



MAYER | BROWN

EUROPEAN
ANTITRUST SYMPOSIUM


A PIVOTAL TIME FOR RISK,
STRATEGY, AND ENFORCEMENT

30 April 2026

EUROPEAN ANTITRUST SYMPOSIUM

THOUGHT LEADERSHIP

TABLE OF CONTENTS



The Rules Are Changing: European Merger Control at a Crossroads	1
ESG Cooperations & Competition Law: Navigating the Legal Boundaries	7

THE RULES ARE CHANGING: EUROPEAN MERGER CONTROL AT A CROSSROADS

Christian Horstkotte, Nathalie Jalabert-Doury,
Daniel Vowden, Guillaume De Meersman,
Elisabetta Rotondo, Sarah Wilks

INTRODUCTION

A striking paradox has emerged in European competition enforcement: regulators are simultaneously casting an ever-wider net over transactions including those falling outside traditional merger control thresholds, whilst consulting on approaches that promise greater flexibility and openness to the benefits of consolidation. This tension reflects current market realities. On one hand, there is rapid consolidation across certain sectors and, in some areas, calls for the promotion of larger European players capable of competing on the global stage. On the other, authorities want to protect smaller innovators from being absorbed or marginalised. In this context, competition law, and especially merger control, has come under criticism for being out of date and ill-equipped to deal with modern markets. In response, both the European Commission (“**Commission**”) and the UK Competition and Markets Authority (“**CMA**”) have been adapting and updating their approaches.

This Legal Update examines three critical developments that exemplify this paradox: (i) the evolving approach to below-threshold transactions; (ii) the ongoing scrutiny of non-controlling minority shareholdings; and (iii) the modernisation of merger guidance, including more flexible approaches to efficiencies and remedies. Whilst the first two themes illustrate how authorities are ensuring no potentially problematic conduct escapes their reach, the third demonstrates how regulators are seeking to balance concerns about overreach with more pragmatic analysis. All three areas present both challenges and opportunities for dealmakers, but the overriding message is clear: the rules of engagement are shifting, and businesses should plan their deal strategy accordingly.

1. BELOW-THRESHOLD TRANSACTIONS: THE EXPANDING REACH OF COMPETITION ENFORCEMENT

The first illustration of authorities extending their reach concerns transactions that fall beneath traditional notification thresholds. Such deals may be perceived as problematic by competition authorities, especially when they involve a large player acquiring smaller strategic targets, potentially giving rise to significant competition law risks.

In the United Kingdom, the Digital Markets, Competition and Consumers Act specifically amended the UK merger control regime to target killer acquisitions, introducing a new jurisdictional threshold applicable to such deals. In the European Union, since the landmark ruling in *Illumina/Grail*, the Commission has been encouraging national competition authorities (“**NCA**s”) to amend their merger control provisions to introduce targeted “call-in” powers or consider the use of behavioural rules to catch these kinds of transactions and address a perceived enforcement gap. Some jurisdictions, such as Italy, have revised their thresholds, while others, which have not yet done so, such as France and Belgium, but in the meantime are increasingly adopting an ex-post antitrust assessment, reviewing below-threshold transactions through the lens of abuse of dominance or anticompetitive agreements. In other words, competition authorities are demonstrating that antitrust powers can be deployed to challenge already closed transactions.

The French Competition Authority used antitrust powers in 2024 to assess a series of cross-divestitures in the meat-cutting sector under Article 101 TFEU. Acquisitions presenting indicia of collusion, such as market allocation through cross-sales or exchange of commercially sensitive information during negotiations, could be considered illegal if there is an anticompetitive purpose and discussions are not part of preparations for the merger agreements.

The French Competition Authority took a further step in 2025, imposing its first fine on a below-threshold acquisition using Article 102 TFEU. It concluded that Doctolib allegedly abused its dominant position by acquiring its closest rival seven years earlier, on the ground that the acquirer’s intent was to remove competition from the market. Importantly, mere strengthening of dominance is not abusive; authorities must demonstrate that, post-transaction, the remaining players on the market will be dependent on the acquirer. This decision is currently under appeal.

