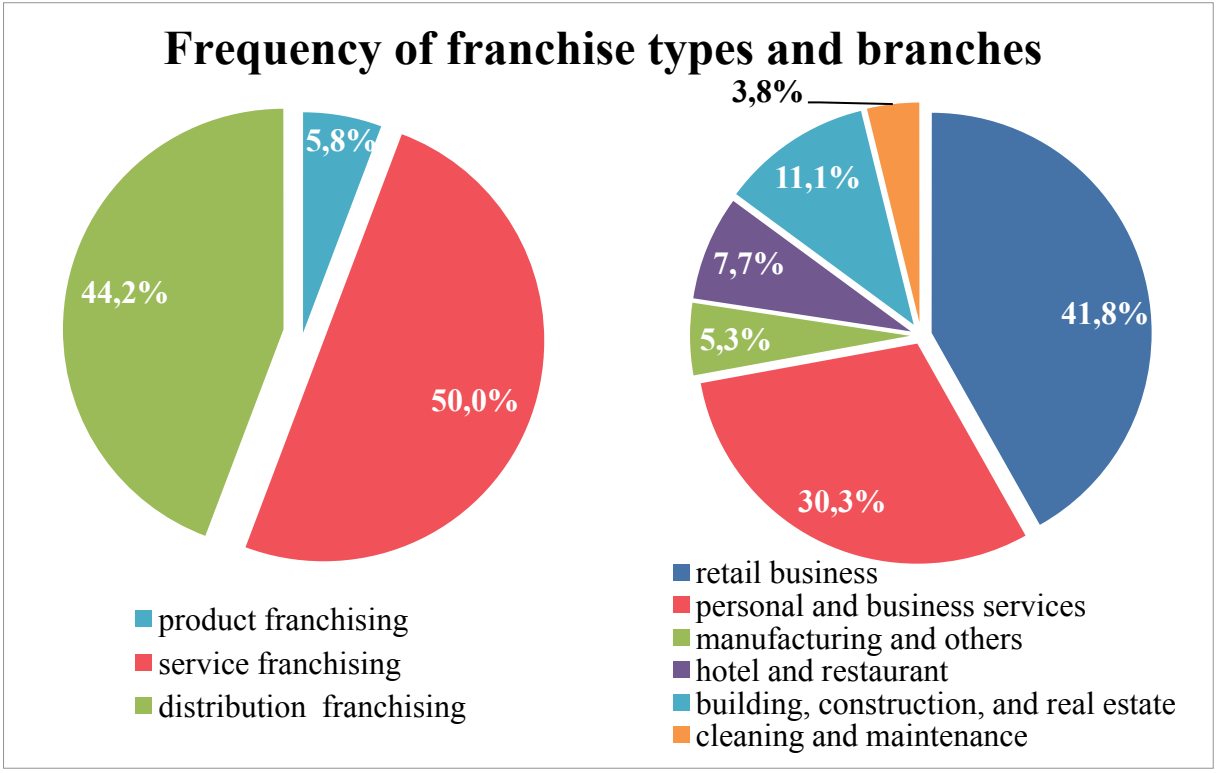

Figure 11: Frequency of franchise types and branches

The left side of *Figure 11* presents the distribution of branches in the data set. The classification of branches was carried out on the basis of the following six branches, namely retail business, personal and business services, manufacturing and other, hotel and restaurant, building, construction, and real estate as well as cleaning and maintenance. The majority of the franchise contracts at hand represent companies in the retail business (41.8%), followed

by personal and business services with 30.3 %. This shows that 150 from a total of 208 franchise contracts can be assigned to the retail, e.g. footwear, clothing, grocery, etc., and personal and business services, e.g. language education, computer coaching, personal training, etc. The building, construction, and real estate branch is a long way behind with 11.1 % on the third place, followed by the hotel and restaurant branch (7.7 %), manufacturing and others (5.3 %), and lastly the cleaning and maintenance branch with a mere 3.8 %.

Moreover, in order to understand the data set and the following analysis, a short overview of the required payments, both non-recurring and recurring fees, is provided below. First of all, the entry fee is dealt with. In 100 contracts of the present data set an initial fee is explicitly indicated, which varies from 254 € to 145,345 € with a standard deviation of 19,720 €. As can be seen in the following *Figure 12*, in 78 % of the analysed franchise contracts the entry fee ranges up to 20,000 €, only 15 % range between 20,001 and 30,000 €, and lastly in seven out of 100 cases it outvalues 30,001 €. In addition, in three cases out of the total 208 franchise contracts, the initial fee is specified in percentage, to be precisely in 1 %, 3 %, and 20 %. Furthermore, in 23.1 % of the franchise contracts an entry fee is stipulated by contract, however, a specific amount is not stated.

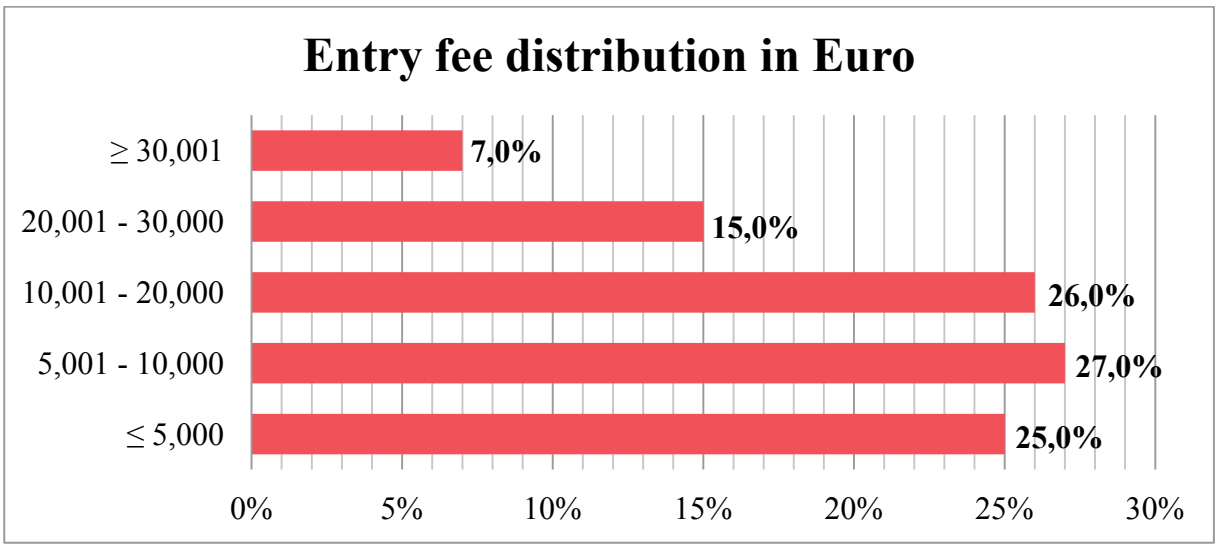

Figure 12: Entry fee distribution

As a recurring fee in a franchise relationship, royalty payments are used. The franchisor indentures the franchisee to pay a precise amount of royalty in 63 % (131 contracts); this is stipulated either as a fixed amount (33 contracts) or as a percentage of sales (112 contracts). For the sake of completeness, it has to be mentioned that in 32 franchise contracts (15.4 %) a

royalty is provided in the contract, however, no precise amount has been defined or it has not been negotiated by then. Overall, in 78.4 % of the 208 contracts, a royalty fee is stipulated in the contracts. *Figure 13* shows the distribution of the royalty in Euro and as a percentage. The left side of the figure presents the agreed royalty in Euro, which ranges between a minimum of 85.20 € and a maximum of 72,673 €, and provides a standard deviation of 13,093.20 €. However, the before mentioned maximum is an outlier, which can be seen in the figure, as in 78.8 % of 33 contracts the royalty fee only ranges up to 6,000 €. In addition, the right side of the figure represents the royalty payment in percentage. In 20 contracts (17.9 %) out of 112 contracts the royalty is less or equal to two percent of the sales, followed by 25 contracts (22.3 %) between 2.1 % and 4 %. The majority of the royalty payments in percentage lie between 4.1 % and 6 %, with 18 contracts indicating a royalty fee of 5 %. 18 contracts (16.1 %) show a recurring fee between 6.1 % and 8 % as well as seven contracts (6.3 %) between 8.1 % and 10 %. Lastly, 9.8 % (11 contracts) indicate royalties of more than 10.1 % of the sales. Here, it is particularly worth mentioning that there is one company that operates in personal and business services and indicates a 30 %-royalty, and one product franchising company that works in the retail branch even indicates a 50 %-royalty. Altogether the royalty reported as a percentage fee has a standard deviation of 6.03 %. Moreover, in 14 cases the franchisor stipulates both a definite sum and a percentage fee as a royalty payment. A specific amount of royalty is of particular importance when the franchisor does not want to rely on the sales of the franchisee. Hence, he will receive the revenue from royalties irrespectively of the sales generated by the franchisee.

