
FTC Non-Compete Rule Update: Texas District Court Blocks Rule's Implementation on a Nationwide Basis

On August 20, 2024, the U.S. District Court for the Northern District of Texas granted summary judgment to the plaintiffs in *Ryan, LLC v. Federal Trade Commission*,¹ holding that the Federal Trade Commission's (the "FTC") new non-compete rule (the "Rule") is unlawful and must be set aside.² The court had previously entered a July 3, 2024 order preliminarily enjoining enforcement of the Rule against the plaintiffs Ryan, LLC, a tax services company, and the Chamber of Commerce of the United States (together with certain other pro-business associations),³ but the court's summary judgment order enjoined enforcement of the Rule nationwide. In so holding, the court emphasized that the Administrative Procedure Act (the "APA") does not contemplate party-specific relief and setting aside an agency action under the APA has nationwide effect, is not party-restricted, and affects persons in all judicial districts equally.

District Court's Reasoning

In granting the plaintiffs' motion for summary judgment, the court found that: (i) the FTC's issuance of the Rule on April 23, 2024 exceeded its statutory authority under the Federal Trade Commission Act (the "FTC Act") and (ii) the Rule constitutes an arbitrary and capricious agency action under the APA.

FTC Exceeded Its Statutory Authority

While the FTC had taken the position that Section 6(g) of the FTC Act empowers it to issue substantive rules addressing unfair methods of competition, the court determined, based on its review of the text, structure, and history of the FTC Act, that Section 6(g) does not grant such authority.

The court found that a plain reading of Section 6(g) does not empower the FTC to issue substantive rules regarding unfair methods of competition. In contrast, the court characterized Section 6(g) as a "housekeeping statute," limited to "rules of agency organization procedure or practice as opposed to substantive rules." The court

¹ See *Ryan, LLC v. Federal Trade Commission*, Case No. 3:24-cv-00986 (N.D. Tex.); *Chamber of Commerce of the United States of America, et al. v. Federal Trade Commission*, Case No. 6:24-cv-00148 (E.D. Tex.) (Tyler Division). The plaintiff-intervenors consist of the Chamber of Commerce of the United States of America, Business Roundtable, Texas Association of Business and Longview Chamber of Commerce.

² See our memoranda, dated [May 20, 2024](#) and [July 29, 2024](#), for further discussion of the Rule and various challenges to the legal validity of the Rule.

³ See *Ryan, LLC v. Federal Trade Commission*, Case No. 3:24-cv-00986 (N.D. Tex. July 3, 2024) (order granting preliminary injunction).

further observed that Section 6(g), unlike other sections of the FTC Act, does not provide for penalties, supporting the plaintiffs' contention that this section was not intended to confer substantive rulemaking power upon the FTC.

The court also examined Section 6(g)'s placement within the FTC Act. The court stated that, "viewing the [FTC Act] as a whole, the location of the alleged rulemaking authority is suspect," and provided as examples the fact that Section 6(g) is "seventh in a list of twelve almost entirely investigative powers" and "fails to mention Section 5 [of the FTC Act] or any other substantive authority from where such substantive rulemaking power would stem."

Finally, the FTC's argument that various amendments to the FTC Act over the years demonstrated Congress's intent for Section 6(g) to provide substantive rulemaking power was similarly rejected by the court "as a piecemeal attempt to confer rulemaking authority that Congress has not affirmatively granted to the FTC." The FTC's position was further weakened by the fact that the FTC had not promulgated *any* substantive rules under Section 6(g) since 1978. The court emphasized that, prior to issuing the Rule, the FTC had typically sought to prevent unfair methods of competition through its case-by-case adjudication process.

Rule is Arbitrary and Capricious

In holding that the Rule violates the APA as an arbitrary and capricious action by the FTC, the court described the Rule as "unreasonably overbroad without a reasonable explanation" that "imposes a one-size-fits-all approach with no end date." The court found the studies relied upon by the FTC in support of the Rule to be unconvincing, stating that the Rule is based on "inconsistent and flawed empirical evidence, fails to consider the positive benefits of non-compete agreements, and disregards the substantial body of evidence supporting [non-compete] agreements." The court was similarly critical of the FTC's failure to consider alternative (and less disruptive) approaches to worker non-competes, asserting that "the FTC dismissed any possible alternatives, concluding that either the pro-competitive justifications outweighed the harms, or that employers had other avenues to protect their interests."

Looking Ahead

Employers can breathe a sigh of relief (at least for the immediate future), as the Rule was scheduled to take effect on September 4, 2024. While the FTC has not yet indicated whether it will appeal the *Ryan* decision,⁴ there is reason to expect it may face an uphill battle in the U.S. Court of Appeals for the Fifth Circuit (and the U.S. Supreme Court), particularly in light of recent jurisprudence pertaining to agency rulemaking. It also remains to be seen what impact this ruling may have on any of the other pending legal challenges to the Rule's validity.⁵

In addition to monitoring any further judicial developments regarding the Rule, employers should be mindful of continuing efforts in state legislatures to limit (or outright ban) worker non-competes, which may pick up steam now that the FTC's national ban is no longer scheduled to take effect in light of the *Ryan* decision.

* * *

⁴ Following the ruling in the *Ryan* case, a spokesperson stated that the FTC is "seriously considering a potential appeal." Danielle Kaye, *Judge Blocks F.T.C.'s Noncompete Rule*, N.Y. TIMES, Aug. 20, 2024.

⁵ The court in *ATS Tree Services, LLC's* challenge to the Rule issued a ruling on July 23, 2024 declining to grant a motion for a preliminary injunction and stay of the Rule's effective date. See *ATS Tree Services, LLC v. Federal Trade Commission, et al.*, Case No. 2:24-cv-01743 (E.D. Pa.); In contrast, in the most recently filed challenge to the Rule's validity brought by *Properties of the Villages, Inc.*, the court issued a ruling on August 15, 2024 staying the Rule's effective date as to the plaintiff only. See *Properties of the Villages, Inc. v. Federal Trade Commission*, Case No. 5:24-cv-000316 (M.D. Fla) (Ocala Division). Neither of these decisions were final rulings, as was the summary judgment ruling in the *Ryan* case.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (partner) at 212.701.3120 or jkurtzberg@cahill.com; Geoffrey E. Liebmann (senior counsel) at 212.701.3313 or gliebmann@cahill.com; Mark Gelman (counsel) at 212.701.3061 or mgelman@cahill.com; or Eric Scher (senior attorney) at 212.701.3984 or escher@cahill.com; or email publicationscommittee@cahill.com.

This memorandum is for general information purposes only and is not intended to advertise our services, solicit clients or represent our legal advice.