

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Corporate Influence in Competition Policymaking – Note by the United States**

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## *United States*

### 1. Introduction

1. The United States Department of Justice, Antitrust Division (DOJ) submits this note in connection with the Competition Committee's session on "Corporate Influence in Competition Policy Making."
2. Competition agencies, organizations, and other entities involved in competition policy and enforcement rely on information and advocacy from those with knowledge or expertise, be they academics, economists, trade associations, think tanks, representatives of industry or other specialists. These individuals, organizations or corporations are a significant source of know-how, and their experience and knowledge play an important role in the vibrant intellectual debate surrounding competition law and policy. DOJ considers its views carefully in weighing enforcement decisions and key policy positions.
3. However, this necessary and valuable engagement between private sector actors and competition authorities must contend with inherent tensions. Corporate participants naturally advocate for their own interests, which may not always align with the broader public welfare. When these interactions occur without adequate transparency, they can undermine the decision-making process and create the perception—or reality—of undue influence over policy outcomes.
4. The challenge facing competition agencies is not whether to eliminate corporate input from policy making, which would be counterproductive, but rather how to structure these interactions to maximize their benefits while minimizing their risks.
5. This paper discusses both the constructive role that corporate input can play in competition policy development and the systemic risks that arise when such influence operates without sufficient transparency. It also identifies some practical mechanisms to enhance understanding of corporate influence while preserving the benefits of private sector expertise in the policy making process.

### 2. Benefits of corporate participation in competition policy making

6. DOJ relies on a variety of sources, including the views of impacted corporations, in carrying out its policy-related and enforcement responsibilities. In DOJ's experience, this extensive stakeholder engagement results in better and stronger outcomes and enhances the legitimacy and practical effectiveness of the outcomes by incorporating diverse perspectives.
7. For example, DOJ recently sought stakeholder input in its ongoing efforts to identify and eliminate anticompetitive regulations across the government. In late March 2025, DOJ launched an Anticompetitive Regulations Task Force to "advocate for the elimination of anticompetitive state and federal laws and regulations that undermine free market competition and harm consumers, workers, and businesses."<sup>1</sup> As a first step, DOJ

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<sup>1</sup> DOJ Press Release, Justice Department Launches Anticompetitive Regulations Task Force (March 27, 2025),

available at <https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force>.

initiated a public inquiry to identify “unnecessary laws and regulations that raise the highest barriers to competition.”<sup>2</sup> Hundreds of comments were received by the deadline (May 27, 2025), many from the business community. DOJ greatly appreciates the feedback and is actively reviewing the comments.

8. Input from companies is invaluable to enforcement activities as well. For example, customers or competitors of the parties to a transaction or those under investigation, are a critical source of in-depth knowledge of the products and markets at issue. U.S. law also provides that when DOJ proposes to enter a consent decree to settle a civil antitrust case, the public must be provided notice and an opportunity to comment.<sup>3</sup> This formal channel provides any interested party—including competitors, customers, trade associations, or other businesses—an opportunity to submit their perspectives about the proposed settlement. These comments facilitate judicial review of the proposed settlement to ensure that it is in the public interest before approving it.

9. Similarly, DOJ values the input of the business community in multilateral organizations, such as the International Competition Network and the Competition Committee of the OECD. Nongovernmental organizations bring specialized expertise and advocacy to discussions of complex challenges the international competition community faces today.

10. Beyond the practical benefits of expertise and diverse perspectives, corporate participation in policy making also reflects fundamental democratic principles. The First Amendment of the U.S. Constitution protects the right of individuals and organizations to petition the government for redress of grievances, a right that encompasses lobbying activities by corporations and their representatives. The First Amendment’s free speech clause also protects against unduly burdensome disclosure and the right to speak and associate anonymously recognizing that onerous requirements and penalties for noncompliance can chill protected speech such as petitioning the government and may dissuade entities from speaking at all. As such, U.S. courts review disclosure requirements with varying levels of scrutiny depending on the type of disclosure requirement at issue to ensure they comply with the First Amendment. This constitutional protection recognizes that in a pluralistic democracy diverse voices have legitimate standing to participate in public discourse and policy formation.