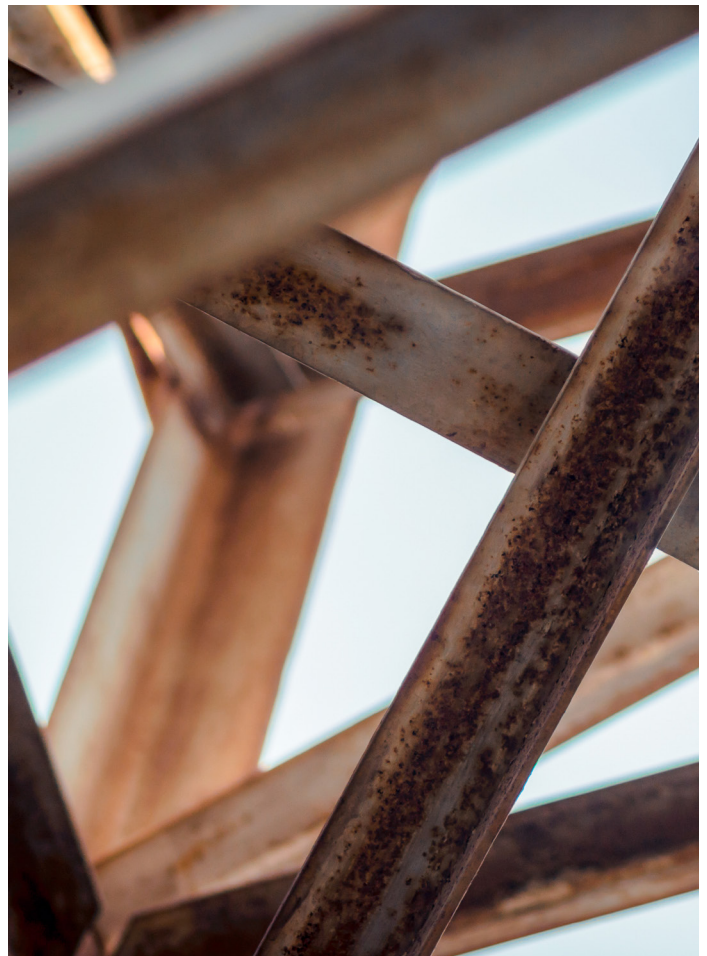
In Belgium, the NCA has opened antitrust investigations into deals where they have been publicly announced but not yet closed, intervening with interim measures such as hold-separate orders imposed to prevent integration. This effectively converts *ex-post* antitrust powers into a *de facto ex-ante* review.

While the use of interim measures mitigates some of the strains of post-closing intervention, dealmakers must factor regulatory intervention risk into transactions that, until recently, would have proceeded without a second thought. This approach of employing behavioural rules to in effect review mergers, notwithstanding legal thresholds not being met, fundamentally alters the risk calculus for dealmakers, who can no longer assume that clearing traditional thresholds guarantees regulatory peace.

In this context, it is important to note that the French Competition Authority may soon be able to allocate more resources to monitoring below-threshold transactions, as a recently adopted bill increases the French monetary thresholds (which had not been updated for more than 20 years). This change will naturally result in fewer notifiable transactions. The UK Government is currently analysing feedback after consulting on steps to increase certainty for dealmakers by tightening up the criteria the CMA can use for

applying the share of supply test to establish jurisdiction to review a merger. This jurisdictional threshold has, in the past, been applied in ways which might have surprised businesses, creating uncertainty about which transactions may fall within the CMA’s remit. Clarifying these criteria should provide greater predictability for parties assessing their notification obligations, at least in the United Kingdom.

The authorities’ determination to leave no potentially problematic transaction beyond their reach extends to non-controlling minority shareholdings, where traditional merger control frameworks have historically provided limited oversight.



2. NON-CONTROLLING MINORITY SHAREHOLDINGS: ANOTHER AVENUE OF EXTENDED SCRUTINY

Acquisitions of non-controlling minority interests will typically escape merger control but can still give rise to significant competition law risks. The Commission has for many years made clear that a minority stake should not serve as an instrument for influencing a competitor's commercial conduct. Critically, the lack of control does not entitle parties to benefit from intra-group antitrust immunity, as illustrated by the [Commission's EUR 329 million fine in *Delivery Hero/Glovo* for misuse of a minority stake](#) (as low as 15%) to foster collusion. More recently, in *Naspers/Just Eat Takeaway*, the Commission required Naspers to divest a significant part of its 27% non-controlling stake in Delivery Hero, a direct competitor of *Just Eat Takeaway* it contemplated to acquire.

