

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) with Guardian Service Industries, Inc. (“Guardian” or “Respondent”). The proposed Decision and Order (“Order”), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that have resulted from Guardian’s use of restrictive covenants in some of its contracts with building owners and managers that limit the ability of those building owners and managers to solicit or hire Respondent’s employees (“No-Hire Agreements”). The term No-Hire Agreement refers to a term in an agreement between two or more companies that restricts, imposes conditions on, or otherwise limits a company’s ability to solicit, recruit, or hire another company’s employees, during employment or afterwards, directly or indirectly, including by imposing a fee or damages in connection with such conduct, or that otherwise inhibits competition between companies for each other’s employees’ services.

The Consent Agreement settles charges that Guardian has engaged in unfair methods of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by entering into No-Hire Agreements with customers. Guardian’s No-Hire Agreements constitute unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and are thus unfair methods of competition in violation of Section 5 of the FTC Act.



The proposed Order seeks to remedy Guardian's unfair methods of competition. Section II of the proposed Order prohibits Guardian from entering or attempting to enter, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a No-Hire Agreement, or communicating to a customer or any other person that any Guardian Employee is subject to a No-Hire Agreement.

Paragraph III.A of the proposed Order requires Guardian to provide written notice to customers that are subject to No-Hire Agreements that (i) the restriction is null and void, and (ii) any customer or subsequent building services contractor for a customer is no longer subject to the restrictions or penalties related to the No-Hire Agreements in Guardian's contracts.

Paragraph III.B of the proposed Order requires Guardian to provide various written notices to employees who are subject to a No-Hire Agreement. Paragraph III.C requires that Guardian post clear and conspicuous notice that employees are not subject to No-Hire Agreements and may seek or accept a job with the building directly, or any company that wins the building's business.

Paragraphs IV.A and IV.B of the proposed Order provide a timeline according to which the obligations enumerated in Section III must be met. Paragraphs IV.C-E set forth Guardian's ongoing compliance obligations.

Other paragraphs contain standard provisions regarding compliance reports, requirements for Guardian to provide notice to the FTC of material changes to its business, and access for the FTC to documents and personnel. The term of the proposed Order is ten years.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.