GIBSON DUNN

UK Antitrust Authority Releases Guidance on Sustainability Collaborations

Client Alert | March 15, 2023

On February 28, 2023, the UK's Competition & Markets Authority ("CMA") released draft Guidance on the application of the UK's antitrust laws to environmental sustainability agreements between competitors.[1]

The Guidance recognizes that "environmental sustainability is a major public concern" and that antitrust law enforcement should not "unnecessarily or erroneously deter[]" businesses from collaborating to address the challenges posed by climate change.[2] To that end, the Guidance provides a framework for applying competition rules to "environmental sustainability agreements," defined as "agreements or concerted practices between competitors and potential competitors which are aimed at preventing, reducing or mitigating the adverse impact that economic activities have on environmental sustainability or assessing the impact of their activities on environmental sustainability."[3]

The Guidance outlines three standards for assessing environmental sustainability agreements under UK antitrust laws. First, the Guidance provides examples of agreements that are unlikely to raise antitrust concerns. These include agreements to:

- Further environmental sustainability goals that require complementary skills or resources from multiple firms to achieve;
- Create sustainability-related industry standards;
- Share information about "the environmental sustainability credentials of suppliers … or customers"; and
- Withdraw or phase out non-sustainable products or processes.[4]

Second, the Guidance describes agreements that could violate antitrust laws because they have the "object" of restricting competition.[5] An agreement has the "object" of restricting competition when, for example, it involves price fixing, market or consumer allocation, or limitations on output, quality, or innovation. Such agreements are subject to increased scrutiny because they "are assumed by their very nature to be harmful to the proper functioning of normal competition."[6]

Where an environmental sustainability agreement does not restrict competition by object, it will raise antitrust concerns only "if it has an appreciable negative effect on competition."[7] The Guidance provides a non-exhaustive list of factors to consider when determining if an agreement has such an effect on competition, including the market coverage of the agreement and market power of the participating companies; the extent to which the agreement limits the freedom of action of the parties; whether non-parties may participate in agreed-upon conduct; whether the agreement involves the sharing of competitively sensitive information; and whether the agreement is likely to lead to an appreciable increase in price or reduction in output, product variety, quality, or innovation.[8]

Related People

Scott Hammond

Michael K. Murphy

Ali Nikpay

Christian Riis-Madsen

Perlette Michèle Jura

Jeremy Robison

Rachel Levick

Sarah Akhtar

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

Third, the Guidance recognizes an exemption for agreements that would otherwise violate the antitrust laws when "the benefits of the agreement outweigh the competitive harm."[9] To qualify under this exemption, participants will need to demonstrate that the agreement meets the following four conditions:

1. The agreement must contribute certain benefits, namely improving production or distribution or promoting technical or economic progress;
2. The agreement and any restrictions on competition within the agreement must be indispensable to the achievement of those benefits;
3. Consumers must receive a fair share of the benefits; and
4. The agreement must not eliminate competition in respect to a substantial part of the products concerned.[10]

The CMA's draft Guidance follows in the wake of the Japan Fair Trade Commission's announcement of similar draft guidance in January.[11] Last year, the European Commission ("EC") for the European Union also announced that it would develop new guidelines for potential antitrust exemptions for environmental sustainability collaborations within agricultural production markets.[12] The EC's new Horizontal Guidelines, set to replace its prior Guidelines later this year, devote a chapter to outlining the EC's regulatory approach to environmental sustainability agreements.[13] As with the CMA's draft Guidance, the EC's Horizontal Guidelines are not limited to a particular industry and detail the standards for evaluating environmental sustainability collaborations, including whether they restrict competition by object or have appreciable negative effects on competition.[14] These developments reflect a growing recognition that "collaboration is needed to battle climate change," particularly because "[f]irst movers may find themselves at a competitive disadvantage."[15]

The guidance has inspired debate about how to approach similar environmental collaborations under U.S. antitrust laws. For example, last year, nineteen state Attorneys General issued a letter to the CEO of Blackrock, Inc. raising antitrust concerns about the firm's commitment to ESG initiatives in its investment decisions.[16] In response, the Attorneys General of sixteen other states and the District of Columbia issued their own letter to Congress touting the benefits of ESG and criticizing the efforts of their peers to frame ESG collaborations as antitrust violations.[17] Although the Federal Trade Commission ("FTC") and DOJ Antitrust Division have not issued guidance on the subject, the Chair of the FTC recently indicated "there is no such thing" as an ESG "exemption" from U.S. antitrust laws.[18]

Given the uncertain landscape in the United States and the promulgation of new guidance on environmental collaboration abroad, multinational companies should seek legal advice on how to minimize potential antitrust risks before entering into similar environmental sustainability agreements.

