

FTC, DOJ ISSUE JOINT ANTITRUST STATEMENT REGARDING COVID-19

On March 24, 2020, the Federal Trade Commission (the “FTC”) and the Antitrust Division of the Department of Justice (the “DOJ”) issued a [joint statement](#) offering an insight into the Agencies’ approach to the COVID-19 pandemic and how entities can engage in pro-competitive collaboration that does not violate the antitrust laws. While much of the Agencies’ guidance is a reaffirmation of their prior positions, there are a number of things entities should keep in mind as they respond to the spread of COVID-19.

- For entities seeking guidance through the DOJ’s Business Review Process and the FTC’s Advisory Opinion Process, the Agencies aim to respond expeditiously to all COVID-19-related requests and to resolve those addressing public health and safety within seven calendar days of receiving all necessary information.
- The Agencies will account for exigent circumstances in evaluating collaborative efforts by providers to address the spread of COVID-19 and its aftermath. For entities considering any type of collaborative response, the Agencies have advised that these joint efforts be limited in duration and confined to those activities necessary to assist patients and communities affected by COVID-19.
- The Agencies will work to expeditiously process filings under the National Cooperative Research and Production Act for the formation of certain joint ventures.
- The Agencies reaffirmed their prior guidance on many types of collaborative activities designed to improve the health and safety response to the pandemic that would be consistent with the antitrust laws, including research and development, sharing technical know-how rather than company-specific data, providers’ development of suggested practice parameters, most joint purchasing arrangements and certain private lobbying.

Additionally, the Agencies reaffirmed their intent to prosecute those who use COVID-19 to subvert competition or prey on vulnerable Americans, including civil violations of the antitrust laws, 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 and criminal violations, which typically involve agreements or conspiracies between individuals or businesses to fix prices or wages, rig bids or allocate markets.

Accordingly, if you have questions about how the Agencies would view a potential collaborative arrangement or would like additional information about this topic, please contact one of the following members of Hall Render’s Antitrust Practice Group:

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For more information about Hall Render’s Antitrust services, click [here](#).