

ACT Association for Competitive Technology

May 21, 2026

Re: Joint Public Inquiry on Potential Additional Guidance Regarding Collaboration Among Competitors, Docket No. ATR-2026-0001

The Association for Competitive Technology (ACT) appreciates the opportunity to respond to this joint public inquiry from the Federal Trade Commission and the U.S. Department of Justice regarding potential additional guidance on collaborations among competitors.¹ ACT represents small and medium-sized software developers and connected device companies that are building, deploying, and commercializing technology across consumer, enterprise, industrial, health, education, and emerging artificial intelligence markets.

The small businesses ACT represents are frequently the source of novel technical approaches and real-world applications, yet they face persistent barriers in translating early-stage innovation into scalable, deployable products. For emerging technologies, the policy design choices that agencies make, including the clarity, accessibility, and usability of antitrust guidance, can determine whether procompetitive collaboration becomes a practical pathway for smaller firms or remains available only to companies with extensive legal and administrative resources.

ACT strongly supports the Agencies' effort to consider updated guidance on competitor collaborations. Clear guidance is especially important because collaborations among firms can support innovation, reduce costs, improve security, expand access to technical infrastructure, and help smaller businesses compete more effectively. At the same time, ACT supports effective antitrust enforcement against conduct that harms competition and consumers. Updated guidance should preserve that distinction: lawful, efficiency-enhancing collaboration should not be chilled by uncertainty, while naked coordination on price, output, customers, or markets should remain subject to strong enforcement.

I. Statement of Interest

ACT is a global policy trade association for startups and small and medium-sized technology companies. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology.

¹ U.S. Dep't of Just., Office of Pub. Affs., *Justice Department and Federal Trade Commission Seek Public Comment for Guidance on Business Collaborations* (Feb. 23, 2026), <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-public-comment-guidance-business>.

The value of the domestic ecosystem ACT represents, which we call the app economy, is worth approximately \$1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.² ACT members develop software, connected devices, AI-enabled tools, enterprise applications, digital health products, productivity services, cybersecurity solutions, and other technologies that depend on access to trusted distribution channels, technical infrastructure, and complementary business relationships.

Because our members are smaller firms, clear antitrust guidance is especially important. Small businesses do not have the same ability as the largest firms to absorb prolonged uncertainty, hire extensive antitrust counsel, or design bespoke compliance structures for every potential collaboration. When guidance is unclear, smaller firms may forgo lawful collaborations that could help them build products, enter markets, access infrastructure, improve security, or compete against larger incumbents.

II. ACT Comments

Updated guidance should restore certainty for procompetitive collaboration.

ACT welcomes the Agencies' recognition that businesses need transparent and predictable rules for collaborations among competitors. The withdrawal of the 2000 Antitrust Guidelines for Collaborations Among Competitors³ created uncertainty in an area where clarity is particularly important for small businesses. The prior guidelines were useful because they recognized that competitor collaborations can be procompetitive while preserving strong enforcement against agreements that harm competition.⁴

The Agencies should issue updated guidance that retains this basic framework. Businesses need to know that collaboration among competitors is not inherently suspect. In many cases, collaboration is the mechanism that allows smaller firms to develop products, share risk, combine complementary capabilities, or reach customers more efficiently.

This is especially true in the digital markets, where products often depend on multiple layers of technical inputs and business relationships. A small AI developer may need access to cloud infrastructure, specialized compute, testing tools, data management support, cybersecurity services, or distribution channels.⁵ A connected device company may need to coordinate with software providers, security researchers, logistics partners, and technical service providers. A

² ACT, *The App Economy: The Backbone of American Innovation: Fast Facts* (2023), https://actonline.org/wp-content/uploads/Fast-Facts_Website.pdf.

³ FTC & DOJ, *Antitrust Guidelines for Collaborations Among Competitors* 1–2, 6, 25 (Apr. 2000).

⁴ *Id.* at 1–2, 6, 25.

⁵ See ACT, *Antitrust at a Crossroads: Protecting Innovation in the Age of AI* 8, 11 (June 12, 2025), <https://actonline.org/wp-content/uploads/Antitrust-at-a-Crossroads-Protecting-Innovation-in-the-Age-of-AI-June-12-2025.pdf>.

small enterprise software firm may need to collaborate with others to bring an integrated solution to market. Guidance that leaves these arrangements uncertain can have the practical effect of deterring beneficial activity. For smaller firms, uncertainty itself is a cost. It can slow product development, weaken investment prospects, and discourage partnerships that would otherwise help small businesses compete. Updated guidance should therefore make clear that the Agencies will continue to assess legitimate collaborations under a flexible, fact-specific, effects-based framework.

Competitor collaborations are often essential to innovation, market entry, and scaling.

Small businesses often rely on collaboration to overcome structural barriers to scale. They may have a promising product but lack distribution. They may have technical expertise but lack infrastructure. They may have a specialized application but need access to complementary tools, cloud services, security resources, or commercialization support. Collaboration can help bridge those gaps.