The [Commission's March 2026 Merger Brief](#) confirms that even absent formal control, governance rights such as board seats or approval rights over investment rounds may allow a minority shareholder to influence a competitor's strategic decisions. The Commission will examine structural links between competitors looking beyond formal thresholds to assess practical influence. For dealmakers, this means that traditional legal categories (control versus non-control, notifiable versus non-notifiable) are becoming less reliable guides to regulatory exposure.

3. MODERNISATION OF MERGER GUIDELINES: THE FLEXIBILITY COUNTERBALANCE

If the first two developments illustrate how authorities are expanding their enforcement reach, the third represents the other side of the paradox: a move towards greater flexibility and recognition of the benefits of consolidation. The Draghi Report suggested that European competition policy has prioritised protecting smaller firms over enabling European companies to achieve the scale necessary to compete globally. Similarly, in the United Kingdom, the Labour government has raised concerns about the CMA's approach and its potential effects on economic growth. In response, both the Commission and the CMA have published consultations on modernising their merger control regimes.

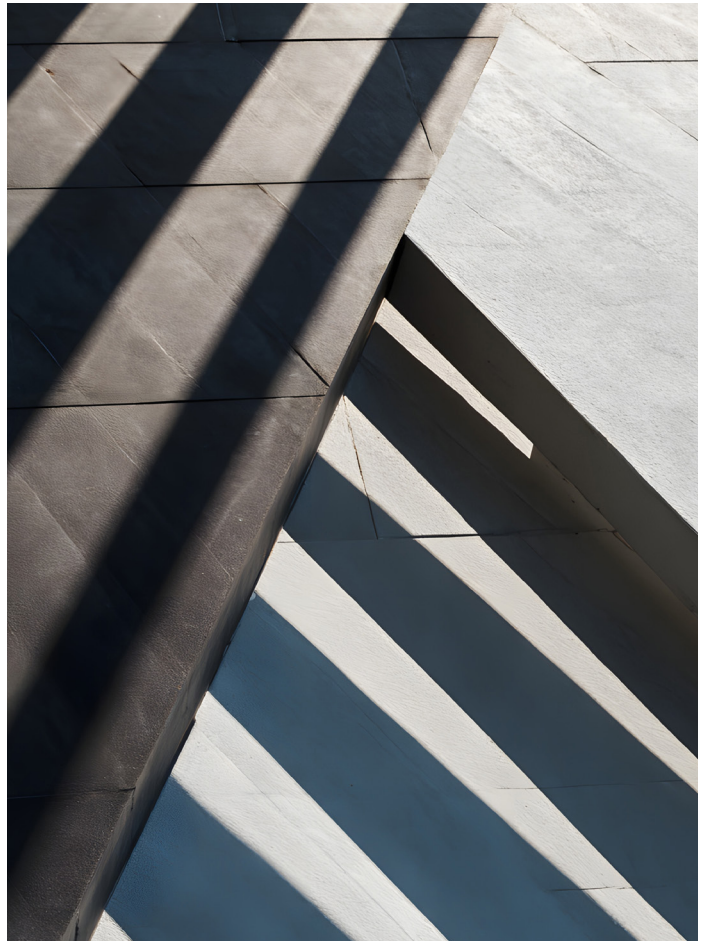
EU Developments

In the European Union, [the Commission's review of its merger guidelines](#) arguably represents the most significant overhaul of EU merger control in over two decades. A key consideration underlying this revamp is the acknowledgement that European companies must be allowed to scale up to compete globally, with consolidation across national boundaries creating so-called "EU champions". However, the Commission is wrestling with what constitutes "positive scale", a novel concept, and the potential adverse effects of heightened concentration versus positive externalities such as productivity gains, cost rationalisation, and enhanced ability to invest and innovate. In this context, key areas to be reflected in draft guidelines include productivity and innovation in the single market, sustainability, and the cost of living and price effects of mergers.

