



Office of the Chair

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**Statement of Chair Lina M. Khan  
In the Matter of Planned Building Services, Inc.  
Commission File No. 2410029**

**January 6, 2025**

The Commission has issued an administrative complaint against Planned Building Services, Inc. and related entities (collectively, “Planned”), subsidiaries of one of the largest property management companies in North America. Planned directly employs more than 3,000 workers to perform security, janitorial, and concierge services at residential and commercial buildings. The FTC’s complaint charges that Planned illegally uses “No-Hire” clauses that restrict building owners from directly hiring Planned’s employees. The Commission alleges that the No-Hire agreements “eliminate direct, horizontal, and significant forms of competition to attract labor in the U.S. building services industry,” with the likely effect of impeding the entry and expansion of Planned’s rivals, restricting employee mobility by denying them access to job opportunities, and causing lower salaries, reduced benefits, worse working conditions, and personal hardship for employees.<sup>1</sup> The complaint charges that these No-Hire clauses are unlawful restraints of trade that violate Section 1 of the Sherman Act and an unfair method of competition that violates Section 5 of the FTC Act.<sup>2</sup>

To resolve these charges, the Commission has proposed an order that would prohibit Planned from using No-Hire clauses in their customer contracts, allowing workers to freely switch jobs and businesses to freely hire. The order would also require that Planned notify, within 30 days after the order is issued, each employee and building owner subjected to a No-Hire clauses in the last 3 years that these clauses have been rescinded or will no longer be enforced.

Commissioners Ferguson and Holyoak write separately to explain why they voted to support this matter, despite dissenting on a parallel matter involving No-Hire clauses affecting janitors, concierge staff, and security guards.<sup>3</sup> They argue that the appropriate framework for assessing the legality of these No-Hire provisions is the rule of reason. I disagree.

Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce.”<sup>4</sup> “Restraints can be unreasonable

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<sup>1</sup> Complaint ¶¶ 12-13, *In re Planned Bldg. Servs., Inc.* (F.T.C. Dec. 26, 2024) (FTC File No. 2410029).

<sup>2</sup> *Id.* ¶¶ 16-17.

<sup>3</sup> Statement of Comm’r Andrew N. Ferguson Joined by Comm’r Melissa Holyoak In the Matter of Planned Companies (Jan. 6, 2025); *see also* Dissenting Statement of Commissioner Andrew N. Ferguson In the Matter of Guardian Service Industries (Dec. 4, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/guardian-ferguson-dissenting-statement-final.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/guardian-ferguson-dissenting-statement-final.pdf); Dissenting Statement of Commissioner Melissa Holyoak In the Matter of Guardian Service Industries, Inc. (Dec. 4, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Holyoak-Guardian-Dissenting-Statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Holyoak-Guardian-Dissenting-Statement.pdf).

<sup>4</sup> 15 U.S.C. § 1.

in one of two ways.”<sup>5</sup> Restraints that have an inherently anticompetitive “nature and character”<sup>6</sup> are condemned as per se unreasonable, while all other restraints are assessed under the rule of reason, a “fact-specific assessment” of “the restraint’s actual effects on competition.”<sup>7</sup> Courts have recognized that market allocation agreements among competitors, for example, are per se illegal, including when pursued by buyers agreeing to allocate sellers.<sup>8</sup>

The “ancillary restraints” doctrine modifies which practices receive per se treatment. A horizontal agreement is “exempt from the per se rule” and instead analyzed under the rule of reason if the restraint is (1) subordinate and collateral to a separate, legitimate transaction, and (2) reasonably necessary to achieving that transaction’s procompetitive purpose.<sup>9</sup> Importantly, a “restraint does not qualify as ‘ancillary’ merely because it accompanies some other agreement that is itself lawful.”<sup>10</sup>

As alleged in the Complaint, because Planned competes with building owners and property management competitors for the labor of janitors, security guards, concierge staff, and other building services workers, its No-Hire clauses are therefore horizontal agreements among competitors not to compete and are per se unlawful. I have seen no evidence to suggest that the No-Hire clauses are ancillary restraints exempted from per se treatment. Specifically, I am unaware of evidence that the No-Hire clauses are reasonably necessary to achieve any procompetitive purpose relating to Planned’s provision of building services.<sup>11</sup>

To the contrary, it is difficult to square the duration of the No-Hire clause with any procompetitive purpose. By its terms, Planned’s No-Hire clauses restrict customers from directly or indirectly hiring or soliciting its employees during the term of the contract *and* for six months after its termination. Even if Planned sought to restrict employee mobility so that it could recoup recruiting, hiring, and training costs, the length of the No-Hire restriction seems unrelated to “any estimate of the time” that it would need to recover these investments.<sup>12</sup> The fact that [REDACTED]

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<sup>5</sup> *Ohio v. Am. Express Co.*, 585 U.S. 529, 539 (2018).

<sup>6</sup> *Standard Oil Co. v. United States*, 221 U.S. 1, 64-65 (1911).

