

Collaborative ESG Efforts, Antitrust Risk Examined by Dulani, Smith in *Bloomberg Law*

In the News

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Stinson LLP Partners [Jeetander Dulani](#) and [Vicki Smith](#) authored an article for *Bloomberg Law*, “ESG Collaborations Face Challenges Without Safe Harbor Guidance.”

The attorneys evaluate how current collaborations involving environmental, social and governance (ESG) initiatives are impacted by the withdrawal of long-standing “safe harbor” guidance regarding how competitors could safely engage in information sharing and benchmarking efforts coupled with the coming changes to the merger guidelines.

“There’s been a push for broader collaboration among competitors through industry working groups or trade associations—with the goal to establish common standards or best practices for ESG initiatives,” the attorneys write. “It’s possible for such efforts to be pro-competitive and beneficial, but there are also inherent antitrust concerns when competitors work together to develop industry standards and best practices.”

Dulani and Smith also note that “in this highly charged enforcement environment, companies considering or involved in ESG collaboration direly need antitrust guidance.” They provide insight on the safeguards companies should consider, including:

- The focus of ESG initiatives do not implicate pricing, bids, market or customer allocation, or boycotts of suppliers or competitors.
- The procompetitive benefits of the collaboration are documented and quantified.
- All industry group or trade group meetings follow antitrust best practices, with a written agenda, meeting minutes, and antitrust compliance statement—and are conducted in the presence of antitrust counsel.

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- No competitively sensitive data is shared between participants. Any data for benchmarking should be given only to an independent third party, and any results should be anonymized.
- Avoid mandatory terms. Each participant should make their own independent decision on whether to adopt any resulting ESG policies, benchmarks, standards, best practices, codes of conduct or goals.

Dulani's practice includes competition disputes, class actions, mergers and acquisitions, government investigations and other complex litigation. He represents clients before the Department of Justice and Federal Trade Commission in merger and conduct investigations, as well as False Claims Act-related litigation, and he advises on antitrust risk and compliance and on vertical business arrangements.

Smith's practice focuses on complex business litigation, leveraging her strong legal presence to protect her clients' interests and advance key business goals. She has extensive experience in antitrust litigation. Her antitrust experience also includes counseling clients on compliance matters and assisting on deals and pre-merger activities.

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