

CLIENT ALERT

DOJ & FTC Facilitate Lawful Collaborations to Respond to COVID-19

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Yesterday the Department of Justice and the Federal Trade Commission issued a [joint statement](#) providing guidance to businesses responding to the COVID-19 crisis on how to engage with competitors without running afoul of the antitrust laws.

The agencies acknowledged that this pandemic “will require unprecedented cooperation among federal, state, and local governments and among private businesses” and reiterated that competitor collaborations often yield procompetitive benefits. To that end, the agencies recognize that some businesses need to act immediately and that “[m]any types of collaborative activities designed to improve the health and safety response to the pandemic would be consistent with the antitrust laws.” This includes collaboration on R&D, technical know-how, healthcare providers’ development of standards for patient management, joint purchasing arrangements, and lobbying to address the use of federal emergency authority. Collaborations that are permissible within the scope of existing antitrust guidance may proceed.

The agencies went on to suggest that, in the midst of the COVID-19 crisis, the antitrust laws may permit extensive collaboration in production, distribution, and service provision, ostensibly even between direct competitors. The guidance suggests that such collaboration is more likely permissible where it is “limited in duration,” “necessary to assist patients, consumers, and communities affected by COVID-19,” and “a necessary response to exigent circumstances” that might provide “products or services that might not be available otherwise.”

While the antitrust laws require no pre-review or -approval from enforcement agencies, some businesses may desire greater comfort regarding a specific proposed collaboration. In response, the agencies have pledged to provide expedited review of such proposals via the DOJ’s [Business Review process](#) and the FTC’s [Advisory Opinion process](#). Both agencies will review proposed collaborations within seven (7) calendar days of receiving all information necessary to assess the collaboration. The DOJ also committed to process [National Cooperative Research and Production Act filings](#) more quickly for those organizations involved in standards development.

Businesses seeking expedited review of collaborations should expect to provide basic facts regarding the program in question via a brief email submission. The agencies expect such applications to include basic facts about the participants, products or services, geographic areas, and customers affected, and the competitive significance of other parties who also provide such products and services.

The joint statement also recognized that during this crisis some individuals and businesses may seek to exploit the vulnerable and undermine competition through conspiracies, illegal monopolistic behavior, or agreements to increase prices, lower wages, decrease output, or reduce quality. The agencies warned that they remain vigilant and stand ready to prosecute all civil and criminal antitrust violations, [as well as other fraudulent schemes](#).

This announcement comes on the heels of a similar statement issued by the [European Competition Network](#) Monday.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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