For ACT members, procompetitive collaboration can take several forms:

- joint research and development;
- shared testing or validation environments;
- technical partnerships that improve product security or reliability;
- joint commercialization or distribution arrangements;
- collaborations that improve access to cloud, compute, or data infrastructure;
- cybersecurity and fraud-prevention information sharing;
- privacy-preserving data practices;
- joint purchasing or infrastructure arrangements that reduce costs; and
- partnerships that help smaller firms reach customers through trusted channels.

These arrangements can produce consumer benefits by lowering costs, improving quality, accelerating deployment, strengthening security, and increasing the availability of new products. They can also help smaller firms compete more effectively against larger incumbents by giving them access to resources that would be difficult or inefficient to build alone.

The Agencies should recognize that collaboration can be part of the competitive process. In dynamic markets, firms may compete in one respect, complement each other in another, and collaborate in a third. Treating those relationships with inherent suspicion would misunderstand how digital markets work.

Guidance should preserve the distinction between naked coordination and efficiency-enhancing collaboration.

The Agencies should ensure that updated guidance does not blur the line between unlawful coordination and legitimate collaboration. Many procompetitive collaborations require some coordination among participants. A joint R&D project may require participants to share technical information. A joint commercialization arrangement may require coordination around

launch timing, customer support, or product integration. A cybersecurity collaboration may require participants to exchange threat information. An infrastructure partnership may require shared planning, procurement, or investment commitments. The relevant question should be whether the coordination is reasonably related to a legitimate collaboration that can improve output, quality, security, innovation, or market access. Guidance should avoid suggesting that independent action is always preferable or that collaboration is suspect simply because the participants could be viewed as actual or potential competitors in some broader sense. The Agencies should retain a rule-of-reason approach for legitimate, efficiency-enhancing collaborations.

Guidance should account for AI and other emerging technologies without treating them as inherently risky.

AI is a foundational element of many digital services. Small businesses are using AI to improve productivity, enhance customer support, strengthen cybersecurity, develop new applications, and compete in markets that were previously difficult to enter.⁶ AI is not a single product or market. It is a general-purpose technology that is integrated across many layers of the economy. The AI ecosystem is also highly dynamic.⁷ Competition occurs across chips, cloud services, foundation models, open-source tools, data infrastructure, application-layer products, and sector-specific deployments. Market positions are shifting quickly, and small firms continue to play an important role in developing new use cases and products. In this environment, collaboration can be especially important. AI development and deployment often require access to complementary resources, including compute capacity, model evaluation tools, cybersecurity expertise, privacy-enhancing techniques, domain-specific data, and cloud infrastructure. Smaller firms may not be able to access or build these resources efficiently on their own.

Updated guidance should therefore avoid treating AI-related collaboration as inherently suspect. The Agencies should instead use a technology-neutral approach that evaluates the actual conduct, market context, and likely competitive effects. Guidance should recognize that AI-related collaborations may help smaller firms participate in the market, reduce duplication, improve safety and security, and bring useful products to consumers more quickly. Existing antitrust laws are capable of addressing conduct that harms competition. The Agencies do not need to create AI-specific presumptions that could chill beneficial collaboration before the benefits and risks of specific arrangements are understood.

The Agencies' inquiry identifies algorithmic pricing and related technologies as areas where updated guidance may be useful. ACT agrees that the Agencies should provide practical guidance, but that guidance should remain technology-neutral and evidence-driven.

⁶ See ACT, *The Hidden Cost of AI Regulations: A Survey of EU, UK, and U.S. Companies* (Aug. 2025), <https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/>.

⁷ Kedhar Sankararaman, *The AI Ecosystem: Dynamic, Competitive...and Misunderstood*, ACT (Jan. 8, 2025), <https://actonline.org/2025/01/08/the-ai-ecosystem-dynamic-competitiveand-misunderstood/>.

Algorithmic tools can be procompetitive. They allow firms, including small businesses, to respond more quickly to changes in supply, demand, inventory, and consumer behavior. They can reduce overhead, improve efficiency, support better customer service, and help new entrants compete with larger incumbents. Many small firms access these tools through cloud services or third-party software providers because they cannot build similar capabilities internally. Algorithmic pricing tools support efficiency, inventory management, and market responsiveness for small businesses, and such tools should not be treated as inherently anticompetitive.

The mere use of an algorithm should not be treated as evidence of anticompetitive conduct. The relevant inquiry should be whether the use of a tool facilitates an agreement or conduct that harms competition. For example, concerns may arise where shared tools or pooled competitively sensitive data are used to coordinate prices or reduce competitive intensity. But those concerns should be addressed through fact-specific enforcement, not broad presumptions against algorithmic tools.

Guidance should recognize infrastructure and resource-access collaborations that expand capacity.