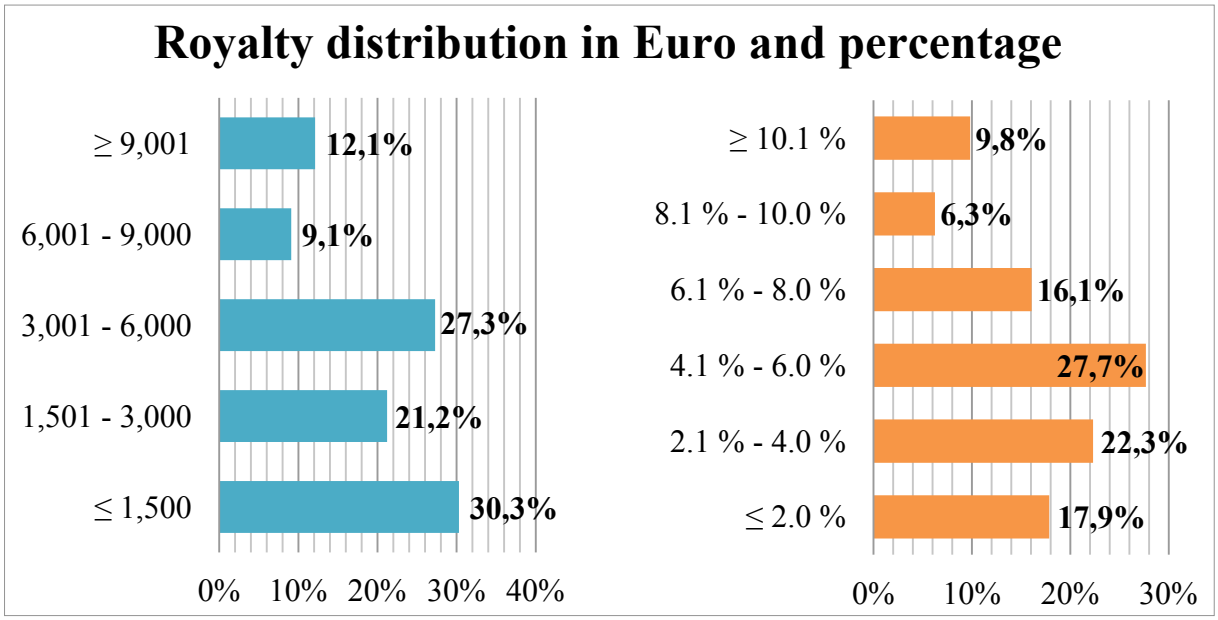

Figure 13: Royalty distribution in Euro and percentage

Another recurring fee, which is stipulated in most franchise contracts, is the advertising fee that has to be paid to the franchisor and is used for promotional and advertising purposes on a national basis. In the data set at hand, in 46.2 % of the contracts an advertising fee is explicitly stipulated, either as a specific amount or as a percentage fee. Additionally, an advertising fee is determined in 25 contracts (12 %), nonetheless an amount has not been defined in the contract. To be specific, a precise amount is only stipulated in 16 contracts ranging between one Euro and 6,000 € with a standard deviation of 1,830.02 €. Moreover, *Figure 14* presents the percentage distribution of the contractually agreed advertising fee in 83 contracts. 19.3 % of the franchisees need to pay an advertising fee that is less or equal to 1.5 %. The majority have to pay between 1.6 % and 3 %, with ten contracts stipulating 2 % and 17 contracts require the franchisee to pay 3 %. 7.2 % of the contracts range between an advertising fee of 3.1 % and 4.5 %, followed by 27.7 % that stipulate a fee between 4.6 % and 6 %. Only 9.6 % of 83 contracts determine a fee greater or equal to 6.1 %. In sum, the advertising fee in percentage provides a standard deviation of 2.73 %. What is worth knowing is that there is one contract that indicates an advertising fee of 11.5 % and one even of 17.5 %. Both franchising companies operate in the service field; hence, advertising activities may be of utmost importance in order to increase the brand awareness.

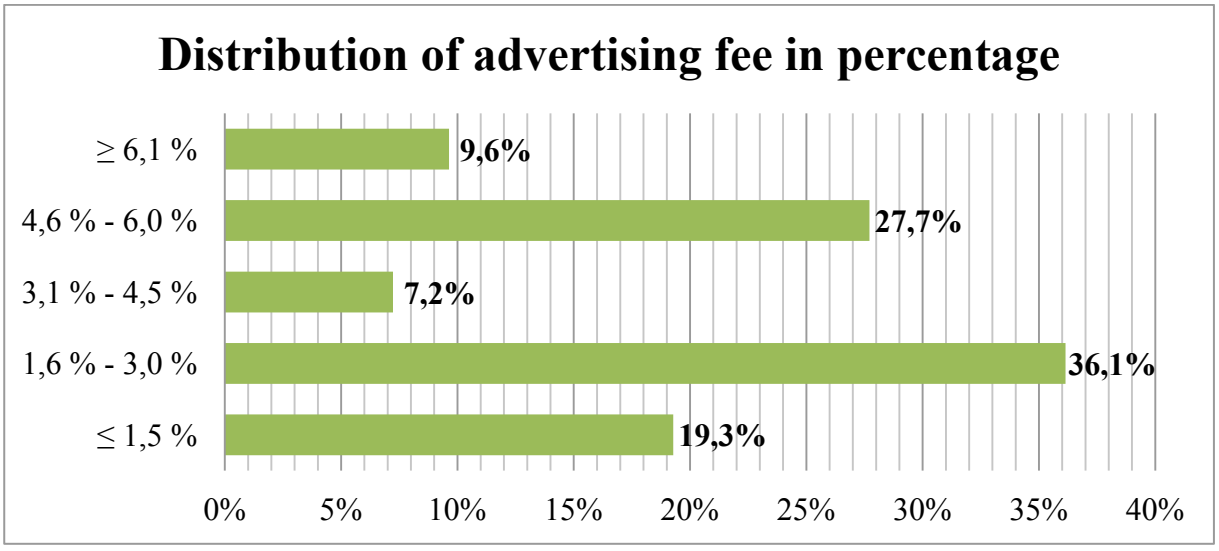

Figure 14: Distribution of advertising fee

Lastly, also non-recurring payments as investments have been determined. Basically, it can be differentiated between an investment that can be used after the termination of the contract and an investment that is system-specific, i.e. they cannot be used for any other purpose than the actual franchised business and is herein after referred to as special investment. 115 franchise

contracts from a total of 208 contracts require an investment. Only two franchisors have explicitly excluded the need for an investment, which is used for reusable fixtures and furnishings, while the remaining 43.8 % have not mentioned this clause in their franchise contract. In order to be allowed to open a franchised business, the franchisor may require the franchisee to invest in special investment. In the data set at hand 45.2 % indicated that system-specific investments have to be made, with 8.7 % having specified a precise amount between 683 € and 76,306 € with a standard deviation of 28,367.02 €. For the sake of completeness, it has to be mentioned that in 5.8 % of the contracts a clause for special investments is explicitly negated and in 49.0 % a special investment clause has not been included.

5.3 Hypotheses overview

This subchapter provides an overview of all hypotheses that have been derived throughout the theoretical part of this thesis.

H1a: A high amount of intangible knowledge assets leads to a significantly greater amount of residual decision rights for the franchisor than a low amount of intangible knowledge assets.

H1b: A high amount of intangible knowledge assets leads to a significantly greater amount of incentivising ownership surrogates for the franchisor than a low amount of intangible knowledge assets.

H2a: The amount of transaction-specific investments is positively related to the amount of residual decision rights assigned to the franchisee.

H2b: The amount of transaction-specific investments is positively related to the amount of residual decision rights assigned to the franchisor.

Figure 15: Graphical representation - Hypothesis 2

H3: A high initial fee paid to the franchisor is negatively related to a high incentive for control of the franchisor.

Figure 16: Graphical representation - Hypothesis 3

H4: The amount of royalty to be paid by the franchisee differs when more incentivising ownership surrogates are assigned to the franchisor or the franchisee, respectively.

H5: The higher the number of training days, the more likely it is to have a competition clause after termination stipulated.

Figure 17: Graphical representation - Hypothesis 5

H6: A higher total initial investment of the franchisee is positively related to a longer duration of the franchise contract.

Figure 18: Graphical representation - Hypothesis 6

H7: The number of training days to be completed by the franchisee is positively related to the duration of the franchise contract.

Figure 19: Graphical representation - Hypothesis 7

5.4 Operationalization of variables

This subchapter aims to define the variables, i.e. dependent and independent variables, for the following data analysis. The aim of the operationalization is to recode or compute variables in

order to be able to improve measurement levels, if procurable, and conduct an accurate analysis. As a cut-off value for the significance, .05 is used throughout this thesis.

5.4.1 Intangible knowledge assets

The variable "Intangible_knowledge_assets" is a nominal scale summarized by the variables "Advertising_fee_amount", "Advertising_fee_percentage", and "Training_days_annual". Due to the fact that the three above mentioned variables have all different values, namely Euro, percentage and days, the mean of "Advertising_fee_amount" (1,714.16 €), "Advertising_fee_percentage" (3 %), and "Training_days_annual" (5.99 days) indicates the threshold between low and high level of intangible knowledge assets. If either of the aforementioned variables is above the threshold value, it implicates a high level of intangible knowledge assets. This results in 132 valid cases from a total of 208, and a violation of normality by using the KS-Test, $D(132) = .395$, $p < .05$.

5.4.2 Residual decision rights

The data collection for residual decision rights was conducted on a nominal basis. Hence, the decision right could be assigned to the franchisor ("1"), the franchisee ("2"), or after internal communication to both ("3") of them. In the event that the mention of the examined decision right is absent in the franchise contract, it was noted with "9". This is done in order to avoid missing values. In order to be able to test the aforementioned hypotheses and to capture the needed dimensions, new variables have been computed named "Decision_rights_franchisor", "Decision_rights_franchisee", and "Decision_rights_both". These variables combine the following decision rights: marketing decisions, advertising decisions, production decisions, accounting system decisions, recruiting decisions, employees training decisions, and investment decisions. Considering each single, resulting variable "Decision_rights_franchisor" has a mean of 2.78, which indicates that 2.78 decision rights are assigned to the franchisor, and a non-normal distribution ($D(208) = .160$, $p < .05$), "Decision_rights_franchisee" depicts a mean of 1.26 decision rights for the franchisee and differs from normal distribution ($D(208) = .260$, $p < .05$), and finally "Decision_rights_both" produce a mean of 1.12 decision rights and a violation of normality ($D(208) = .234$, $p < .05$).