UK Developments

In the United Kingdom, on 15 January 2026, the [CMA launched a review of its approach to assessing “rivalry-enhancing efficiencies” in mergers](#), marking a potentially significant shift in how the regulator considers efficiency arguments. This consultation follows [significant reforms to UK merger control over the past year](#), including December 2025 remedies guidance signaling greater openness to behavioural remedies and acknowledging that remedies can be used to “lock in” pro-competitive efficiencies. These reviews conducted by the CMA form part of its “4Ps” framework (pace, predictability, proportionality, and process), aimed at supporting growth, investment, and business confidence in the United Kingdom. Central to the CMA’s efficiencies consultation is stakeholder input on the CMA’s analytical approach to how dynamic efficiencies (relating to future innovation and investment) are assessed, and the process for engaging with merging businesses wishing to raise efficiency arguments. Interestingly, the CMA is also interested in clarifying the types of evidence relevant to efficiency assessments. Both the Commission and the CMA have stressed that merger assessments must be grounded in rigorous, evidence-based decision-making, with outcomes determined on the basis of all relevant circumstances of each case. Rather than applying rigid presumptions, regulators are signalling a willingness to engage substantively with the facts, weighing the specific competitive dynamics, market conditions, and efficiency claims presented by the parties. This case-by-case approach reflects a broader commitment to analytical flexibility and proportionality in merger enforcement.

Looking ahead, results from both consultations are awaited, but the stakes are high, potentially ushering in a new generation of merger assessment including what remedies are considered acceptable. The timing of the new EU draft guidelines coincides with the appointment of Anthony Whelan as the new head of DG Competition in April 2026, who has immediately promised increased “openness” and “clarity” in EU merger reviews. The current period of transition creates both risk and opportunity: those who engage proactively with the evolving framework may find regulators more receptive than in the past, whilst those who continue to rely on established but outdated practices risk facing adverse regulatory outcomes.



KEY TAKEAWAYS

The common thread running through these developments is that the familiar landmarks of merger control are shifting. Dealmakers who have relied on established thresholds, structural presumptions, and traditional remedies frameworks must recalibrate their approach. The following points should guide transaction planning in this period of flux:

- **Thresholds no longer define enforcement boundaries.** Below-threshold deals face scrutiny under behavioural rules, whilst non-controlling minority stakes attract attention through analysis focused on governance and day-to-day interactions. Any transaction involving a player with significant market presence, whether a full acquisition or a minority investment, may attract regulatory intervention across multiple jurisdictions, regardless of whether traditional notification thresholds are met.
- **Navigate the current merger enforcement paradox strategically.** Regulators are simultaneously expanding their reach and signaling greater openness to consolidation benefits. Dealmakers should document procompetitive rationales from day one including synergies, efficiencies, and consumer benefits whilst also preparing for the possibility of regulatory challenge. Internal documents are increasingly central to assessments, so ensure they articulate rivalry-enhancing efficiencies and out-of-market benefits clearly and in good time.
- **Treat information barriers as essential.** Clean teams, strict protocols, and board nominee compliance training are critical safeguards against allegations of anticompetitive coordination and because regulators now examine structural links between competitors for evidence of practical influence including on the basis of information flows, even where formal control is absent.
- **Watch this space.** A lighter-touch, pro-growth enforcement environment may be emerging but the direction and pace of change remain uncertain. Dealmakers should monitor developments closely as both the Commission and the CMA refine their approaches. Proactive engagement with new approaches is essential.



ESG COOPERATIONS & COMPETITION LAW: NAVIGATING THE LEGAL BOUNDARIES

Dr. Johannes Weichbrodt, Teresa Gerhold-Kempf,
Ora Nwabueze

INTRODUCTION

Companies across industries increasingly recognize that tackling systemic human rights and environmental challenges in global supply chains often requires collective action to have true impact. Whether addressing forced labor, promoting living wages in agricultural supply chains, or remediating unsafe working conditions, a single company can rarely solve these problems alone. Trade associations, multi-stakeholder initiatives, and other forms of cooperation between competitors have emerged as critical vehicles for supply chain due diligence and remediation measures.

Yet every time competitors sit down together, even for the noblest of purposes, competition law is in the room. The legal frameworks in the European Union, the United Kingdom, and the United States share a common premise: agreements between competitors that restrict competition are prohibited, no matter the purpose. Where they diverge, however, is in how much space they leave for sustainability-driven collaboration, and that divergence matters enormously for companies operating on both sides of the Atlantic.