<sup>7</sup> *Am. Express*, 585 U.S. at 541 (internal quotation marks and brackets omitted).

<sup>8</sup> *Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co.*, 334 U.S. 219, 236 (1948) (holding that a conspiracy among purchasers to fix prices is per se unlawful); *Todd v. Exxon Corp.*, 275 F.3d 191, 201 (2d Cir. 2001) (Sotomayor, J.) (“[A] horizontal conspiracy among buyers to stifle competition is as unlawful as one among sellers.”); *United States v. Brown*, 936 F.2d 1042, 1044-45 & n.1 (9th Cir. 1991) (holding that a buy-side conspiracy to allocate inputs is per se unlawful).

<sup>9</sup> *Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, 9 F.4th 1102, 1109 (9th Cir. 2021).

<sup>10</sup> *Deslandes v. McDonald’s USA, LLC*, 81 F.4th 699, 704 (7th Cir. 2023). In this matter the Seventh Circuit questioned whether the ancillary restraints defense would cover a No-Hire Agreement in a vertical franchise agreement that imposed a six-month post-termination hiring restriction, similar to the No-Hire provisions used by Planned. According to the Seventh Circuit, a restriction that extended beyond termination (as opposed to one beginning at hiring) was not related to any attempt by the employer to recoup search or training costs in any obvious way, such that careful economic analysis was required before concluding that the ancillary restraints defense (and not the per se rule) applied. Addressing the purported justification that the employer needed to recoup its investment, the Seventh Circuit explained that “eventually the cost of training will have been amortized, and a ban on transfer to another [competing franchisee] after that threshold could be understood as an antitrust problem.” *Id.*

<sup>11</sup> To establish an ancillary restraints defense, the restraint must be “reasonably necessary to achieving th[e] transaction’s pro-competitive purpose.” *Aya*, 9 F.4th at 1109.

<sup>12</sup> *Deslandes*, 81 F.4th at 704.

Nonetheless, I am glad my colleagues have started to value the importance of the Commission's efforts to protect workers from violations of the statutes that we enforce.<sup>13</sup> Since 2021, the Commission has deepened and expanded its focus on protecting Americans in their capacity as working people as well as in their capacity as consumers. This effort has included regularly bringing enforcement actions when workers are the target of unfair methods of competition or unfair or deceptive practices.<sup>14</sup> It has also included updating the tools and screens

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<sup>13</sup> By contrast, Commissioners Ferguson and Holyoak dissented on the Commission's rule to free millions of American workers from noncompete clauses, opposed labor-related provisions in the updated Hart-Scott-Rodino form, and criticized the Commission's work protecting gig drivers from unfair and deceptive practices by Lyft. Dissenting Statement of Comm'r Andrew N. Ferguson Joined by Comm'r Melissa Holyoak, In the Matter of the Non-Compete Clause Rule (June 28, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-andrew-n-ferguson-joined-commissioner-melissa-holyoak-matter-non>; Dissenting Statement of Comm'r Melissa Holyoak Joined by Comm'r Andrew N. Ferguson, In the Matter of the Non-Compete Clause Rule (June 28, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-melissa-holyoak-joined-commissioner-andrew-n-ferguson-matter-non>; Statement of Comm'r Melissa Holyoak, Final Premerger Notification Form and the Hart-Scott-Rodino Rules (Oct. 10, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-melissa-holyoak-regarding-final-premerger-notification-form-hart-scott-rodino>, and Concurring Statement of Comm'r Andrew N. Ferguson In the Matter of Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule (Oct. 10, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/concurring-statement-commissioner-andrew-n-ferguson-matter-amendments-premerger-notification-report>; Dissenting Statement of Commissioner Melissa Holyoak In the Matter of Lyft, Inc. (Oct. 25, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-melissa-holyoak-matter-lyft-inc>; Statement of Commissioner Andrew N. Ferguson Concurring in Part and Dissenting in Part In the Matter of Lyft, Inc. (Oct. 25, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-andrew-n-ferguson-concurring-part-dissenting-part-matter-lyft-inc>. Notably, while Commissioner Ferguson continues to claim the FTC's noncompete rule exceeds the Commission's authority under Section 6(g) of the FTC Act, two of the three courts that have freshly reviewed the question have said during preliminary injunction rulings that Section 6(g) *does* confer substantive rulemaking authority on the FTC, a rejection of both Commissioner Ferguson's and Commissioner Holyoak's statutory arguments. *See ATS Tree Services, LLC v. FTC*, 2024 WL 3511630 (E.D. Pa. July 23, 2024); *Properties of the Villages, Inc. v. FTC*, 2024 WL 3870380 (M.D. Fla. Aug. 15, 2024).