---

[1] U.K. CMA, Draft Guidance on the Application of the Chapter I Prohibition in the Competition Act 1998 to Environmental Sustainability Agreements (Feb. 28, 2023), available here.

[2] *Id.* ¶¶ 1.1-1.2, 1.5.

[3] *Id*. ¶¶ 1.5, 2.1.

[4] *Id.* ¶ 3.4, 3.9, 3.11, 3.15.

[5] *Id.* ¶ 4.3.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

[6] *Id.* ¶ 4.4-4.6.

[7] *Id.* ¶ 4.12.

[8] *Id.* ¶ 4.14.

[9] *Id.* ¶ 5.1.

[10] *Id.* ¶ 5.2.

[11] *See* Charles McConnell, *JFTC Consults on Draft Sustainability Guidelines*, Global Competition Rev. (Jan. 17, 2023), available at https://globalcompetitionreview.com/article/jftc-consults-draft-sustainability-guidelines.

[12] *See* European Commission, Sustainability Agreements in Agriculture – Guidelines on Antitrust Derogation, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13305-Sustainability-agreements-in-agriculture-guidelines-on-antitrust-derogation_en. The EU's new guidelines are expected to be released in late 2023. *See id.*

[13] *See* European Commission, Chapter 9: Sustainability Agreements, Draft Revised Horizontal Guidelines, available here.

[14] *See id.* ¶¶ 548, 551-54, 555-60.

[15] Matteo Gasparini, Knut Haanes, and Peter Tufano, *When Climate Collaboration Is Treated as an Antitrust Violation*, Harvard Bus. Rev. (Oct. 17, 2022), available at https://hbr.org/2022/10/when-climate-collaboration-is-treated-as-an-antitrust-violation.

[16] *See* Ltr. from Nineteen Attorneys General to Laurence D. Fink, CEO, BlackRock, Inc. (Aug. 4, 2022), available here.

[17] *See* Ltr. from Seventeen Attorneys General to Sen. Sherrod Brown, et al. (Nov. 21, 2022), available here.

[18] Senate Judiciary Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights, Hearing, "Oversight of Federal Enforcement of the Antitrust Laws" (September 20, 2022), available at https://www.judiciary.senate.gov/meetings/oversight-of-federal-enforcement-of-the-antitrust-laws.

The following Gibson Dunn lawyers prepared this client alert: Scott Hammond, Mike Murphy, Ali Nikpay, Christian Riis-Madsen, Perlette Jura, Jeremy Robison, Rachel Levick, Stéphane Frank, Sarah Akhtar, and Nicholas Fuenzalida.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Antitrust and Competition, Environmental, Social & Governance, or Environmental Litigation and Mass Tort practice groups:

Antitrust and Competition Group: Scott D. Hammond – Washington, D.C. (+1 202-887-3684, shammond@gibsondunn.com) Jeremy Robison – Washington, D.C. (+1 202-955-8518, wrobison@gibsondunn.com) Rachel S. Brass – Co-Chair, San Francisco (+1 415-393-8293, rbrass@gibsondunn.com) Stephen Weissman – Co-Chair, Washington, D.C. (+1 202-955-8678, sweissman@gibsondunn.com) Ali Nikpay – Co-Chair, London (+44 (0) 20 7071 4273, anikpay@gibsondunn.com) Christian Riis-Madsen – Co-Chair, Brussels (+32 2 554 72 05, criis@gibsondunn.com)

Environmental, Social and Governance (ESG) Group: Susy Bullock – London (+44 (0) 20 7071 4283, sbullock@gibsondunn.com) Elizabeth Ising – Washington, D.C. (+1

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

202-955-8287, eising@gibsondunn.com) Perlette M. Jura – Los Angeles (+1 213-229-7121, pjura@gibsondunn.com) Ronald Kirk – Dallas (+1 214-698-3295, rkirk@gibsondunn.com) Michael K. Murphy – Washington, D.C. (+1 202-955-8238, mmurphy@gibsondunn.com) Selina S. Sagayam – London (+44 (0) 20 7071 4263, ssagayam@gibsondunn.com)

Environmental Litigation and Mass Tort Group: Stacie B. Fletcher – Washington, D.C. (+1 202-887-3627, sfletcher@gibsondunn.com) Daniel W. Nelson – Washington, D.C. (+1 202-887-3687, dnelson@gibsondunn.com) Rachel Levick – Washington, D.C. (+1 202-887-3574, rlevick@gibsondunn.com)

© 2023 Gibson, Dunn & Crutcher LLP Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice. Please note, prior results do not guarantee a similar outcome.

Related Capabilities

Antitrust and Competition

ESG: Risk, Litigation, and Reporting

Environmental

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**