

GUIDE

HOW TO NAVIGATE SUSTAINABILITY AGREEMENTS WITHOUT BREACHING COMPETITION LAW

Applying competition law to sustainability agreements in the European Union, Germany, Japan, New Zealand, South Africa, United Kingdom and United States

Second edition

ICC

iccwbo.org/TheBusinessOfClimate

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Introduction

This high-level guidance explores the application of competition law to sustainability agreements in the European Union (EU), United Kingdom (UK), Germany, Japan, New Zealand, South Africa and the United States (US). This is a rapidly evolving area that has attracted increasing levels of attention in recent years.

Competition law regulates commercial behaviour to ensure markets function efficiently and deliver benefits to consumers.

These benefits may include improving environmental outcomes and resolving market failures such as climate change and nature loss, which may require industry-wide cooperation to overcome collective action problems. Cooperation among firms can help to clean up and future-proof their operations and realise sustainability goals more effectively and efficiently than if firms acted alone. However, such cooperation must not restrict competition more than is necessary to achieve these goals.

While anti-competitive agreements between competitors have traditionally been a key focus of enforcement, there is increasing recognition of the role that agreements between actual and potential competitors can play in combating climate change, addressing nature loss and supporting a resilient and sustainable economy within their sector. Several competition authorities are therefore clarifying that competition law does not necessarily impede cooperation aimed at the promotion or protection of environmental sustainability. An increasing number of competition authorities have issued guidelines on sustainability agreements and invited businesses to seek informal guidance on specific agreements and given them certain protections.

Jurisdictions where competition authorities have published guidance on sustainability agreements include **Australia**[1], **Austria**, **Belgium**, **France**, **Greece**, **Japan**, **the Netherlands**, **New Zealand**, **the Republic of Korea**, **Portugal**, **Singapore**, the **United Kingdom** and **the European Union**. Other countries, such as China, provide a statutory basis for sustainability agreements without guidance having been made available.

For the purposes of this guidance, sustainability agreements refer to forms of cooperation between independent companies that may be actual or potential competitors (hereafter referred to as "competitors") pursuing sustainability, biodiversity and climate goals, including:

- ✔ Improving water/air quality or eliminating pollution;
- ✔ Reducing greenhouse gas emissions, to fight climate change;
- ✔ Promoting the sustainable use of natural resources;
- ✔ Protecting biodiversity and nature.

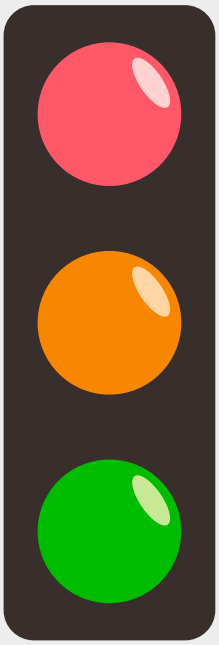
For convenience, this guide is divided by jurisdiction and includes a brief overview of the competition law considerations in the European Union and the United Kingdom, Germany, Japan, New Zealand, South Africa and the United States. In practice, however, the extra-territorial reach of competition laws is considerable and the laws of several jurisdictions may apply at the same time. Careful consideration is needed where any proposed cooperation may have an effect on competition and any assessment should take into account the laws in all relevant countries (noting that in the European Union an agreement could have an impact in only one member state and be subject only to national law, or impact trade between member states and be subject to EU competition law).

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1 For Australia, see Ogilvy, Mraz, "The Net Public Benefit Test in Practice: Environmental Sustainability under Australian Competition Law", presented at the Autorité de la concurrence workshop on Economics and Sustainability 5 October 2026.

1. Competition law and sustainability agreements: European Union and United Kingdom

Compliance risk levels for agreements under competition law to be used as a caption for the subsequent figures.



Some agreements are **clearly not compliant with competition law.**

Some agreements require **in-depth assessment and legal advice to ensure compliance with competition law** e.g., conditions and considerations of economic efficiencies.

Some agreements are **unlikely to infringe competition law.**

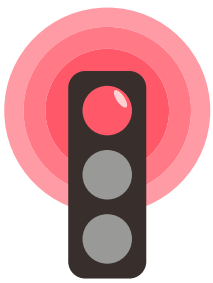
Since the launch of the European Green Deal in 2019, businesses' sustainability goals have become increasingly relevant for cooperation between competitors. Competition authorities like the **European Commission** (EC), the **UK Competition and Markets Authority** (CMA) and the **Dutch Competition Authority** (ACM) have released guidelines on sustainability agreements and have indicated a willingness to issue opinions on initiatives and therefore protect the parties involved from enforcement action and fines if they take advantage of this open-door policy.

Prohibited agreements

Greenwashing cartels

Agreements that are considered by regulators to have as their object or effect a restriction of competition are deemed harmful to competition and are therefore prohibited. These include price-fixing, market or customer allocation, output restrictions or limiting quality or innovation. The concept of an "agreement" covers oral agreements, "gentlemen's agreements" and other informal arrangements. Furthermore, those agreements that are used to disguise infringements of competition law including the sharing of certain commercial data (or which unintentionally or "accidentally" do so) are prohibited and authorities are not afraid to probe deeper to ensure the goals pursued are legitimate. This also applies to agreements that use sustainability as an excuse or as a disguise to fix prices or otherwise harm competition in a way to reduce consumer welfare.

Figure 1: Examples of agreements clearly not compliant with competition law



Agreeing a price increase or surcharge to pass on costs of adopting sustainability initiatives

Collective boycott to exclude competitors from the market, especially more sustainable competitors

Limiting technology development; agreeing not to do better than minimum legal standards; or not to adopt a new less polluting production process

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

These may be "by object" infringements and are therefore unlikely to benefit from a sustainability exemption under competition law.

"By object" infringements may include agreements to delay or prevent the transition to clean products or sustainable business models.[2] For example, on 1 April 2025, following parallel investigations, the EC and CMA announced fines for multiple car manufacturers and a trade association for participating in a 15-year-long cartel concerning end-of-life vehicle recycling. The EC and CMA found that the car manufacturers had illegally agreed to refrain from advertising how much recycled material is used in new cars and how much of an end-of-life vehicle can be recycled, recovered and reused. This had the effect of lowering the pressure on these companies to go beyond legal requirements and invest in green initiatives.

Antitrust law evolves and may capture conduct not previously considered. A recent development in competition/antitrust law is the concept of 'collusive deception'. This applies when two or more parties coordinate to disparage or spread false or misleading information – for example, to discourage green technologies. Disinformation can be viewed as a form of anti-competitive exclusionary behaviour if it delays or hinders the emergence of competing products. This follows the existing prohibition of practices such as providing misinformation to competition authorities and disparagement of competitors.

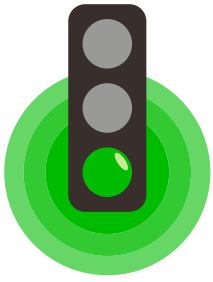
By way of example, ClientEarth sent legal letters to 10 companies suggesting the UK gas industry coordinated efforts to discourage heat pump adoption and protect the market position of gas-based heating technology. The concerns stemmed from evidence suggesting targeted joint misinformation campaigns on reliability and cost of heat pumps. To date, this has not (yet) resulted in a decision.

Agreements unlikely to infringe competition law

Agreements are allowed if they have no appreciable impact on effective competition, such as a voluntary code of conduct combined with "best practice" benchmarking.

Agreements are permissible even if there is a restriction of competition, if they meet the conditions of a block exemption regulation. For example, an agreement for the joint development of clean technology is permissible if it meets all the conditions of the EU R&D Block Exemption Regulation[3].

Figure 2: Examples of agreements that are normally not considered to negatively impact the parameters of competition (*i.e.* price, quantity, functionality, choice or innovation)



Internal corporate initiatives, e.g. limiting single use plastic and printing in offices	Joint consumer campaigns; lobbying on sustainability issues; joint shareholder action to promote investee sustainability	Jointly funded industry training programmes on the reduction of greenhouse gas emissions
Promise to comply with a precise and binding legal requirement; voluntary code of conduct	Development of a common methodology to calculate and report emissions impact	Early stage scientific or technological research that draws upon parties' complementary skills

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

If in doubt, you should seek legal advice.

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2 Other rules and regulations may be relevant too. Greenwashing is likely to be pursued under consumer protection legislation. Greenwashing is understood to mean the act of making false or misleading statements about the environmental benefits of a product or practice. For example, recent enforcement by the EC and national consumer authorities has targeted airlines for potentially misleading claims about carbon offsetting and sustainable fuel use.

3 Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, [2023] OJ L 143, pp. 9–19.