### 3. Risks of corporate participation in competition policy making

11. At the same time, competition agencies should be cognizant of significant risks to effective policy and enforcement outcomes if appropriately balanced, lawful safeguards are not adopted.

12. A key risk is that corporations may present biased, incomplete, or misleading information to support their policy preferences. Advocacy may appear to be funded by seemingly independent sources but may instead represent the interests of undisclosed corporate funding sources. Similarly, the credibility and reliability of information provided by experts, consultants, or trainers can be affected if their work is funded by undisclosed sources. They can present a neutral front while working on behalf of corporate interests.

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<sup>2</sup> A link to the comment portal is available at <https://www.regulations.gov/document/ATR-2025-0001-0002>.

<sup>3</sup> See Antitrust Procedures and Penalties Act of 1974, 15 U.S.C. § 16 (“APPA”), also known as the Tunney Act.

Without disclosure of funding sources, agencies, members of multilateral organizations, and others involved in competition enforcement cannot assess the credibility, reliability and impartiality of submissions, which negatively affects the integrity of competition policy debate and the process by which competition agencies gather information.<sup>4</sup> In addition, research or advocacy are frequently referred to in subsequent articles, decisions or other forums, gathering the imprimatur of reliability despite the undisclosed influence of original funding.

13. Another risk is that large corporations often possess significantly greater resources than other stakeholders, enabling them to hire professional lobbyists, fund think tanks and advocacy campaigns, and sponsor events. This resource advantage can create unequal access to policymakers and skew policy discussions toward corporate interests while marginalizing the voices of consumers, labor organizations, and other less-resourced stakeholders.

#### 4. Approaches for operationalizing disclosures

14. To address the concerns discussed above and to enhance transparency regarding funding and relationships that may have an interest in agency actions, DOJ has instituted disclosure policies for outside individuals who participate in DOJ-sponsored events.<sup>5</sup>

15. Participants are required to provide information such as:

- Sources of financial support for the material included in the presentation.
- Support adding up to a specific amount received within recent years, or where there is a reasonable expectation of receiving in the future, from an interested party;
- Personal involvement or any financial support in relation to a specific matter to be addressed by the participant at the event; and
- Paid or unpaid positions of any organization whose policy positions or financial interests relate to the topics associated with their participation in the event.

16. In the enforcement context, experts hired to represent the DOJ undergo a rigorous process to ensure that they do not have a financial or personal interest that would conflict with their work on behalf of DOJ. These conflict checks delve deeply into a candidate's prior work, financial arrangements and many more issues that could present either actual or perceived conflicts. Through this exhaustive background research, DOJ can determine that a retained expert will represent the agency's interest, not the interests of some undisclosed funding source.

17. Additionally, DOJ's position is that senior enforcers should exercise caution at conferences hosted or sponsored by trade associations, bar associations, universities, and others to avoid any perception of influence by the event organizers. Frequent participation in industry events can contribute to regulatory capture, where competition agencies become overly influenced by the interests they are supposed to oversee. Sponsored events present particular transparency challenges because they often involve seemingly nonaffiliated

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<sup>4</sup> See, e.g., Wakabayashi, Daisuke, *Big Tech Funds a Think Tank Pushing for Fewer Rules. For Big Tech.* (July 24, 2020), available at <https://www.nytimes.com/2020/07/24/technology/global-antitrust-institute-google-amazon-qualcomm.html>.

<sup>5</sup> DOJ's Disclosure Practices for Competition Experts and Competition Research, available at: <https://www.justice.gov/atr/media/1381046/dl?inline>.

organizations that may receive significant corporate funding. Disclosure requirements should apply to these events, encompassing not only direct corporate sponsors but also trade associations, advocacy groups, think tanks and other organizations that receive corporate funding and host events attended by government officials.