

MARCH 24, 2020

For more information,
contact:

Jeff Spigel
+1 202 626 2626
jspigel@kslaw.com

Norm Armstrong
+1 202 626 8979
narmstrong@kslaw.com

John Carroll
+1 202 626 2993
jcarroll@kslaw.com

Albert Kim
+1 202 626 2940
akim@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Washington, D.C. 20006-
4707
Tel: +1 202 737 0500

DOJ/FTC Release Competitor Collaboration Guidance in Light of COVID-19

On March 24, 2020, the Antitrust Division of the U.S. Department of Justice and the U.S. Federal Trade Commission (the Agencies) issued guidance and outlined an expedited review process for companies seeking to work together on COVID-19-related collaborations (Joint Statement). Reinforcing and expanding on previous guidance from the Agencies regarding competitor collaborations, the [Joint Statement](#) reminds companies that the antitrust laws still apply to ventures between competitors but acknowledges the urgency of the public health crisis by committing to a seven-calendar day turnaround for DOJ Business Review letters and FTC Advisory Opinions related to COVID-19.

Companies should always consider potential antitrust exposure when partnering with competitors such as the risk of exchanging competitively sensitive information or jointly setting prices. However, as set out in prior guidance, such as the Agencies' [Antitrust Guidelines for Collaborations Among Competitors](#) (2000), antitrust enforcers recognize that competitor collaborations are often pro-competitive, leading to greater efficiency, increased production and lower prices.

In determining whether a proposed competitor collaboration is lawful under the antitrust laws, companies and their antitrust counsel often internally analyze the collaboration based on existing guidance and precedents. Companies may also seek written guidance on the proposed collaboration from the Agencies via the DOJ Business Review letter and FTC Advisory Opinion process. These review processes typically take at least several months to complete.

Acknowledging the need for speed in addressing the current health crisis, the Agencies now have committed to respond within seven calendar days for COVID-19 collaboration review requests. The Agencies have also committed to "expeditiously process" filings made under the National Cooperative Research and Production Act (NCRPA) which applies to standard-setting organizations and certain R&D and production joint ventures.



The Joint Statement does not provide an antitrust exemption or otherwise expressly state that collaborations that would not have been legal prior to the crisis are now authorized. In particular, the Agencies will continue to challenge agreements that “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.”

This is consistent with prior Agency statements related to “crisis cartels,” noting that cartels are illegal at any time, regardless of the economic climate. That said, the Joint Statement also recognizes that given the “exigent circumstances,” competitors may be required to collaborate for example, to provide health care services or equipment or to combine production or distribution facilities to facilitate the distribution of COVID-19 supplies. So long as such joint efforts are limited in duration and required to address the health crisis, the Joint Statement indicates that the agencies will be more accommodating to such collaborations.

Finally, the Joint Statement makes clear that the Agencies will be on particular watch for anticompetitive and anti-consumer conduct in the crisis, including competitor collusion and any fraudulent or illegal schemes targeting vulnerable Americans.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,100 lawyers in 21 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	BRUSSELS	DUBAI	HOUSTON	MOSCOW	RIYADH	SINGAPORE
ATLANTA	CHARLOTTE	FRANKFURT	LONDON	NEW YORK	SAN FRANCISCO	TOKYO
AUSTIN	CHICAGO	GENEVA	LOS ANGELES	PARIS	SILICON VALLEY	WASHINGTON, D.C.