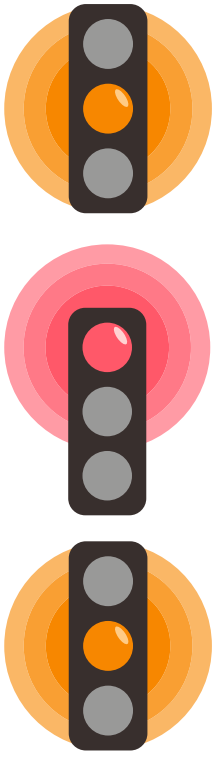
Agreements that require in-depth assessment

Agreements that go beyond the likely permissible goals set out above or combine likely permissible goals with other aspects will require legal advice to establish how they might be treated by competition regulators. Some examples of these types of agreements, and a high-level summary of the legal analysis which might be required, are set out below.

Sustainability standardisation agreements may sometimes qualify for a "soft safe harbour"

A soft safe harbour is a non-binding indication by a competition authority that certain conduct is unlikely to attract enforcement action. Sustainability standardisation agreements need further assessment if the agreements impose required conduct rather than simply making recommendations for industry participants to follow on a voluntary basis.

Figure 3: When sustainability standardisation agreements may qualify for a "soft safe harbour", according to the EC[4]



Special rules apply to competitor agreements to **create, adopt or comply with certain industry-wide agreed minimum standards for sustainability**:

- **transparent** and relevant criteria
- **accessible** to **all firms on reasonable and non-discriminatory** terms.

Not permissible to:

- **prohibit competitors from applying alternative** or higher standards
- **oblige competitors to comply** with the standard, unless exempted (although monitoring and certifying those who have signed up voluntarily is permissible)
- use the standard for **greenwashing** or misleading environmental claims.

NB: The EC has further requirements for the safe harbour, e.g., on market share, procedure for adoption of objective and non-discriminatory criteria. Standards not complying with soft safe harbour criteria may still be exemptible.

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

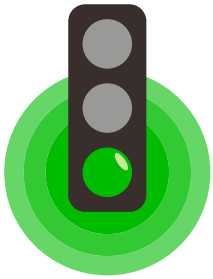
Sustainability standardisation agreements need further assessment if the agreements impose required conduct rather than simply making recommendations for industry participants to follow on a voluntary basis.

Sharing competitive information may be allowed if reasonably necessary for a permissible sustainability goal

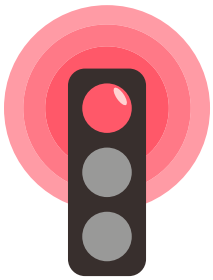
The exchange (or sometimes mere disclosure) of "competitively sensitive information" between competitors is typically a problematic area under competition law. However, the authorities have recognised that pooling sustainability information can help further legitimate objectives.

4 Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, [2023] OJ C 259/1, para. 549

Figure 4: When sharing information may be permissible



Pooling general information about the environmental credentials of suppliers, e.g., on (un)sustainable production processes/ inputs/marketing practices



Discussions on price or purchase volumes. Information that goes beyond what is necessary and proportionate to develop a sustainability standard, or for joint sustainability lobbying

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

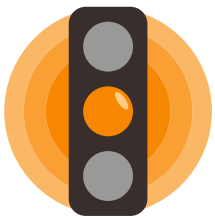
Sharing confidential, commercially sensitive information between competitors, formally or informally, including through trade associations, requires great care. The safest approach is to seek legal advice, which may, for example, recommend that data is collected by an independent third party and disclosed to the participating companies only on a sufficiently aggregated and historical basis.

A third party that facilitates unlawful coordination or the unlawful sharing of information between two competitors is considered to be involved in anti-competitive conduct. Also known as the "hub-and-spoke theory", this describes a situation where anti-competitive behaviour between two competitors or "spokes" (A and C) is coordinated or facilitated by a third party "hub" (B) that typically acts at a different level of the supply chain. In other cases, the hub can simply be a trade association.

Other agreements and sustainability (self-)assessment under Article 101 of the Treaty on the Functioning of the European Union (TFEU)/Chapter I Competition Act (CA)

Beyond the approaches set out above, sustainability agreements may require an in-depth balancing of benefits and competitive impact to determine how they might be considered by regulators. Concepts and their application may vary between each initiative and each jurisdiction.

Figure 5: Sustainability agreements that meet the following exemption criteria might be permissible, according to the EC



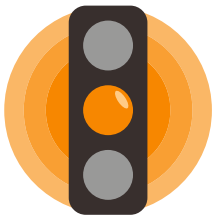
Initiatives that restrict competition may still be permissible if they benefit from the sustainability exemption:

1. Lead to **objective benefit or efficiency gains** that are capable of being **substantiated, concrete and verifiable**. EC goes beyond environmental sustainability to, e.g., human rights, food waste and animal welfare.
2. The restriction of competition must be **indispensable** to attain the benefits or efficiency gains – there must be no less restrictive, but equally effective, alternative.
3. **Consumers affected by the agreement must receive a fair share of the benefits**, substantial enough to outweigh harm. Both individual and collective benefits may qualify. For climate agreements, benefits to all consumers may qualify.
4. The initiative **does not eliminate effective competition** for a substantial part of the products.

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

Any justification of sustainability agreements will generally need to be analysed robustly and supported by economic data to ensure compliance. Exceptionally, even agreements in the "red boxes" (see all of the above figures) may meet the criteria for exemption, but this requires legal advice, careful consideration and robust evidence of the benefits and likely impact on competition.

Figure 6: Examples of sustainability agreements that may be allowed subject to in-depth consideration to ensure compliance with competition law



Phase out, withdraw or replace non-sustainable products and processes, e.g., coal fired steel production, with sustainable alternatives	Agreement to only purchase production inputs manufactured in a sustainable manner	Agreements not to supply, support, finance or insure new fossil fuel projects, or to buyers that produce unsustainable products
Joint production or joint purchasing of sustainable input products between firms with high market share	Agreement imposing sustainability requirements for distributors suppliers, and retailers	Agreement to impose a minimum sustainability standard, e.g., recycled paper content in a magazine

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

The EC and national antitrust authorities and the CMA are available for consultation on agreements that require in-depth evaluation and may, in certain cases, issue case-specific guidance.

For instance, in March 2025 the CMA published informal guidance issued to the Builders Merchants Federation in respect of a proposed supply chain assurance initiative for use by its members. The initiative proposed that the industry appoint a single provider of supply chain assurance services to make it easier for merchants to assess the impact of their supply chains and for suppliers to provide environmental, social and governance (ESG) information on a consistent basis. The CMA confirmed that it did not expect to take enforcement action against the proposal provided certain conditions were met such as the proposal being implemented as described, additional steps and safeguards against information exchange being implemented and an initial 24-month period of proposal being kept under review.

Other examples of CMA opinions under its Green Agreements Guidance process include:[5]

- **Landscape Enterprise Networks Scheme (LENS).** In January 2026, the CMA published its guidance on LENS, a collaboration model that facilitates coordinated environmental projects among land managers, buyers and other stakeholders[6].
- **World Wildlife Fund (WWF) Basket.** In March 2024, the CMA published its opinion on the WWF Basket: Climate Action Cooperation, where major supermarkets proposed a joint commitment to encourage their suppliers to adopt science-based net zero targets.[7]
- **Fairtrade Foundation – Shared Impact Initiative.** In December 2023, the CMA published its guidance on a Fairtrade Foundation – Shared Impact Initiative, where the UK grocery retailers proposed longer term sourcing arrangements for Fairtrade bananas, coffee and cocoa to give producers of these products greater certainty to be able to invest in sustainable farming practices.[8]

Similarly, the EC has now issued several positive informal guidance letters to sustainability initiatives. For example, in July 2025, the EU published its first informal guidance on an initiative by operators at the APM Terminal who proposed to jointly purchase various goods and set minimal technical specifications.

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5 Please refer to the relevant authority's websites for more examples of cases where guidance has been given.

6 Competition and Markets Authority, CMA Informal Guidance on the Landscape Enterprise Networks Scheme (published 23 January 2026).

7 Competition and Markets Authority, CMA Informal Guidance on WWF's Proposal: 'WWF Basket – Climate Action' (published 20 March 2024).

8 Competition and Markets Authority, CMA Informal Guidance: Fairtrade Environmental Sustainability Agreement (published 14 December 2023).

This initiative aimed to reduce procurement costs, improve charging interoperability and accelerate the replacement of diesel by electrical equipment, while allowing participants to continue purchasing independently and with safeguards to limit the sharing of competitively sensitive information to what was strictly necessary (Case AT.40976).[9]

An earlier example, predating the current guidelines, is the formal exemption given to the European Council of Domestic Compliance Manufacturers (Conseil Européen de la Construction d'Appareils Domestiques, short CECED) washing machines agreement, whereby manufacturers representing 90% of the EEA's washing machine market agreed to stop producing and importing the least energy efficient washing machines.[10]

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9 European Commission, Informal guidance request – APM Terminals (Case AT.40976 – APM Terminals) (published 9 July 2025).

