

Analysis of Agreement Containing Consent Order to Aid Public Comment

In the Matter of Gateway Services Inc., FTC File No. 2210170

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) with Gateway Services, Inc. and Gateway US Holdings, Inc. (collectively and separately, “Gateway” or “Respondents”). 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 Respondents’ 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 Respondents have 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.

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 Respondents

Respondent, Gateway Services, Inc. (“Gateway Services”), is a corporation organized in Canada with its principal place of business located in Guelph, Ontario. Respondent, Gateway US Holdings Inc. (“Gateway US”), is a wholly owned subsidiary of Gateway Services, Inc. and 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 Cranston, Rhode Island. Respondents are by far the largest pet cremation services company in the United States. Gateway operates over 100 locations with 2,276 employees servicing 17,000 customers across North America. Gateway has 1,992 U.S.-based employees.

III. The Complaint

The complaint makes the following allegations.

Respondents provide pet cremation services in the United States. Respondents instituted a policy in 2019 requiring all newly hired employees to enter Non-Compete Agreements,

regardless of their position or responsibilities. Today, all Gateway employees, except for those working in the state of California, are subject to Non-Compete Agreements.

Respondents' Non-Compete Agreements cover both highly-compensated executives and hourly workers, such as those considered "laborers" and "helpers," who perform everyday functions at cremation facilities, such as operating incinerators, or route drivers who pick up deceased pets from veterinary clinics and deliver them to Respondents' crematories. These types of employees account for the vast majority of Respondents' U.S.-based employees subject to Non-Compete Agreements.

As alleged in the complaint, Respondents' Non-Compete Agreements require that, for one year following the conclusion of employment with Gateway, the employee is prohibited from working in the pet cremation service industry anywhere in the United States.

The complaint alleges that Respondents' Non-Compete Agreements are anticompetitive because they deprive employees of the ability to negotiate for better terms of employment in the pet cremation services industry by denying them access to job opportunities and restricting their mobility. The complaint alleges this has the tendency or likely effect of lowering wages and salaries, reducing benefits, and causing less favorable working conditions, and, among other things, personal hardship to employees. The complaint further alleges that Respondents' Non-Compete Agreements are anticompetitive because they eliminate direct, horizontal forms of competition to attract labor in the pet cremation services industry, inhibit current competition in the pet cremation industry, and impede competitive entry. The complaint alleges any legitimate objectives Respondents sought to achieve through its Non-Compete Agreements could have been achieved through significantly less restrictive means.

For these reasons, the complaint alleges that the Non-Compete Agreements constitute unfair methods of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IV. Proposed Order

The proposed Order seeks to remedy Respondents' unfair methods of competition. Section II of the proposed Order prohibits Respondents from entering into, maintaining, or enforcing Non-Compete Agreements, or communicating to an employee or any other person that any former employee is subject to a Non-Compete Agreement. Section II of the proposed Order also specifies that Respondents cannot prohibit employees in any employment agreement from soliciting any prospective, current, or former customers of Gateway, except with respect to those current or prospective customers with whom the employee had direct contact or personally provided service to in the last 12 months of their employment with Respondents.

Section III of the proposed Order requires Respondents to provide clear and conspicuous written notice to employees and former employees that they (i) are not subject to a Non-Compete Agreement, (ii) may compete with Respondents, and (iii) may solicit customers with whom the employee did not have direct contact or did not personally service during the last 12 months of

their employment with Respondents, and, following that period, may solicit any potential customer.

Other sections contain standard provisions regarding compliance reports, requirements for Respondents to provide notice to the FTC of material changes to their 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.