5.4.3 Incentivising ownership surrogates

In order to compute variables which encompass all incentivising ownership surrogates for both the franchisor and the franchisee, new variables were computed according to *Figure 10* explained in *subchapter 4.4 Ownership rights: Ownership surrogates*. Hence, the variable "Incentive_franchisor" is a summary of the variables resale price maintenance, tying arrangement, exclusive dealing, franchisor's lease control, approval and buy back rights, competition clause after termination, and competition clause during contract, all indicating either "yes" or ""after approval". The same procedure was applied to compute "Incentive_franchisee" using exclusive territory, exclusive customer clause, franchisee's lease right after, option right extension, extension right franchisee, alienation right, and inheritance right with indications "yes" or "after approval". Both the franchisor and the franchisee would be able to have a maximum of seven ownership surrogates if all would be assigned to them. Moreover, a normality test using the KS-Test was conducted and resulted for both new variables in a non-normal distribution, $D^{Incentive\_franchisor}(208) = .166$, $p < .05$ and $D^{Incentive\_franchisee}(208) = .149$, $p < .05$.

As a next step and with the aim to compute a single variable with the groups "franchisor" and "franchisee", "Incentive_franchisee" has been subtracted from "Incentive_franchisor". On the one hand, negative values ((-5) to (-1)) have been allocated to the franchisee ("3"), as it indicates that more ownership surrogates have been assigned to the franchisee than to the franchisor. On the other hand, positive values (1 to 6) have been allocated to the franchisor ("1") as more ownership surrogates have been assigned to the franchisor. All 0 values indicate that there is an equal distribution of ownership surrogates between a franchisor and a franchisee, thus they have been excluded. This results in 178 valid cases with a mean of 1.4, which specifies that altogether more ownership surrogates are assigned to the franchisor than to the franchisee, and a non-normal distribution ($D(178) = .490$, $p < .05$).

5.4.4 Transaction-specific investment

The variable "Transaction_specific_investment" would usually be computed by a summation of "Investment_amount" and "Special_investment_amount". Due to the fact that no explicit data for "Investment_amount" was provided, the new variable "Transaction_specific_investment" is a result of recoding the variable

"Special_investment_amount". The recoded variable exhibits a mean of 23,598.69 € and differs from normal distribution (D (16) = .280, p < .05).

5.4.5 Initial fee

In order to be able to test hypothesis 3, some pre-processing of the data was necessary. To determine a high initial fee, the frequency analysis conducted in *subchapter 5.2 Descriptive Statistics* was used. Based on this, an ordinal scale with five ranks has been formulated. This was necessary to test the correlation between the two ordinal scaled variables "Initial_fee" and "Control_incentives". Furthermore, after having excluded all missing variables a non-normal distribution (D (100) = .185, p < .05) was observed.

5.4.6 Incentive for control

For the control incentive variable, as can be seen in *Figure 20* the variable "Control_rights" was used and recoded into an ordinal scale "Control_incentives", with unheralded control being the highest incentive, IT-connected control being a moderate to high incentive, heralded control being a moderate to weak incentive, and lastly no control as the least incentive. In addition, a normality test using the KS-Test was conducted and resulted in a violation of normality, D (208) = .292, p < .05.

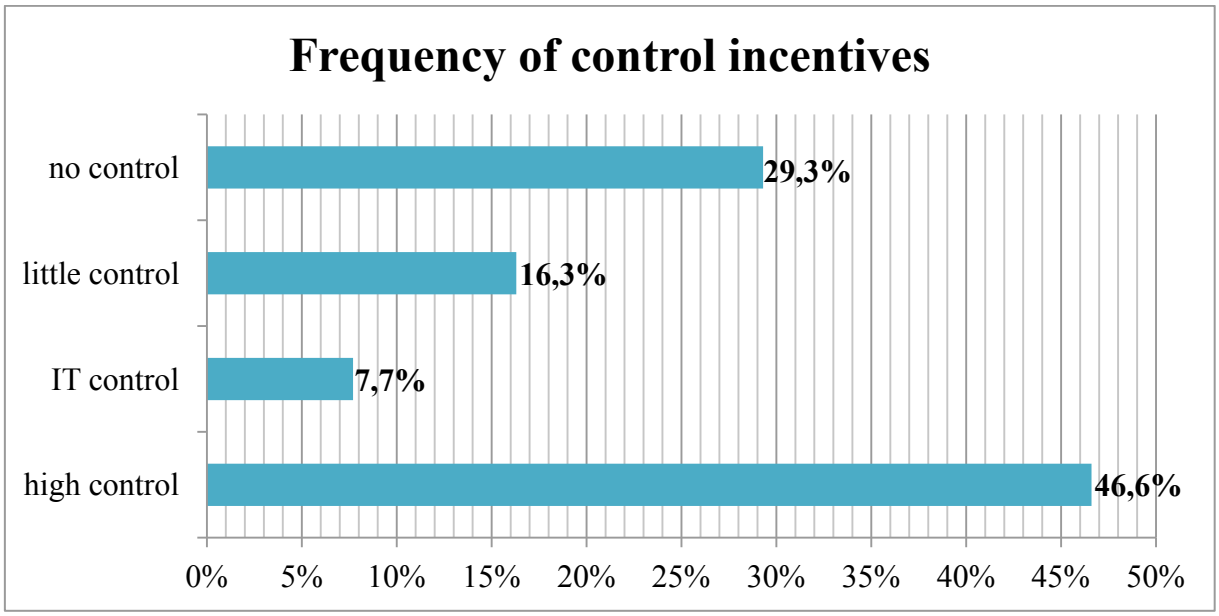

Figure 20: Frequency of control incentives

5.4.7 Royalty

The royalty paid by the franchisee is either specified in a fixed amount ("Royalty_amount") or a percentage fee ("Royalty_percentage"). In addition to what is stated in *subchapter 5.2 Descriptive Statistics*, the mean of the royalty amount is 6,276.16 € and 6.23 % for the royalty percentage. For both variables a KS-Test to test normality was conducted, which results in a non-normal distribution $D^{Royalty\_amount}$ (33) = .323, $p < .05$ and $D^{Royalty\_percentage}$ (112) = .224, $p < .05$.

5.4.8 Training days

The distribution of the variable "Training_days_annual" ranges between a minimum of one day and a maximum of 16 days per year. Due to the fact that 16 days annual training only occurs once, it has been classified as an outlier, and consequently has been removed. This results in a frequency range between one and nine days, with a mean of 5.99 days and a non-normal distribution (D (78) = .351, $p < .05$).

5.4.9 Competition clause after termination

The variable "Competition_clause_after_termination" indicates 98 contracts with an affirmation of a competition clause after the termination, five contracts with an explicit negation, and 105 missing values. After having excluding all missing values, a KS-Test was executed and resulted in a violation of normality, D (103) = .540, $p < .05$.

5.4.10 Total initial investment

The new variable "Total_initial_investment" has been computed by summarizing the two variables "Entry_fee_amount" and "Special_investment_amount". The new, resulting variable has a mean of 17,236.66 € and exhibits a non-normal distribution (D (108) = .236, $p < .05$).

5.4.11 Contract duration

Contract duration was first defined in a fixed-term or permanent contract. As can be seen in *Figure 21*, it results in 62 % fixed-term contracts, 29.8 % permanent contracts, and in 8.2 % of the cases the duration of the franchise contract was not defined. In order to look at the fixed-term contracts in its entirely, *Figure 21* also shows an exact distribution of contract

duration with 42 cases having a five years contract and 37 cases indicating a ten years contract. This mirrors the statement of the WKO Gründerservice (2013) in *subchapter 4.6.2 Contract duration* that most contracts exhibit a duration of five years. The 128 contracts with fixed-term duration exhibit a range between one and 30 years and a mean of 7.91 years. In addition and in order to test whether a normal distribution is applicable, a KS-Test was conducted, resulting in a violation of normality with D (128) = .219, p < .05.

