

Analysis of Agreement Containing Consent Order to Aid Public Comment

In the Matter of Planned Companies, File No. 241-0029

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) with Planned Building Services, Inc., Planned Lifestyle Services Inc., Planned Security Services, Inc., and Planned Technologies Services, Inc. (collectively and separately, “Planned” 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 restrictive covenants in some of their contracts with building owners and managers that limit the ability of those building owners and managers to solicit or hire Respondents’ 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 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 No-Hire Agreements with customers. Respondents’ 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. Independent of the Sherman Act, Respondents’ use of the No-Hire Agreements constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the building services industry, in violation of Section 5.

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

Respondents, Planned Building Services, Inc. (“PBS”), Planned Lifestyle Services Inc. (“PLS”), Planned Security Services, Inc. (“PSS”), and Planned Technologies Services, Inc. (“PTS”), are divisions of Planned Companies Holdings, Inc. Planned Companies Holdings, Inc., is a non-wholly owned, loosely controlled subsidiary of FirstService Corporation, a publicly traded Canadian company and one of the largest property management companies in North America. PBS provides cleaning and maintenance services at residential and commercial

buildings; PLS provides doorman and concierge services at residential buildings; PSS provides security guard services at residential and commercial buildings; and PTS provides technology related services. Respondents are headquartered in New Jersey and employ more than 3,000 building services workers, primarily in the Northeast and Mid-Atlantic, but also in the metro regions of Boston, the District of Columbia, Atlanta, San Francisco, and Florida. The complaint focuses on Respondents' conduct in New York and New Jersey.

III. The Complaint

The complaint alleges that Respondents sell building services to building owners and property management companies, primarily consisting of the labor of janitors, security guards, maintenance workers, and concierge desk workers who are directly employed by Respondents. These employees perform their work at residential and commercial buildings in various states, but predominantly in New York City and Northern New Jersey.

The complaint also alleges that Respondents and their building owner and property manager customers are direct competitors in labor markets for building services workers. These include the markets for workers to perform concierge, security, janitorial, maintenance, and related services.

As alleged in the complaint, Respondents use standard-form agreements with their customers that include No-Hire Agreements. The No-Hire Agreements restrict the ability of Respondents' customers to (1) directly hire workers employed by Respondents and (2) indirectly hire workers employed by Respondents through a competing building services contractor after the competitor wins the customers' business away from Respondents. These restrictions apply during the term of Respondents' contracts and for six months thereafter. Earlier versions of the No-Hire Agreements applied not just to Respondents' employees staffed to provide services for a particular customer, but to all of Respondents' building services employees.

The complaint alleges that Respondents' No-Hire Agreements are facially anticompetitive because they are horizontal agreements among competitors not to compete. Respondents and their customer building owners and property managers are competitors for the labor of building services workers like Respondents' employees. The No-Hire Agreements are horizontal agreements that prohibit buildings and property management companies from hiring building services workers, thereby undermining competition for labor, reducing worker bargaining power, and suppressing wages. For these reasons, the complaint alleges that the 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, as amended, 15 U.S.C. § 45.

Independent of the Sherman Act, the complaint alleges that Respondents' conduct constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the building services industry, in violation of Section 5 of the FTC Act. According to the complaint, the No-Hire Agreements limit the ability of building owners and managers to hire Respondents' employees. This harms Respondents' employees because it limits their ability to negotiate for higher wages, better benefits, and improved working

conditions. Employees may suffer further hardship if the building they work at brings services in-house because the No-Hire Agreements force them to leave their jobs in some circumstances. The complaint further alleges that the No-Hire Agreements harm building owners and managers because they may be foreclosed from bringing services in-house due to the prospect of losing long-serving workers with extensive, building-specific experience.

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 a No-Hire Agreement, or communicating to a customer or any other person that any Planned employee is subject to a No-Hire Agreement.

Paragraph III.A of the proposed Order requires Respondents 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 a subsequent building services contractor for a customer is no longer subject to the restrictions or penalties related to the No-Hire Agreements in Respondents' contracts.

Paragraph III.B of the proposed Order requires Respondents to provide written notice to employees who are subject to a No-Hire Agreement. Paragraph III.C requires that Respondents 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 Respondents' ongoing compliance obligations.

Other paragraphs 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.