**Analysis of Agreement Containing Consent Order to Aid Public Comment**

***In the Matter of Rollins Inc., FTC File No. 2510011***

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## I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") with Rollins, Inc. ("Rollins" or "Respondent"). The proposed Decision and Order ("Proposed Order"), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that have resulted from Respondent's use of post-employment covenants not to compete ("Non-Compete Agreements"). A Non-Compete Agreement refers to contract terms that, after a worker has ceased working for an employer, restricts the worker's freedom to accept employment with a competing business, to form a competing business, or otherwise to compete with the employer.

The Consent Agreement settles charges that Respondent 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 Non-Compete Agreements with its employees and enforcing them against its former employees.

The Proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement and take appropriate action or make the Proposed Order final.

## II. The Respondent

Rollins is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. Respondent is one of the largest pest-control companies in the United States. Rollins operates over 700 locations with over 18,000 U.S-based employees.

## III. The Complaint

The complaint makes the following allegations.

Respondent provides pest-control services in the United States. Respondent long had a policy requiring all newly hired employees to enter Non-Compete Agreements, regardless of their position or responsibilities, with limited exceptions that depend on the employee's location of employment.

Respondent's Non-Compete Agreements have covered a broad range of employees, including pest-control technicians, customer-service representatives, and other employees

earning relatively low wages. These types of employees account for the bulk of Respondent's U.S.-based employees subject to Non-Compete Agreements.

As alleged in the complaint, Respondent's Non-Compete Agreements have contained a clause prohibiting, for two years following the conclusion of employment with Rollins, the employee from working in the pest-control services industry within a predetermined distance – usually a 75-mile radius around the Rollins location at which the employee worked, but often a multi-county region.

The complaint alleges that Respondent's Non-Compete Agreements are unfair and anticompetitive because they degrade employees' ability to negotiate for better terms of employment in the pest-control industry. The Non-Compete Agreements deny employees access to job opportunities and restrict their mobility, including their ability to start their own pest-control businesses. The complaint alleges that this has the tendency or likely effect of restricting business formation, lowering worker earnings (including but not limited to wages and salaries), reducing benefits, and causing less favorable working conditions and other personal hardships to employees. The complaint further alleges that Respondent's Non-Compete Agreements are unfair and anticompetitive because they suppress competition to sell pest control services to consumers, including by inhibiting current competition in the pest-control industry and by impeding competitive entry.

The complaint further alleges that any procompetitive objectives Respondent sought to achieve through its Non-Compete Agreements do not depend on the use and enforcement of Non-Compete Agreements and could have been achieved through significantly less restrictive means. In particular, the complaint alleges that Respondent's Non-Compete Agreements are not reasonably necessary to incentivize Respondent to continue investing in developing confidential information and employee training. The complaint also alleges that Respondent offers the same level of employee training where it does not use or enforce Non-Compete Agreements and is incentivized to provide adequate training to compete on the merits by offering quality services. The complaint further alleges that Respondent can use narrowly tailored non-solicitation agreements, which may promote continued investment in growing or maintaining customer relationships and client goodwill. These agreements may reduce or eliminate the harms associated with more restrictive Non-Compete Agreements.

## IV. Legal Analysis

Section 5 of the Federal Trade Commission (FTC) Act prohibits unfair methods of competition.[1] This prohibition includes agreements in restraint of trade proscribed by Section 1 of the Sherman Act[2] as well as agreements or other practices that "conflict with the basic policies of the Sherman and Clayton Acts" even if they "may not actually violate these laws."[3] Section 5 claims typically "bear the characteristics of recognized antitrust violations."[4] Courts have long

[1] 15 U.S.C. § 45
[2] 15 U.S.C. § 1; *see FTC v. Cement Inst.*, 333 U.S. 683, 693–94 (1948).
[3] *FTC v. Brown Shoe*, 384 U.S. 316, 321 (1966).
[4] *Atl. Ref. Co. v. FTC*, 381 U.S. 357, 369–70 (1965).

found agreements not to compete between workers and their current or former employers to be "proper subjects for scrutiny" under federal antitrust law.[5] That courts at common law prior to the passage of the federal antitrust laws treated agreements between workers and business owners not to compete as presumptively unlawful further suggests that these agreements often conflict with the basic policies of the antitrust laws.[6]

