

## The FTC and DOJ Seek Public Comment on Antitrust Guidance for Business Collaborations



By **Bilal Sayyed**  
Counsel | Antitrust

Recognizing that lack of agency guidance on business collaborations may be deterring procompetitive collaborations and hindering business compliance with the Sherman Act and Federal Trade Commission Act, [the Federal Trade Commission and Department of Justice \("the Agencies"\)](#) are seeking comment on the need for new and updated, "guidance on collaborations among competitors."

**Comments must be filed no later than April 24, 2026, and can be submitted [here](#).**

The Agencies request is a significant opportunity for businesses to advise and influence the Agencies' enforcement posture towards business collaborations short of a merger or control acquisition, both general and industry-specific. New guidelines would replace long-time but dated guidance rescinded by the Biden Administration and other guidance that would be timely to update and better align with the Trump Administration's economic policies (including with respect to conduct subject to certain tariff agreements).

*Significant Opportunity for the Trump Administration to Adopt a Fresh Position on U.S. and International Business Collaborations*

The [Antitrust Guidelines for Collaborations Among Competitors](#) ("Competitor Collaboration Guidelines" or "CCGs") were [withdrawn](#) by the previous administration because, according to a [Joint Statement](#) by the DOJ and FTC, they did not reflect the "evolution" of Supreme Court and Appellate Court opinions issued subsequent to their April 2000 release. They also "rel[ied] on outdated analytical methods that fail[ed] to capture advances in computer science, business strategy, and economic disciplines that help enforcers assess . . . the competitive implications of corporate collaborations." Andrew Ferguson, now-Chairman of the FTC, [dissented](#) from their withdrawal.

The Biden Administration also withdrew other guidance on business collaborations without replacement, including the 2011 [Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program](#) and the [1996 Statements of Antitrust Enforcement Policy in Health Care](#). See [Federal Trade Commission Withdraws Health Care Enforcement Policy Statements](#) (Jul. 14, 2023); [Justice Department Withdraws Outdated Enforcement Policy Statements](#) (Feb. 3, 2023).

Other existing guidelines that discuss collaborative activity may be viewed as out-of-date. The FTC and DOJ leadership in the first Trump Administration did not seek to update the [Antitrust Guidelines for International Enforcement and Cooperation](#) and the [Antitrust Guidelines for the Licensing of Intellectual Property](#) both approved in the final days of the Obama administration. They may be viewed as inconsistent with, or not responsive to, policies of the second Trump administration, or, more generally, somewhat dated and not sufficiently cognizant of developments in the case law.

*Topics of Interest to the FTC and DOJ & Additional Areas for Possible Comment*

The Agencies have identified a broad set of issues that they are interested in:

- What **topics** would benefit from additional guidance – including, for example, joint licensing arrangements and agreements that adopt conditions

for dealing with competitors?

- What **new technologies and business models** would benefit from additional guidance – including, for example, algorithmic pricing, information and data sharing, or labor collaborations?
- What significant **legal, economic, or technological developments** should be considered in any revisions to the prior competitor collaboration guidelines?

In withdrawing the CCGs in December 2024, the Biden Administration identified other limitations, including the guidelines failure to cover (i) “**roll ups**” and (ii) **vertical integration**. Although unspecified in the Agencies joint statement of withdrawal, collaborations by contract, management rights, or by means other than through control acquisitions by either a single firm or legally distinct entities acting collectively, are relevant to both of these areas, and are the subject of ongoing enforcement initiatives. These are all areas where additional guidance would be helpful to the business and legal communities, and where the law is not especially well-developed or as yet responsive to changes in economic analysis.

The breadth of the topics identified as of interest to the Agencies suggests that they may update, in one or more documents, guidance with respect to collaboration in labor markets, health care markets, intellectual property and technology markets and, possibly, the interpretation of statutes related to associations or other collaborations engaged in the export of goods into and from the United States. The Agencies are also cognizant of the need to provide guidance with respect to new technologies, including Artificial Intelligence (A.I.) and Algorithms, in both their creation-development and use-cases, including in real estate and energy markets, and other markets that align with the Administration’s affordability agenda and its interest in the U.S. obtaining and maintaining a dominant position in A.I.

The Agencies may pay close attention to comments showing that too restrictive antitrust policies towards collaborations may limit innovation, growth and recapitalization of U.S. firms, and an expansion of export-focused economic activity. Similarly, a too-light touch of antitrust enforcement towards foreign export cartels may affect the development and growth of U.S. firms.

*The Agencies’ request for public comment on the need for and content of guidelines with respect to business collaborations is a significant opportunity for the business and legal community to shape the Administration’s rethink of antitrust policy and doctrine.*