The Federal Trade Commission and the U.S. Department of Justice Antitrust Division today issued joint statement detailing an expedited antitrust procedure and providing guidance for collaborations of businesses working to protect the health and safety of Americans during the COVID-19 pandemic.

The expedited procedure notes, for example, that health care facilities may need to work together in providing resources and services to assist patients, consumers, and communities affected by the pandemic and its aftermath. Other businesses may need to temporarily combine production, distribution, or service networks to facilitate production and distribution of COVID-19-related supplies.

Under the expedited procedure for COVID-19 public health projects, the agencies will respond to all COVID-19-related requests, and resolve those addressing public health and safety, within seven calendar days of receiving all information necessary to vet these proposals. The statement sets out the instructions for businesses wishing to take advantage of this procedure.

The expedited COVID-19 procedure offers quicker review than existing FTC and Justice Department programs that are designed to provide guidance to businesses concerned about the legality of proposed conduct under the antitrust laws. The FTC’s “Staff Advisory Opinion” procedure and DOJ’s “Business Review Letter” procedure allow any firm, individual, or group of firms or individuals to submit a proposal to the agencies and to receive a statement advising whether the agencies would challenge the proposed activity under the antitrust laws.

"Under these extraordinary circumstances, we understand that businesses collaborating on public health initiatives may need an expedited response from U.S. antitrust authorities," said FTC Chairman Joe Simons. "We are committed to doing everything we can to help with these efforts, while continuing to aggressively enforce the antitrust laws."

“The Antitrust Division recognizes the importance of providing clarity expeditiously on any antitrust obligations in this challenging time,” said Assistant Attorney General Makan Delrahim of the Department of Justice’s Antitrust Division. “Our
expedited Business Review Letter procedure will help facilitate businesses that want to work quickly to address the urgent public health and economic needs associated with COVID-19."

The antitrust laws accommodate procompetitive collaborations among competitors. In their joint statement, the FTC and the Department of Justice listed several types of collaborative activities designed to improve the health and safety response to the pandemic that would likely be consistent with the antitrust laws.

At the same time, the agencies also stressed that they will not hesitate to hold accountable those who try to use the pandemic to engage in antitrust violations. In addition, the Department of Justice will criminally prosecute conduct such as price-fixing, bid-rigging, or market allocation.

The expedited procedure requires that an applicant provide the FTC or Justice Department a written description of the proposal, including the parties that would be involved in the effort or activity, and the name and contact information of a person from whom the agencies could obtain additional information. This expedited procedure is for use solely for coronavirus-related public health efforts and may be invoked at the option of the requestor, in lieu of the agencies’ standard procedures for handling requests for advice.

The agencies also committed to expedite requests under the National Cooperative Research and Production Act for flexible treatment of certain standard development organizations and joint ventures.

The statement also notes that the FTC and the Justice Department are 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 FTC’s Consumer Response Center at 1-877-382-4357 or the National Center for Disaster Fraud Hotline (1-866-720-5721) or e-mail (disaster@leo.gov). 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.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about how competition benefits consumers or file an antitrust complaint. Like the FTC on Facebook, follow us on Twitter, read our blogs, and subscribe to press releases for the latest FTC news and resources.

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