10 European Commission, 2000/475/EC: Commission Decision of 24 January 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case IV.F.1/36.718.CECED) (notified under document number C(1999) 5064)

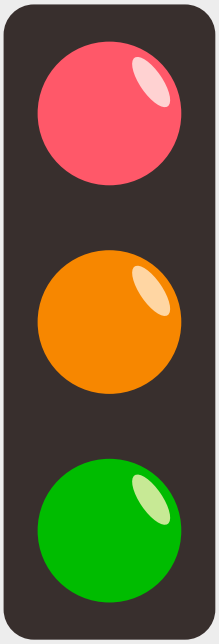


2. Competition law and sustainability agreements: Germany

In the EU, EU competition law prevails over national law where an agreement may affect trade between Member States. As a result, national courts and antitrust authorities cannot allow any such agreement that is prohibited under EU law or prohibit any such agreement that is allowed under EU law.

National law can apply, however, to agreements that only have effect within a specific Member State. The following section discusses German law by way of example.

Compliance risk levels for agreements under competition law to be used as a caption for the subsequent figures



Some agreements are **clearly not compliant with competition law.**

Some agreements require **in-depth assessment and legal advice to ensure compliance with competition law.**

Some agreements are **unlikely to infringe competition law.**

Protecting competition as an institution and guaranteeing economic freedom remains the conceptual foundation of German competition law, which accommodates sustainability considerations rather than overriding them.[11]

While Germany does not materially diverge from the EU framework,[12] it continues to provide useful practical examples of how competition authorities assess sustainability initiatives in practice. This is primarily through the decisions and press releases issued by Germany's enforcer of competition law (Bundeskartellamt),[13] some of which are detailed below.

See **Chapter 1 (Competition law and sustainability agreements: European Union and United Kingdom)** for more information about the EU framework.

Prohibited agreements

Sustainability agreements that restrict competition by object or result in price fixing, output restrictions, customer or market allocation and mandatory sustainability surcharges are generally prohibited in Germany, as are sustainability initiatives that are used as a vehicle or cloak for cartel conduct.

11 Sustainability considerations do not override this framework but are accommodated within it, primarily through the efficiency exemption (GWB, § 2) and the Bundeskartellamt's prosecutorial discretion (Aufgreifermessen) (GWB, § 32C).

12 Germany generally follows the EU's approach to sustainability agreements (i.e. the legal framework remains Article 101 TFEU and the European Commission's 2023 Horizontal Cooperation Guidelines, including Chapter 9 on sustainability agreements. Germany applies the same substantive framework through Sections 1 and 2 of the Gesetz gegen Wettbewerbsbeschränkungen ("GWB").

13 The Bundeskartellamt emphasises that competition law can accommodate genuine sustainability cooperation – particularly common standards, voluntary quality labels and infrastructure cooperation – while rejecting initiatives that use sustainability language to support industry-wide price coordination or margin increases without verifiable sustainability improvements. See: Bundeskartellamt, Press Release: Achieving Sustainability in a Competitive Environment – Bundeskartellamnt Concludes Examination of Sector Initiatives (18 January 2022).

Example | Agrardialog Milch (B2-87/21, 2022)14

The authority rejected a proposed sector-wide mandatory price supplement on raw milk as an unjustified price cartel. The authority noted that sustainability aspects played no discernible role in the project's design and that the economic interest in higher producer income could not, by itself, justify a cartel exemption

Agreements unlikely to infringe competition law

Cooperation on certain sustainability initiatives is generally unlikely to breach competition law. These include voluntary sustainability standards, non-binding guidance and best practice initiatives, environmental awareness programmes, sustainability data collection using aggregated and appropriately anonymised or historic information, co-operation that does not materially affect competition parameters.

Example | Living Wages – Bananas (82-90/21, 2022)15

The authority raised no objections to a voluntary initiative by major food retailers, developed in collaboration with the German Corporation for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit, short GIZ), to promote living wages along the banana supply chain. Critical to the positive assessment was the absence of any exchange of commercially sensitive information (prices, costs, volumes, margins) and the absence of mandatory minimum prices or surcharges.

Example | Cocoa Initiative (2023)16 and Euro Plant Tray (2024)17

The following initiatives received no-objection assessments, primarily because they involved no resale price coordination, limited information exchange and allowed open, non-discriminatory access for non-members.

The Cocoa Initiative (Forum Nachhaltiger Kakao) involved a collaboration between cocoa and chocolate producers, retailers, public authorities and non-profits aimed at promoting living wages for cocoa farmers. This was achieved through voluntary commitments on minimum raw material purchase prices, quotas and premium systems that ultimately sought better prices for farmers.

The Euro Plant Tray (EPT) Initiative developed a European industry standard for reusable plant packaging, with the goal of reducing the use of single use, plastic trays in plant logistics (e.g. garden centres and DIY stores).

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14 Bundeskartellamt, Fallbericht: Finanzierungskonzept für eine marktkonforme und faire Risiken- und Lastenverteilung der landwirtschaftlichen Transformationsprozesse für Milcherzeuger, v. 8.3.2022, B2-87/21 (8 March 2022).

15 Bundeskartellamt, Fallbericht: Finanzierungskonzept für eine marktkonforme und faire Risiken- und Lastenverteilung der landwirtschaftlichen Transformationsprozesse für Milcherzeuger, v. 8.3.2022, B2-87/21 (8 March 2022).

16 Bundeskartellamt, Press Release: German Initiative on Sustainable Cocoa – Bundeskartellamt Sees No Reason for Detailed Examination (13 June 2023).

17 Bundeskartellamt, Press Release: Green Light for Reuse System to Reduce Plastic Waste in the Plant Trade Sector (8 May 2024).

Agreements that may be allowed but require in-depth assessment

Some sustainability agreements will require legal advice to establish how they might be treated by competition regulators. Such agreements are likely to include industry-wide sustainability standards affecting cost or consumer choice, shared infrastructure projects, joint purchasing or financing arrangements, significant information sharing initiatives, agreements requiring broad sector participation.

Recent practice by the EC and German Federal Cartel Office demonstrates that such arrangements may be permissible where restrictions remain necessary and proportionate to achieving the underlying genuine sustainability objective.[18]

Example | Animal Welfare Initiative (B2-72/14, ongoing)

The German Federal Cartel Office temporarily tolerated a voluntary uniform price surcharge to pay farmers for animal welfare improvements, recognising the pioneering character of the Animal Welfare Initiative (Initiative Tierwohl) and the introduction of a consumer-facing label. However, it required the scheme to be restructured by 2024, replacing the fixed surcharge with a non-binding recommendation.[19]

Note: The German Federal Cartel Office's tolerance did not constitute a formal clearance and did not bind civil courts.

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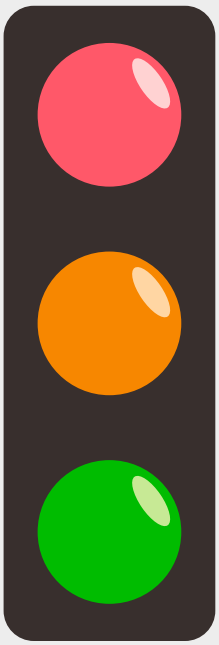
18 European Commission, European Commission Opinion - Sustainability Agreement in the Wine Sector in the Occitanie (15 July 2025); Bundeskartellamt, Press Release: Bundeskartellamt Has No Competition Concerns About Two CO2 Pipeline Cooperation Projects (5 August 2025).

19 Bundeskartellamt, Press Release: More Competition Elements to be Included in Animal Welfare Initiative "Initiative Tierwohl" – Bundeskartellamt Achieves Abolishment of Compulsory Premium (2 June 2023). This press release was originally published in German on 25 May 2023.



3. Competition law and sustainability agreements: Japan

Compliance risk levels for agreements under competition law to be used as a caption for the subsequent figures



Some agreements are **clearly not compliant with competition law.**

Some agreements require **in-depth assessment and legal advice to ensure compliance with competition law.**

Some agreements are **unlikely to infringe competition law.**

The **Japan Fair Trade Commission** (JFTC) considers environmental policy central to achieving a green society, with competition policy playing a complementary role by promoting competition, efficient resource use and innovation.

While Japan has no special exemption or relaxed competition law standard for sustainability initiatives, the JFTC supports legitimate green cooperation by clarifying how the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (AMA) applies.

The Green Guidelines[20] produced by the JFTC provide practical, non-exhaustive examples that support business initiatives by increasing transparency around how the AMA is applied and enforced and improving legal certainty. However, each initiative is assessed on its facts.