The Agencies should also recognize that some collaborations are designed to expand productive capacity rather than restrict competition. This is particularly important in AI and cloud-enabled technology markets, where access to infrastructure can determine whether small firms can participate meaningfully.

AI-enabled innovation depends on compute, cloud services, data management tools, energy-intensive infrastructure, cybersecurity resources, and technical support. Smaller firms may need to partner with infrastructure providers or participate in shared arrangements to access these inputs on workable terms. Such collaborations are procompetitive when they reduce costs, expand access, improve reliability, or help bring new capacity online. They can also allow smaller firms to compete in markets that would otherwise be limited to firms with hyperscale resources.

Updated guidance should make clear that the Agencies will evaluate these collaborations based on their actual competitive effects. Arrangements that expand access to infrastructure, increase output, or reduce barriers to entry should not be discouraged merely because they involve coordination among firms that may compete in downstream markets.

Updated guidance should maintain its original scope and avoid duplicating IP and standards guidance.

Any revised guidance should preserve the architecture of the 2000 Collaboration Guidelines, which are a set of high-level, generally applicable analytical principles, rather than industry- or agreement-specific rules. The 2000 Collaboration Guidelines were, by design, framed in this

way, and expressly disclaimed coverage of standard setting in a dedicated footnote. Any revisions built on that foundation should preserve that same architecture. Folding standard setting, voluntary consensus standards development, standard-essential patents (SEPs), or intellectual property licensing into a revised competitor-collaboration document would mark a significant departure from the prior document's scope and risk muddying what should remain a clear and broadly applicable analytical framework on which small businesses and their counsel can rely.

The Agencies already maintain a well-developed and long-standing vehicle for IP licensing issues in the Antitrust Guidelines for the Licensing of Intellectual Property, which has served the business community, the courts, and the enforcement bar for decades. The Agencies have addressed, and are addressing, the intersection of antitrust, intellectual property, and voluntary consensus standards through joint agency work products. While ACT and its community disagree strongly with this Administration's views contained in those statements of interest, circumstances have not materially changed in ways that warrant repackaging them inside a horizontal collaboration document like the Business Collaboration Guidelines. To the extent the Agencies see a need to refresh guidance on standards or IP licensing, the IP Guidelines (and accompanying reports or policy statements) are the appropriate and well-established place to do so. Bringing IP licensing, voluntary consensus standard setting, and SEPs into business-collaboration guidance would create overlap and confusion and undermine the Agencies' stated goal of providing businesses with the predictability and confidence they need to collaborate and grow while avoiding anticompetitive conduct that risks raising prices or stifling innovation.

Small developers need clear, usable guidance that helps them understand when collaboration can support innovation, security, deployment, and market entry. Expanding competitor-collaboration guidance into adjacent legal regimes would undermine that goal by adding complexity in an area where the Agencies should be reducing uncertainty. The Agencies should therefore preserve a focused framework for horizontal collaborations while leaving standards and IP licensing issues to existing, more specialized, guidance.

Guidance should avoid structural shortcuts and speculative theories of harm.

ACT has consistently emphasized that competition enforcement should be grounded in rigorous economic analysis. Market structure can be relevant, but it should not substitute for evidence of likely competitive harm. Market definition and concentration measures are tools to assess competitive effects, not ends in themselves, and the guidance should not treat such structural indicators as *de facto* conclusions. The fact that participants have some market presence, share a business relationship, or operate in adjacent parts of a technology ecosystem does not by itself establish competitive harm. Nor should the fact that firms are potential competitors in a broad or speculative sense make a collaboration suspect.

In fast-moving technology markets, static market share snapshots may provide an incomplete picture of competitive dynamics. Entry, product differentiation, multi-homing, switching,

innovation cycles, open-source alternatives, and global competition can all affect whether a collaboration is likely to harm or strengthen competition. Updated guidance should therefore avoid bright-line assumptions that discourage collaboration based on structure alone. The Agencies should focus on concrete evidence, market context, and likely effects on consumers, innovation, quality, output, and price.

III. Conclusion

ACT supports the Agencies' efforts to provide updated guidance on collaborations among competitors. Clear guidance can promote competition by giving small businesses confidence to pursue lawful, efficiency-enhancing collaborations. For small technology companies, collaboration is often essential to innovation, security, commercialization, infrastructure access, and market entry. Updated guidance should reflect that reality. The Agencies should preserve rule-of-reason treatment for legitimate collaborations, provide practical guidance on AI and algorithmic tools, recognize the procompetitive role of appropriate information sharing, avoid structural shortcuts, preserve the original high-level scope of the 2000 Collaboration Guidelines by leaving standards and IP licensing matters to the IP Guidelines and existing joint work, and ensure that guidance is usable by smaller firms.

A predictable, evidence-based approach will better serve competition, innovation, and consumers. ACT appreciates the opportunity to provide these comments and looks forward to continued engagement with the Agencies.

Sincerely,



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