In applying antitrust scrutiny to such agreements, courts typically make a fact-specific determination to assess the agreements' likely effects on competition.[7] Agreements between market participants not to compete may suppress competition by limiting the entry or growth of competitors or otherwise giving rise to the types of harms the antitrust laws are aimed at preventing. These harms include higher consumer prices, reduced availability of services, lower quality services, and reduced worker earnings and benefits. Courts have long held that agreements between market participants that restrain competition but are not reasonably necessary to achieve some procompetitive purpose can be unlawful "even in the absence of elaborate market analysis."[8] Moreover, a growing volume of empirical evidence indicates that agreements not to compete between workers and their current or former employers can harm

[5] *See Newburger, Loeb & Co., Inc. v. Gross*, 563 F.2d 1057, 1081–82 (2d Cir. 1977); *see also Polk Bros., Inc. v. Forest City Enters., Inc.*, 776 F.2d 185, 189 (7th Cir. 1985) ("A covenant not to compete following employment does not operate any differently from a horizontal market division among competitors—not at the time the covenant has its bite, anyway.").

[6] *See United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 281–82 (6th Cir. 1898), *aff'd*, 175 U.S. 211 (1899) (collecting cases and relating the treatment of agreements not to compete at common law to Sherman Act principles, describing them as permissible only where shown to be ancillary to the sale of a business, a partnership, a lease, or where otherwise shown "reasonably necessary" to protect confidential knowledge); *cf. Mitchel v. Reynolds*, 24 Eng. Rep. 347, 351 (Q.B. 1711) (analyzing noncompete accompanying the sale of a bakery and presuming noncompetes "*prima facie* to be bad" unless shown otherwise).

[7] *See Ohio v. Am. Express Co.* ("*Amex*"), 585 U.S. 529, 541 (2018). This analysis is similar to but distinct from that under many state employment law tests for enforceability of non-compete agreements, which tend to focus on balancing the interests of the two parties to the case rather than on competitive effects. *See DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 688 (Tex. 1990) ("Rule of reason analysis under antitrust laws must not be confused with reasonableness analysis under the common law. . . . An agreement may be reasonable as between the parties and nevertheless violate antitrust laws. Conversely, an agreement may be unreasonable as between the parties and yet not violate the rule of reason test under the antitrust laws.").

[8] *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 459–61 (1986) (citations omitted); *see also, e.g.*, *Newburger*, 563 F.2d at 1082 (suggesting similar framework for analysis of agreements not to compete between workers and their former employers); *Mitchel*, 24 Eng. Rep. at 351 (non-compete agreements presumed "*prima facie* to be bad" unless shown otherwise); *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 770 (1999) (affirming that an abbreviated rule of reason analysis is appropriate where "an observer with even a rudimentary understanding of economics could conclude that [they] would have an anticompetitive effect on customers and markets").

both competition between market participants and the workers subject to them.[9] One notable study found that such agreements can hinder the formation and growth of competitors.[10]

Determining agreements' lawfulness also typically requires consideration of whether (a) any purported procompetitive justifications are in fact legitimate,[11] and (b) less restrictive alternative measures can incentivize any associated procompetitive investments.[12] The existence of less restrictive alternatives can be dispositive.[13] In assessing the validity of potential justifications, the basic fact that a company trains its employees, for example, does not mean that any worker restraints are necessary to incentivize investments in training.[14] And even if an employer submits persuasive evidence of procompetitive investments that it aims to promote through its restrictive agreements, less restrictive alternatives often exist to advance those aims, including narrowly-tailored non-disclosure agreements and non-solicitation agreements.[15]

Applying these principles, the factual allegations described in the complaint support concluding that Respondent's Non-Compete Agreements constitute unfair methods of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. As detailed above, the Non-Compete Agreements likely have anticompetitive effects, including by inhibiting new business formation and restricting worker mobility and self-determination. The Non-Compete Agreements are not needed to advance any procompetitive aims—for example,

