

Stinson's Dulani Provides Guidance for Companies as Regulators' Antitrust Scrutiny Increases

In the News

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Stinson LLP Partner [Jeetander Dulani](#) is featured in a *Corporate Counsel* article, "Antitrust Regulators Poised to Pounce on Industrywide ESG Collaborations."

The article examines antitrust risks related to industry-wide collaborations to develop best practices and common standards for environmental, social and governance (ESG) initiatives.

Dulani says even outside of the context provided by the [draft merger guidelines](#), it's not clear that companies will get the benefit of the doubt on collaborations.

"The temptation is to say, 'Well, the merger guidelines only apply to merger review.' But the changes about 30% market share equaling dominance and that such markets are highly concentrated are substantial changes," Dulani said. "Now—if companies want to create new ESG standards, goals, or benchmarks—there is not any guidance on how to do that safely. And if competitors wanted to collaborate directly, the 20% market share safe harbor seems to no longer be valid because the policy articulating the principle has been withdrawn."

Dulani also provides guidance for mitigating the antitrust risk from new or existing ESG collaborations. Companies should ensure that any ESG collaboration meetings with competitors are well-structured and documented. "Ideally, the meetings should include an antitrust compliance statement and be held with an antitrust lawyer present," he said.

In addition, he says that each company needs to make a unilateral decision on whether to adopt any ESG policies or practices developed by the industry group. "Collaborations should avoid mandatory terms, with each participant allowed to make independent decisions on whether to adopt policies, benchmarks or other practices."

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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.

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