

becomes a director, officer, or employee with such responsibility.

Other paragraphs contain standard provisions regarding compliance reports, notice of changes in the Respondents, and access to documents and personnel.³³ The term of the proposed order is twenty years.³⁴

By direction of the Commission, Commissioner Wilson dissenting.

April J. Tabor,
Secretary.

Dissenting Statement of Commissioner Christine S. Wilson

Today, the Commission announced that it has accepted, subject to final approval, a consent agreement with Prudential Security, Inc. The consent resolves allegations that the use of non-compete agreements in employee contracts constitutes an unfair method of competition that violates Section 5 of the FTC Act. This case, which alleges a stand-alone violation of Section 5, is one of the first to employ the approach that the recently issued Section 5 Policy Statement¹ describes. For the reasons explained below, I dissent.

One point is worth emphasizing: my vote to oppose issuance of the complaint does *not* mean that I endorse or condone the conduct of Prudential Security. The company required its security guards to sign non-compete agreements that prohibited employees from accepting employment with a competing business for two years following conclusion of their employment with Prudential. Moreover, a liquidated damages provision required employees to pay Prudential \$100,000 for violations of the non-compete agreement. Based on these facts, it seems appropriate that a Michigan state court found that the non-compete agreements were unreasonable and unenforceable under state law.²

Instead, my vote reflects my continuing disagreement with the new Section 5 Policy Statement and its application to these facts. When it was issued, I expressed concern that the Policy Statement would be used to condemn conduct summarily as an unfair method of competition based on little more than the assignment of

adjectives.³ Unfortunately, that is the approach taken in this case.

The Complaint offers no evidence of anticompetitive effect in any relevant market. According to the Complaint, Prudential's use of non-compete agreements "has harmed employees" by limiting their ability to work for other firms in the security guard industry.⁴ It asserts that Prudential's use of non-compete agreements is "coercive and exploitative" and "tends to negatively affect competition conditions"⁵—but it appears that those "competition conditions" pertain only to individual employees. Similarly, the Complaint offers only a conclusory assertion that "[a]ny possible legitimate objectives . . . could have been achieved through significantly less restrictive means, including . . . confidentiality agreements that prohibited disclosure of any confidential information."⁶ This assertion is unsubstantiated.

Another aspect of the case also concerns me. This enforcement action is designed not to provide effective relief but instead to signal activity with respect to non-compete agreements in the employment arena. As the Complaint describes, Prudential sold the bulk of its security guard business to another security guard company, Titan Security Group. The former Prudential security guards who now work for Titan are not subject to non-compete agreements.⁷ Moreover, now that Prudential no longer provides security guard services, there is no reason for the company to seek to enforce non-compete agreements against former Prudential security guards who did not move to Titan.

I wish it were accurate to say that this case (with apologies to Shakespeare) is a tale of sound and fury, signifying nothing. Unfortunately, it has great significance: it foreshadows how the Commission will apply the new section 5 Policy Statement. Practices that three unelected bureaucrats find distasteful will be labeled with nefarious adjectives and summarily condemned, with little to no evidence of harm to competition. I fear the consequences for our

³ See Christine S. Wilson, Comm'r, Fed. Trade Comm'n, Dissenting Statement Regarding the "Policy Statement Regarding the Scope of Unfair Methods of Competition Under section 5 of the Federal Trade Commission Act" (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyWilsonDissentStmnt.pdf.

⁴ Complaint ¶¶ 23, 25.

⁵ Complaint ¶ 29.

⁶ Complaint ¶ 26.

⁷ Complaint ¶ 16.

economy, and for the FTC as an institution.

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FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.
ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than \$10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than \$1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are \$45,257,000 for Section 8(a)(1), and \$4,525,700 for Section 8(a)(2)(A).

DATES: January 20, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher M. Grengs (202–326–2612), Bureau of Competition, Office of Policy and Coordination.

Authority: 15 U.S.C. 19(a)(5).

April J. Tabor,
Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 1009(d) of 5 U.S.C. 10, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. The grant

³³ *Id.* §§ IV–VII.

³⁴ *Id.* § X.

¹ Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/p221202sec5enforcement_policystatement_002.pdf.

² Complaint ¶ 22.