Many green initiatives do not restrict competition and may promote innovation, efficiency and consumer benefits, including lower greenhouse gas emissions, while initiatives producing only anticompetitive effects raise concerns.

Initiatives affecting important parameters of competition, including prices, output, customers and sales channels, technology and facilities, require careful assessment.

Prohibited agreements

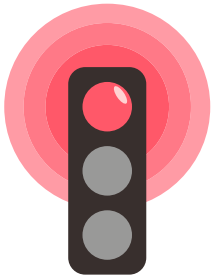
An initiative that produces only anticompetitive effects generally raises concerns under the AMA even if it is intended to contribute to a green society. Competitors should not agree on prices, how environmental compliance costs will be passed on to customers, output, customers or sales channels, bids or other important parameters of competition.

Other high-risk conduct includes restricting independent technology development, exchanging competitively sensitive information without objective necessity or appropriate information barriers and operating standards or certification schemes in a discriminatory manner that unjustifiably excludes competing technologies or businesses.

20 Japan Fair Trade Commission, Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act (Green Guidelines), most recently revised on 1 January 2026

A horizontal collective boycott may also raise concerns under the AMA where it makes market entry substantially more difficult or excludes a business from the market. Concerns may similarly arise where a business or trade association, in order to exclude a competitor, denies access to data or inputs indispensable to carrying on business or unjustifiably restricts access to certification or facilities.

Figure 7: Examples of agreements clearly not compliant with competition law



Agreeing a price or how environmental costs will be passed on.	Jointly restricting independent technological developments.	Collective boycotts to exclude competitors from the market or make entry significantly more difficult.

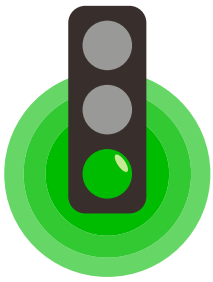
Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

Agreements unlikely to infringe competition law

Lower-risk initiatives include non-binding industry targets, awareness-raising activities, general guidance, common emissions-calculation standards whose use is voluntary, joint public communications that do not restrict prices or other important parameters of competition and the sharing of energy-saving measures and best practices for reducing greenhouse gas emissions.

Voluntary standards and certification schemes can also often be implemented without raising concerns under the AMA where they remain within the scope reasonably necessary for a legitimate objective, are not unjustifiably discriminatory between businesses, are in principle voluntary in their use and observance and do not unjustifiably exclude alternatives with equivalent environmental benefits.

Figure 8: Examples of agreements that are normally not considered to negatively impact the parameters of competition



Non-binding industry targets	Sharing energy-saving measures and best practice for reducing greenhouse gas emissions	Voluntary standards, including common emissions calculation standards

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

These are general indications only. Each initiative is assessed on its specific features and market effects. If in doubt, you should seek legal advice.

Agreements that require in-depth assessment

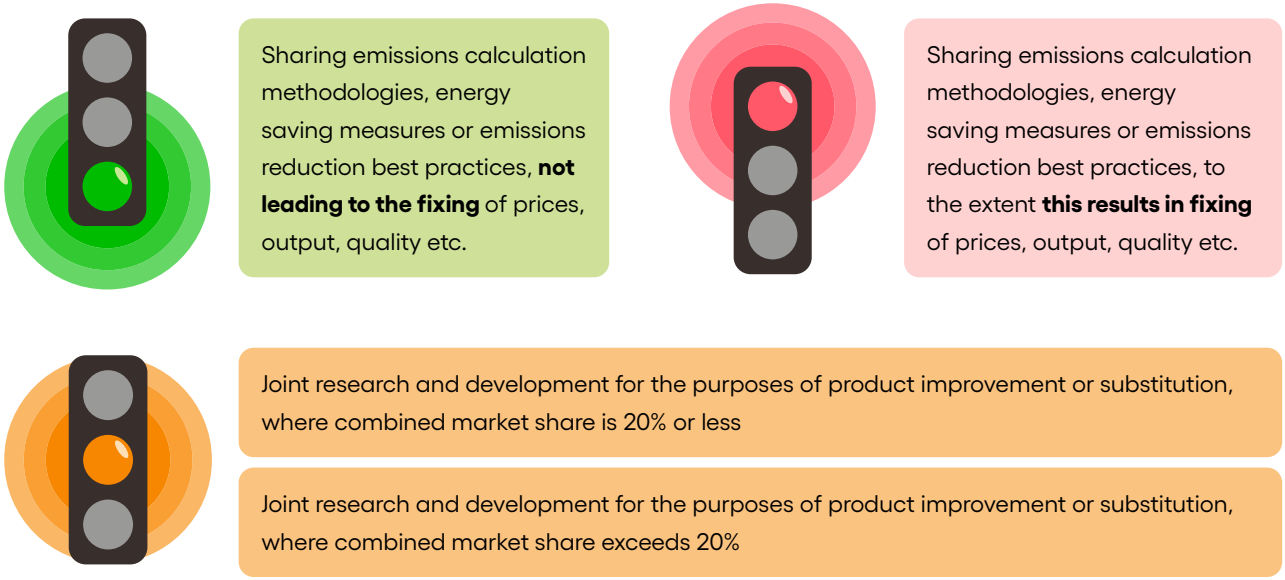
Competitors may jointly develop low-carbon technologies, formulate environmental standards, procure raw materials, conduct logistics or production, or collect and share data. Such cooperation may involve sharing costs and risks, creating new markets or reducing emissions. Although many such arrangements can proceed without raising AMA concerns, the assessment depends on their necessity and scope, the participants' market positions and whether participants remain independent on prices, output, customers and sales channels, as well as research and development. Depending on the arrangement, unjustified restrictions on third-party participation or access to results may also be relevant. Jointly coordinating the retirement of production facilities similarly requires an assessment of

its necessity, scope and effects on competition.

Particular care is required when competitively sensitive information is exchanged

Sharing should be limited to what is necessary and less restrictive alternatives should be considered, including the use of firewalls or information barriers. Information barriers may include third-party analysis or a clean team excluding sales personnel, aggregated or anonymised data, restricted access and prohibitions on other use or unnecessary disclosure.

Figure 9: Examples of when sharing information may (or may not) be permissible



Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

While no statutory safe harbour exists for sustainability initiatives, businesses may consult with the JFTC

Japan has no statutory safe harbour specifically for sustainability initiatives. Businesses may seek the JFTC's view through a formal prior consultation or a general consultation. Under the formal procedure, the JFTC responds in writing, in principle within 30 days of receiving the application or, if it requests additional materials, all requested materials. If the JFTC concludes that the proposed conduct does not contravene the AMA, it will not take legal action against that conduct on that ground. The applicant's name and the consultation and response are, in principle, published within 30 days after the response.

General consultations are not public, and responses are generally oral. The JFTC has a dedicated prior consultation contact point for green initiatives and encourages early engagement. Businesses should be prepared to explain the initiative, relevant market, necessity, contribution to a green society and treatment under the AMA. If competitively sensitive information will be shared, they should also consider less restrictive alternatives and appropriate information barriers.

The Green Guidelines will evolve to reflect recent developments

The Green Guidelines were issued in March 2023 and revised in April 2024 and January 2026. The JFTC has stated that it will continue to review the Green Guidelines in light of changes in markets and business activities and developments in enforcement and consultation practice.

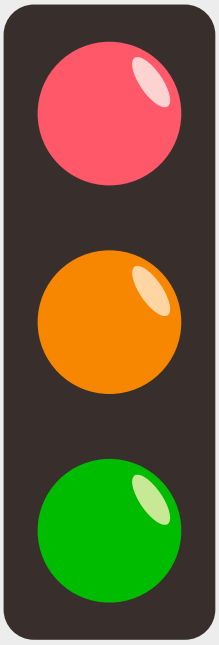
In June 2026, the JFTC published three green-related consultation cases from fiscal year 2025 and

found no AMA concerns. They concerned a pilot project testing retail discounts for a lower-emission fuel, independent matching and results-sharing for regenerative-agriculture trials, and joint production for the pilot introduction of a new lower-emission transport fuel. The decisions do not permit green cooperation across the board. They show that the JFTC assesses the relevant facts, including, as applicable, the initiative's objective and necessity, market effects, information controls, participants' continued independence and effects on non-participants.



4. Competition law and sustainability agreements: New Zealand

Compliance risk levels for agreements under competition law to be used as a caption for the subsequent figures



Some agreements are **clearly not compliant with competition law.**

Some agreements require **in-depth assessment and legal advice to ensure compliance with competition law.**

Some agreements are **unlikely to infringe competition law.**

The New Zealand Commerce Commission (Te Komihana Tauhokohoko, short NZCC) is responsible for administering and enforcing competition law under the Commerce Act 1986 (Commerce Act). The NZCC acknowledges that collaboration between competitors may be necessary to overcome the challenges that individual businesses face in meeting climate commitments and sustainability goals, but this acknowledgement does not diminish competition law obligations.