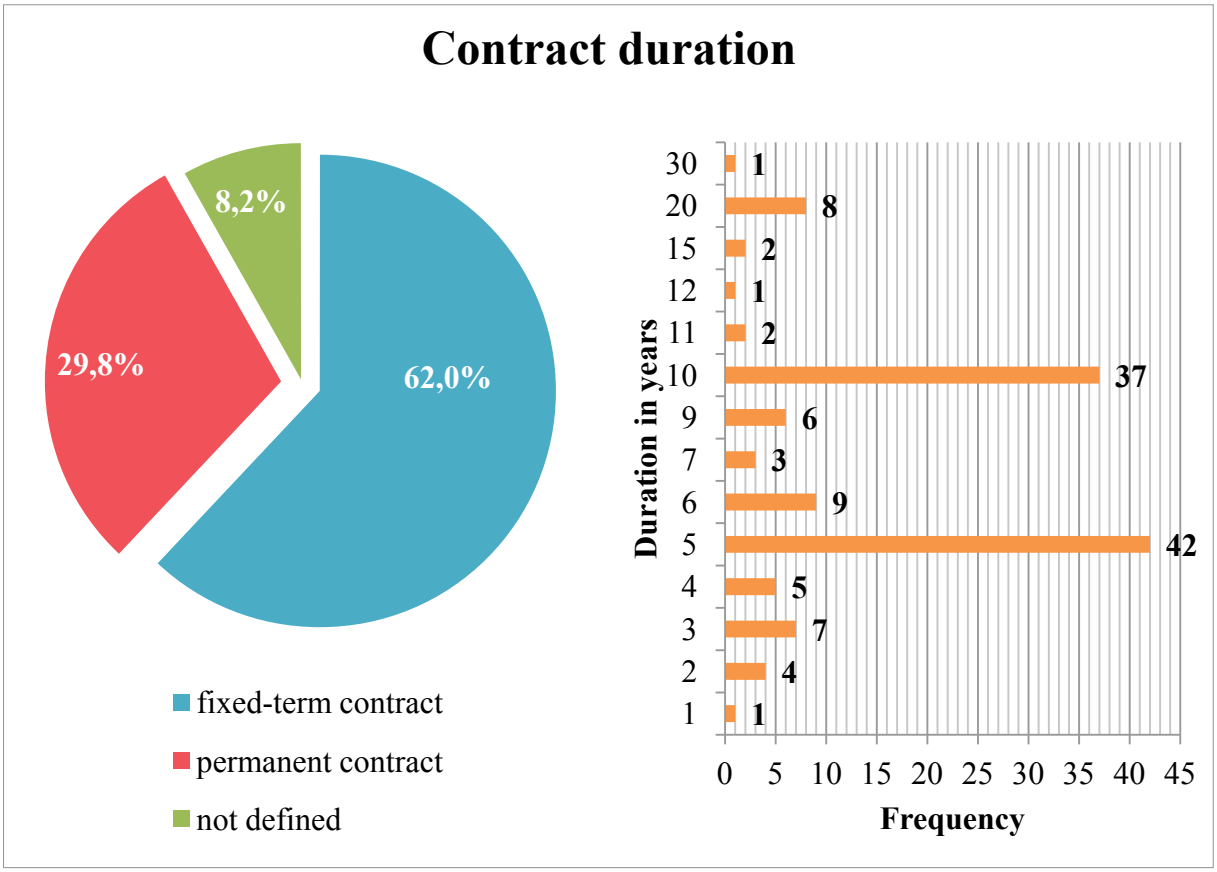

Figure 21: Contract duration

5.5 Results and findings

In this subchapter, the hypotheses are going to be tested by using the prior operationalised variables with adequate statistical methods. All statistical analyses have been conducted using IBM SPSS Statistics 22. As mentioned above, a significance cut-off value of .05 is applied. Moreover, findings of the performed empirical analysis will be provided and assessed to the extent deemed possible. The original output of every single analysis can be found in *Appendix C: Supplementary data*.

5.5.1 Hypothesis 1

H1a: A high amount of intangible knowledge assets leads to a significantly greater amount of residual decision rights for the franchisor than a low amount of intangible knowledge assets.

As explained in the previous *subchapter 5.4.1 Intangible knowledge assets* the variable "Intangible_knowledge_assets" is a combination of advertising fees and the number of training days. Due to the fact that all variables that are included in "Intangible_knowledge_assets" are differently scaled, a nominal scale was produced indicating whether there is a high or low amount of intangible knowledge assets. On the basis of hypothesis 1a, a high amount of intangible knowledge assets should lead to a greater amount of residual decision rights for the franchisor reflecting that a higher amount of advertising fees and/or a higher number of training days lead to the right that the franchisor has greater power over the decisions to be taken during business operations. Based on this and since both variables are not normally distributed, the non-parametric counterpart of an independent t-Test, namely the Mann-Whitney U Test, had to be used. Hence, *Table 6* shows the Mann-Whitney U Test which results in a non-significant difference between the two groups, $U (80, 52) = 2{,}074$, $p > .05$. This indicates that the amount of residual decision rights allocated to the franchisor is not significantly greater with the amount of intangible knowledge assets. In other words, both groups report a comparable amount of residual decision rights assigned to the franchisor. Thus, hypothesis 1a that a greater amount of intangible knowledge assets leads to more decision rights for the franchisee is not supported.

	Intangible knowledge assets	Mean Ranks	Mann-Whitney U	Significance (one-tailed)
Decision rights franchisor	**high**	66.58	**2,074**	**.489**
	low	66.38		

Table 6: Hypothesis 1a - Mann-Whitney U Test

Hypothesis 1a was based on Windsperger & Yurdakul (2007) and Windsperger (2002) who proved in their work that "residual decision rights are allocated according to the distribution of intangible knowledge assets" (Windsperger & Yurdakul 2007, p.90). However, the hypothesis that a high amount of intangible knowledge assets leads to a significantly greater amount of residual decision rights for the franchisor than a low amount of intangible

knowledge assets is not supported with the given data in this thesis. Hence, a high amount of intangible knowledge assets does not lead to a significantly greater amount of residual decision rights for the franchisor. Therefore, the assumption that decentralisation prevails when more intangible knowledge assets are assigned to the franchisee and vice versa centralisation when more intangible knowledge assets are assigned to the franchisor is not confirmed with the data set given. One possible reason for this may be that the costs incurred when transferring the intangible knowledge assets are either too low or too high to transfer assets from one party to the other. Thus, when there is a low amount of intangible knowledge assets assigned to the franchisor costs of transferring more to him may be low, and when there is a high amount of intangible knowledge assets assigned to the franchisor costs may be too high to transfer some to the franchisee. As a result, the amount of decision rights allocated to the franchisor is not significantly greater with more intangible knowledge assets.

H1b: A high amount of intangible knowledge assets leads to a significantly greater amount of incentivising ownership surrogates for the franchisor than a low amount of intangible knowledge assets.

In order to find out whether a high amount of intangible knowledge assets leads to a greater amount of incentivising ownership surrogates for the franchisor, the same non-parametric t-Test as in hypothesis 1a was applied. Here, the Mann-Whitney U Test as provided in *Table 7* shows a significant result, referring to a difference of incentivising ownership surrogates for the franchisor when there is a high or a low amount of intangible knowledge assets. However, the value mean rank reports that a low amount of intangible knowledge assets have a statistically significantly higher amount of incentivising ownership surrogates assigned to the franchisor than a high amount of intangible knowledge assets, $U\,(80, 52) = 1{,}703$, $p < .05$. Hence, despite the fact that the test shows a statistically significant result, hypothesis 1b is not supported since ownership surrogates assigned to the franchisor with a low amount of intangible knowledge assets are statistically significantly greater than with a high amount of intangible knowledge assets, as can be seen on the “mean ranks”.

	Intangible knowledge assets	Mean Ranks	Mann-Whitney U	Significance (one-tailed)
Ownership surrogates franchisor	**high**	61.79	**1,703**	**.036**
	low	73.75		

Table 7: Hypothesis 1b - Mann-Whitney U Test

Moreover, hypothesis 1b, which tests whether a high amount of intangible knowledge assets leads to a significantly greater amount of incentivising ownership surrogates for the franchisor than a low amount of intangible knowledge assets, is based on the statement that the allocation of ownership rights, i.e. residual income rights and ownership surrogates, depends on the intangible assets' distribution (Windsperger 2002, p.135). This hypothesis constitutes the compatible part of Windsperger (2003, p.292) and Windsperger & Yurdakul (2007, p.76 ff.) view that "residual decision and ownership rights are complements" (Windsperger 2003, p.292). However, the attention of the herein derived hypothesis 1b is focused only on ownership surrogates. Nevertheless, this hypothesis is also not supported in this empirical analysis. Hence, a high amount of intangible knowledge assets does not lead to a significantly greater amount of incentivising ownership surrogates for the franchisor. In essence, the data used for the empirical analysis at hand does not support the suggested structure of ownership rights, in this case ownership surrogates, according to a property rights explanation.

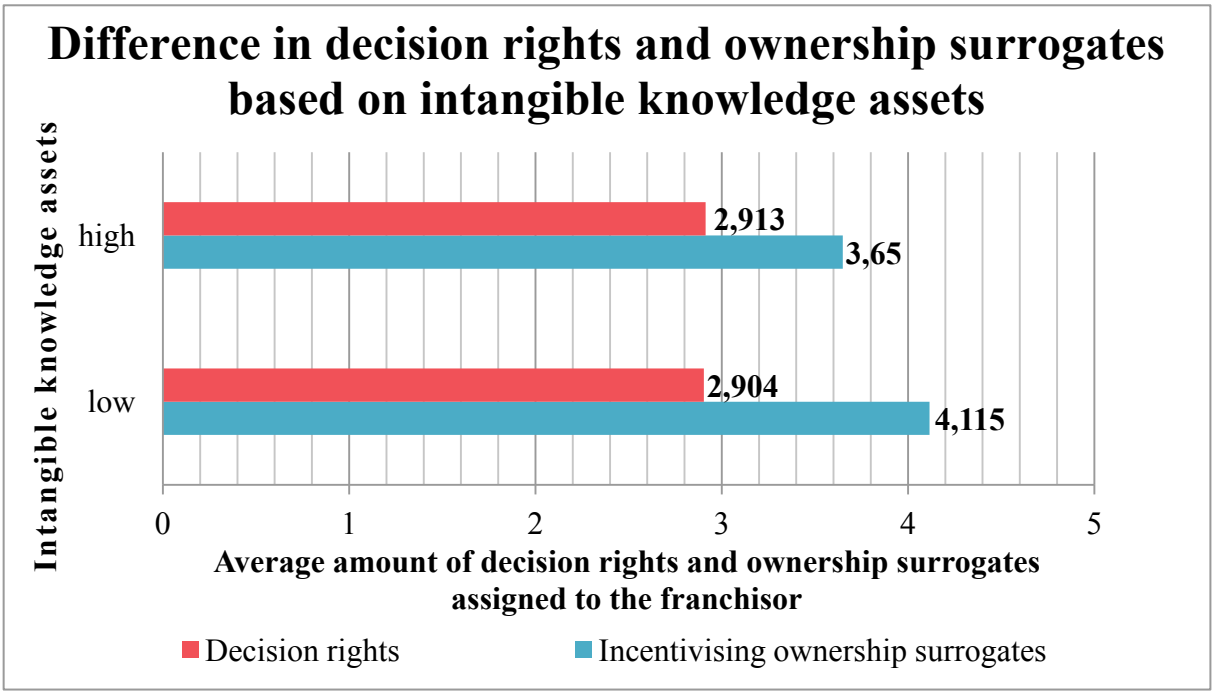

Figure 22: Hypothesis 1

In order to provide a graphical overview of hypothesis 1a and 1b, *Figure 22* shows that there is a difference in incentivising ownership surrogates, but no difference in decision rights depending on whether there is a high or a low amount of intangible knowledge assets.

