



May 21, 2026

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

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

The International Franchise Association is pleased to submit these comments to the Department of Justice and the Federal Trade Commission in response to the [request for comment](#) regarding Guidance on Business Collaborations. IFA is the largest organization representing franchising, including a broad community of more than 1,400 brands; thousands of individual franchisees, franchisors and suppliers in more than 300 industries; and companies that support those franchise companies in marketing, law, technology, human resources, business development, and operations. Franchising serves as an engine for economic growth, contributing an estimated \$907.3 billion in economic output and providing an estimated 8.8 million direct jobs in 2025 across the more than 830,000 franchised establishments operating in the United States.¹ When considering the significant impact of franchised businesses on the U.S. economy, it is imperative to recognize that franchising is small. Approximately half of the U.S. franchised businesses are operated by franchisees owning a single unit.² These small business owners hire local workers, serve local consumers, support local families and invest in local communities. And franchise systems provide small business owners with valuable opportunities to build businesses closely tied to their local communities coupled with brand recognition and consumer loyalty through standardization and continuous innovation, all of which create competition that would otherwise not be possible.

1. Background and Why Franchising Matters

The withdrawal in December 2024 of the longstanding Antitrust Guidelines for Collaborations Among Competitors (the “[2000 Guidelines](#)”)³ left companies considering collaborative ventures without a safe harbor or otherwise clear guidance explaining how the government would evaluate and enforce the antitrust laws with respect to such collaborations. For the franchise industry, this gap is particularly acute: each franchise system involves hundreds or thousands of legally independent businesses (franchisees) operating under common brand standards set by their franchisor — a structure that does not fit neatly into traditional “competitor collaboration” frameworks but is touched by virtually every issue the DOJ and FTC may now choose to revisit.

¹ Alka Sinha, Khadija Cochinwala & Jin Wang, 2026 FRANCHISING ECONOMIC OUTLOOK 4, (INT’L FRANCHISE ASS’N 2026), <https://www.franchise.org/franchising-economic-outlook/>.

² See 2023 Mega 99 Rankings, MULTI-UNIT FRANCHISEE MAGAZINE ISSUE 1 (2023), https://www.franchising.com/articles/2023_mega_99_rankings.html [hereinafter, the 2023 MEGA 99 RANKINGS].

³ *Antitrust Guidelines for Collaborations Among Competitors: Issued by the Federal Trade Commission and the U.S. Department of Justice* (April 2000).

2. The Franchise Relationship Deserves Its Own Analytical Framework

The franchise relationship is not a straightforward competitor collaboration, and new guidelines should explicitly recognize this.

Franchisees operating under the same brand are nonetheless independent businesses that may compete with one another in overlapping geographic markets. But they are simultaneously bound together by franchise agreements, brand standards, supply chain requirements, and shared marketing obligations. The 2000 Guidelines offered a very useful general framework, but they did not expressly address how to analyze restraints that are inherent to the franchise model itself; that is, territorial grants, pricing recommendations, cooperative advertising, joint purchasing and standardized operations requirements. New guidelines should explicitly acknowledge the franchise relationship as a recognized and historically procompetitive business model and confirm that restrictions reasonably ancillary to a legitimate franchise system will be analyzed under the rule of reason, not treated as *per se* horizontal agreements among competitors.

This approach would be entirely consistent with relevant Supreme Court precedent, given the demonstrable benefits to competition and consumers that franchise systems produce. In the 2000 Guidelines themselves, the Commission and the Department of Justice outlined many of the benefits of competitor collaborations such as franchise systems:

The Agencies recognize that consumers may benefit from competitor collaborations in a variety of ways. For example, a competitor collaboration may enable participants to offer goods or services that are cheaper, more valuable to consumers, or brought to market faster than would be possible absent the collaboration. A collaboration may allow its participants to better use existing assets, or may provide incentives for them to make output-enhancing investments that would not occur absent the collaboration. The potential efficiencies from competitor collaborations may be achieved through a variety of contractual arrangements including joint ventures, trade or professional associations, licensing arrangements, or strategic alliances.

