



May 20, 2026

Department of Justice, Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Collaboration Guidelines — The Procompetitive Role of Trade Associations

On behalf of the trade associations listed below, which together represent a broad cross-section of the U.S. business community, we are pleased to submit these comments to the Department of Justice and Federal Trade Commission in response to the request for comment regarding Guidance on Business Collaborations. We write to encourage the agencies to issue definitive guidance, including the addition of an “antitrust safety zone” regarding the procompetitive role of trade associations, the constitutional protections that safeguard their activities, and the longstanding legal consensus that trade association membership and joint advocacy do not, standing alone, give rise to antitrust liability.

I. Trade Associations Promote Procompetitive Collaboration

The Supreme Court has long recognized that trade associations are “beneficial to the industry and to consumers.”¹ Similarly, the FTC has stated that “[m]ost trade association activities are procompetitive or competitively neutral.” Among other benefits, trade associations facilitate networking and training, promote appropriate industry standards, provide information to industry members, conduct research, and encourage demand for products and services.² Perhaps most importantly, trade associations provide businesses of all sizes with a voice in legislative and regulatory processes that they otherwise might not have.

II. Revised Guidelines Should Include a Safety Zone for Trade Associations

To encourage such procompetitive collaboration, revised guidelines should create a safety zone for membership and joint advocacy within a trade association. In particular, revised guidelines should expressly recognize that most trade association activities, including joint advocacy, networking, training, reasonable information sharing, and transparent standard-setting promote competition and benefit consumers. Even as the agencies may evaluate the acceptable parameters of certain of these practices, they should clarify that the involvement of a trade association raises no additional antitrust concerns.

¹ See *Maple Flooring Mfrs.' Ass'n v. United States*, 268 U.S. 563, 566 (1925).

² See *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1196 (9th Cir. 2015).

Revised guidelines would help to provide clarity on several points. Specifically, and consistent with case law, the guidelines should explain that membership and joint participation in a trade association does not, standing alone, constitute evidence of an antitrust conspiracy or serve as a “plus factor” supporting the plausibility of a Section 1 claim.³ The Sixth Circuit, for example, has rejected the notion that “shared membership in trade associations demonstrates parallel conduct in trying to fix prices.”⁴ Other circuit courts have expressed similar views.⁵

Similarly, revised guidelines should reiterate that joint lobbying and petitioning activities, conducted through or in connection with trade associations, are protected by the First Amendment and the *Noerr-Pennington* doctrine. These activities may not be used as evidence of an antitrust conspiracy.⁶

More broadly, revised guidelines should recognize the basic principle that the First Amendment’s right of expressive association and right to petition the government apply fully to trade associations and their members. For instance, the Supreme Court has “long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others.”⁷

III. Clarity Would Promote Competition

Clear guidelines, including a safety zone for trade associations, would promote procompetitive collaboration. As the Supreme Court recognized in *Americans for Prosperity Found. v. Bonta*, rules that burden trade association membership could discourage participation and advocacy, and thereby undermine the “wide variety of political, social, economic, educational, religious, and cultural ends” that associations further. Without clear guidance, businesses may feel the need to continuously assess each trade association

³ See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 567 n.12 (2007).

⁴ *Hobart-Mayfield, Inc. v. Nat’l Operating Comm. on Standards for Athletic Equip.*, 48 F.4th 656, 667-68 (6th Cir. 2022).

⁵ E.g., *Prosterman v. Am. Airlines, Inc.*, 747 F. App’x 458, 462 (9th Cir. 2018); *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1295 (11th Cir. 2010); *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass’n*, 663 F.2d 253, 265 (D.C. Cir. 1981).

⁶ E.g., *Merck-Medco Managed Care v. Rite Aid Corp.*, 22 F. Supp. 2d 447, 470 (D. Md. 1998), *aff’d*, 201 F.3d 436 (4th Cir. 1999) (“The First Amendment shields this joint lobbying from antitrust liability, even when [] competitors are seeking government action that would eliminate competition or exclude competitors.”). See also *A Fisherman’s Best, Inc. v. Recreational Fishing All.*, 310 F.3d 183, 189 (4th Cir. 2002) (“[H]orizontal competitors may join together to lobby government because antitrust violations cannot be predicated on attempts to influence the passage or enforcement of laws.”).

⁷ *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021).

membership, the activities of the association, and the overall competitive landscape to calibrate their risk—a burden that would chill the very procompetitive collaboration the antitrust laws are designed to protect.

Clear guidelines would be consistent with the Supreme Court's longstanding precedent, the weight of circuit authority, and the FTC's own prior guidance. It would also provide the clarity and administrability that businesses need to plan their affairs and engage in the collaborative activities that drive innovation and growth.

We appreciate the opportunity to submit these comments and urge the agencies to ensure that the revised guidelines protect and promote the vital role that trade associations play in our economy and our democracy.

Respectfully submitted,

Alternative Investment Management Association
American Beverage Association
American Chemistry Council
American Coatings Association
American Council of Life Insurers
American Fuel & Petrochemical Manufacturers
American Gas Association
American Institute of CPAs
American Investment Council
American Land Title Association
American Petroleum Institute
American Public Gas Association
Associated Builders and Contractors
Biotechnology Innovation Organization
Business Roundtable
Computer & Communication Industry Association
Consumer Brands Association
Consumer Technology Association
Energy Equipment and Infrastructure Alliance
Entertainment Software Association
Flexible Packaging Association
Finseca
FMI - The Food Industry Association

Institute of International Bankers
Insured Retirement Institute
International Fresh Produce Association
International Sign Association
Interstate Natural Gas Association of America
Investment Company Institute
Managed Funds Association
Metals Service Center Institute
Motion Picture Association
NACS | Advancing Convenience & Fuel Retailing
National Association of Broadcasters
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Confectionary Association
National Electrical Manufacturers Association
National Roofing Contractors Association
NCTA - The Internet & Television Association
Net Choice
PhRMA
Recording Industry Association of America
Retail Industry Leaders Association
RIMS, the risk management society
Securities Industry & Financial Markets Association
Security Industry Association
Software & Information Industry Association (SIIA)
U.S. Chamber of Commerce
USTelecom—The Broadband Association
U.S. Travel Association