[1] Part of the mission of the FTC is to educate the public and the business community about compliance responsibilities under the law. The withdrawal of the Collaboration Guidelines was necessary because it contained outdated guidance that did not account for the significant evolution of Supreme Court and federal court guidance on these issues,[2] relied on numerous outdated and withdrawn policy statements,[3] and described safe harbors that have no basis in federal antitrust law. In other words, the FTC was failing in its duties by leaving in place flawed and incomplete guidance that businesses could mistakenly rely upon. Contrary to Commissioner Holyoak's claim that it "leaves businesses grasping in the dark,"[4] the explanatory statement identifies relevant precedent since the Collaboration Guidelines were issued and encourages businesses contemplating collaboration to "review the relevant statutes and caselaw to assess whether a collaboration would violate the law."[5]

Commissioners Holyoak and Ferguson criticize the FTC and DOJ for taking this action after an election.[6] We are not on vacation. The American people expect their government to keep working for them even in periods of transition. Collaborations among competitors carry significant risks of anticompetitive conduct that can harm consumers and market conditions. We look forward to working with the new administration as they review the evolving jurisprudence on competitor collaborations and issue new guidance for the business community.

92 (2021); A
202 (2010); Texaco Inc. v. Daghe, 547 U.S. 1, 6 (2006); Desland
(7th Cir. 2023), cert. denied, 144 S. Ct. 1057 (2024); United State
(1st Cir. 2024).

[3] Id. at 1 n.2 (citing 1992 and 1997 Merger Guidelines, 1993 Statements of Antitrust Enforcement Policy in Health Care, and 1995 Antitrust Guidelines for the Licensing of Intellectual Property).

[4] Dissenting Statement of Commissioner Melissa Holyoak, Withdrawal of 2000 Antitrust Guidelines for Collaboration Among Competitors, 1 (December 11, 2024) [hereinafter "Holyoak Dissent"].

[5] Withdrawal Statement at 1–2.

[6] See Holyoak Dissent at 1; and Dissenting Statement of Commissioner Andrew Ferguson, Regarding Withdrawal of 2000 Antitrust Guidelines for Collaboration Among Competitors, 1 (December 11, 2024).