There are two main ways that sustainability agreements could be prohibited under the Commerce Act:

- Prohibition of contracts, arrangements or understandings containing a provision with the purpose or likely effect of substantially lessening competition in a market (requiring an effects assessment); and
- Prohibition of contracts, arrangements or understandings between competitors containing a provision that has the purpose or likely effect of price fixing, restricting output or market allocating (Cartel Provision). This is a "per se" prohibition, without a need to prove effect on competition.

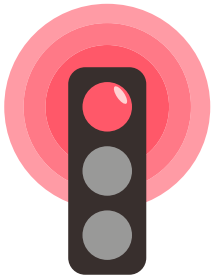
The NZCC Collaboration and Sustainability Guidelines (2023) do not have legal force but provide useful guidance about how the NZCC considers these prohibitions apply in the context of sustainability agreements.

Proposed reforms currently before Parliament are intended to make beneficial collaboration easier (Commerce (Promoting Competition and Other Matters) Amendment Bill) (the Commerce Amendment Bill).

Prohibited agreements

Collaboration between competitors involving unlawful cartel provisions that would be likely to substantially lessen competition is prohibited even if it has a sustainability objective.

Figure 10: Examples of agreements likely to infringe competition law (unless an exception applies or an authorisation is obtained)



Price fixing (e.g. agreeing to pass sustainability costs, such as environmental levies, onto customers).	Allocation of markets and/or customers, such as bid rigging (e.g. where competitors agree only one will bid in a competitive process).	Restricting output (e.g. competing retailers agreeing not to supply certain products with poor environmental standards).

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

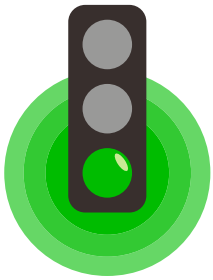
There are exceptions for certain types of cartel provisions (most relevantly the exception for collaborative activities), which are discussed below. To benefit from these exceptions, for instance for an agreement to phase out unsustainable supplies or unsustainable production, parties must seek formal comfort from the NZCC that the exception for "collaborative activities" applies and the collaboration would not be likely to substantially lessen competition.[21]

Alternatively, parties can seek authorisation from the NZCC where an agreement is or may be a breach of the prohibitions, but the resulting public benefit outweighs the likely reduction in competition.[22]

Agreements unlikely to infringe competition law

Collaboration is unlikely to breach the Commerce Act if it does not affect competition between businesses (e.g., it does not affect businesses' ability to independently decide on prices, quality, service or innovation) and would not affect competition in any market in New Zealand.

Figure 11: Examples of agreements that are normally not considered to negatively impact the parameters of competition



Joint "awareness raising" campaigns.	Agreements on internal business conduct that do not affect capacity, output or pricing (e.g. better practices for handling hazardous chemicals).	Industry-wide frameworks for reporting climate-related information, where they are transparently developed and publicly accessible.

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

However, any initiative that may affect price, output, quality, innovation or other key competitive parameters requires careful self-assessment and (where appropriate) informal engagement with the NZCC, formal clearance or authorisation.

A sustainability agreement can be assessed as lawful under the Commerce Act where it (i) does not contain any cartel provisions, or the cartel provisions it contains fall within the exceptions to the prohibition on cartel provisions; and (ii) would not be likely to substantially lessen competition in any market.

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21 New Zealand Commerce Commission, Competitor Collaboration Guidelines (January 2018).

22 New Zealand Commerce Commission, Guidelines on Authorisation (June 2023).

Agreements that require in-depth assessment

Where collaborative sustainability initiatives may affect competition, an in-depth assessment will be required. For example:

- **Industry commitments to sustainability-related standards**. Particularly if the standards are mandatory, not timebound or stricter than necessary to achieve the sustainability objective, they may impact businesses' ability to offer different or improved goods or services from the agreed standard. The process of agreeing standards can also raise concerns if parties exchange competitively sensitive information beyond what is reasonably necessary. Voluntary and proportionate minimum standards, on the other hand, would likely be allowed, subject to assessing that the standards would not substantially lessen competition.
- **Supply chain restrictions**. Agreements between competitors (such as, that they will not supply services to customers in high-emitting industries) could amount to an unlawful output restriction (a form of cartel provision), unless one of the exceptions outlined above applies.

Safe harbours and informal guidance

There are no safe harbours or block exemptions under the Commerce Act, but two exceptions that apply to the cartel provisions are relevant to sustainability initiatives. Note that even if one of these exceptions applies, an effects analysis is required (as the agreement will still be unlawful if it would be likely to result in a substantial lessening of competition).

Exception 1: Collaborative activities. This exception applies where (i) a cartel provision is agreed in the context of a legitimate collaborative activity, being an activity in trade carried on in co-operation by two or more persons and not carried on for the dominant purpose of lessening competition between any two or more of the parties and (ii) the cartel provision is reasonably necessary for the purpose of the collaborative activity. As indicated above, a competition effects analysis is also necessary.

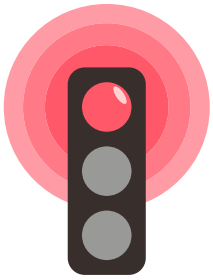
Businesses seeking certainty of the application of the exception can voluntarily seek clearance from the NZCC.

Figure 12: Examples of collaborative activities that may breach competition law



Competitors jointly agree to fund a carbon offset programme and impose agreed levies on consumers to cover the cost of purchasing carbon credits, which is reasonably necessary for the arrangement to be economically viable.

Note: While the collaboration may fall within the exemption, testing the alternatives to the cartel provision is needed to ensure it meets the standard of being "reasonably necessary".



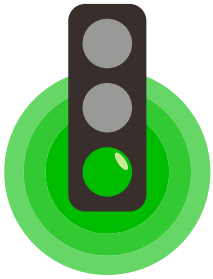
Competitors charge jointly agreed prices for their separate provision of carbon offset services.

Note: In this case, it is not possible to claim that the agreed charges were necessary to achieve the carbon offset services.

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

Exception 2: Joint buying and promotion. Competing buyers are permitted to negotiate collectively on price for goods and services (e.g., jointly purchasing recycled materials or electric vehicles). The exception only applies to input purchase price fixing, not to other cartel provisions and not to resale price maintenance (prohibited under sections 37 and 38 of the Commerce Act. The conduct must also not substantially lessen competition (*i.e.* an effects analysis is required).

Figure 13: Example of joint buying and promotion that is permitted under competition law



A group of small, independent retailers collectively negotiate prices for solar panel installations with an energy provider to reduce their carbon footprint. They meet the joint buying exception criteria and conduct is not otherwise likely to impact competition (including because the largest retailers in the market are not part of the group).

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

NZCC signals have helped to clarify the scope of conduct considered lawful

The NZCC recently expressed the view that banks' participation in the Net-Zero Banking Alliance is not cartel behaviour.[23] While only a court can determine whether the law has been breached, this conclusion is a helpful signal of the scope of conduct the NZCC considers lawful. The voluntary UN-convened initiative (abandoned late 2025) supported banks to lead on climate mitigation, without prescribing targets for signatories.

Proposed amendments to the Commerce Act seek to enable beneficial collaboration

In December 2025, the government introduced the Commerce Amendment Bill. It includes amendments that aim to make beneficial collaboration easier, for example by:

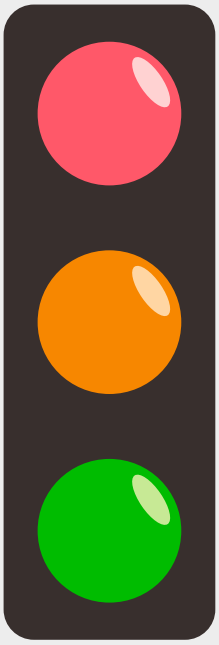
- introducing a statutory notification scheme (initially for resale price maintenance and small business collective bargaining), allowing businesses to notify the NZCC of proposed conduct and proceed unless it objects,
- granting the NZCC class exemption powers to exempt categories of conduct that are low-risk or clearly beneficial, and
- making clearance and authorisation available for collaborative arrangements with changing participants over time.

The Commerce Amendment Bill has cross-party support. While it might not pass ahead of New Zealand's general election (November 2026), if it does not it may well do so in the next Parliament.

23 New Zealand Commerce Commission, 'ComCom Finds No Evidence of Cartel Behaviour in Banks' Involvement in Net-Zero Banking Alliance' (21 July 2025).

