



JOINT ANTITRUST STATEMENT REGARDING COVID-19

Addressing the spread of Coronavirus Disease 2019 (“COVID-19”) will require unprecedented cooperation between federal, state, and local governments and among private businesses to protect Americans’ health and safety. The Antitrust Division of the Department of Justice (“the Division”) and the Bureau of Competition of the Federal Trade Commission (the “Bureau,” and collectively the “Agencies”) wish to make clear to the public that there are many ways firms, including competitors, can engage in procompetitive collaboration that does not violate the antitrust laws.

The Agencies are committed to providing individuals and businesses in any sector of the economy that are responding to this national emergency expeditious guidance about how to ensure their efforts comply with the federal antitrust laws. The Antitrust Division’s [Business Review Process](#) and the Federal Trade Commission’s [Advisory Opinion Process](#) already provide ways for individuals and businesses to ask the Agencies to evaluate proposed conduct. While these processes generally take several months after the Agencies receive all necessary information, the Agencies recognize that many individuals and businesses are trying to address a rapidly evolving crisis as quickly as possible. Accordingly, the Agencies will aim to respond expeditiously to all COVID-19-related requests, and to resolve those addressing public health and safety within seven (7) calendar days of receiving all necessary information.

Since joint ventures may be necessary for businesses to bring goods to communities in need, to expand existing capacity, or to develop new products or services, the Agencies will also work to expeditiously process filings under the National Cooperative Research and Production Act (as amended by the Standards Development Organization Advancement Act). *See* Dep’t of Justice, [Filing a Notification Under NCRPA](#). These statutes provide flexible treatment under the antitrust laws for certain standard development organizations and joint ventures.

The Agencies recognize, however, that some individuals and businesses may need to act immediately in addressing this ongoing pandemic. Many types of collaborative activities designed to improve the health and safety response to the pandemic would be consistent with the antitrust laws. For example:

- As a general matter, the Agencies have stated that when firms collaborate on research and development this “efficiency-enhancing integration of economic activity” is typically procompetitive. *See* Federal Trade Comm’n & U.S. Dep’t of Justice, [Antitrust Guidelines for Collaborations Among Competitors](#) at 31 (2000).

- The Agencies have expressed that sharing technical know-how, rather than company-specific data about prices, wages, outputs, or costs, may be “necessary to achieve the procompetitive benefits of certain collaborations.” *Id.* at 15; *see also* Federal Trade Commission, [Information Exchange: Be Reasonable](#) (discussing the “safety zones” around information sharing).
- The Agencies have explained that they will not challenge, absent extraordinary circumstances, providers’ development of suggested practice parameters – standards for patient management developed to assist providers in clinical decisionmaking – that also may provide useful information to patients, providers, and purchasers. *See* Federal Trade Comm’n & U.S. Dep’t of Justice, [Statement of Antitrust Enforcement Policy in Health Care at 41](#) (1996).
- The Agencies have also explained that most joint purchasing arrangements among healthcare providers, such as those designed to increase the efficiency of procurement and reduce transaction costs, do not raise antitrust concerns. *See id.* at 53 (also explaining circumstances in which joint purchasing arrangements may raise concerns).
- The antitrust laws would generally permit private lobbying addressed to the use of federal emergency authority, including private industry meetings with the federal government to discuss strategies on responding to COVID-19, “insofar as those activities comprise[] mere solicitation of governmental action with respect to the passage and enforcement of laws.” *Eastern R. Conf. v Noerr Motors*, 365 U.S. 127, 138 (1961); *see also* FTC, Enforcement Perspectives on the *Noerr-Pennington* Doctrine: An FTC Staff Report (2006) (discussing applicability and limitations).

Interested businesses should refer to the Agencies’ previous statements on how they analyze cooperation and collaboration between competitors. *See* Federal Trade Comm’n & U.S. Dep’t of Justice, [Antitrust Guidelines for Collaborations Among Competitors](#) (2000) and [Statement of Antitrust Enforcement Policy in Health Care](#) (1996).

