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

Office of Commissioner
Mark R. Meador

Statement of Commissioner Mark R. Meador
In the Matter of Non-Compete Clauses
Matter Number P201200

September 5, 2025

I vote today in favor of acceding to the vacatur of the noncompete rule. The rule was substantively overbroad and an ill-advised use of Commission resources. I write separately to expound my views on the appropriate framework for evaluating noncompete agreements between employers and employees.

Noncompete agreements, which bar employees from joining a competitor or starting a competing business after leaving an employer, present opposing economic considerations that require careful analysis. Given this complexity, it is my view that such agreements, while they can raise serious competitive concerns, are neither uniformly benign nor invariably harmful. For this reason, a more balanced enforcement approach than that contemplated by the noncompete rule is warranted.

On the one hand, noncompete agreements can create barriers to entry, restrict worker mobility, and suppress wages in ways that harm competition and workers. These concerns have become heightened in recent decades as noncompete clauses have become more and more common in employment agreements. Given this trend, I fully support rigorous enforcement against noncompete agreements under both Sections 1 and 2 of the Sherman Act and Section 5 of the FTC Act when the Commission has reason to believe the law is violated.

At the same time, noncompete agreements can protect legitimate investments in training, encourage internal collaboration, and safeguard proprietary and confidential information. Particularly for medium and small businesses, these provisions can allow companies to invest in developing a workforce and protect know-how. Thus, while focus on noncompete agreements as an unfair method of competition is long overdue, the approach the Commission takes should not make it harder for Americans to start and run a business.

Accordingly, rather than taking a categorical approach, this statement outlines the general analytical framework that I believe the Commission should apply when evaluating noncompete agreements between employers and employees. This statement identifies many of the pro-competitive benefits and adverse effects associated with such restrictions, as well as the contextual factors that impact how such provisions should be analyzed. It also provides my view on the legal approach that should be taken when challenging such provisions under Sections 1 and 2 of the Sherman Act and Section 5 of FTC Act.

I. Legal Principles for Evaluating Noncompetes

a. Sherman Act

Noncompete agreements can be challenged as a restraint of trade under Section 1 or a method of monopolization under Section 2. Accordingly, any approach to evaluating noncompete agreements should incorporate the established standards that are used to assess violations of the Sherman Act. With respect to noncompetes specifically, courts typically look at several factors to distinguish whether a noncompete provision constitutes a legitimate ancillary restriction or a naked restraint on competition, including but not limited to: the horizontal or vertical nature of the restraint, whether the challenged restraint is reasonably necessary to a legitimate collaboration or the operations of a company, the market power of the entity imposing the restriction, and whether the agreement operates as a barrier to entry (such as by preventing competitors from accessing employees and whether it prevents employees from starting competing businesses).

The Sherman Act's dual enforcement mechanisms are particularly well suited to targeting anticompetitive noncompetes. Government enforcement can establish important precedent, which can serve as the basis for future private enforcement efforts that carry the weight of treble damages. Private suits can thus produce additional deterrent effects while allowing private parties to play a complementary role in challenging anticompetitive conduct in labor markets.

b. Section 5 of the FTC Act

Section 5 of the FTC Act provides broader authority that captures both traditional antitrust violations and unfair methods of competition that have adverse economic consequences on consumers and other trading partners, such as employees. Because Section 5 focuses on the "methods" by which firms compete, this authority allows the Commission to address anticompetitive practices that result in adverse economic effects even absent traditional showings of market power or structural market harms. This authority extends to situations where firms' adoption of noncompetes creates incentives for their competitors to adopt practices that restrict worker mobility, even in the absence of formal coordination between firms.

Section 5 therefore offers a complementary approach to policing noncompete agreements. It shifts the analysis from a strict focus on market power and precisely quantifiable economic effects to a more holistic analysis of whether the competitive method itself—*e.g.*, the use of noncompetes—creates problematic incentives and outcomes that are related to the manner in which firms compete for workers. By deploying Section 5 of the FTC Act alongside analyses grounded in Section 1 and Section 2 of the Sherman Act, the Commission can more effectively address the full range of competitive and economic harms presented by noncompete agreements.

II. Economic Concerns Presented by Noncompetes

As noted above, noncompete provisions present both potential benefits and risks. Some examples include:

- Pro-Competitive Justifications: Noncompete agreements can serve legitimate business interests by protecting employer investments in human capital development, safeguarding confidential information and proprietary know-how that cannot be easily protected through other means (*e.g.*, non-disclosure and confidentiality agreements or intellectual property), and encouraging intra-firm collaboration and knowledge sharing. When employers make substantial investments in employee-specific training or provide access to trade secrets and proprietary methods in the performance of an employee's day-to-day responsibilities, noncompetes can prevent "free-riding" behavior that would otherwise discourage such procompetitive investments.

