Congress of the United States
Washington, DC 20515

September 22, 2020

Chairman Joseph J. Simons
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons,

We write to you regarding competition and unfair and deceptive issues in food delivery and in restaurant-related franchising. The market for digital food delivery services is highly concentrated both nationally and regionally in three dominant firms: DoorDash Inc., Uber Technologies Inc., and Grubhub Inc. The COVID-19 pandemic and Uber's acquisition of Postmates have accelerated ongoing problems with the dominant food delivery platforms, namely regional market concentration, high fees for marketing and delivery services, and concerning contracting and marketing practices. In addition, franchisors of restaurants and other food-related companies continue to impose increasingly controlling strictures on franchisees, making those franchisees' viability during this economic downturn increasingly difficult. We request that the FTC investigate the impacts of consolidation in the restaurant industry, including the impacts of highly consolidated food delivery services, and potentially unfair or deceptive practices by food-related franchisors.

Market consolidation in food delivery poses harms to small businesses, consumers and workers

Food delivery services in the U.S. are consolidated among DoorDash, Uber, and Grubhub—nationally, the firms respectively account for 45, 30, and 23 percent of online food delivery sales.[1] At the regional level, concentration is more acute, with the majority of sales in the nation's largest cities going to only one or two of these firms. These concentrated regional market shares give the food delivery platforms substantial leverage in setting agreements with restaurants. Independent restaurant owners are often unable to choose between competitive firms offering marketing and delivery services; rather, restaurants can only choose whether to participate with the services and terms set by the dominant firm in their market. The platforms have used this leverage to set excessive fees and commissions, and to undertake multiple coercive and potentially deceptive marketing actions such as creating fake phone numbers and websites for restaurants and offering delivery services without restaurants' consent.

COVID-19 has made restaurants increasingly reliant on food delivery platforms as measures to reduce the spread of the virus continue to limit in-person dining. While restaurants struggle to survive, these delivery platforms' fee structures and questionable practices have made it hard or impossible for restaurants to remain profitable, prompting multiple cities to cap these fees as an emergency measure to support local restaurants. Multiple reports have detailed the plight of independent restaurant owners trying to stay in business,[2] with one owner succinctly describing the dilemma this way, “I have every right to not engage [the food delivery platforms] because of their predatory service fees, but that removes my goods and services from a substantial portion of the market.”[3] Additionally, during the pandemic our offices have heard from multiple restaurants that the platforms have continued to list restaurants without consent, list open restaurants as closed, and pass blame for delivery and marketing errors to restaurants.

Uber’s acquisition of Postmates raises the same concerns and should be thoroughly investigated. The food delivery platforms have long been unprofitable, despite multiple acquisitions of smaller food delivery platforms, growing customer bases and partnered merchants, and major investments in logistics and marketing. We are very concerned that these firms’ paths to profitability will likely come from eliminating competition, charging higher fees to restaurants and consumers, and misclassifying and undercompensating the workers who perform the labor of delivering the food.

Consolidation of these platforms will also impact the workers who perform the labor of food delivery. These three platforms have been subject to litigation regarding their misclassification of workers as independent contractors. The platforms’ classification practices have hampered workers’ access to critical resources such as unemployment insurance, health insurance and paid leave, and have failed to protect those workers from arrest when engaged in food delivery.[4] With fewer players providing food delivery services, there will be even less incentive for these platforms to compete for workers by providing adequate compensation and appropriate classification—and services that might consider providing workers with fair wages and benefits will be unable to compete.

And, as COVID-19 has showed, the fees necessary for the platforms to be profitable may be too high for restaurants and consumers to continue using the platforms’ services, casting doubt on the long-term validity of the platforms’ business models.

Franchisors have placed a heavy burden on food services and should be more carefully scrutinized

The franchisor/franchisee relationship is also underinvestigated by the FTC and deserves careful scrutiny, including when applied to food services. Numerous complaints have been filed by franchisees of Dickey’s, Subway, 7-Eleven, and Burgerim, alleging unfair and deceptive practices by the franchisors. According to the International Franchise Association, in April 2019, there were approximately 733,000 franchised establishments in the United States, creating 7.6 million jobs and $269.9 billion in payroll.[5] Yet, the Federal Trade Commission (FTC) has less than one full-time person assigned to this industry, and the associate director of the Division of Marketing Practices told the New York Times in 2019 that the agency had not focused on franchise misconduct or taken any franchise-related enforcement action in years.[6]

These two issues mean one thing for American consumers and American small businesses: fewer choices, higher prices, and far fewer independent business. In addition, COVID-19 has devastated workers and small businesses alike. FTC commissioners have said repeatedly, and on the record, that the FTC’s highest priority is to protect the vulnerable and promote economic growth during the downturn. By investigating the impacts of food delivery apps and by more thoroughly investigating claims brought by restaurants and other food-related franchisees, the

FTC will better comply with the agency's statutory mandate and better protect the small restaurants and food service businesses that employ thousands, allow for diversity of entrepreneurship, and add vibrance to our communities.

Sincerely,

Mary Gay Scanlon
Member of Congress

Pramila Jayapal
Member of Congress

Jan Schakowsky
Member of Congress

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[1] Liyin Yeo, "Which company is winning the restaurant food delivery war?" Second Measure (September 15,2020). https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/

[2] See: Nick Kindelsperger, "Grubhub comes under fire for high fees, bad drivers — and some Chicago restaurants are dropping it," Chicago Tribune (April 13, 2020). https://www.chicagotribune.com/coronavirus/ct-food-coronavirus-grubhub-uber-eats-20200413-h57oq4yno5etfen6zktcunwvfa-story.html;
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[3] Nick Kindelsperger and Phil Vettel, "Chicago imposes new rules for 3rd-party food delivery companies, requiring transparency on receipts," Chicago Tribune (May 12, 2020). https://www.chicagotribune.com/coronavirus/ct-food-coronavirus-third-party-delivery-rules-20200512-c4aojule7fenbfb7n4hfpa7hiu-story.html

[4] Faiz Siddiqui, "Gig workers face arrest and charges while delivering during pandemic and curfews," Washington Post (June 17, 2020). https://www.washingtonpost.com/technology/2020/06/17/gig-workers-arrests-protests-pandemic/

[5] International Franchise Association, https://franchiseeconomy.com/

[6] Tiffany Hsu and Rachel Abrams, "Subway Got Too Big. Franchisees Paid a Price." New York Times (June 28, 2019). https://www.nytimes.com/2019/06/28/business/subway-franchisees.html