

## Justice Department and Federal Trade Commission Withdraw Guidelines for Collaboration Among Competitors

The Justice Department’s Antitrust Division and the Federal Trade Commission announced today that they have withdrawn the Antitrust Guidelines for Collaborations Among Competitors (“Collaboration Guidelines”) issued in April 2000. The Agencies are committed to vigorous antitrust enforcement on a case-by-case basis in the area of competitor collaborations because such collaborations can harm competition and subvert the competitive process.

In the 24 years since the Collaboration Guidelines were issued, the Supreme Court and the federal courts of appeals have decided many significant cases addressing collaborations involving competitors and advancing the jurisprudence interpreting Section 1 of the Sherman Act.<sup>1</sup> The Collaboration Guidelines do not reflect this evolution. Moreover, the Collaboration Guidelines rely in part on outdated and withdrawn policy statements,<sup>2</sup> and risk creating safe harbors that have no basis in federal antitrust statutes. They also rely on outdated analytical methods that fail to capture advances in computer science, business strategy, and economic disciplines that help enforcers assess, as a factual matter, the competitive implications of corporate collaborations. Furthermore, the Collaboration Guidelines fail to address the competitive implications of modern business combinations and rapidly changing technologies such as artificial intelligence, algorithmic pricing models, vertical integration, and roll ups. As a result, while some specific aspects of the Collaboration Guidelines may accurately reflect the state of the law, the Collaboration Guidelines no longer provide reliable guidance to the public about how enforcers assess the legality of collaborations involving competitors.

For these reasons, the Antitrust Division and Federal Trade Commission are withdrawing the Collaboration Guidelines.<sup>3</sup> Businesses considering collaborating with competitors are

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<sup>1</sup> See, e.g., *NCAA v. Alston*, 594 U.S. 69, 88-92 (2021); *American Needle Inc. v. NFL*, 560 U.S. 183, 191, 202 (2010); *Texaco Inc. v. Dagher*, 547 U.S. 1, 6 (2006); *Deslandes v. McDonald’s USA, LLC*, 81 F.4th 699, 702 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 1057 (2024); *United States v. American Airlines Grp.*, --- F.4th ---, 2024 WL 4716418 (1st Cir. 2024).

<sup>2</sup> The Collaboration Guidelines rely on 1992 and 1997 Merger Guidelines, 1993 Statements of Antitrust Enforcement Policy in Health Care, and 1995 Antitrust Guidelines for the Licensing of Intellectual Property, none of which remain in effect. See Press Release, Department of Justice, Office of Public Affairs, Justice Department and Federal Trade Commission Release 2023 Merger Guidelines (Dec. 18, 2023), <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-release-2023-merger-guidelines>; Press Release, Federal Trade Commission, FTC and DOJ Issue Updated Antitrust Guidelines for the Licensing of Intellectual Property (Jan. 13, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/01/ftc-doj-issue-updated-antitrust-guidelines-licensing-intellectual-property>; Press Release, Department of Justice, Office of Public Affairs, Justice Department Withdraws Outdated Enforcement Policy Statements (Feb. 3, 2023), <https://www.justice.gov/opa/pr/justice-department-withdraws-outdated-enforcement-policy-statements>; Press Release, Federal Trade Commission, Federal Trade Commission Withdraws Health Care Enforcement Policy Statements (July 14, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/07/federal-trade-commission-withdraws-health-care-enforcement-policy-statements>.

<sup>3</sup> This withdrawal does not withdraw, modify, or otherwise impact other guidance documents, such as the Agencies’ Antitrust Policy Statement on Sharing of Cybersecurity Information (“Cybersecurity Statement”), that reference or discuss the Collaboration Guidelines. In particular, the Agencies stand by their assessment in the Cybersecurity Statement that “properly designed sharing of cyber threat information should not raise antitrust concerns,” given the valuable purpose of sharing, and the very technical nature of, such information. Furthermore, this withdrawal statement does not prescribe how the Agencies will analyze antitrust issues raised by collaborations going forward.

encouraged to review the relevant statutes and caselaw to assess whether a collaboration would violate the law.