Efficiency gains from competitor collaborations often stem from combinations of different capabilities or resources. For example, one participant may have special technical expertise that usefully complements another participant's manufacturing process, allowing the latter participant to lower its production cost or improve the quality of its product. In other instances, a collaboration may facilitate the attainment of scale or scope economies beyond the reach of any single participant. For example, two firms may be able to combine their research or marketing activities to lower their cost of bringing their products to market, or reduce the time needed to develop and begin commercial sales of new products. Consumers may benefit from these collaborations as the participants are able to lower prices, improve quality, or bring new products to market faster.⁴

In an efficiency enhancing integration, participants collaborate to perform or cause to be performed (by a joint venture entity created by the collaboration or by one or more participants or by a third party acting on behalf of other participants) one or more business functions, such as production, distribution, marketing, purchasing or R&D, and thereby benefit, or potentially

⁴ [Antitrust Guidelines for Collaborations Among Competitors: Issued by the Federal Trade Commission and the U.S. Department of Justice](#) (April 2000), at 6.

benefit, consumers by expanding output, reducing price, or enhancing quality, service, or innovation. Participants in an efficiency-enhancing integration typically combine, by contract or otherwise, significant capital, technology, or other complementary assets to achieve procompetitive benefits that the participants could not achieve separately.⁵

Franchise systems are the quintessential example of collaborations which are designed to create and have the effect of creating an “efficiency-enhancing integration of economic activity” that provides important benefits to competition and consumers. As noted above, new guidelines should therefore expressly recognize the benefits that franchise-related collaborations provide and permit franchisors and their franchisees to collaborate effectively, and to that end should expressly presume that the analysis of any given franchise system, from an antitrust perspective, should be governed by the rule of reason. In *Continental T.V. v. GTE Sylvania*, the Supreme Court emphasized that this approach should be the norm rather than the exception:

Since the early years of [the twentieth] century a judicial gloss on [the prohibition enunciated by Section 1 of the Sherman Act] has established the “rule of reason” as the prevailing standard of analysis. . . . Under this rule, the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition. . . . Per se rules of illegality are appropriate only when they relate to conduct that is manifestly anticompetitive.⁶

The Court reaffirmed this principle in *Leegin v. PSKS, Inc.*:

Resort to per se rules is confined to restraints . . . “that would always or almost always tend to restrict competition and decrease output.” To justify a per se prohibition a restraint must have “manifestly anticompetitive” effects” . . . and “lack. . . any redeeming virtue.”⁷

And the Court once again reaffirmed this principle in *National Collegiate Athletic Association v. Alston*:

Most restraints challenged under the Sherman Act—including most joint venture restrictions—are subject to the rule of reason, which (again) we have described as “a fact-specific assessment of market power and market structure” aimed at assessing the challenged restraint’s “actual effect on competition”—especially its capacity to reduce output and increase price.⁸

With respect to franchise systems in particular, courts have repeatedly recognized, moreover, that franchisee-franchisor collaborations — including in particular collaborative efforts to meet quality and safety standards, offer customers promotions and discounts, and leverage the benefits and efficiencies of standardized purchasing arrangements — do not raise any antitrust concerns under a rule of reason analysis.

⁵ *Id.* at 8 (citation omitted).

⁶ *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 49-50 (1977) (citations omitted).

⁷ *Leegin Creative Leather Products, Inc. v. PSKS, Inc., doing business as Kay’s Closet, et al.*, 551 U.S. 877, 886, quoting *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717, 723 (1988); *Continental T.V. v. GTE Sylvania*, 433 U.S. at 50; *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 289 (1985).

⁸ *National Collegiate Athletic Association v. Alston et al.*, 594 U.S. 69, 88 (2021), quoting *Ohio et al. v. American Express Co. et al.*, 585 U.S. 529, 541 (2018).

In *Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.*, for example, the Fifth Circuit Court of Appeals determined that franchisor-franchisee coordination with respect to quality standards and purchase requirements did not violate Section 1 of the Sherman Act.⁹ Similarly, in *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, the Third Circuit Court of Appeals determined that franchisor-franchisee coordination with respect to product supply requirements did not violate either Section 1 or Section 2 of the Sherman Act.¹⁰ And in *Mumford v. GNC Franchising LLC*, the District Court for the Western District of Pennsylvania determined that franchisor-franchisee coordination with respect to purchase requirements and franchisor pricing promotions did not violate either Section 1 or Section 2 of the Sherman Act, or the Robinson-Patman Act.¹¹

3. Territorial Exclusivity and Market Allocation

One of the most commercially critical issues for franchise systems is territorial exclusivity. Franchisors typically grant franchisees exclusive or protected territories to incentivize investment in the brand and prevent intra-brand free riding. However, territorial divisions among businesses that are technically competitors can superficially resemble market allocation — which if agreed to other than in the vertical franchisor-franchisee relationship would constitute a *per se* violation under the Sherman Act.