5. Competition law and sustainability agreements: South Africa

Compliance risk levels for agreements under competition law to be used as a caption for the subsequent figures



Some agreements are **clearly not compliant with competition law.**

Some agreements require **in-depth assessment and legal advice to ensure compliance with competition law.**

Some agreements are **unlikely to infringe competition law.**

South Africa is a constitutional democracy.

Its policies and regulatory frameworks are designed to give effect to various constitutionally enshrined rights, often with an emphasis on social equity, economic transformation and the alleviation of poverty and inequality.

Sustainability considerations are often assessed alongside and within the context of broader socio-economic objectives.

The Competition Act 89 of 1998 (the "Competition Act") establishes the **Competition Commission of South Africa**, being the body responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant positions and mergers. The Competition Act also prohibits certain types of anti-competitive agreements and conduct and provides the framework for merger control.

When assessing the nature of sustainability agreements from a competition law perspective, they are treated like any other agreement and subject to the same considerations provided for by the Competition Act.

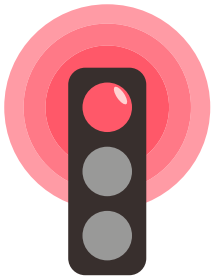
In certain instances, an exemption may be applicable for small-, micro-, and medium-sized businesses[24] (SMMEs), but an SMME will require prior approval from the Competition Commission of South Africa before the exemption applies.

Prohibited agreements

Certain types of conduct and agreements are outright prohibited by Chapter 2 of the Competition Act. Figure 14 identifies the types of conduct specifically prohibited under section 4(1)(b) and section 5(2) of the Competition Act.

24 An "SMME" is a small, medium, or micro enterprise that the Competition Act seeks to protect and promote to ensure equitable participation in the economy. SMME status is determined by sector-specific thresholds relating to employees, turnover, and, where applicable, asset values.

Figure 14: Examples of agreements clearly not compliant with competition law



Agreements requiring minimum resale price maintenance.	Agreements that directly or indirectly fix a purchase or selling price, or any other trading condition.
Agreements that seek to divide the market or allocate market shares, customers, suppliers, territories or specific types of goods or services.	Agreements that would lead to collusion between competitors in a bidding process.

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

Agreements unlikely to infringe competition law

There is presently no guidance provided by the Competition Commission of South Africa on the types of sustainability agreements that are unlikely to infringe competition law.

Although the Competition Act and certain guidance contemplate public interest considerations (including environmental sustainability), for the time being, this only applies in the context of merger control.

Agreements that require in-depth assessment

Firms are generally precluded from entering into agreements that substantially lessen or prevent competition unless it can be justified (see below). This applies to firms in both a horizontal and vertical relationship.

As there is no specific legal framework governing sustainability agreements in South Africa, such agreements will be assessed in the same manner as any other agreement under the Competition Act.

Figure 20 identifies the categories of horizontal agreements that may contravene section 4(1)(a) of the Competition Act, as well as prohibited vertical practices governed by section 5(1).

These agreements are assessed on the basis of their effects. They will be permissible where the parties can demonstrate that any technological, efficiency or other pro-competitive gains resulting from the agreement outweigh any actual or potential anti-competitive effects.

An agreement or practica that would otherwise contravene the Competition Act may also qualify for an exemption in limited circumstances. However, any such exemption is subject to prior approval from the Competition Commission.

Figure 15: Examples of agreements/conduct that requires in-depth assessment



- Restraint of trade
- Long-term lease agreements
- Exclusive supply arrangements or distribution agreements
- The submission and/or exchange of commercially sensitive information in a trade association or as part of a public advocacy objective

Source: ICC (2026), How to navigate sustainability agreements without breaching competition law (Second edition)

Collaboration with competitors and sharing sensitive information may be problematic

It may be problematic for competitors to share competitively sensitive information with each other, particularly where it leads to anticompetitive behaviour. This sharing can happen directly or indirectly through a third party, like a trade association.

In the Guidelines on the Exchange of Competitively Sensitive Information[25] (Information Sharing Guidelines), the Competition Commission of South Africa acknowledged that, in some instances, it may be appropriate – or even beneficial – for competitors to share information. Examples of competitively sensitive information include price, output and production costs. It is less likely that the sharing of competitively sensitive information will be considered problematic where the information is historical or shared on an aggregated basis (where specific firms' sensitive information cannot be identified).

It is always important to carefully consider Competition Act and Information Sharing Guidelines before sharing any commercially sensitive information with competitors or trade associations.

The Block Exemption Regulations for Small, Micro and Medium-Sized Businesses may provide a safe harbour in limited circumstances

In some circumstances, an application can be made for certain agreements to be exempt from the application of Chapter 2 (Prohibited Practices) of the Competition Act. Alternatively, and in some instances, it may be possible that an exemption may already exist, for example where a sustainability agreement can be categorised as a "standardisation agreement" for environmental performance, as applicable to SMMEs under the Block Exemption Regulations for Small, Micro and Medium-Sized Businesses 2024 (SMME Block Exemption). This will only be an exemption from section 4(1) and 5(1) of the Competition Act (*i.e.* the amber category above) and not the prohibited agreements listed above (*i.e.* the red category). However, it is important to note that an SMME seeking to rely on the SMME Block Exemption is required to apply to the Commission for approval prior to implementation of the agreement.

25 Department of Trade, Industry and Competition, Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act No. 89 of 1998 (as amended) (dated 27 January 2023, published 24 February 2023).

6. Competition law and sustainability agreements: United States

US antitrust law—enforced by the **Federal Trade Commission** (FTC), the **Department of Justice** (DOJ) and State Attorneys General and US courts—regulates the behaviours of companies and other actors in the market, with a particular emphasis on eliminating anti-competitive agreements between competitors.

While European competition authorities such as the EC and the UK CMA have indicated a willingness to issue advisory opinions on initiatives to protect parties to sustainability agreements from enforcement action and fines, there has been no similar approach in the US. Antitrust policy generally, and particularly with respect to climate change and other sustainability initiatives, has become partisan and political.

Private sector efforts to advance ESG goals have come under antitrust scrutiny. For example:

- **31 March 2023:** 21 State Attorneys General issued an open letter to asset managers, expressing a concern that they may be "pushing" political goals of the Climate Action 100+ and Net Zero Asset Managers Initiative.
- **15 May 2023:** 23 State Attorneys General issued requests for documents to the Net-Zero Insurance Alliance and Net-Zero Asset Owner Alliance.
- **15 December 2023:** The House Judiciary Committee subpoenaed BlackRock and State Street regarding "left-wing environmental, social and governance goals".
- **30 July 2024:** The House Judiciary Committee demanded disclosures from more than 130 participants of the initiative Climate Action 100+.
- **27 November 2024:** Several State Attorneys General filed antitrust claims against Blackrock, State Street and Vanguard for alleged shareholder coordination with impact in coal markets. Motions to dismiss were denied in August 2025 and the Court applied the rule of reason. The request to treat the alleged coordination on ESG issues as per se illegal was rejected.
- **11 and 12 June 2024 and 13 December 2024:** The US House Judiciary Committee released its first formal majority staff report on antitrust law, competition and net zero goals in June 2024,[26] alongside the minority position.[27] This was followed by a second interim report in December 2024.[28]
- **July – November 2025:** Attorneys General in Missouri, Texas and Florida launched investigations or filed lawsuits challenging Institutional Shareholder Services and Glass Lewis alleging violations of consumer protection or antitrust laws by favouring ESG or diversity, equity and inclusion (DEI) interests over financial performance.

Sustainability agreements

There is no safe harbour under US antitrust laws for sustainability agreements and so compliance efforts must be proactive in avoiding pitfalls. In certain cases, cooperation between competitors is constitutionally protected, such as in the case of joint lobbying to federal, state or local government or joint litigation.

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26 US House Judiciary Committee, Climate Control: Exposing the Decarbonization Collusion in Environmental, Social, and Governance (ESG) Investing (11 June 2024).

27 The minority staff report was formally submitted into the formal congressional record by Representative Becca Balint during hearing by the Subcommittee on the Administrative State, Regulatory Reform and Antitrust on 12 June 2024. The full transcript is available here.

28 US House Judiciary Committee, Sustainability Shakedown: How a Climate Cartel of Money Managers Colluded to Take Over the Board of America's Largest Energy Company (13 December 2024).

Sustainability agreements, if challenged, are subject to review for compliance with Section 1 of the Sherman Antitrust Act, which prohibits agreements in restraint of trade.

Per se analysis

Agreements that always, or almost always, have anti-competitive effects are deemed to be per se unlawful. These tend to be horizontal agreements in cases where firm precedent exists, indicating that the agreements cannot, or are rarely, justifiable. If an agreement is per se unlawful, a court needs only to find that the agreement exists before imposing liability; there is no need to prove actual anticompetitive effect.