5.5.2 Hypothesis 2

H2a: The amount of transaction-specific investments is positively related to the amount of residual decision rights assigned to the franchisee.

In this hypothesis the correlation of transaction-specific investments and residual decision rights for the franchisee is going to be investigated. It is hypothesised that there is a positive relationship between the two variables. Since this is a directional hypothesis based on theory and the direction of expected influence is a priori indicated, an one-tailed significance level of .05 is used to determine whether a significant relationship exists. Due to the fact that both variables are not normally distributed, a non-parametric correlations test, namely the Spearman's rho is conducted. As can be seen in *Table 8*, this test shows a non-significant result, indicating that there is no relationship between the transaction-specific investment and the assigned decision rights to the franchisee, $r_s\,(16) = .241$, $p > .05$. Hence, hypothesis 2a is not supported, meaning that the amount of transaction-specific investment has no impact on residual decision rights assigned to the franchisee.

Spearman's rho	Correlation Coefficient	Significance
Transaction-specific investment	**.241**	**.184**
Decision rights franchisee		

Table 8: Hypothesis 2a - Spearman's rho

Hypothesis 2a is based on the work of Mumdziev & Windsperger (2013, p.174) who therein have tested a similar hypothesis. The here used hypothesis relies on the transaction cost theory and states that "behavioral uncertainty increases the franchisor's opportunism risk that arises in the form of dishonest and detrimental behavior of franchisees" (Mumdziev & Windsperger 2013, p.172). To minimise the chance of opportunistic behaviour, franchisors choose to control their franchisees by centralising decision making. Mumdziev & Windsperger (2013, p.174) base the hypothesis on the fact that transaction-specific investments have a

self-enforcing impact on the franchisee. To be more precise, when franchisees invest in transaction-specific assets, the resulting quasi-rents are higher than the "hold up gains from opportunistic behavior" (Mumdziev & Windsperger 2013, p.174), and this in turn creates a so-called bonding effect. According to Klein (1996; 1995) the self-enforcing scope of contracts rests in the aforementioned bonding effect. Therefore, costs incurred by the franchisor to monitor the franchisees and the franchisor's need to control decline. In turn, residual decision rights should be relinquished in favour of the franchisee. Hypothesis 2a, however, is not supported. Hence, it has the same result as in Mumdziev & Windsperger's (2013, p.174 ff.) work resulting in the fact that the allocation of residual decision rights to the franchisee is not dependent on the amount of transaction-specific investments. Nevertheless, unlike to the transaction cost theory, behavioural uncertainty is connected with the franchisee's allocation of decision rights. Consequently, decision rights are allocated to the franchisee in the case of emerging problems in monitoring the franchisee's results (Mumdziev & Windsperger 2013, p.179).

H2b: The amount of transaction-specific investments is positively related to the amount of residual decision rights assigned to the franchisor.

In order to test the opposite of hypothesis 2a, the same procedure is applied here, with the intention to examine the relationship between transaction-specific investment and the decision rights assigned to the franchisor. Just as in the previous case, a non-normal distribution of the data obliges one to use the Spearman's rho as a non-parametric correlation test. *Table 9* presents the result showing that the correlation is not statistically significant. This means that there is no relationship, r_s (16) = -.197, p > .05, between transaction-specific investment and decision rights assigned to the franchisor. Therefore, hypothesis 2b is not supported and the amount of transaction-specific investment has no impact on residual decision rights assigned to the franchisor.

Spearman's rho	Correlation Coefficient	Significance
Transaction-specific investment	**-.197**	**.232**
Decision rights franchisor		

Table 9: Hypothesis 2b - Spearman's rho

5.5.3 Hypothesis 3

H3: A high initial fee paid to the franchisor is negatively related to a high incentive for control of the franchisor.

In order to test hypothesis 3, both variables initial fee and incentive for control have to be recoded in order to test the relationship. Both variables "Control_incentive" and "Initial_fee" are ordinal scaled. The ordinal scale of initial fee can be seen in *chapter 5.2 Descriptive Statistics*. Given that, Spearman's rho is used to test whether there is a relationship. More precisely, based on hypothesis 3 a high initial fee should be negatively related to a high incentive for control of the franchisor, which reflects the fact that the higher the initial fee is, the less incentives are provided for the franchisor to control the franchisee. Here, Spearman's rho in *Table 10* shows a statistically significant result and a weak negative relationship (r_s (100) = -.220, $p < .05$) between the initial fee paid by the franchisee and the franchisor's incentive for control. Hence, hypothesis 3 is supported, indicating that a high initial fee paid by the franchisee to the franchisor is negatively related to a high incentive for control of the franchisor. In other words, the higher the initial fee paid by the franchisee, the less incentivising is it for the franchisor to control the franchisee.

Spearman's rho	Correlation Coefficient	Significance
Initial fee	**-.220**	**.014**
Control incentive		

Table 10: Hypothesis 3 - Spearman's rho

Agency theory studies indicate that if the initial fee paid to the franchisor is sufficiently high, there is no reason for the franchisor to maintain a high standard of quality, thus the franchisor does not have an incentive to control the franchisee against shirking (Manna et al. 2006, p.23). On the other hand and according to Manna et al. (2006, p.23), if the initial fee is only of modest amount, the franchisor expects higher returns during the franchise relationship; hence he places importance on quality. Having examined this hypothesis, it results in a negative relationship meaning that the higher the initial fee, the lower is the franchisor's incentive to control the franchisee.

5.5.4 Hypothesis 4

H4: The amount of royalty to be paid by the franchisee differs when more incentivizing ownership surrogates are assigned to the franchisor or the franchisee, respectively.

To test the above hypothesis, two separate non-parametric t-Tests have to be performed. This is due to the fact that in the given data set royalty was either indicated as a fixed amount or as a percentage fee. In addition, all needed variables differ from normal distribution, which in turn calls for the non-parametric counterpart of the independent t-Test.

First, the percentage fee of the royalty is going to be tested in order to find out whether there is a difference between the amount of royalty to be paid when more incentivising ownership surrogates are assigned to the franchisor or to the franchisee. Here, the Mann-Whitney U Test in *Table 11* shows a non-significant difference between both groups, $U\,(78, 20) = 709.5$, $p > .05$. This signifies that both the franchisor and the franchisee report a comparable amount of incentivising ownership surrogates assigned to them.

		Incentivising ownership surrogates	Mean Ranks	Mann-Whitney U	Significance (two-tailed)
a)	**Royalty percentage**	**franchisor**	50.40	**709.5**	**.537**
		franchisee	45.98		
b)	**Royalty amount**	**franchisor**	12.00	**56.00**	**.066**
		franchisee	17.83		

Table 11: Hypothesis 4(1) - Mann-Whitney U Test

The same applies when testing for a fixed royalty amount. As can be seen in *Table 11*, the Mann-Whitney U Test exhibits a marginal, however, non-significant result, $U\,(16, 12) = 56.0$, $p > .05$. This indicates that the fixed royalty amount is the same across both categories, i.e. the franchisor and the franchisee.

Hypothesis 4 is based on Windsperger (2003, pp.292, 301, 308) who state that there is a "substitutability between residual income rights and ownership surrogates". This is based on the assumption that underinvestment "can be mitigated by ownership surrogates" (Windsperger 2003, p.295). In Windsperger's (2003, p.307) work the correlation between the

franchisor's assigned ownership surrogates and the paid "royalties is negative and very slightly significant" (Windsperger 2003, p.307). However, with the here given data set, no relationship can be proven. Hence, taking both results into consideration, hypothesis 4 is not supported. This means that the incentivising ownership surrogates do not differ with the royalty fee; neither with the amount of royalty in percentage nor with a fixed royalty amount.

5.5.5 Hypothesis 5

H5: The higher the number of training days, the more likely it is to have a competition clause after termination stipulated.

In this hypothesis it is tried to explain a dichotomous variable, i.e. competition clause after termination (1 = yes, 0 = no), with one continuous variable, i.e. the number of training days. Hence, a binary logistic regression was carried out to determine the effect of the number of training days on the likelihood that there is a competition clause after termination stipulated in the franchise contract. The following *Table 12* shows the result that the overall model of the test is not statistically significant, X^2 (1) = 1.595, p > .05. Therefore, the number of training days is not a statistically significant predictor of whether a competition clause after termination is included in the contract, Wald = .000, p > .05. The overall percentage of cases that are correctly predicted by the model show 97.8 % for the null model (see *Appendix Table 12*). Thus, hypothesis 5 is not supported.