In horizontal relationships, courts conclusively presume market allocation agreements — agreements dividing markets by allocating customers, suppliers, territories or lines of commerce — to be illegal, without inquiring into their claimed business purposes, anticompetitive harms, procompetitive benefits, or overall competitive effects. The Supreme Court has, however, expressly recognized that the permissibility of such restrictions with respect to franchise systems should instead be analyzed under the rule of reason. Thus, in *Sylvania*, the Court noted that “[f]ranchise agreements between manufacturers and retailers frequently include provisions barring the retailers from selling franchised products from locations other than those specified in the agreements”¹² — such as the restrictions imposed by *Sylvania* — and concluded that such restrictions in the franchise context should be governed by the rule of reason.¹³ Therefore, future new guidelines should provide clear guidance that territorial restrictions granted by a franchisor to franchisees as part of a legitimate franchise system are properly analyzed under the rule of reason and under *Sylvania*’s vertical restraints framework, not treated as a form of horizontal market division. The agencies are encouraged to confirm in such guidelines that a franchisor’s grant of territorial rights to franchisees does not become a horizontal agreement merely because franchisees may compete with one another in adjacent areas.

4. No-Poach Agreements in the Franchise Context

This is perhaps the most contested franchise-specific antitrust issue of the past decade, and the agencies’ new guidance should address it directly and carefully.

The 2025 Antitrust Guidelines for Business Activities Affecting Workers issued jointly by the DOJ and FTC suggest that franchise no-poach agreements — whether between the franchisor and its franchisees or between franchisees — can be *per se* illegal without a showing of actual harm to workers. Franchisors historically included no-poach clauses in franchise agreements for legitimate reasons: to protect the return on investment in training franchisee employees, to prevent franchisees from free-riding on workforce

⁹ *Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.*, 549 F.2d 368 (5th Cir. 1977).

¹⁰ *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430 (3d Cir. 1997).

¹¹ *Mumford v. GNC Franchising LLC*, 437 F. Supp. 2d 344 (W.D. Pa. 2006).

¹² *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. at 37.

¹³ *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. at 59.

development by fellow franchisees and to maintain system-wide operational standards. Courts have held that no-poach agreements may be lawful if reasonably necessary to support efficiency or protect shared investments, such as training or confidential information within a joint venture.

Future new guidelines should mirror the law as developed by such courts:

- New guidelines should apply rule of reason, not *per se*, analysis to franchise no-poach provisions that are (a) ancillary to a legitimate franchise relationship, (b) limited in scope and duration and (c) justified by the need to protect training investments or proprietary systems.
- The agencies should distinguish between blanket industry-wide no-poach schemes with no legitimate justification versus limited, system-specific restrictions embedded in franchise agreements. Courts have not uniformly adopted the *per se* approach, so the agencies' guidance on this issue would be beneficial.

5. Cooperative Advertising and Joint Marketing

Franchise systems depend on national and regional advertising funds to which franchisees contribute and from which shared marketing is conducted. These cooperative advertising arrangements involve competitors pooling funds and jointly setting messaging — conduct that could theoretically raise issues under rules about information sharing and collective action.

The safety zones and other general principles set forth by the 2000 Guidelines assisted parties contemplating collaborations in understanding when joint business activities are relatively unlikely to raise antitrust concerns, including situations where collaborations lower costs or promote innovation. New guidelines should restore clear safe harbors for franchise cooperative advertising funds and joint marketing organizations, recognizing that these arrangements are pro-competitive, reduce consumer search costs, build brand equity that benefits both franchisors and franchisees, and do not raise the horizontal price-fixing or market-allocation concerns that the antitrust laws target.

6. Joint Purchasing and Approved Supplier Programs

Franchisors routinely negotiate system-wide supply agreements with vendors on behalf of all franchisees and may require franchisees to purchase from approved suppliers. These arrangements reduce costs through volume purchasing and ensure product consistency that maintains brand quality — both clearly procompetitive outcomes. However, joint purchasing by horizontal competitors can raise antitrust concerns if it leads to buyer-side market power or supplier exclusion.

Future new guidelines should reasonably address these issues as follows:

- The agencies should affirm that franchisor-negotiated supply arrangements are properly analyzed as vertical restraints (franchisor to franchisee) rather than as horizontal purchasing cartels.
- The new guidelines should provide a meaningful safe harbor for joint purchasing cooperatives and buying groups with modest market shares, restoring the kind of practical clarity the 2000 Guidelines provided.
- The agencies should recognize that franchisor-mandated use of approved suppliers does not constitute an illegal tying arrangement when the purpose is quality control, brand integrity and consumer protection.

