

April 30, 2026

WEBSTER, CHAMBERLAIN & BEAN, LLP – NONPROFIT ALERT

Developments in the Legal Landscape for Competitor Collaborations

In 2023, the DOJ and FTC withdrew enforcement policy statements on competitor collaborations in the health care industry (“safe harbors”), calling them outdated and overly permissive. While those safe harbors addressed competitor collaborations in the health care industry, they were widely relied upon by Associations for data-sharing and benchmarking programs.¹

What did the Old Guidelines Say?

Under the withdrawn safe harbors, the FTC and DOJ’s view was that a “reasonable” exchange of information among competitors would exist in a “safety zone” (i.e., there would be no concern of illegality) if:

- The information exchange was managed by a third party (e.g. a trade association);
- The information provided was more than three months old; and
- There were at least five providers reporting data upon which each disseminated statistic is based, no individual provider’s data represented more than 25 percent on a weighted basis of that statistic, and any information disseminated was sufficiently aggregated such that it would not allow recipients to identify the information provided by any individual participant.

With these safe harbors withdrawn, there has been increased uncertainty surrounding how courts or regulatory agencies may perceive Association data-sharing and benchmarking programs. However, a few recent developments signal that help (in the form of guidance) may be on the way.

Agencies Considering Issuing New Guidance

First, the FTC and DOJ are considering issuing new guidance. On February 23, 2026, the DOJ and the FTC launched a Joint Public Inquiry for Consideration of Guidance on Collaborations Among Competitors to Promote Certainty and Competition. The inquiry seeks public comment to “help enforcers to consider reintroducing guidance built on the prior guidelines.”

The agencies are seeking input and suggestions regarding:

- “What topics would benefit from additional guidance — for example, joint licensing arrangements? Conditional dealing with competitors? Other topics?”
- What new technologies and business models would benefit from additional guidance — for example, algorithmic pricing, information and data sharing, or labor collaborations?

¹ See Justice Department Withdraws Outdated Enforcement Policy Statements, *available at* <https://www.justice.gov/archives/opa/pr/justice-department-withdraws-outdated-enforcement-policy-statements>; Federal Trade Commission Withdraws Health Care Enforcement Policy Statements, *available at* <https://www.ftc.gov/news-events/news/press-releases/2023/07/federal-trade-commission-withdraws-health-care-enforcement-policy-statements>.

April 30, 2026

- What significant legal, economic, or technological developments should be considered in any revisions to the prior competitor collaboration guidelines?”

The original comment period was set to end on April 24, 2026, but has been extended.²

Agri Stats Cases

Second, the data benchmarking company Agri Stats has been involved in multiple antitrust litigation cases across various sectors of the meat industry. Plaintiffs in those cases alleged Agri Stats’ data sharing, benchmarking, and reporting services were anticompetitive by allowing competitors to easily monitor each others’ competitively sensitive data, including pricing, volume, and wage data. Agri Stats has reached several settlements that include extensive conduct reform. This conduct reform could illustrate for Associations how courts may approach data-sharing and benchmarking programs going forward.

Conduct Reform in the Settlements

While the substance of the “protein” settlements are the same, we discuss the *In Re Broiler Chicken Antitrust Litigation* below. The settlement set new rules governing the data sharing program as follows:

- Agri Stats broiler reports may only include actual competitor- or plant-level price or production volume data at the aggregate level;
- Published data must come from at least three entities, with no entity representing more than 70% of the data;
- Agri Stats cannot share any data fields that have categorical values (for example a field that takes on values of YES and NO, or a plant shift field which lists the shifts a plant operates, or the breed processed at a particular plant) if any given value of that category has fewer than three firms;
- Data must be at least 45 days old;
- Agri Stats must remove all participant lists in reports; and
- Agri Stats will provide no forward-looking industry forecasts.

Further, the DOJ and the Attorneys General of the states of Minnesota, California, North Carolina, Tennessee, Texas, and Utah have also sued Agri Stats. *United States v. Agri Stats, Inc.*, 0:23-cv-03009, (D. Minn.). This case was scheduled for trial this May. However, the trial was recently postponed, as it appears the parties are nearing a settlement. Any resulting settlement could provide insight on the DOJ’s current approach to data-sharing and benchmarking programs. We will continue to monitor this case.

² See Justice Department and Federal Trade Commission Seek Public Comment for Guidance on Business Collaborations, available at <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-public-comment-guidance-business> (accessed Apr. 21, 2026); DOJ and FTC Extend Deadline for Public Comment on Guidance on Business Collaborations, available at <https://www.justice.gov/opa/pr/doj-and-ftc-extend-deadline-public-comment-guidance-business-collaborations> (accessed Apr. 21, 2026).

April 30, 2026

What Should Associations do with this Information?

Associations should keep in mind for the time being there are still no official safe harbors or guidance. We recommend Associations maintain an antitrust compliance policy and monitor data sharing programs to prevent anticompetitive behavior.

* * * *

Notice: This article is for informational purposes only and does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader.