

## Listening B

**Arthur Johansson:** If I may, I'd like to address another one of the clauses in the franchise agreement: the non-competition clause here, at the bottom of page three.

**Ms Orvatz:** Yes, the non-compete. Well, I'll just say upfront that that's standard, that's in all our agreements.

**Arthur Johansson:** Right. That may be so, but I'm afraid we can't go along with it in its present form.

**Ms Orvatz:** What do you object to? All our franchisees accept that. It's standard practice, like I said.

**Arthur Johansson:** Well, the clause in question states, and I quote: 'Franchisee shall not, for a continuous uninterrupted period and continuing for two years thereafter, own, operate, maintain, or engage in any business that: (a) offers products or services which are the same as or similar to the products and services offered by the Franchised Business under the System and (b) is, or is intended to be, located at or within a 25-mile radius of the Approved Location.' What this means is that in the event that the agreement between my client and your corporation should at one time no longer be in effect, my client wouldn't be able to operate a sandwich restaurant for two full years in his own neighbourhood. I'm afraid that's out of the question.

**Ms Orvatz:** Well, you must understand that my client has to protect itself – I mean, a former franchisee could just come along and set up a nearly identical sandwich restaurant right near one of our restaurants, and with all the know-how he got from us ...

**Arthur Johansson:** Yes, I fully understand the reasoning behind that provision, no need to explain. But my client also has skills and abilities of his own, proven skills relevant to the sandwich-making business. That's why your client is interested in concluding a franchise agreement with him in the first place. Let's face it: your client owns a young and upcoming franchise enterprise that may be promising, but it certainly isn't well known or well established yet – you need the skills and know-how of experienced franchisees as much as they need you. So I'll say it again: we simply could not accept any clause that would forbid my client from making a living through these skills independently for two whole years, if that should one day become necessary.

**Ms Orvatz:** What do you suggest? We're not in a position to remove the non-compete clause from the contract, let me be perfectly clear about that.

**Arthur Johansson:** Of course. Our proposal is to reduce the scope of the clause. If you could consider reducing the time period the non-compete covers, we'd be willing to be more flexible about the arbitration clause, for example.

**Ms Orvatz:** Well, all right. In that case, I think we could talk about a reduction.

**Arthur Johansson:** That's certainly a step in the right direction. How about this: we suggest reducing the time frame to six months.

**Ms Orvatz:** That would be difficult for us. We could only reduce it to eighteen months, and that's already very generous on our part.

**Arthur Johansson:** Let's agree on a year, shall we? After all, you and I both know that your client really wants to enter into this agreement with my client, as he's perfectly suited to run a franchise in that part of town, which, let's be honest, isn't exactly the safest neighbourhood. He knows the area, he has the necessary skills and experience ...

**Ms Orvatz:** OK, OK. I think we could live with that. A year it is.

**Arthur Johansson:** Very well.

**Ms Orvatz:** Now, what about the arbitration clause? You said you'd be willing to be a bit more flexible ...