



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580



DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
WASHINGTON, DC 20530

ANTITRUST GUIDANCE – HURRICANES KATRINA AND RITA

In the wake of the extraordinary devastation resulting from Hurricanes Katrina and Rita, cooperation among federal, state, and local governments, private organizations, and businesses will be necessary to rebuild the communities and the economies affected by the hurricanes. The federal antitrust laws are sufficiently flexible and resilient to accommodate beneficial collaborations, including collaborations among competitors, of appropriate scope and limited duration. At the same time, however, the Antitrust Division of the Department of Justice and the Federal Trade Commission (“the Agencies”), will not tolerate any attempt by competing businesses to undertake naked price fixing or market allocation agreements and thereby prey on those affected by Hurricanes Katrina and Rita.

The antitrust laws allow businesses to create joint ventures and other collaborative arrangements through which they are likely to produce net procompetitive benefits for consumers. Such arrangements frequently serve as an efficient method for firms to combine skills or resources to supply products or services at a lower cost or that would not otherwise be available. Consumers benefit from competitor collaborations in a variety of ways. A competitor collaboration may enable participants to bring goods or services to market faster than would be possible absent the collaboration, may allow its participants to better use existing assets, or may provide incentives for them to make investments that would not otherwise occur. Similarly, a collaboration among competitors may be needed to provide products or services that none of the competitors could provide on its own.

The recovery from the devastation of Hurricanes Katrina and Rita may require a wide range of collaborative efforts among competitors – including joint ventures, joint licensing, and other similar contractual arrangements. For example, one participant may have special technical expertise that usefully complements another participant’s manufacturing process. Another example may involve two or more firms combining their distribution networks to better or more quickly bring needed products or services to their customers. Similarly, hospitals or other health care facilities may need temporarily to combine certain resources or services to meet the health care needs of affected communities. These collaborations can be accomplished in a manner consistent with the antitrust laws rather than in conflict with them.

Antitrust analysis of these collaborative arrangements can – and will – take into account the changes in market conditions as a result of the hurricanes. Hurricanes Katrina and Rita disrupted or destroyed many vital production and distribution facilities as well as numerous other business sectors, including telecommunications, health care, housing, and retail. Joint efforts of limited duration by businesses to restore these services more effectively and to assist the affected

communities in recovering from the devastation likely will be necessary and should not generally raise concern under the antitrust laws. Consumers are likely to benefit from these collaborations as the participants are able to bring products or services to them that might not otherwise be available.

The Agencies recognize that even in this time of tremendous personal and economic loss, some businesses may be reluctant to go forward with joint ventures or other collaborative arrangements without antitrust guidance. Accordingly, both agencies have committed to respond to requests from businesses for expedited antitrust guidance within five (5) business days on specific proposed conduct relating to relief from Hurricane Katrina or Hurricane Rita.

The antitrust laws can accommodate the collaborative efforts that may be needed to recover from Hurricanes Katrina and Rita. The Agencies are committed to reasonable and responsible application of the antitrust laws and will work closely with other federal agencies, state and local governments, and the business community to expedite the dissemination of antitrust guidance.