§ 779.230 Franchise and other arrangements.

(a) There are many different and complex arrangements by which businesses may join to perform their activities for a common purpose. A general discussion will be found in part 776 of this chapter. The quotation in §779.229 from the Senate Report shows that Congress recognized that some franchise, lease, or other arrangements have the effect of creating a larger enterprise and whether they do or not depends on the facts. The facts may show that the arrangements are so restrictive as to deprive the individual establishment of those prerogatives which are the essential attributes of an independent business. (Compare Wirtz v. Lunsford, 404 F. 2d, 693 (C.A. 6).) An establishment through such arrangements may transfer sufficient “control” so that it becomes in effect a unit in a unified chain operation. In such cases the result of the arrangement will be to create a larger enterprise composed of the various segments, including the establishment which relinquishes its control.

(b) The term “franchise” is not susceptible of precise definition. The extent to which a businessman relinquishes the control of his business or the extent to which a franchise results in the performance of the activities through unified operation or common control depends upon the terms of the contract and the other relationships between the parties. Ultimately the determination of the precise scope of such arrangements which result in creating larger enterprises rests with the courts.

§ 779.231 Franchise arrangements which do not create a larger enterprise.

(a) While it is clear that in every franchise a businessman surrenders some rights, it equally is clear that every franchise does not create a larger enterprise. In the ordinary case a franchise may involve no more than an agreement to sell the particular product of the one granting the franchise. Some arrangements which do not create a larger enterprise and some which do are discussed in §§779.230 through 779.235.