Examples of such agreements are:

- Price fixing
- Bid rigging
- Market allocations
- Output restrictions
- Horizontal group boycotts.

Rule of Reason

If an agreement is not per se unlawful, it may be anticompetitive under the Rule of Reason (RoR). To be unlawful, actual anti-competitive effects must be proven that must substantially outweigh any procompetitive benefits.

Factors assessed include:

- Nature and purpose of agreement;
- Market power of the parties involved;
- Competition in the relevant market;
- Existence of a market failure, resolved by the agreement.

Sustainability standards

Standards adopted by an industry group are unlikely to pose serious antitrust risk

Industry-wide self-regulation is analysed under RoR, meaning it is permissible under the Sherman Act unless its anti-competitive effects significantly outweigh any pro-competitive benefits.

Factors used to assess industry self-regulation under RoR include:

- Whether promulgators of the standards are competitors of the businesses harmed by the application of the standards;
- Whether the intent behind the standards is to suppress competition in the relevant market, create market power, or raise profit margins;
- Whether the standards are reasonably necessary to achieve legitimate goals;

- The extent of the economic detriment suffered by the injured business resulting from the application of the standards.

Industry-wide climate and sustainability standards may be permitted by US antitrust law under the RoR so long as they are (i) not purposely designed to suppress competition, (ii) reasonably tied to a climate or sustainability goal, (iii) applied consistently and (iv) not mandatory.

Note that although a violation is harder to prove under RoR, investigations defending against allegations of an infringement (which can be politically motivated) can be resource intensive and distract from the focus of the organisation.

Best practices for standard setting

Standards and guidelines should:

- Target objective business practices and effects that have ecologically detrimental effects, rather than targeting specific businesses or companies
- Be developed for the purpose of addressing the ecological crisis facing the world today, rather than for the exclusion or elimination of particular businesses or companies
- Rely on sound, documented scientific evidence
- Develop suggestions, wherever possible, for companies and businesses affected by the guidelines to mitigate the negative consequences of ecologically responsible investment
- Call for investors to apply standards and guidelines objectively and consistently across the spectrum of their investment activities, and not in an arbitrary or capricious manner that targets only some, but not all, similarly situated polluters
- Be open and accessible to all potential implementers
- Not be mandatory.

Information sharing agreements

Information sharing agreements pose some risk under US antitrust laws

US antitrust law typically prohibits companies from sharing commercial sensitive information with their competitors where that information may facilitate collusion.

Information that could be problematic if shared includes:

- Pricing
- Detailed margins and costs
- Inventory levels
- Customer identities
- Bidding information
- Detailed product development plans
- Sales and marketing plans
- Production and capacity figures.

Intermediaries that facilitate unlawful agreements or unlawful information sharing arrangements can themselves be held liable for violating antitrust laws—even if the intermediary is a trade association or a non-governmental organisation (NGO). This reflects the "hub-and-spoke theory", in which a central hub (the intermediary) acts as a link between the spokes of a wheel (the competitors) and thus facilitates collusion along the rim of the wheel.

However, competitors and NGOs may organise and participate in information sharing agreements provided that they do not involve the exchange of information which could be used to collude, boycott or divest.

Agreements targeting specific entities should be carefully vetted

An agreement between competitors not to do business with specific individuals or firms can create antitrust exposure where the vertical boycott restricts competition in the market in which the parties compete and lacks a legitimate business justification.

Boycotts are permitted by the First Amendment freedom of speech clause where: (i) the purpose is to achieve social change or advances political, religious or other non-commercial goals, rather than to harm competition; and (ii) it is organised by firms that are not competitors of those who suffer from the boycott. Refusals to buy from or sell to firms engaged in unsustainable business practices upstream or downstream present litigation risk but are subject to a rule of reason analysis.

Political activity cannot be used as a shield for price-fixing or other anti-competitive agreements between competitors (including in a hub-and-spokes situation).

Vertical boycott and divestment agreements championed by climate action groups are likely protected from antitrust liability by the First Amendment provided they are not used as cover for anti-competitive conduct.

Advocacy group and trade association meetings

A disclaimer can be used to remind participants of their competition law obligations, helping ensure the meeting remains compliant and that everyone feels confident in participating.

A disclaimer could read: *"Participants attending this meeting should be aware of their competition law obligations including with respect to the exchange or discussion of commercially sensitive information/ topics. If there is any doubt as to the application of these guidelines, participants should seek independent legal advice"*.

Conclusion: Practical tips for practitioners

Competition law plays a critical role in protecting free markets, ensuring a level playing field and delivering benefits for consumers. However, as this guidance demonstrates, there is a growing recognition that collaboration on sustainability initiatives can yield significant benefits – including efforts that address market failures (such as climate change) and result in net gains for the environment (e.g. by protecting biodiversity, improving air and water quality, reducing waste and more).

This guidance aims to support such initiatives by helping practitioners navigate the rigours of competition law. While what is permissible may vary across jurisdictions, several themes emerge.

Indeed, best practice frequently comes down to:

- **Clarifying the net benefits early.**
  Define the initiative's objective, expected environmental benefits, procompetitive effects and consumer benefits and document why joint action is necessary. Consider whether equivalent benefits could be achieved by a practicable and less restrictive means. Examine whether the initiative can be designed so that those who bear the costs substantially overlap with those who benefit.
- **Limiting cooperation to what is necessary.**
  Limit the scope and duration of the cooperation to what is necessary. In principle, leave prices, output, customers and sales channels, facilities and independent research and development to each participant. Undertake a careful legal assessment in advance before coordinating any of these matters.
- **Restricting the competitively sensitive information shared.**
  Limit the sharing of competitively sensitive information to what is necessary. Where appropriate, implement information barriers such as third-party analysis or a clean team that excludes sales personnel, aggregation or anonymisation of data, access restrictions, and prohibitions on use for other purposes or disclosure beyond what is necessary.
- **Taking care when developing standards and certification schemes.**
  Keep standards and certification schemes within what is reasonably necessary for a legitimate objective, apply them non-discriminatorily and, in principle, make participation voluntary. Do not exclude alternatives with equivalent environmental benefits without reasonable grounds. If additional measures are requested from a dependent trading partner, consult sufficiently and appropriately allocate or reflect additional costs in the price.
- **Reviewing the initiative as markets, technology or regulation change.**
  If the assessment is unclear, seek legal advice before implementation and, where appropriate, consider consulting the relevant authority. Act early where competitively sensitive information will be exchanged, participants have high market shares, facilities will be coordinated, cost structures will be substantially commonised or third parties risk unjustified exclusion.

Additional reading

EU, UK and US

- Competition and Markets Authority (UK), Green Agreement Guidance: Guidance on the Application of the Chapter I Prohibition in the Competition Act 1998 to Environmental Sustainability Agreements (12 October 2023).
- European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (21 July 2023).
- Netherlands Authority for Consumers and Markets, ACM's Oversight of Sustainability Agreements (4 October 2023).
- Dolmans, M. 'Sustainable Competition Policy', Chillin' Competition Conference (Dec. 19, 2019). this was written up as M. Dolmans, 'Sustainable Competition Policy', 6 Comp. L. & Pol'y Debate CLPD, Vol 5, Issue 4 and Vol. 6, Issue 1 (2020).
- Dolmans, M. Sustainability Agreements and Antitrust – Three Criteria to Distinguish Beneficial Cooperation from Greenwashing, Chillin' Competition (7 September 2021).
- Dolmans, M., W. Lin and J. Hollis, 'Sustainability and Net Zero Climate Agreements – A Transatlantic Antitrust Perspective', *Competition Law & Policy Debate* 2023, nr. 2 (24 November 2023).
- Dolmans, M. 'The Need to Integrate Externalities, Market Failures, and Collective Action Problems in Antitrust Analysis – Thoughts on the US House Judiciary Committee Report on ESG Investigation and the Rebuttal Report', NYU Compliance and Enforcement (22 June 2024).
- Dolmans, M., W. Lin and C.E. Lee, 'Sustainable Antitrust Policy in the US and Texas v Blackrock – Hot Water or Hot Air?', ABA Perspectives on International Antitrust, Winter, 224–249 (3 January 2025).
- Dolmans, M. and S. DeTar, "A Consistent Sustainable Policy for All Areas of EU Competition Law", Liber Amicorum for Olivier Guersent (2026, forthcoming).
- Francis, D. 'Post-Profit Antitrust', 135 Yale Law Journal 194–279 (2025), NYU Law and Economics Research Paper No. 25-11.
- Gasparini, M. and P. Tufano, 'An Empirical Examination of Business Climate Alliances: Effective and/or Harmful?', Harvard Business School Working Paper, No. 25-060 (2025).
- Gasparini, M., K. Haanaes and P. Tufano, 'When Climate Collaboration is Treated as an Antitrust Violation', Harvard Business Review (17 October 2022).
- Hanawalt, C. and A. Fitch, 'Climate Skeptics Rush to Misuse Texas v. BlackRock', Climate Law: A Sabin Center Blog (11 December 2025).
- Hanawalt, C. and A. Fitch, 'The FTC Asserts (and Oversteps) its Antitrust Authority Against a Key Climate Alliance', Climate Law: A Sabin Center Blog (27 October 2025).
- Hanawalt, C. and D. Hearn, 'Texas v. Blackrock Puts the Common Ownership Theory on Trial, with Implications across The Financial Sector and Collaborative Sustainability Efforts', International Journal for Financial Services, No. 2, 107 (2025).
- Holmes, S. and D. Middelschulte and Martijn Snoep (eds.) *Competition Law & Environmental Sustainability* (Concurrences, 26 March 2021).