THE EU FRAMEWORK: ENCOURAGING COOPERATION WITHIN GUARDRAILS

The European Commission's (the "**Commission**") revised Horizontal Guidelines, adopted in 2023, provide helpful guidance for ESG cooperation. The Commission explicitly acknowledges that "sustainability agreements", including those pursuing human rights and environmental objectives, can generate substantial economic benefits and, in many cases, fall entirely outside the scope of the EU cartel prohibition under Article 101(1) TFEU.

The Commission identifies several categories of cooperation that are unlikely to raise competition concerns at all. These include agreements aimed at ensuring compliance with binding international treaties or national laws (such as prohibitions on child labor or the use of certain pollutants), agreements concerning only a company's internal corporate conduct (such as eliminating single-use plastics from offices), and the establishment of supplier databases containing general sustainability information, provided they do not oblige parties to purchase from (or boycott) specific suppliers.¹ Industry-wide awareness campaigns also fall into this safe zone, as long as they do not amount to joint advertising of specific products (Horizontal Guidelines, para. 531).

Even where a sustainability agreement falls within the scope of Article 101(1) TFEU, it may still be justified under Article 101(3) TFEU if it produces efficiency gains, is indispensable to achieving its sustainability objectives, passes benefits on to consumers, including through improved product quality or, notably, collective societal

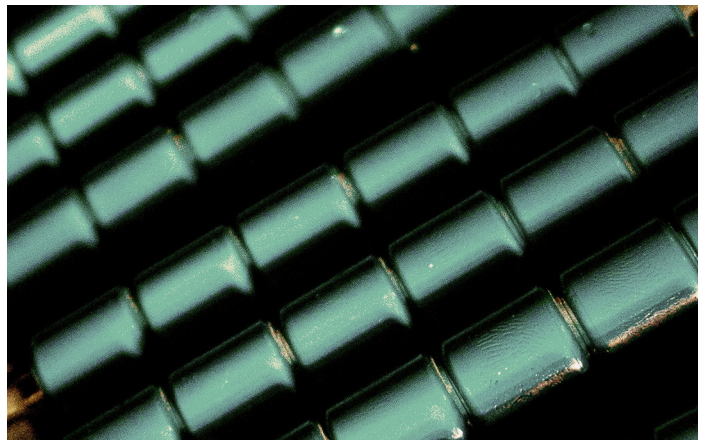
¹ Horizontal Guidelines, para. 528, 529 and 530. With respect to supplier databases, the Commission clarifies in footnote 369 of the Horizontal Guidelines that undertakings contributing to a database however should not generally identify all of their current or future suppliers.

benefits (i.e., benefits that occur irrespective of the consumer’s individual appreciation of the product and accrue to a wider section of society than just the consumers in the relevant market), and does not eliminate competition (Horizontal Guidelines, para. 557 et seq). The Commission has illustrated this flexibility through fictional examples, including a “Fair Clothing” agreement covering the large majority of EU clothing firms agreeing to only purchase clothing from producers in developing countries that respect certain minimum wage levels. Despite its broad market coverage, the Commission found that in such a scenario the effect on consumer prices was minimal (at most 1.5-2%) given the margins added along the value chain, and that productivity improvements from better working conditions could even have a price-lowering effect (Horizontal Guidelines, para. 601).

The Commission has also issued informal guidance on sustainability-related collaborations. In July 2025, it published its [first guidance letters](#) under the revised Notice on Informal Guidance of 2022 in relation to an ESG cooperation. The guidance concerned the compatibility with EU competition rules of a sustainability agreement for the joint purchasing and the setting of technical specifications for electric container-handling equipment used in ports to reduce CO2 emissions. The Commission found no concerns under Article 101(1) TFEU, provided key safeguards were in place, including limited information exchange, and preserved independent decision-making. While these guidance letters are non-binding and uptake of the mechanism has been limited since 2022, they offer valuable insight into the Commission’s analytical approach and can reduce uncertainty for businesses pursuing legitimate sustainability objectives.

The legislative landscape reinforces this direction. The EU Corporate Sustainability Due Diligence Directive (“**CSDDD**”), which entered into force in June 2024, explicitly invites companies to collaborate with other entities to prevent, mitigate, or remedy adverse human rights and environmental impacts, while acknowledging that such collaboration must comply with competition law (See Article 10 para. 2 (f) and Article 11 para. 2 (g) CSDDD). The message from the EU legislator is clear: collaboration is strongly encouraged, as long as it is structured within the boundaries of competition law.

