

March 27, 2023

Hon. April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW - Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices (FTC Docket No.-2023-0026) (March 10, 2023)

Dear Secretary Tabor:

The International Franchise Association (“IFA”), on behalf of itself and the members of the IFA, requests that the Federal Trade Commission (“FTC”) extend the comment period to the above-referenced solicitation for public comments on provisions of franchise agreements and franchisor business practices (“RFI”) for an additional 60 days.

We note that the RFI contains six multi-part requests that when broken down, exceed 75 distinct questions, each relating to substantive aspects of the franchise business model and franchisor/franchisee relationships. Additional time would permit the IFA and its members to understand and thoroughly evaluate the wide-ranging questions put forth by the FTC and gather quantitative data to facilitate development of insightful comments for the Commissioners to consider.

Moreover, the RFI seeks information not only about franchisor business practices and provisions contained in franchise agreement but also information about the impact of those business practices and provisions on consumers, workers, and competition generally, and it does so through a procedure the FTC has rarely used for such an expansive and vaguely defined purpose. While the stakeholders were aware that the Franchise Rule is currently under regulatory review by the FTC, the information sought in the RFI relates not to the franchise sales process addressed in the Franchise Rule but also nuances of franchisor/franchisee relationships across all industries that franchise companies represent, as well as the myriad of consumers serviced and workers employed by those companies.

There also are significant legal questions that must be addressed by commentors, as the FTC asserts that its authority for the broad scope of information sought in the RFI is its enforcement of not only the Franchise Rule but also Section 2(c) of the Robinson-Patman Act, 15 U.S.C. § 13, related to payments received by persons engaged in commerce, and Section 5 of the FTC Act, 15 U.S.C. § 45, related to unfair competition and unfair or deceptive acts or trade practices. Commentors must also consider whether action taken by the FTC in response to comments received will impact their obligations under those laws as well as existing state laws that govern many aspects of the franchisor/franchisee relationship addressed in the RFI.

The timing of the deadline to submit comments further complicates responses. Most franchise companies are engaged in the time-consuming annual renewal of their franchise disclosure documents in accordance with the Franchise Rule (16 CFR § 436.7(a)). Additionally, as the FTC notes in the footnotes of the RFI, the information sought in the RFI is in addition to comments sought in the notice of proposed rulemaking for the non-compete clause rule, 88 Fed. Reg. 3482 (Jan. 19, 2023), specifically whether the proposed rule should also apply to noncompete clauses between franchisors and franchisees, for which comments are due April 19, 2023. In addition, as you know, the Commission is seeking public comment under the aegis of the Paperwork Reduction Act with respect to the Franchise Rule, with comments requested by April 3, 2023. 88 Fed. Reg. 6727 (Feb. 1, 2023).

Considering the broad scope of substantive issues raised in the RFI, the IFA and its members urge the FTC to extend the comment period under the RFI for an additional 60 days. Doing so would ensure the stakeholders can fully and confidently provide comprehensive and meaningful information to the Commission.

Thank you for your consideration of this matter.

Sincerely,

THE INTERNATIONAL FRANCHISE ASSOCIATION
THE INTERNATIONAL SIGN ASSOCIATION
THE AMERICAN HOTEL & LODGING ASSOCIATION
THE NATIONAL RESTAURANT ASSOCIATION
THE NATIONAL ASSOCIATION OF CONVENIENCE STORES
THE NATIONAL RETAIL FEDERATION
THE U.S. CHAMBER OF COMMERCE

cc: Christine M. Todaro, Esq.
Josh Doan, Esq.
Alex Petros, Esq.