- Holmes, S. 'Climate Change, Sustainability and Competition Law', Oxford Journal of Antitrust Enforcement, Vol. 8, No. 2, 354–405 (2020).
- Holmes, S. and M. Meagher, 'A Sustainable Future: How Can Control of Monopoly Power Play a Part?' ECLR Vol. 44 No. 1, 16–26 (Part 1); ECLR, Vol. 44, No. 2, 61–69 (Part 2); ECLR, Vol. 44, No. 4, 148–161 (Part 3) (2023).
- Holmes, S. 'Sustainability and Competition Policy in Europe: Recent Developments', JECLAP, Vol. 15, No. 8, 562–570 (2024).
- Holmes, S. 'Sustainability and Competition Policy in Europe: Recent Developments', JECLAP, Vol. 14, No. 7, 448–456 (2023).
- Miazad, A. 'From Zero-Sum to Net-Zero Antitrust', UC Davis Law Review, Vol 56 (2023).
- Miazad, A. 'Investor Alliances: The Infrastructure for Climate Stewardship', Washington University Law Review, Vol. 102, 797 – 857.
- Miazad, A. 'Prosocial Antitrust', 73 Hastings L.J. 1555 (2022) (last revised 19 October 2024).
- Newman, J. 'The Output-Welfare Fallacy: A Modern Antitrust Paradox', 107 Iowa L. Rev. 563 (2022).
- Nowag, J. (ed.) Research Handbook on Sustainability and Competition Law (Edwards Elgar Publishing, 2024);
- Veno, N.A., J.E. Kelly, K. Capatosto and G.H. Kozen, 'Climate and Antitrust', The Georgetown Environmental Law Review, Vol. 37, No. 2, 267–295 (2025).

Germany

- Bundeskartellamt, Jahresbericht 2023/24. See, in particular, pp. 56 f.
- Bundeskartellamt, Offene Märkte und nachhaltiges Wirtschaften – Gemeinwohlziele als Herausforderung für die Kartellrechtspraxis (Hintergrundpapier) (1 October 2020).
- Bundesministerium für Wurtschaft und Klimaschutz, Kartellrecht und Nachhaltigkeit: Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirttschaft und Klimaschutz *(BMWK)* (22 May 2024).
- European Commission, Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements ("2023 Horizontal Guidelines").
- Gesetz gegen Wettbewerbsbeschränkungen („GWB"). See, in particular, §§ 1, 2, 32c.
- Bär-Bouyssiere, B. and C. Lau, 'Umwelt im Kartellrecht – Nachhaltig oder Nachrangig?', NZKart, Issue 5, 258 (2024).
- Weinert, C. and C. Ely, 'Die Grüne Zwickmühle: Nachhaltigkeitsinitiativen auf dem Kartellrechtlichen Prüfstand', ZASA, Issue 9, 535–574 (2025).
- Wiedemann/Lübbig, *Handbuch des Kartellrechts*, 5th Edition (C.H. Beck, 2026). See, in particular, § 9 Rn. 356–360 (Umweltschutz- und Nachhaltigkeitsvereinbarungen im deutschen Recht).

Japan

- Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947).
- Japan Fair Trade Commission, Consultation Casebook for Fiscal Year 2025, published June 2026.
- Japan Fair Trade Commission, Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act, issued 31 March 2023 and revised 24 April 2024 and 1 January 2026.
- Japan Fair Trade Commission, Guidelines Concerning Joint Research and Development under the Antimonopoly Act.
- Suzuki, K., O. Igarashi and M. Isono, 'On the Formulation of the Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society under the Antimonopoly Act', Kosei Torihiki (Fair Trade), no. 872, pp. 4–9. (June 2023).
- Suzuki, K. (ed.) with O. Igarashi and M. Isono. *Antimonopoly Act Guidelines for a Green Society* (Tokyo: Shojihomu Co. Ltd., 2024).
- Suzuki, Mabuchi, Horie, Saito, *Japanese Experience: Sustainability and Competition Law*, presented at the Autorité de la concurrence workshop on Economics and Sustainability 5 October 2026.

New Zealand

- Commerce Act 1986.
- Commerce (Promoting Competition and Other Matters) Amendment Bill.
- New Zealand Commerce Commission, Collaboration and Sustainability Guidelines (November 2023).
- Chapman Tripp, Commerce Act and Commission Reform (16 September 2025).

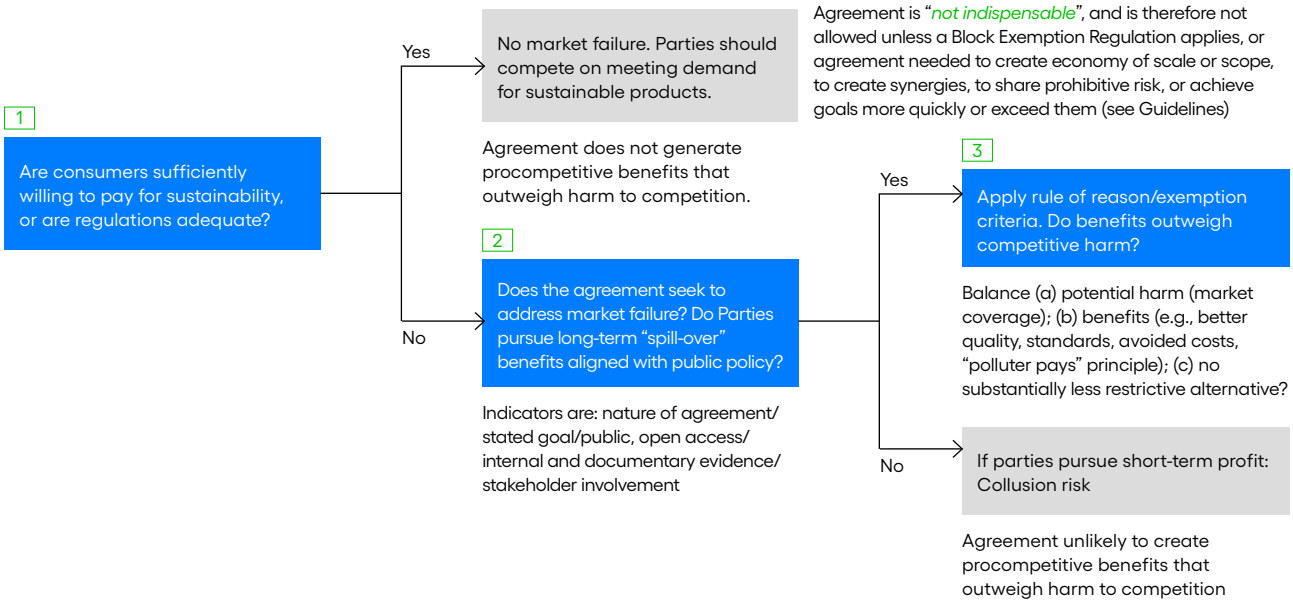
South Africa

- Block Exemption Regulation for Small, Micro and Medium-Sized Businesses 2024.
- Competition Act 89 of 1998 (as amended).
- Department of Trade, Industry and Competition, Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act No. 89 of 1998 (as amended) (dated January 2023, published February 2023).
- Bove, D. 'Sustainability Considerations in the Antitrust Mandate: A Green Evolution or a Prioritisation of Sustainable Development Goals?' (Competition Commission of South Africa, 2024).
- Khaki, N. and O. Maseng, 'Integrating Sustainable Development Goals into Antitrust Mandates for Competition Policy: A Case Study of South Africa' (Competition Commission of South Africa, 2024).

Appendix | Additional content relevant to the EU, UK and US

Assessing restrictions in the EU and UK

Figure 16: Decision tree to assess the legality of sustainability agreements



Source: Dolmans, Lin and Hollis (2023), Sustainability and Net Zero Climate Agreements – A Transatlantic Antitrust Perspective, with design modifications by ICC

The decision tree does not serve as legal advice nor does it replace legal consultation.



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