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[9] *See, e.g.*, Michael Lipsitz & Mark Tremblay, *Noncompete Agreements and the Welfare of Consumers*, 16 (4) Am. Econ. J. Microecon. 112 (2024) (showing empirically that when non-compete agreements are enforced more at the state level, market concentration increases, with the potential for harm the greatest in industries in which non-compete agreements are likely to be used at the highest rate); Matthew S. Johnson, Kurt J. Lavetti & Michael Lipsitz, *The Labor Market Effects of Legal Restrictions on Worker Mobility,* J. Pol. Econ. 133(9), 2735–279 (2025) (linking non-compete agreement enforcement to negative worker earnings); Bo Cowgill, Brandon Freiberg & Evan Starr, *Clause and Effect: Theory and Field Experimental Evidence on Noncompete Clauses* (Jan. 10, 2024) (last revised July 18, 2025), https://ssrn.com/abstract=5012370 (causal study finding that removing non-compete agreements increases workers' earnings and mobility without generating information leakage).

[10] Evan Starr, Natarajan Balasubramanian & Marik Sakakibara, *Screening Spinouts?: How Noncompete Enforceability Affects the Creation, Growth, and Survival of New Firms*, 64 MGMT. SCI. 552 (2018) (detailing how noncompete enforcement can hinder startup employment).

[11] *See Newburger*, 563 F.2d at 1082 (suggesting non-compete agreements would be invalid if, as an initial step, they "serve no legitimate purpose at the time they are adopted").

[12] *See Amex*, 585 U.S. at 540–41.

[13] *See NCAA v. Alston*, 594 U.S. 69, 100 (2021) ("[R]estraints of trade may wind up flunking the rule of reason to the extent the evidence shows that substantially less restrictive means exist to achieve any proven procompetitive benefits.").

[14] *See, e.g.*, *Addyston Pipe*, 85 F. at 281 (discussing employee training only in context of whether the noncompete is necessary to protect confidential information); *Deslandes v. McDonald's USA, LLC*, 81 F.4th 699, 704 (7th Cir. 2023) (advocating scrutiny of whether restraints that affect employees are actually necessary for promoting output and do not "just take advantage of workers' sunk costs and help[] [the] business's bottom line"); *AWP, Inc. v. Safe Zone Servs., LLC*, No. 3:19-CV-00734-CRS, 2022 WL 989133, at *10–11 (W.D. Ky. 2022) (finding that even though the employer "made some investment of 'time, effort and money' in training its employees, whether this investment is 'significant' enough to constitute a legitimate business interest is questionable at best").

[15] *See, e.g.*, *AWP*, 2022 WL 989133, at *8 ("Insofar as any Former Employees . . . had access to sensitive information, the fact that the Employee Agreement contains a separate nondisclosure provision forecloses any argument that [the employer] needed a noncompete agreement to protect it."); *Total Quality Logistics, LLC v. EDA Logistics LLC*, No. 23-3713, 2024 WL 4372312, at *5 (6th Cir. Oct. 2, 2024) (affirming lower court decision that found employer's customer goodwill and relationship interest to be "adequately protected by the agreement's non-solicitation provision").

Respondent provides the same training to employees regardless of whether they are subject to a Non-Compete Agreement. And even if there were procompetitive aims associated with the Non-Compete Agreements, alternatives such as narrowly tailored non-solicitation agreements are available to promote those aims.

## V. Proposed Order

The Proposed Order seeks to remedy Respondent's unfair methods of competition. Section II of the Proposed Order prohibits Respondent from: entering into, maintaining, or enforcing a Non-Compete Agreement against a Covered Employee; communicating to a Covered Employee or any other prospective or current employer that the Covered Employee is subject to a Non-Compete Agreement; and requiring any Covered Employee to pay any fees or penalties relating to a Non-Compete Agreement. Section II of the Proposed Order also specifies that Respondent cannot prohibit Covered Employees from using general advertisements to solicit customers in competition with Rollins nor prohibit Covered Employees from responding to inquiries initiated by Rollins customers.

Section III of the Proposed Order requires Respondent to provide clear and conspicuous written notice to Covered Employees that they (i) are not subject to a Non-Compete Agreement; (ii) may compete with Respondent, including by starting their own business; and (iii) may solicit customers through general advertisements.

Other sections of the Proposed Order contain standard order provisions regarding compliance reports, requirements for Respondent 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.

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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.