Predictor	**β**	***SE* β**	**Wald's χ^2**	***df***	***p***	***Exp(β)***
Constant	62.481	14,934.013	.000	1	.997	1.365E+27
# of training days	-6.609	1,659.335	.000	1	.997	.001
Test			**χ^2**	***df***	***p***	
Overall model evaluation			1.595	1	.207	
R^2 = .000 (Hosmer & Lemeshow), .034 (Cox & Snell), .180 (Nagelkerke)						

Table 12: Hypothesis 5 - Logistic Regression

This hypothesis is based on Rubin's (1978, p.231) prediction that competition clauses after termination are more likely to be included in a franchise contract when the franchisor has invested in the training of the franchisee. Nevertheless, this hypothesis cannot be supported

with the data at hand. This may be due to the fact that there were too few data entries for training days given that an explicit number of training days was only indicated in 78 out of 208 franchise contracts. Furthermore, the franchise type, i.e. production, service, and distribution franchising, may have a bearing on the existence of a stipulated competition clause after termination. To be specific, on the basis of intangible knowledge assets, many service franchising businesses have a greater need of training than other franchise types.

5.5.6 Hypothesis 6

H6: A higher total initial investment of the franchisee is positively related to a longer duration of the franchise contract.

In accordance with the previous *subchapters 5.4.10 Total initial investment and 5.4.11 Contract duration*, the total initial investment is a summated scale composed of the initial fee and special investment. However, both variables show a violation in normality, hence a non-parametric correlation test has to be used. Here, the hypothesis states that a higher total initial investment should lead to a longer duration of the franchise contract. Spearman's rho in *Table 13* presents a statistically significant correlation with a moderate positive relationship, $r_s\,(83) = .455$, $p < .05$, between the total initial investment undertaken by the franchisee and the stipulated contract duration.

Spearman's rho	Correlation Coefficient	Significance
Total initial investment	**.455**	**.000**
Contract duration		

Table 13: Hypothesis 6 - Spearman's rho

This hypothesis relies on the fact that franchisees need to undertake investments, amongst others, for fixtures and furnishings, marketing, initial fee, etc. prior to their business operation. Thus, in order to be profitable for the franchisee, a franchise contract has to be sufficiently long enough to recoup the total initial investment with the generated quasi-rents. Hence, the assumption of Brickley et al. (2006, p.176 ff.) that a total initial investment is positively related with the contract duration is the basis for this hypothesis. As indicated in *Table 13*, hypothesis 6 is supported and results in confirming the findings of Brickley et al.

(2006, p.193 f.), meaning that the higher the total initial investment paid by the franchisee, the longer is the duration of the franchise contract.

5.5.7 Hypothesis 7

H7: The number of training days to be completed by the franchisee is positively related to the duration of the franchise contract.

Similar to hypothesis 6, the relationship between the number of training days that have to be completed by the franchisee and his employees and the contract duration is investigated with this hypothesis. Given that a positive relationship is expected, this hypothesis is a directional one and an one-tailed significance level has to be used. Due to the fact that both variables exhibit a non-normal distribution, Spearman's rho as a non-parametric correlation test is applied. *Table 14* exhibits a non-significant relationship, $r_s(56) = -.116$, $p > .05$. This indicates that there is no statistically significant relationship between the number of training days and the franchise contract duration.

Spearman's rho	Correlation Coefficient	Significance
Training days	**-.116**	**.196**
Contract duration		

Table 14: Hypothesis 7 - Spearman's rho

In addition to the initial monetary investment, which has been examined in hypothesis 6, an investment in the training of the franchisees has to be undertaken. This investment is highly relationship-specific due to the fact that it is targeted at the franchised business. According to Brickley et al. (2003, p.8 f.), the same principle used in hypothesis 6 is applied here, by testing the correlation between the human capital investment and the contract duration. As can be seen, hypothesis 7 is not supported, meaning that the given data set does not provide evidence for a statistically significant relationship between the number of training days and the contract duration. Just as in hypothesis 5, this may be due to the fact that the data set does not provide sufficient data entries for training days. Moreover, differences in franchise firm types may also be prevalent. Hence, restaurants, hotels, and other service businesses require a higher amount of human capital investment, amongst others, through training days than other types of franchising.

6 Conclusion and limitations

The intention of the present master thesis was to analyse contract clauses and the allocation of rights with a data set consisting of 208 franchise contracts from the Austrian franchise market. As a theoretical basis, three theoretical perspectives, i.e. property rights theory, transaction cost theory, and principal-agent theory, which are grounded on the new institutional economics are used to explain the contract design and the stipulation of contract clauses. In this part the first hypotheses were derived. Further hypotheses were developed throughout the theoretical explanation of contract clauses that are stipulated in franchise contracts. Prior to the theoretical parts and the empirical analysis, franchising as an organisational form, the historical development, and the current situation in Austria were presented. The theoretical part of this thesis highlights the importance of contract design and shows the complexity in allocating property rights and decision rights to the parties concerned in due consideration of transaction costs and possible opportunistic behaviour.

The aim of the empirical analysis was to provide evidence of the statements and suppositions assumed by previous studies and scholars with an Austrian sample of franchise contracts. Considering the empirical analysis, only hypothesis 3 and hypothesis 6 can be supported. First, hypothesis 3 proved a negative relationship between initial fees which are paid by the franchisee to the franchisor and an incentive to control the franchisee. This is based on the principal-agent theory and targets the relevance to control the franchisee against shirking. Hence, the supposition assumed by Manna et al. (2006, p.23) can be supported on the basis of the Austrian data set, meaning that the higher the initial fee paid to the franchisor, the less likely are control and monitoring actions performed by the franchisor. These are normally carried out to maintain quality standards in the outlets operated by the franchisees. In addition, hypothesis 6 can be supported with the executed statistical evaluation. Thus, the amount of the total initial investment which has to be undertaken by the franchisee proves a positive relationship with the duration of the franchise contract. This renders the redemption of the total initial investment with the generated quasi-rents possible. All remaining cases, including hypotheses about the allocation of residual decision rights and ownership rights, failed to support the hypotheses with the present data set. Therefore, it can be concluded that the allocation of property rights and decision rights may be grounded on a far more sophisticated approach. To be specific, in order to be able to provide qualitative evidence

about the allocation of rights, more information on the franchisors' and the franchisees' attributes as well as the franchised business itself are essential.

There are several limitations that had to be coped with in this thesis. One of them is the fact that not all of the provided franchise contracts included every single, investigated contract clause. Hence, the data set of 208 contracts was incomplete. The incompleteness, however, may also be one of the reasons why some of the hypotheses were not supported. Prior to this, an initial analysis of the original 240 franchise contracts resulted in the fact that 32 of them had to be pronounced unfit for use due to their incompleteness. Additionally, the franchise contracts differ in their composition. Therefore, some franchise contracts were detailed and lengthy whereas others were more compressed, depicting the difficulty of comparison. Furthermore, no data showed what attributes, i.e. knowledge, a franchisee has to bring in order to be an eligible franchisee. Thus, the importance of local knowledge cannot be evaluated. In addition, the empirical analysis may be limited by the fact that the three applied theoretical perspectives present only a narrow view of franchising and the legal basis for the business relationship. Therefore, future studies may include, amongst others, the resource-based theory, the screening theory, the signalling theory, and/or the search cost theory in order to provide a more sufficient explanation of this comprehensive topic, i.e. the allocation of rights. Moreover, a comparison of changes in the course of the years in contract design and the application of contract clauses may be considered.

Notwithstanding the fact that no generally applicable assertions can be made, fundamental findings were obtained with the subject of this thesis, amongst others, by showing that the Austrian franchise market and franchise contracts themselves have refined distinctions. In sum, franchising has experienced substantial growth since the mid-20th-century and enjoys popularity ever since then. It holds potential to adapt to future business developments and to remain one of the most considerable and important types of distribution in Austria and the world. On that account and in conjunction with the contract design and the stipulated contract clauses in franchise contracts, an ample scope for further academic research is guaranteed.

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Appendix A: Zusammenfassung

Franchising befindet sich seit Mitte des 20. Jahrhunderts im Aufschwung und erlangte über die Jahre hinweg weltweite Popularität. Infolgedessen ist es wichtig eine solide, rechtliche Grundlage als Ausgangspunkt für jede Franchisebeziehung zu haben. Der Zweck dieser Masterarbeit ist es daher, Licht auf die Wichtigkeit der Vertragsgestaltung in Verbindung mit den erforderlichen Vertragsklauseln sowie der Zuweisung von Property Rights zu werfen. Um statistische Beweise zu erbringen, wird eine Datenbank von 208 Franchiseverträgen des österreichischen Franchisemarkts genutzt. Im Vorfeld werden grundlegende Informationen und Gegebenheiten über Franchising und ihrer momentanen Situation in Österreich dargelegt. Als theoretische Basis für die nachfolgende empirische Untersuchung werden die Property-Rights-Theorie, die Transaktionskostentheorie sowie die Prinzipal-Agent-Theorie, die ihren Ursprung in der Neuen Institutionenökonomik finden, herangezogen. Daraufhin werden Hypothesen aufgestellt, um wissenschaftlichen Erkenntnissen früherer Studien an einer Auswahl österreichischer Franchiseverträge zu überprüfen.

Aufgrund der Tatsache, dass es beinahe nie möglich ist, alle Eventualitäten zu berücksichtigen, sind Franchiseverträge in den seltensten Fällen vollständig. Um jedoch sicherzustellen, dass beide beteiligten Parteien motiviert sind, sich systemkonform zu verhalten, werden Anreize in Form von Verfügungs- und Handlungsrechten geboten. Aus diesem Grund wird eine empirische Analyse zur Untersuchung von residualen Einkommensrechten, Eigentumssurrogaten, Entscheidungsrechten und weiteren wichtigen Bestandteilen mit den verfügbaren Franchiseverträgen durchgeführt. Unter Berücksichtigung von Transaktionskosten und möglichem opportunistischen Verhalten, trägt diese Analyse durch Betonung der Komplexität bei der Verteilung von Handlungs- und Verfügungsrechten zur Wichtigkeit von Vertragsdesign in Franchisebeziehungen bei.