7. Information Sharing and Benchmarking

Franchise systems necessarily involve substantial information sharing: franchisors collect and disseminate operational data, sales performance metrics and cost benchmarks across their systems to help franchisees improve performance. New guidelines therefore should acknowledge the procompetitive effects of certain kinds of information sharing with and among franchisees, and make it clear that franchisors may share certain information with and among franchisees to ensure consistent quality and food safety; to facilitate promotions and customer value initiatives; and to achieve legitimate cost saving efficiencies, all without suggesting that routine coordination within a franchise system presents any sort of inherent antitrust risk. To that end, new guidelines should provide the franchise industry with clear guidance distinguishing:

- Franchisor-to-franchisee data sharing (vertical) from franchisee-to-franchisee data sharing (horizontal);
- Sharing of historical aggregated performance data system-wide (lower risk) from forward-looking pricing or strategic data (higher risk); and
- Data sharing that is genuinely ancillary to franchise system operations from information exchanges that might facilitate price coordination.

The agencies should also expressly recognize that franchise systems are developing new technologies and business models — including algorithmic pricing and information and data sharing — to facilitate a variety of different types of dynamic pricing, such as surge pricing, demand-based pricing and personalized offers. To that end, franchise systems often use shared analytics tools — including artificial intelligence, algorithmic analyses, forecasting, inventory, operations, and other decision support tools — across franchisees to improve efficiency, consistency, and consumer value. As a consequence, new guidelines should recognize that the use of these tools within a franchise system is generally procompetitive and should be treated as permissible, absent traditional indicia of unlawful coordination, such as agreements among franchisees on pricing or wages. The guidelines should further provide specific administrable guidance on what distinguishes information exchanges that create low risks to competition from those exchanges that entail higher risks. In particular, the mere use of a shared pricing algorithm, standing alone, does not and should not constitute *per se* illegal price fixing when each franchisee retains independent discretion over its final prices.

8. Franchise Councils, Independent Franchisee Associations and Industry Associations

Many franchise systems have franchisee advisory councils and independent franchisee associations through which franchisees collectively communicate with franchisors about operational concerns. Additionally, trade associations like IFA facilitate industry-wide coordination on issues such as supplier relationships, legislative advocacy and operational best practices. These bodies involve competitors exchanging information and taking collective positions.

The new guidelines should address how trade association activities, franchisee advisory councils and independent franchisee associations will be evaluated, and should restore practical guidance (similar to what the 2000 Guidelines provided) that draws a clear line between legitimate collective advocacy and information exchange on one hand, and anticompetitive coordination on pricing, output or markets on the other.

9. Practical Requests: Safe Harbors and Compliance Clarity

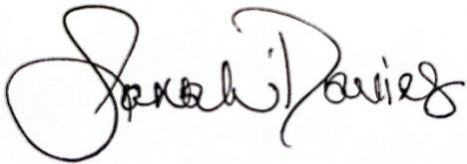
Across all of these issues, both franchisors and franchisees share a common interest in predictability. That predictability can be enhanced through the development of new guidelines that include the following:

- Restoration of market share safe harbors similar to those in the 2000 Guidelines (which generally did not challenge collaborations where the combined market share of participating competitors was below 20% for agreements with potential competitive concern, or 35% for certain efficiency-enhancing agreements).
- A franchise-specific safe harbor or guidance section that addresses the most common and clearly procompetitive franchise system arrangements (territorial grants, cooperative advertising, system-wide training and approved supplier programs) and confirms they will not be challenged absent specific evidence of anticompetitive effect.
- A more accessible compliance framework. Small and mid-size franchise systems often cannot afford the antitrust counsel that large corporations retain. Clear, practical written guidance will help these businesses comply without the need for expensive legal analysis for routine business decisions.

We appreciate the opportunity to submit these comments and encourage the agencies to recognize the unique position of franchising in our nation's economy and that, in applying our antitrust laws, this unique position should be expressly recognized as outlined above.

Respectfully Submitted,

INTERNATIONAL FRANCHISE ASSOCIATION

A handwritten signature in black ink that reads "Sarah Davies". The signature is written in a cursive, flowing style with a large initial "S" and "D".

Sarah Davies, General Counsel