<sup>14</sup> *See, e.g.*, Press Release, Fed. Trade Comm'n, FTC Challenges Kroger's Acquisition of Albertsons (Feb. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Building Service Contractor's No-Hire Agreement (Dec. 4, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-takes-action-against-building-service-contractors-no-hire-agreement>; Press Release, Fed. Trade Comm'n, FTC, Illinois Attorney General Take Action Against Grubhub for Harming Diners, Workers, and Small Businesses (Dec. 17, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-illinois-attorney-general-take-action-against-grubhub-harming-diners-workers-small-businesses>; Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop Lyft from Deceiving Drivers with Misleading Earnings Claims (Oct. 25, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-takes-action-stop-lyft-deceiving-drivers-misleading-earnings-claims>; Press Release, Fed. Trade Comm'n, Uber Agrees to Pay \$20 Million to Settle FTC Charges That It Recruited Prospective Drivers with Exaggerated Earnings Claims (Jan. 19, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/01/uber-agrees-pay-20-million-settle-ftc-charges-it-recruited-prospective-drivers-exaggerated-earnings>; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Gig Work Company Arise Virtual Solutions for Deceiving Consumers About Pay in Marketing Its Business Opportunity (July 2, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-takes-action-against-gig-work-company-arise-virtual-solutions-deceiving-consumers-about-pay>; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Care.com for Deceiving Caregivers About Wages and Availability of Jobs on its Site, Impeding Cancellation

we use for assessing and detecting in the first instance whether workers are being unlawfully harmed.<sup>15</sup> Because this had not been a top Commission priority for decades, we've had to invest in developing the muscle to do this work effectively. This has required, among other things, regularly engaging with workers and labor organizations.<sup>16</sup> Continuing and deepening this engagement will be critical for ensuring that the Commission's efforts reflect the realities of how labor markets function and the real impact of various business practices on workers.

Many thanks to the FTC team for their excellent work on this matter—and for securing an order that will free workers and businesses from undue restraints of trade in an industry that employs hundreds of thousands of Americans.

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Process (Aug. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/08/ftc-takes-action-against-carecom-deceiving-caregivers-about-wages-availability-jobs-its-site>; Press Release, Fed. Trade Comm'n, FTC Approves Final Administrative Consent Order Against Amazon for Withholding Customer Tips from Amazon Flex Drivers (June 10, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-approves-final-administrative-consent-order-against-amazon-withholding-customer-tips-amazon-flex>; Press Release, Fed. Trade Comm'n, FTC Approves Final Order against HomeAdvisor, Inc. for Deceptively Marketing its Leads for Home Improvement Projects (April 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-approves-final-order-against-homeadvisor-inc-deceptively-marketing-its-leads-home-improvement>; Press Release, Fed. Trade Comm'n, FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>.

<sup>15</sup> See, e.g., Statement of Chair Lina M. Khan Joined by Comm'r Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya Regarding The Final Premerger Notification Form and the Hart-Scott-Rodino Rules (Oct. 10, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/khan-slaughter-bedoya-statement-regarding-final-premerger-notification-form-hsr-rules-fy2023-hsr-annual-report-to-congress.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/khan-slaughter-bedoya-statement-regarding-final-premerger-notification-form-hsr-rules-fy2023-hsr-annual-report-to-congress.pdf) (explaining that “information required by . . . provisions of the Final Rule will position the agencies to identify transactions that threaten competition in labor markets.”); Fed. Trade Comm'n, Making the Second Request Process Both More Streamlined and More Rigorous During this Unprecedented Merger Wave (Sept. 28, 2021), <https://www.ftc.gov/enforcement/competition-matters/2021/09/making-second-request-process-both-more-streamlined-more-rigorous-during-unprecedented-merger-wave> (explaining FTC measures to “ensure merger reviews are more comprehensive and analytically rigorous,” including factoring “how a proposed merger will affect labor markets” into Second Requests).

<sup>16</sup> See, e.g., Press Release, Sen. Bernie Sanders, Sanders, Casar to Host FTC Chair Lina Khan, Discuss Corporate Power and Worker Freedom with Texas Workers (Sept. 30, 2024), <https://www.sanders.senate.gov/press-releases/media-advisory-sanders-casar-to-host-ftc-chair-lina-khan-discuss-corporate-power-and-worker-freedom-with-texas-workers/>; Press Release, Sen. Chris Murphy, Murphy Listening Session With FTC Chair Lina Khan: Non-Competes Frustrate Efforts To Raise Wages, Create An Innovation Economy (June 14, 2024), <https://www.murphy.senate.gov/newsroom/press-releases/murphy-listening-session-with-ftc-chair-lina-khan-non-competes-frustrate-efforts-to-raise-wages-create-an-innovation-economy>; Press Release, Fed. Trade Comm'n, FTC and Justice Department Launch Listening Forums on Firsthand Effects of Mergers and Acquisitions (Mar. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-justice-department-launch-listening-forums-firsthand-effects-mergers-acquisitions>; Press Release, Fed. Trade Comm'n, FTC and DOJ to Hold Virtual Public Workshop Exploring Competition in Labor Markets (Oct. 27, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-doj-hold-virtual-public-workshop-exploring-competition-labor-markets>; Press Release, Fed. Trade Comm'n, FTC, Department of Labor Partner to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (Sept. 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices>; Press Release, Fed. Trade Comm'n, FTC, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (July 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>.