Die Ergebnisse der empirischen Analyse zeigen, dass der Verteilung von Property Rights weit komplexere Ansätze zu Grunde liegen als die bloße Untersuchung von Franchiseverträgen, z.B. zusätzliche Informationen zu Franchisegeber und -nehmer sowie dem Franchisebetrieb. Aus diesem Grund lassen die Vertragsgestaltung und die vertraglich festgelegten Vertragsklauseln in Franchiseverträgen einen großen Spielraum für die weitere wissenschaftliche Forschung.

Appendix B: Curriculum vitae

Madeleine Kern

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WORK EXPERIENCE

07-08/2014	Internship abroad: OptimalNachhilfe GbR, Ghent, Belgium Marketing & Business Development • Conducting international market analyses • Market research and supervision of business competition • SEO and Social Media
07/2013	RHI AG, Vienna, Austria Risk & Opportunity Management internship • Report generation and administration of insurance claims • Designing and updating of databases
07/2012, 08/2013	Banque PSA Finance - Austria, Vienna, Austria Wholesale internship • Customer support, administration of customer information
08/2011	STM Warenhandel und Vermittlung GmbH, St. Pölten, Austria Marketing internship • Development of a new business concept • Market research, analysis and presentation of price comparisons
07/2009, 07-08/2010	Voith Paper AG, St. Pölten, Austria Marketing and project development internship

EDUCATION

Since 10/2013	Master's degree in International Business Administration (MSc) University of Vienna, Vienna, Austria • Major: International Marketing, International Management • Performance scholarship award: 01/2015
10/2010 – 07/2013	Bachelor of Science in International Business Administration (BSc) University of Vienna, Vienna, Austria Bachelor Thesis 1: "The Lytro Light Field Camera – an Innovation that holds Potential" Bachelor Thesis 2: "Reverse Logistics - Importance, Consequences and Outlook in the E-Commerce"
09/2012 – 01/2013	Exchange semester at the Facultat d'Economia Universitat de València, Valencia, Spain
09/2005 – 06/2010	A-levels at BHAK/BHAS St. Pölten, pass with distinction (1.16) Higher-level secondary commercial college in St. Pölten, Austria European Class – International economy and foreign languages

SKILLS AND COMPETENCES

Languages	German: Mother tongue English: Full professional proficiency Spanish: Professional working proficiency French: Limited working proficiency
Computer Literacy	MS Office: Advanced proficiency SPSS: Advanced knowledge Adobe InDesign: Basic knowledge Adobe Photoshop: Basic knowledge HTML5: Basic knowledge
Additional Qualifications	Store Design, Visual Merchandising and Shopper Marketing (iversity, May-July 2015) BEC Higher (Cambridge Business English Certificate Higher) CAE (Cambridge Certificate in Advanced English) FCE (Cambridge First Certificate in English) ECDL (European Computer Driving License)

OTHER SKILLS AND COMPETENCES

- Participation at the Profil High Potential Day (Vienna, July 2015)
- 3rd place in the European finale of urMall Business Game organised by Unibail-Rodamco, Europe's leading listed commercial property company (Paris, April 2015)
- Participation in the finale of the "YPD Challenge 2012", a competition to win a summer internship in Austria (Vienna, February 2012)
- Winner of the Essay Competition "What do I know about Azerbaijan?" (July 2011)
- Chief Editor of the School Magazine "Wood Street Journal" of the BHAK/BHAS St. Pölten
- Accurateness and a high affinity towards numbers, distinct organising abilities and self-motivation

INTERESTS

Travelling, foreign cultures, languages, photography, reading, sports

Appendix C: Supplementary data

franchise_sector		
		Value
Standard Attributes	Label	franchise_sector
	Measurement	Nominal
Valid Values	1	product franchising
	2	service franchising
	4	distribution franchising

branch		
		Value
Standard Attributes	Label	branch
	Measurement	Nominal
Valid Values	1	retail business
	2	personal and business services
	3	manufacturing and others
	4	hotel and restaurant
	5	building, construction, and real estate
	6	cleaning and maintenance

cash_required		
		Value
Standard Attributes	Label	Cash_required
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, amount not defined/to be negotiated
	9	not mentioned

cash_amount		
		Value
Standard Attributes	Label	Cash_amount
	Measurement	Nominal

investment_required		
		Value
Standard Attributes	Label	Investment_required
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, amount not defined/to be negotiated
	9	not mentioned

investment_amount		
		Value
Standard Attributes	Label	Investment_amount
	Measurement	Scale

special_investment_required		
		Value
Standard Attributes	Label	special_investment_required
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, amount not defined/to be negotiated
	9	not mentioned

special_investment_amount		
		Value
Standard Attributes	Label	special_investment_amount
	Measurement	Scale

entry_fee_required		
		Value
Standard Attributes	Label	entry_fee_required
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, amount not defined/to be negotiated
	9	not mentioned

entry_fee_amount		
		Value
Standard Attributes	Label	entry_fee_amount
	Measurement	Nominal

entry_fee_percentage		
		Value
Standard Attributes	Label	entry_fee_percentage
	Measurement	Nominal

royalty_required		
		Value
Standard Attributes	Label	royalty_required
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, amount not defined/to be negotiated
	9	not mentioned

royalty_amount		
		Value
Standard Attributes	Label	royalty_amount
	Measurement	Nominal

royalty_percentage		
		Value
Standard Attributes	Label	royalty_percentage
	Measurement	Nominal

advertising_fee		
		Value
Standard Attributes	Label	advertising_fee
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, amount not defined/to be negotiated
	9	not mentioned

advertising_fee_amount		
		Value
Standard Attributes	Label	advertising_fee_amount
	Measurement	Nominal

advertising_fee_percentage		
		Value
Standard Attributes	Label	advertising_fee_percentage
	Measurement	Nominal

exclusive_territory		
		Value
Standard Attributes	Label	exclusive_territory
	Measurement	Nominal
Valid Values	1	yes
	2	no
	9	not mentioned

resale_price_maintenance		
		Value
Standard Attributes	Label	resale_price_maintenance
	Measurement	Scale
Labeled Values	1	yes
	2	no
	9	not mentioned

tying_arrangement		
		Value
Standard Attributes	Label	tying_arrangement
	Measurement	Scale
Labeled Values	1	yes
	2	no
	3	mixed, after approval
	9	not mentioned

exclusive_dealing		
		Value
Standard Attributes	Label	exclusive_dealing
	Measurement	Scale
Labeled Values	1	yes
	2	no
	3	mixed, after approval
	9	not mentioned

approval_and_buy_back_rights		
		Value
Standard Attributes	Label	approval_and_buy_back_rights
	Measurement	Nominal
Valid Values	1	yes
	2	no
	9	not defined

alienation_right		
		Value
Standard Attributes	Label	alienation_right
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, after approval
	9	not mentioned

contract_duration_type		
		Value
Standard Attributes	Label	contract_duration_type
	Measurement	Nominal
Valid Values	1	yes
	3	yes, open-ended
	9	not defined

contract_duration		
		Value
Standard Attributes	Label	contract_duration
	Measurement	Scale

option_right_extention_franchisee		
		Value
Standard Attributes	Label	option_right_extention_franchisee
	Measurement	Nominal
Valid Values	1	yes
	2	no
	9	not mentioned

extention_right_franchisee		
		Value
Standard Attributes	Label	option_right_extention_franchisor
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes, after approval
	9	not mentioned

lease_right_outlet_after_franchisee		
		Value
Standard Attributes	Label	lease_right_after_franchisee
	Measurement	Nominal
Valid Values	1	yes
	2	no
	9	not mentioned

lease_control_outlet_after_franchisor		
		Value
Standard Attributes	Label	lease_control_after_franchisor
	Measurement	Nominal
Valid Values	1	yes
	2	no
	9	not mentioned

marketing_decisions		
		Value
Standard Attributes	Label	marketing_decisions
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

production_decision		
		Value
Standard Attributes	Label	production_decision
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

accounting_system_decision		
		Value
Standard Attributes	Label	accounting_system_decision
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

advertising_decision		
		Value
Standard Attributes	Label	advertising_decision
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

employees_training_decision		
		Value
Standard Attributes	Label	employees_training_decision
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

training_days_annual		
		Value
Standard Attributes	Label	training_days_annual
	Measurement	Scale

investment_decision		
		Value
Standard Attributes	Label	investment_decision
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

recruiting_decision		
		Value
Standard Attributes	Label	recruiting_decision
	Measurement	Nominal
Valid Values	1	franchisor
	2	franchisee
	3	both, after internal communication
	9	not mentioned

exclusive_customer_clause		
		Value
Standard Attributes	Label	exclusive_customer_clause
	Measurement	Nominal
Valid Values	1	yes, franchisor defines
	2	no
	3	yes, after internal communication
	9	not mentioned

inheritance		
		Value
Standard Attributes	Label	inheritance
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	yes. after approval
	9	not mentioned

ownership_rent_facility_franchisor		
		Value
Standard Attributes	Label	ownership_facility
	Measurement	Nominal
Valid Values	1	yes
	2	no
	9	not mentioned

advisory_board		
		Value
Standard Attributes	Label	advisory_board
Valid Values	1	yes
	2	no
	9	not mentioned

competition_clause_after_termination		
		Value
Standard Attributes	Label	competition_clause_after_termination
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	no, after approval
	9	not mentioned

competition_clause_during_contract		
		Value
Standard Attributes	Label	competition_clause_during_contract
	Measurement	Nominal
Valid Values	1	yes
	2	no
	3	no, after approval
	9	not mentioned

minimum_turnover		
		Value
Standard Attributes	Label	minimum_turnover
Valid Values	1	yes
	2	no
	9	not mentioned

minimum_quantity		
		Value
Standard Attributes	Role	Input
Valid Values	1	franchisee must buy minimum quantity from franchisor
	2	franchisee must produce minimum quantity
	3	franchisee must sell minimum quantity to customers
	4	no
	9	not mentioned

control_rights		
		Value
Standard Attributes	Label	control_rights
Labeled Values	1	yes, unheralded
	2	yes, heralded
	3	yes, connected IT
	4	no
	9	not mentioned

entry_fee_required

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	103	49,5	49,5	49,5
	no	13	6,3	6,3	55,8
	yes, amount not defined/to be negotiated	48	23,1	23,1	78,8
	not mentioned	44	21,2	21,2	100,0
	Total	208	100,0	100,0	

