UNITED STATES OF AMERICA

Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter and
Commissioner Alvaro M. Bedoya
In the Matters of Prudential Security,
O-I Glass Inc., and Ardagh Group S.A.
Commission File No. 2210026 & 2110182

January 4, 2023

Today the Comm

Section 5 of the FTC Act.

I am deeply grateful to our talented staff in the Bureau of Competition for their thorough and lengthy efforts to investigate and resolve these matters. The relief secured through these actions will benefit both workers and competition.

Though all three actions target the unlawful use of noncompetes, they also reveal the distinct grounds on which noncompetes can be found to violate Section 5.

and its two owners alleged use of noncompetes against the security guards it employed was coercive, exploitative, and tended to negatively affect competitive conditions. As stated in the complaint, Prudential required its 1,000+ security guards to sign noncompetes as a condition of employment, preventing them from working for a competitor within a 100-mile radius and for two years after departing.

The security guards earned low wages, with many earning slightly above minimum wage,

, which required that employees pay Prudential a $100,000 penalty for violating the noncompete. Although a Michigan state court held that these noncompetes were unreasonable and unenJto Cclt t

all the security guards it had hired and to actively notify all employees that these noncompete clauses are now null and void. Notably, Prudential recently exited the security guard business and sold nearly all of its assets. s assets does not use noncompetes, the relief

[1] *Prudential Security, Inc. v. Pack*, No. 18-015809-CB (Mich. Cir. Ct. Dec. 13, 2018).

that For

orts to work in the security business and to dissuade rivals from hiring them.[2] Workers earning minimum wage would be rational to avoid even the slightest risk of facing a $100,000 penalty and associated lawsuits, and there is no guarantee that Prudential employees would even know that Prudential had exited the market and that the new owner states it has no plans to enforce the prior noncompetes. former owners, Greg Wier and Matthew Keywell, as well as any future business that they control ensuring that they cannot repeat their coercive and exploitative tactics.

-Illinois and Ardagh, meanwhile, target noncompetes in the highly concentrated glass manufacturing sector. Three firms dominate nationally, and these incumbents imposed noncompete restrictions on, collectively, thousands of employees

authority
against Prudential.[6] And it is clear that the widespread use of noncompetes in a highly concentrated industry to the point where labor mobility is so reduced that entry may be thwarted tends to negatively affect competitive conditions in ways that Section 5 is designed to prevent.[7]

ions should put companies and the executives that run them on notice that using noncompetes to restrain workers and restrict competition invites legal scrutiny. We will continue to use our legal authorities to protect all Americans, including by investigating and, where appropriate, challenging restrictive contractual terms that tend to negatively affect competitive conditions.

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standalone Section 5); Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya on the Adoption of the Statement of Enforcement Policy Regarding Unfair Methods of Competition Under Section 5 of the FTC Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Section5PolicyStmtKhanSlaughterBedoyaStmt.pdf; Remarks of Chair Lina M. Khan As Prepared for Delivery at Fordham Annual Conference on International Antitrust Law & Policy (Sept. 16, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/KhanRemarksFordhamAntitrust20220916.pdf.

[6] *Atl. Refin. Co. v. FTC*, 381 U.S. 357 (1965); *FTC v. Texaco, Inc.*, 393 U.S. 223 (1968); *E.I. du Pont de Nemours & Co. v. FTC (Ethyl)*, 729 F.2d 128 (2d Cir. 1984).

[7] *FTC v. Motion Picture Advert. Serv. Co.*, 344 U.S. 392 (1953); *Standard Oil Co. of Cal. v. United States*, 337 U.S. 293, 309 (1949).