Navigating New Antitrust Attacks on ESG

The current U.S. federal administration's deregulatory efforts and increasing opposition to ESG initiatives have created a complex landscape for companies seeking to decarbonize, participate in the energy transition and manage climate risk. Since taking office for his second term in January 2025, President Trump has signed more than 180 executive orders and repealed more than 100 regulations, transforming federal policy at a dizzying pace. Meanwhile, the growing scrutiny of ESG collaborations by conservative attorneys general ("AGs") has led to investigations, lawsuits and other regulatory actions.

Despite the uncertainty and politicization surrounding ESG, the core principles of antitrust law remain unchanged. Companies navigating criticism of their ESG initiatives must focus on the fundamentals of antitrust economics and prioritize strategies that balance their business objectives with political nuance, while staying within clear legal boundaries.

What's Going On

Recent months have brought a surge of high-profile ESG antitrust activity. In August 2025, 23 U.S. state AGs sent a letter to the Science Based Targets Initiative ("SBTi"), a corporate climate action organization, raising antitrust and consumer protection concerns.[1] The letter followed SBTi's release of its Financial Institutions Net-Zero ("FINZ") Standard, which the AGs claimed could amount to an agreement restricting financing and insurance for the oil and gas industry. Florida AG James Uthmeier has since launched investigations into SBTi and CDP, another ESG scoring body, for possible antitrust and deceptive-trade-practice violations.[2] These actions are part of a broader trend, as several U.S. companies have faced antitrust suits in Nebraska, Texas and Florida.

At the federal level, the DOJ Antitrust Division and FTC filed a joint Statement of Interest in Texas AG Ken Paxton's case against BlackRock, State Street and Vanguard — marking the administration's first direct involvement in ESG-related antitrust litigation.[3] FTC Chairman Andrew Ferguson has signaled that investigating potential ESG collusion will be a top priority, stressing that agreements not to invest in fossil fuels raise serious concerns for shareholder value and workers. Meanwhile, the FTC recently closed its probe into a group of truck makers, after the companies pledged not to enforce California's emissions-reduction pact.[4] With scrutiny of ESG initiatives intensifying, it is critical to understand the fundamental principles of competition economics shaping these developments in antitrust litigation.

The Economics of ESG-Related Antitrust Risk

The consumer welfare standard remains the foundation of U.S. antitrust analysis. This principle offers opportunities, most notably the clarity companies draw from 40 years of consistent antitrust enforcement precedent. But it also presents challenges. Antitrust economics primarily focus on consumer outcomes, such as prices, output, quality and innovation in clearly defined antitrust markets. It does not account for broader positive externalities that fall outside those markets.

At its core, antitrust economics are focused on preserving consumer welfare, and protecting competition is the clearest way to do that. But there are important subtleties. "Consumer" does not mean any consumer; rather, it is the set of consumers participating in a particular antitrust market. And "welfare" does not mean any benefit; it primarily refers to benefits that are measurable in terms of prices and quantities. As a result, if an ESG collaboration reduces competition in the relevant antitrust market but significantly generates more benefits across other markets or society broadly, the recognition of these positive effects within the consumer welfare framework is at risk. That's because these are positive externalities not captured by the consumers in the relevant antitrust market.

For example, when companies collaborate to reduce carbon emissions, society broadly benefits from that initiative, but those benefits are diffuse and very long-term, and therefore not captured in a single market analysis. This tension sits at the heart of ESG-related antitrust risk.

Even so, the economic principles that frame ESG antitrust risk are clear: initiatives must not result in reduced output, higher prices or diminished consumer choice. Companies should assess ESG efforts through this lens, ensuring they deliver benefits to consumers without undermining competition.

In *Texas et al. v. BlackRock, Inc., et al.*, a coalition of states led by Texas alleged that the three asset managers used their collective ownership positions in coal companies to coordinate reductions in coal output, violating both Section 1 of the Sherman Act and Section 7 of the Clayton Act.[5] The court's decision to deny the defendants' motion to dismiss and the DOJ and FTC's Statement of Interest in support of the states demonstrate that antitrust authorities are taking a closer look at the use of minority shareholdings to influence industry-wide conduct. This "horizontal shareholding" theory suggests that even small ownership stakes can raise antitrust concerns if used to coordinate competitive decisions.

