

# Clients & Friends Alert

## In a Once-In-A-Generation Opportunity, the FTC and DOJ Seek Public Comment on Antitrust Guidance for U.S. and International Business Collaborations

February 25, 2026

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.”<sup>1</sup> **Comments must be filed no later than April 24, 2026, and can be submitted to [regulations.gov](https://www.regulations.gov) at <https://www.regulations.gov/docket/ATR-2026-0001>.**

*This request is potentially a once-in-a-generation opportunity for businesses, through merit-based submissions, 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 New guidelines would replace long-time but dated guidance rescinded by the Biden Administration and other guidance that it would be timely to update and better align with the Trump Administration’s economic policies (including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).*

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.<sup>2</sup>

The Agencies also appear cognizant of the need to provide guidance with respect to new technologies, including Artificial Intelligence and Algorithms, in both their creation-development and use-cases, including in real estate and energy markets, and other markets that align with the

<sup>1</sup> [Federal Trade Commission and Department of Justice Seek Public Comment for Guidance on Business Collaborations](#) (Feb. 23, 2026).

<sup>2</sup> Examples include the Webb-Pomerene Act and the Export Trading Company Act with respect to exports, and the Wilson-Tariff Act, Section 301 of the Trade Act of 1974, and the Tariff Act of 1930, each of which is discussed in summary fashion in the [ANTITRUST GUIDELINES FOR INTERNATIONAL ENFORCEMENT AND COOPERATION](#) (Jan. 2017).

Administration's affordability agenda and its interest in the U.S. obtaining and maintaining a dominant position in A.I.

*The Biden Administration's Withdrawal of Antitrust Guidelines, Without Replacement, Provides Substantial 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 the guidelines April 2000 release. They also "rel[ie]d 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."<sup>3</sup> Andrew Ferguson, now-Chairman of the FTC, [dissented](#) from their withdrawal.<sup>4</sup>

The Biden Administration also withdrew other guidance on business collaborations without replacement.<sup>5</sup> In other instances, the first Trump Administration did not seek to update what was then newly updated guidance, but which now 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.<sup>6</sup>

*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:

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- <sup>3</sup> [FTC and DOJ Withdraw Guidelines for Collaboration Among Competitors](#) (Dec. 11, 2024); Joint Statement, [JUSTICE DEPARTMENT AND FEDERAL TRADE COMMISSION WITHDRAW GUIDELINES FOR COLLABORATION AMONG COMPETITORS](#) (Dec. 11, 2024).
- <sup>4</sup> [Dissenting Statement of Commissioner Andrew N. Ferguson Regarding the Withdrawal of Antitrust Guidelines for Collaborations Among Competitors](#) (Dec. 11, 2024). Former FTC Commissioner Melissa Holyoak, now Interim U.S. Attorney for the District of Utah, also dissented from the CCGs withdrawal without a replacement. [Dissenting Statement of Commissioner Melissa Holyoak](#) (Dec. 11, 2024).
- <sup>5</sup> The Biden Administration withdrew 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).
- <sup>6</sup> The Obama Administration finalized revised (and still current) versions of the [ANTITRUST GUIDELINES FOR INTERNATIONAL ENFORCEMENT AND COOPERATION](#) and the [ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY](#) in January 2017, and Trump Administration antitrust agency officials decided not to re-open them for revision during the first Trump Administration.

- What **topics** would benefit from additional guidance – including, for example, joint licensing arrangements<sup>7</sup> 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,<sup>8</sup> information and data sharing,<sup>9</sup> or labor collaborations?<sup>10</sup>
- 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.<sup>11</sup> These are 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.<sup>12</sup>

#### *Relevance to International Activities in or Affecting U.S. Commerce*

Joint activity by U.S. exporters and non-U.S. firms exporting to the United States are governed, in part, by specific statutes. Guidance on how the U.S. government may apply the prohibitions, or

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<sup>7</sup> The reference to joint licensing arrangements is interesting, as licensing is, in part, covered in the [ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY](#), last updated in January 2017.

<sup>8</sup> For example, should general guidelines adopt the framework included in the recently filed proposed final judgment in *United States v. RealPage*?

<sup>9</sup> Information sharing guidance was previously provided in Statements 4, 5, and 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care; this guidance was withdrawn by the Biden Administration without replacement in 2023. [Federal Trade Commission Withdraws Health Care Enforcement Policy Statements](#) (Jul. 14, 2023).

<sup>10</sup> Certain issues related to collaboration with respect to labor are detailed in guidance issued late in the Biden Administration, and may be ripe for review by this Administration. [ANTITRUST GUIDELINES FOR BUSINESS ACTIVITIES AFFECTING WORKERS](#) (Jan. 2025).

<sup>11</sup> See, e.g., the enforcement actions *FTC v. U.S. Anesthesia Partners* (acquisitions by a collective of related but legally separate private equity firms) and *FTC v. Zillow Group and Redfin Corp.* (litigation focused on whether contractual relationship of one firm to provide services to another is or is not a horizontal agreement among past and potential competitors not to compete).

<sup>12</sup> The 2000 Competitor Collaboration Guidelines were drafted to place a slight emphasis on and preference for current case law that was developing in a manner somewhat different than earlier case law on horizontal agreements. See Robert Pitofsky, FTC Chairman, *Joint Venture Guidelines: Views from One of the Drafters* (Nov. 11, 1999). See also the submission by Ernest Gellhorn and William E. Kovacic, *Analytical Approaches and Institutional Processes for Implementing Competition Policy Reforms by the Federal Trade Commission* (Dec. 12, 1995), asking the Commission for “clarification of the analytical requirements of the rule of reason” which they described as “a task largely uncompleted since 1914.”

affirmative defenses, for such joint conduct may help support firms exporting from the United States and, consistent with the Administration's economic and trade policy, help restrict certain cartel-like joint conduct that illegally or unfairly supports exports to the United States.<sup>13</sup>

Application of the antitrust laws to joint conduct of state-owned enterprises selling into the United States, or otherwise affecting commerce in the United States, may be in need of a refresh, as the number or presence of state-owned or state-protected entities focused on exporting to the U.S. grows. Additionally, the Agencies' recognition of *Noerr-Pennington* protection for joint petitioning of non-U.S. governments by U.S. and/or non-U.S. companies for the adoption of policies that restrain competition for sales in or into the United States, or that impose barriers for export sales that affect U.S. commerce, might be reconsidered.<sup>14</sup>

The Administration is clearly rethinking the bi-partisan antitrust enforcement policies initiated in the Reagan Administration. 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 non-U.S. 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.

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<sup>13</sup> These issues are discussed in the [ANTITRUST GUIDELINES FOR INTERNATIONAL ENFORCEMENT AND COOPERATION](#) (Jan. 2017).

<sup>14</sup> *Id.*