National competition authorities have echoed this pragmatic approach. The German Supply Chain Act similarly requires companies to consider collaboration with others as part of their remedial actions (See Article 7 para. 2 no. 2 German Supply Chain Act). Consequently, the German Federal Cartel Office (FCO) has reviewed several sustainability initiatives (including the Cocoa Forum promoting living incomes for cocoa farmers and a banana sector initiative promoting living wages in Ecuador) and concluded that neither raised competitive concerns. Critical to these outcomes were the voluntary nature of participation, the absence of binding minimum prices, and the fact that no competitively sensitive information such as purchase prices, costs, or margins was exchanged between members.



THE UK LANDSCAPE: A MORE PERMISSIVE APPROACH TO CLIMATE CHANGE

The UK Competition and Markets Authority (“CMA”) published guidance on environmental sustainability agreements in October 2023, which is broadly similar to the EU Horizontal Guidelines but notably more permissive in certain respects. Like the EU framework, the CMA identifies categories of agreements unlikely to raise competition concerns, including industry standards, phasing out non-sustainable products, pooling supplier information, and industry-wide efforts to tackle climate change. However, the key difference lies in the treatment of “climate change agreements”—a concept absent from the EU Guidelines. For such agreements (those contributing towards binding UK climate change targets), the CMA applies a more permissive approach to the consumer benefit test: rather than requiring benefits to accrue to substantially the same consumers who suffer the harm, the CMA will consider the totality of benefits to all UK consumers, without apportioning between in-market and out-of-market consumers. The CMA justifies this departure due to the “exceptional nature of the harms posed by climate change.” This potentially creates a more favourable environment for climate-focused collaboration in the United Kingdom compared to the European Union. Additionally, unlike the European Union’s broader “sustainability agreements” covering economic, environmental and social development (including human rights), the CMA guidance applies only to the “E” in ESG – environmental sustainability agreements.

The CMA also operates an “open-door policy” for discussing sustainability initiatives, offering protection from enforcement action and fines for companies that engage proactively. To date the CMA has only published a small number of informal green guidance but these

already allow important lessons to be drawn.

Interestingly, from the two most recent guidance documents published in 2026, the CMA’s approach to such initiatives looks set to continue:

- In the Builders Merchants Federation’s supply chain assurance scheme case, the BMF proposed recommending members use one preferred platform for supplier ESG credentials instead of multiple supply chain assurance services; and
- In the 3Keel Landscape Enterprise Networks regenerative agriculture initiative (LEN), 3Keel is trying to encourage businesses co-funding regenerative agriculture and nature-based solutions to improve ecosystem services.

Both initiatives involve collaborative structures such as joint purchasing arrangements, guide pricing mechanisms and single-platform recommendations. Although competitors participate and collaborate closely in both schemes with potential risks of coordination, the CMA concluded that in neither case did it expect to take enforcement action (noting importantly however in the LEN case that individual transactions would need their own specific assessments). In reaching these conclusions, on the facts, the CMA noted that participation remained voluntary, commercial decision-making (particularly on pricing and supplier selection) stayed independent, the eligibility criteria was objective and non-discriminatory, and competitively sensitive information was not exchanged. As such, the CMA continues to adhere to its “open door approach” to relatively ambitious, industry-wide sustainability initiatives that can navigate competition law successfully, provided appropriate safeguards and regular reviews are built in from the outset.

THE US LANDSCAPE: GREATER CAUTION REQUIRED

The US presents a markedly different environment for ESG cooperation. Most collaborative initiatives are assessed under the “rule of reason,” which balances pro- and anti-competitive effects. However, a critical distinction from EU law is that US antitrust law does not recognize ESG or sustainability objectives as a defense to anti-competitive conduct. Pro-competitive justifications must relate to the same relevant market as the alleged competitive harm.

The Department of Justice has described carbon reduction as *“no more a defense to the conduct alleged here than it would be to price fixing among airlines that reduced the number of carbon-emitting flights.”*² Similarly, State Attorneys General have played an active role in pushing back on ESG activities by financial services companies, reflecting dual antitrust jurisdiction in the US where States can individually, or collectively take their own path without federal government involvement. Further, the FTC seems ready to prosecute collusion on ESG issues signaling that collaboration in the ESG field may not merely lack a defense, it may attract affirmative enforcement attention.