The Agencies will also account for exigent circumstances in evaluating efforts to address the spread of COVID-19 and its aftermath. For example, health care facilities may need to work together in providing resources and services to communities without immediate access to personal protective equipment, medical supplies, or health care. Other businesses may need to temporarily combine production, distribution, or service networks to facilitate production and distribution of COVID-19-related supplies they may not have traditionally manufactured or distributed. These sorts of joint efforts, limited in duration and necessary to assist patients, consumers, and communities affected by COVID-19 and its aftermath, may be a necessary response to exigent circumstances that provide Americans with products or services that might not be available otherwise.

Additionally, where the government enlists help from private businesses in addressing COVID-19, the Agencies stand ready to assist, such as by working with the Department of Health

and Human Services to effectuate the Defense Production Act and the Pandemic and All-Hazards Preparedness Act, as appropriate, along with other agencies working to address COVID-19.

While many individuals and businesses have and will demonstrate extraordinary compassion and flexibility in responding to COVID-19, others may use it as an opportunity to subvert competition or prey on vulnerable Americans. The Division and the Bureau will not hesitate to seek to hold accountable those who do so. In particular, the Division and the Bureau stand ready to pursue civil violations of the antitrust laws, which include agreements between individuals and business to restrain competition through increased prices, lower wages, decreased output, or reduced quality as well as efforts by monopolists to use their market power to engage in exclusionary conduct. The Division will also prosecute any criminal violations of the antitrust laws, which typically involve agreements or conspiracies between individuals or businesses to fix prices or wages, rig bids, or allocate markets.

More broadly, the Department of Justice is addressing actions by individuals and businesses to take advantage of COVID-19 through other fraudulent and illegal schemes. Anyone with information or concerns about this sort of conduct, or other COVID-19-related complaints, should contact the National Center for Disaster Fraud Hotline (1-866-720-5721) or e-mail (disaster@leo.gov).

In sum, the Agencies, in addition to the rest of the Department of Justice and the Federal Trade Commission, will continue working closely with the public, the business community, and other federal agencies to responsibly enforce the antitrust laws to protect the health, safety, and welfare of all Americans.

FTC ADVISORY OPINION PROCESS RELATED TO THE NOVEL CORONAVIRUS

As noted above, the Federal Trade Commission through its Bureau of Competition provides antitrust guidance, upon request, in the form of advisory opinions concerning the likely analysis of proposed conduct under the antitrust laws.

FTC rules provide for two types of Advisory Opinions: Commission advisory opinions and advisory opinions issued by staff. Commission advisory opinions are voted on by the Commission and are intended to address substantial or novel questions of fact or law, or subjects of significant interest. Staff advisory opinions typically provide guidance on proposed business conduct.

In an effort to provide expedited antitrust guidance with respect to requests related to COVID-19, the Bureau will accept a request for an expedited staff advisory opinion, along with as much information and documents the requesting parties can reasonably provide. To use this temporary procedure, parties should do the following:

1. Requests for an FTC staff advisory opinion should be submitted to the Bureau of Competition in writing via email at FTCCOVID19@ftc.gov.
2. The request must explain how it is related to COVID-19 and provide a description of the nature and rationale of the proposal (including the names of the participants, the product(s) or service(s) the proposal will cover, and the temporal and geographic scope of the

arrangement), any proposed contractual or other arrangements among the parties (including copies of any documents memorializing the contract or arrangement), the names of the major expected customers, and any available information regarding the competitive significance of other providers of the product(s) or service(s) to be offered. The request must also provide the name and contact information of a person whom staff can contact for additional information.

3. Any additional information submitted with the request for a staff advisory opinion, or additional information requested by staff may be supplied via fax, email, or, in the staff's discretion, by telephone.
4. The Bureau's responses will be in effect for one (1) year from the date of the response. Parties may subsequently request, utilizing these expedited procedures, that the Bureau reiterate its intention not to challenge the conduct, if further time is necessary to respond to COVID-19 and its aftermath.

For more information on requesting a DOJ Business Review Letter, [click here](#).

The Federal Trade Commission continues to investigate fraudulent and deceptive activity involving COVID-19. The expedited advisory opinion process does not relate to or alter those efforts. More information on the FTC's guidance on potential fraud, deceptive practices, and scams is available [here](#), and to report a complaint go to www.ftc.gov/complaint.

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