In *Nebraska v. Daimler Truck et al.*, the Nebraska AG and trade associations sued several major truck manufacturers, alleging that they had conspired with the California Air Resources Board to phase out internal-combustion trucks through the "Clean Truck Partnership."[6] The complaint characterizes the agreement as an illegal horizontal pact to reduce output, raise prices and constrain consumer choice, particularly in agricultural and logistics markets that rely on long-haul diesel fleets.

The cases in Texas and Nebraska demonstrate that antitrust authorities are willing to challenge ESG initiatives under the theory that they may harm competition. Any organization weighing these choices should take comfort in the fundamentals of antitrust economics, which provide clear guidance on what is — and is not — permissible, while also factoring in the political dynamics that are increasingly shaping this space.

It's important to note that corporate collaboration has a long history in the United States and remains a vital part of business today.[7] ESG collaborations offer companies opportunities to share knowledge with each other in order to address problems facing an entire industry, such as extreme weather and increasing regulation regarding waste. This helps drive innovation and address larger risks, ultimately benefiting both consumers and the environment.

For any organization concerned about antitrust risk, the fundamentals of antitrust economics should offer reassurance that ESG initiatives can be pursued responsibly within well-established boundaries.

Focus on the Fundamentals

Despite the growing politicization of ESG, antitrust economics is established, and the guidance remains consistent. Rather than waiting for litigation to arise, companies should adopt proactive strategies that maximize the benefits of collaboration.

Achieving this requires companies to evaluate the legal landscape, the economic impact of their initiatives and the political environment, making decisions that best serve their long-term business interests. The strongest approach is to prioritize initiatives that create business value and align with overall strategy. By grounding decisions in both law, economics and strategy, organizations can pursue collaborations with greater confidence while minimizing risk.

Companies with existing initiatives and those considering new ones should assess the collaboration from multiple angles:

- **Legality:** Ensure the collaboration complies with antitrust laws and is firmly grounded in established principles of antitrust economics
- **Business Value:** Confirm that it supports the business, its stakeholders and the company's broader strategy
- **Risks:** Identify potential challenges, whether from regulators, litigation or political scrutiny

With a legally and operationally sound, strategic approach, companies can then take advantage of collaborations to address the risks and opportunities facing their sector and the economy as a whole. Working with external partners who have expertise in ESG and antitrust economics can also provide valuable support in ensuring compliance and preparing defenses against potential challenges.

1 Mark Segal, *"23 State Coalition Warns SBTi, Financial Firms Over Antitrust Risk from Net Zero Commitments,"* ESGtoday (August 14, 2025), https://www.esgtoday.com/23-state-coalition-warns-sbti-financial-firms-over-antitrust-risk-from-net-zero-commitments.

2 *"AG Uthmeier opens investigation into the 'climate cartel,'"* Florida Phoenix (July 28, 2025), https://floridaphoenix.com/briefs/ag-uthmeier-opens-investigation-into-the-climate-cartel.

3 *"FTC and DOJ File Statement of Interest in Energy Collusion Case Against BlackRock, State Street, and Vanguard,"* Federal Trade Commission (May 22, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-doj-file-statement-interest-energy-collusion-case-against-blackrock-state-street-vanguard.

4 *"FTC Resolves Antitrust Concerns Arising from Clean Truck Partnership,"* Federal Trade Commission (August 12, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-resolves-antitrust-concerns-arising-clean-truck-partnership.

5 *Texas et al. v. Black Rock, Inc., et al.*, Docket No. 6:24-cv-00437 (U.S. District Court, Eastern District of Texas 2024), https://www.naag.org/multistate-case/texas-et-al-v-blackrock-et-al.

6 *Nebraska v. Daimler Truck et al.*, Docket No. D15CI240000570 (District Court, Lincoln County, Nebraska 2024), https://www.naag.org/multistate-case/nebraska-v-daimler-truck-et-al.

7 *"All about cooperation, collaboration and partnerships,"* IESE Insight (November 12, 2024), https://www.iese.edu/insight/articles/cooperation-collaboration-alliances-business-society-government.

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