Statistics

		entry_fee_amount	entry_fee_percentage
N	Valid	100	3
	Missing	108	205
Minimum		254,00	1,0000
Maximum		145345,00	20,0000

Appendix Table 1: Entry fee data

royalty_required

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	131	63,0	63,0	63,0
	no	9	4,3	4,3	67,3
	yes, amount not defined/to be negotiated	32	15,4	15,4	82,7
	not mentioned	36	17,3	17,3	100,0
	Total	208	100,0	100,0	

Statistics

		royalty_amount	royalty_percentage
N	Valid	33	112
	Missing	175	96
Minimum		85,20	,0400
Maximum		72673,00	50,0000

Appendix Table 2: Royalty data

advertising_fee

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	96	46,2	46,2	46,2
	no	6	2,9	2,9	49,0
	yes, amount not defined/to be negotiated	25	12,0	12,0	61,1
	not mentioned	81	38,9	38,9	100,0
	Total	208	100,0	100,0	

Statistics

		advertising_fee_amount	advertising_fee_percentage
N	Valid	16	83
	Missing	192	125
Minimum		1	,500
Maximum		6000	17,500

Appendix Table 3: Advertising fee data

Investment_required

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	2	1,0	1,0	1,0
	yes, amount not defined/to be negotiated	115	55,3	55,3	56,3
	not mentioned	91	43,8	43,8	100,0
	Total	208	100,0	100,0	

Appendix Table 4: Investment data

special_investment_required

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	18	8,7	8,7	8,7
	no	12	5,8	5,8	14,4
	yes, amount not defined/to be negotiated	76	36,5	36,5	51,0
	not mentioned	102	49,0	49,0	100,0
	Total	208	100,0	100,0	

Statistics

		special_investment_required	special_investment_amount
N	Valid	208	16
	Missing	0	192
Minimum		1	683,00
Maximum		9	76306,00

Appendix Table 5: Special investment data

Tests of Normality

	Smirnov[a]			Shapiro-Wilk		
	Statistic	df	Sig.	Statistic	df	Sig.
Intangible knowledge assets	,395	132	,000	,620	132	,000
Decision rights franchisor	,160	208	,000	,944	208	,000
Decision rights franchisee	,260	208	,000	,810	208	,000
Decision rights both	,234	208	,000	,820	208	,000
Ownership surrogates	,490	178	,000	,492	178	,000
Transaction specific investment	,280	16	,002	,739	16	,000
Initial fee	,185	100	,000	,894	100	,000
Control incentives	,411	147	,000	,636	147	,000
Royalty percentage	,224	112	,000	,628	112	,000
Royalty amount	,323	33	,000	,436	33	,000
Training days	,351	78	,000	,729	78	,000
Competition clause after termination	,540	103	,000	,221	103	,000
Total initial investment	,236	108	,000	,599	108	,000
Contract duration	,219	128	,000	,802	128	,000

Appendix Table 6: KS-Test variables

Ranks

Intangible knowledge assets		N	Mean Rank	Sum of Ranks
Decision rights franchisor	high	80	66,58	5326,00
	low	52	66,38	3452,00
	Total	132		

Test Statistics[a]

	Decision rights franchisor
Mann-Whitney U	2074,000
Wilcoxon W	3452,000
Z	-,029
Asymp. Sig. (2-tailed)	,977
Exact Sig. (2-tailed)	,978
Exact Sig. (1-tailed)	,489
Point Probability	,001

a. Grouping Variable: Intangible knowledge assets

Appendix Table 7: Hypothesis 1a - Mann-Whitney U Test

Ranks

Intangible knowledge assets		N	Mean Rank	Sum of Ranks
Ownership surrogates franchisor	high	80	61,79	4943,00
	low	52	73,75	3835,00
	Total	132		

Test Statistics[a]

	Ownership surrogates franchisor
Mann-Whitney U	1703,000
Wilcoxon W	4943,000
Z	-1,797
Asymp. Sig. (2-tailed)	,072
Exact Sig. (2-tailed)	,072
Exact Sig. (1-tailed)	,036
Point Probability	,000

a. Grouping Variable: Intangible knowledge assets

Appendix Table 8: Hypothesis 1b - Mann-Whitney U Test

Correlations

			Transaction specific investment	Decision rights franchisee
Spearman's rho	Transaction specific investment	Correlation Coefficient	1,000	,241
		Sig. (1-tailed)		,184
		N	16	16
	Decision rights franchisee	Correlation Coefficient	,241	1,000
		Sig. (1-tailed)	,184	
		N	16	208

Correlations

			Transaction specific investment	Decision rights franchisor
Spearman's rho	Transaction specific investment	Correlation Coefficient	1,000	-,197
		Sig. (1-tailed)		,232
		N	16	16
	Decision rights franchisor	Correlation Coefficient	-,197	1,000
		Sig. (1-tailed)	,232	
		N	16	208

Appendix Table 9: Hypothesis 2 - Spearman's rho

Correlations

			Initial fee	Control incentives
Spearman's rho	Initial fee	Correlation Coefficient	1,000	-,220*
		Sig. (1-tailed)		,014
		N	100	100
	Control incentives	Correlation Coefficient	-,220*	1,000
		Sig. (1-tailed)	,014	
		N	100	208

Appendix Table 10: Hypothesis 3 - Spearman's rho

Ranks

Incentivising ownership surrogates		N	Mean Rank	Sum of Ranks
Royalty amount	franchisor	16	12,00	192,00
	franchisee	12	17,83	214,00
	Total	28		
Royalty percentage	franchisor	78	50,40	3931,50
	franchisee	20	45,98	919,50
	Total	98		

Test Statistics[a]

	Royalty amount	Royalty percentage
Mann-Whitney U	56,000	709,500
Wilcoxon W	192,000	919,500
Z	-1,857	-,624
Asymp. Sig. (2-tailed)	,063	,532
Exact Sig. [2*(1-tailed Sig.)]	,066[b]	
Exact Sig. (2-tailed)	,064	,537
Exact Sig. (1-tailed)	,032	,268
Point Probability	,002	,001

a. Grouping Variable: Incentivising ownership surrogates

b. Not corrected for ties.

Appendix Table 11: Hypothesis 4 - Mann-Whitney U Test

Case Processing Summary

Unweighted Cases[a]		N	Percent
Selected Cases	Included in Analysis	46	22,1
	Missing Cases	162	77,9
	Total	208	100,0
Unselected Cases		0	0,0
Total		208	100,0

a. If weight is in effect, see classification table for the total number of cases.

Dependent Variable Encoding

Original Value	Internal Value
no	0
yes	1

Block 0: Beginning Block

Classification Table[a,b]

Observed			Predicted		
			CompClause		Percentage Correct
			no	yes	
Step 0	CompClause	no	0	1	0,0
		yes	0	45	100,0
	Overall Percentage				97,8

a. Constant is included in the model.

b. The cut value is ,500

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 0	Constant	3,807	1,011	14,176	1	,000	45,000

Variables not in the Equation

			Score	df	Sig.
Step 0	Variables	Training days	1,115	1	,291
	Overall Statistics		1,115	1	,291

Block 1: Method = Enter

Omnibus Tests of Model Coefficients

		Chi-square	df	Sig.
Step 1	Step	1,595	1	,207
	Block	1,595	1	,207
	Model	1,595	1	,207

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	8,041[a]	,034	,180

Hosmer and Lemeshow Test

Step	Chi-square	df	Sig.
1	,000	1	1,000

Classification Table[a]

Observed			Predicted		
			CompClause		Percentage Correct
			no	yes	
Step 1	CompClause	no	0	1	0,0
		yes	0	45	100,0
	Overall Percentage				97,8

a. The cut value is ,500

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1[a]	Training days	-6,609	1659,335	,000	1	,997	,001
	Constant	62,481	14934,013	,000	1	,997	1,36E+27

a. Variable(s) entered on step 1: Training days.

Appendix Table 12: Hypothesis 5 - Binary logistic regression

Correlations				
			Total initial investment	Contract duration
Spearman's rho	Total initial investment	Correlation Coefficient	1,000	,455**
		Sig. (1-tailed)		,000
		N	108	83
	Contract duration	Correlation Coefficient	,455**	1,000
		Sig. (1-tailed)	,000	
		N	83	128

Appendix Table 13: Hypothesis 6 - Spearman's rho

Correlations				
			Training days	Contract duration
Spearman's rho	Training days	Correlation Coefficient	1,000	-,116
		Sig. (1-tailed)		,196
		N	79	56
	Contract duration	Correlation Coefficient	-,116	1,000
		Sig. (1-tailed)	,196	
		N	56	128

Appendix Table 14: Hypothesis 7 - Spearman's rho