

ALERT

DOJ and FTC Seek Public Input on New Competitor Collaboration Guidance – an Opportunity for Businesses and Trade Groups

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On February 23, 2026, the U.S. Department of Justice’s Antitrust Division and the Federal Trade Commission announced a joint public inquiry seeking input from businesses, trade associations, and other stakeholders to help inform new guidance governing collaborations among competitors. The agencies are seeking comments on whether such guidance would be useful and what topics it should address, to help develop updated guidance providing greater clarity on how the agencies will analyze collaborations between competitors under the antitrust laws.

This inquiry is intended to inform potential replacement guidance following the agencies’ December 2024 withdrawal of the 2000 Antitrust Guidelines for Collaborations Among Competitors, which for many years served as a framework to assess joint ventures and other cooperative arrangements among rivals.

A Key Opportunity to Inform Antitrust Agency Thinking

For companies that work with competitors – whether directly or through industry groups – this public inquiry presents a critical opportunity to help shape the agencies’ thinking in an area that has seen significant enforcement attention in recent years. Collaborations involving competitors have been a particular focus of agency investigations and enforcement actions, including scrutiny of information sharing, labor-related coordination, and the use of intermediaries or data-driven tools.

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With no replacement for the 2000 Guidelines yet in place, businesses are operating with greater uncertainty about how the agencies may evaluate common and often pro-competitive forms of collaboration. Submitting comments allows companies and trade associations to explain how these arrangements function in practice, identify areas where clearer guidance would improve compliance, and help ensure that future guidance appropriately distinguishes lawful cooperation from unlawful coordination.

Original 2000 Collaboration Guidelines Withdrawn in 2024

The original Antitrust Guidelines for Collaborations Among Competitors were issued jointly by the DOJ and FTC in April 2000 and, for nearly 24 years, provided a structured framework for analyzing collaborations such as joint ventures, research and development agreements, and information exchanges. The guidelines articulated key principles for assessing competitive effects, described certain enforcement “safety zones,” and explained the agencies’ analytical approach to competitor collaborations, including how they define relevant markets, evaluate competitive harms and efficiencies, assess information sharing and governance structures, and distinguish potentially unlawful coordination from pro-competitive cooperation.

In December 2024, the DOJ and FTC jointly withdrew the 2000 guidelines, stating that they no longer provided reliable guidance for evaluating competitor collaborations in modern markets. The withdrawal left a notable gap, particularly given continued enforcement activity in this area. The February 2026 public inquiry reflects the agencies’ effort to gather input before developing any new or replacement guidance.

Areas Where Public Input Could Be Valuable

Although the agencies have not released draft guidelines, their February 23 announcement and the structure of the 2000 guidelines highlight several areas where business input could be particularly influential, including:

- Joint ventures and strategic collaborations;
- Joint licensing and intellectual property arrangements;
- Trade association activities such as standard-setting and benchmarking;
- Teaming agreements and consortia;
- Labor-related collaborations; and
- Information exchanges, including those involving third-party intermediaries and data aggregation.

What Trade Groups and Businesses Should Do Now

Companies and trade associations that collaborate with competitors should consider whether and how to engage in the agencies’ public inquiry. Well-crafted submissions can help highlight legitimate, pro-competitive business practices, identify areas where clearer guidance would improve compliance, and reduce uncertainty around common collaborative arrangements.

In preparing comments, businesses may wish to draw on practical experience with joint ventures, trade association activities, information exchanges, labor-related initiatives, and other collaborations that raise recurring antitrust questions. Submissions that explain how these arrangements operate in practice within specific industries – and how existing legal uncertainty affects business decision-making – may be particularly valuable to the agencies as they consider updated guidance. Commenters may also consider highlighting aspects of the rescinded 2000 guidelines that provided helpful stability and guideposts for their industry.

Wiley’s Antitrust team has deep experience advising clients on antitrust enforcement and policy developments as well as a long track record of engaging federal agencies through public comments, advocacy, and thought leadership. Companies and trade associations considering submitting comments may benefit from working with counsel to assess antitrust risk and present practical, constructive input to the DOJ and FTC.