April 25, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission (FTC)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

The Federal Trade Commission (FTC) has a long history of setting rules for franchisee-franchisor relationships. In its latest effort, in March of 2023, the FTC asked for comments on how franchisors may exert control over franchisees and their workers:

> "Amidst growing concern around unfair and deceptive practices in the franchise industry, the FTC hopes to hear from a broad range of stakeholders about how the franchise relationship is working, and how it is not," said Samuel Levine, Director of the FTC's Bureau of Consumer Protection. "This cross-agency effort will inform our policy and enforcement efforts as we work to ensure a fair marketplace for franchisees."

The National Consumers League (NCL) shares many of these concerns. For example, Burger King, the iconic American fast-food brand, is a subsidiary of Restaurant Brands International (RBI), which is owned by a foreign private equity firm named 3G Capital. There is currently a case involving Burger King (BK) and 3G Capital, in which RBI has been closing franchise locations nationwide, sadly, driving many franchisees out of business. For many, the increasing trend of private equity firms' ownership of franchise brands is a growing concern. Franchisees believe franchisors are abusing their terms of agreement, using their leverage as brands to drive businesses out of existence if they don't fall in line. Our concern is that they are simply taking value out of franchisee locations to fatten their coffers and pay dividends to shareholders.

We are aware that the role of private equity firms in reducing competition in other marketplaces, including health care, is under the agency's scrutiny as well. We applaud the recent action by the Federal Trade Commission, the Department of Justice's (DOJ) Antitrust Division, and the U.S. Department of Health and Human Services (HHS) to jointly launch a cross-government public inquiry into private equity and other corporations' increasing control over health care.

In the case of the restaurant industry, RBI under 3G Capital also owns familiar brands, including Tim Horton's and Popeyes. Franchisees allege that RBI banned its Popeyes franchisees from opening or having an interest in any other similar businesses within a 10-mile radius of a Popeyes for two years, raising free-market and anti-competitiveness concerns. RBI even has a history of price-gouging its own franchisees – who are meant to be equal business partners – with higher prices for procuring supplies and operations than the actual market costs.

RBI's tactics include asserting increasing levels of control over how its franchisees are able to operate their businesses and inappropriately wielding complete authority over who a franchisee can sell their businesses to and who can acquire the franchise. This ensures that RBI selects only those franchisees it can control and manipulate. All these behaviors could threaten the franchisor/franchisee model.

In effect, it appears that RBI is controlling its franchisees to such an extent that they are effectively operating as the owners and operators of these individual locations while leveraging the legal benefits of being a franchisor. This creates a system where they enjoy the benefits of ownership without any of the risks – which they transfer to their franchisees. We are concerned that private equity firms take advantage of U.S. franchise law, and their heavy-handed control, if left unchecked, threatens to destroy the franchise model and even ruin the American Dream for so many hardworking franchisees.

RBI under 3G Capital is consolidating and centralizing control over what are supposed to be independent franchise locations by forcing store closures and buying them up themselves.

Concerns are multiplied by the fact that franchisees are often people of color and/or immigrants working to realize the American Dream by investing in these restaurants and trying to provide a better future for their families.

We encourage the FTC to continue investigating, seeking input and comments from the public, and continuing to play a critical role in policing the marketplace to ensure that franchisors and franchisees adhere to agreements that are fair and executed in good faith. Under your leadership, the FTC has already taken the right steps to request public comments on this issue. We want to see the FTC take a stronger role in scrutinizing harmful marketplace actors and protecting American business owners and jobs from heavy-handed and anticompetitive corporate behaviors.

Thank you for your consideration,

Sally Greenberg
CEO
National Consumers League