- Anticompetitive Concerns: Noncompetes can create significant barriers to entry by preventing competitors from accessing experienced employees and restricting employees from starting competing businesses. In addition, noncompete provisions raise competitive concerns comparable to wage-fixing and no-poach agreements if they are used to facilitate agreements between direct competitors.

- Adverse Economic Effects: Noncompetes, when deployed by firms with significant market power or on an industry-wide basis, can generate economic harms such as reduced labor mobility, fewer job prospects for workers, and wage suppression. These harms result in reduced avenues for advancement and innovation as workers are deterred from moving to or starting competing ventures.

III. Contextual Factors in the Legal and Economic Analysis of Noncompetes

The competitive character of a noncompete depends on the employment context and circumstances under which the noncompete arises. For example:

- Employee wage and skill level: Noncompetes tend to be less justified when applied to low-wage workers, as such individuals are less likely to receive employee-specific training and typically have limited access to confidential information. Noncompete provisions in this context are more likely to operate in a manner that restricts worker mobility without protecting legitimate business interests. By contrast, noncompetes for highly-skilled or specialized employees may be more readily justified where employers make substantial investments in training, provide access to proprietary methods, or share confidential business information. However, even in these contexts, the restraints must be carefully tailored to legitimate business needs, including limitation to a reasonable scope and duration.

- Deployment in a distribution network: Noncompetes that are deployed across a distribution network may warrant greater scrutiny because it may involve horizontal elements. For example, noncompetes in the franchise context can raise concerns when such provisions are adopted at the behest of franchisees or operate as a facilitation device that discourages independent operators from competing for employees.

- Independent contractors: Agreements with independent contractors require analysis that considers whether the relationship functions more like traditional employment

relationship or an independent supply arrangement, as the latter may more closely resemble exclusive dealing (which raises competitive considerations separate and apart from traditional noncompetes). The competitive analysis should therefore account for whether the contractor operates under exclusive terms or whether the contractor receives dedicated resources or training that could create legitimate free-riding concerns.

IV. Legal Framework

In evaluating noncompetes, the Commission should consider the following non-exhaustive list of factors:

- Likelihood of Free Riding: The analysis should first determine whether genuine free-riding concerns exist, such as those presented by employer-specific investments in training, access to confidential know-how, and sharing of proprietary information.

- Availability of Less Restrictive Alternative: Even where free-riding concerns exist, an employer must demonstrate that the noncompete is reasonably necessary to prevent harm from materializing and, in turn, that narrower restraints (*e.g.*, non-disclosure agreements, customer non-solicitation clauses, asset-use restrictions, intellectual property protections, etc.) are insufficient to address the potential harm to the employer's business interests.

- Scope and Duration Analysis: The restraint should be no broader in geographic scope, duration, and field of employment than necessary to protect legitimate interests. While contextual analysis (as outlined above) is typically required, some general "rules of thumb" may be appropriate. For example, the following scenarios may be more likely to present competitive concerns:
    - Durations exceeding one to two years.
    - A geographic scope that exceeds the boundaries of the employer's current operations or the locations where the employee performed their regular duties.
    - Restrictions on an employee's ability to pursue work in industries or professions that are unrelated or only tangential to the company's core business or the employee's specific role.

- Market Power: Noncompetes imposed by firms with market power raise heightened competitive concerns. Nonetheless, as stated above, a showing of market power is not required to challenge a noncompete under Section 5.

- Evidence of Economic Effects: In addition to demonstrating that a noncompete may have anticompetitive or adverse economic effects (such as evidence the noncompete operates as an entry barrier or materially reduces labor mobility), the Commission should also consider additional contextual economic evidence, including whether there is widespread use of noncompetes across an industry, whether the noncompete implicates a horizontal agreement among competitors (such as in the context of a no-poach arrangement or when deployed across a distribution network), the skill and wage levels of the employees implicated, and whether the individual is an independent contractor or the functional equivalent of an employee. In addition, an employer should be provided an opportunity to

demonstrate that any potential adverse competitive or economic effects are substantially outweighed by reasonably certain procompetitive benefits that accrue to workers and consumers.

V. Conclusion

Noncompetes should not be judged under a blanket rule of legality or illegality. A contextual framework—grounded in traditional antitrust principles and supplemented by the FTC's Section 5 authority—offers a more workable approach. This approach would be more akin to treating noncompetes as being subject to a "rebuttable presumption" of illegality, with the employer bearing the burden to demonstrate that the noncompete is reasonably necessary to achieve legitimate business interests and narrowly tailored toward that end.

This proposed framework balances the procompetitive justifications of noncompetes against their anticompetitive and adverse economic potential while aiming to both address administrability concerns and provide future guidance to the business community. By clarifying the legal inquiry and focusing on context, necessity, and proportionality, the Commission can continue to protect legitimate business investments while ensuring that noncompetes do not unduly restrict competition or worker mobility.