That said, US law is not a blanket prohibition on ESG cooperation. Information exchange that does not facilitate an anticompetitive agreement is generally permissible under the rule of reason, particularly where members make independent business decisions. The FTC and DOJ are currently seeking input on guidelines for collaborations among competitors, which are highly likely to address ESG collaborations, although it remains to be seen how useful these are in practice for businesses seeking to work with competitors in this area.

² DoJ, Statement of Interest pursuant to 28 USC. § 517, *State of Texas, et al. v. BlackRock, Inc., et al.*

PRACTICAL SAFEGUARDS FOR COMPLIANT COOPERATION

Companies seeking to collaborate on ESG and supply chain due diligence should structure their initiatives around a set of core principles, noting that these situations involve case specific analyses so there is no “one size fits all” safe harbor:

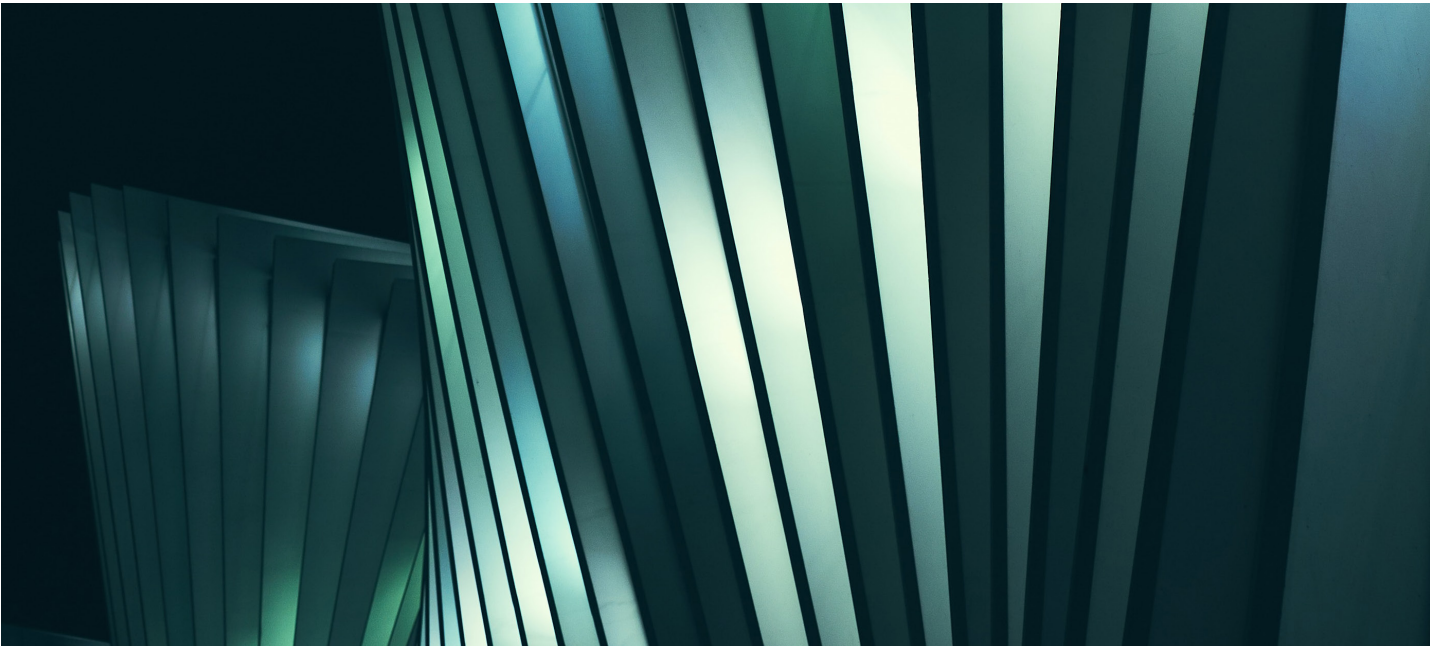
- **Voluntary participation and independent decision-making:** Participation in any collaborative initiative must be voluntary and non-exclusive. Critically, each company must retain full independence over its commercial decisions. Decisions about whether to continue purchasing from a supplier, how to adjust pricing, or how to respond to audit findings must always be made unilaterally. Any collective agreement to cease purchasing from a supplier may amount to a boycott and requires careful case-by-case antitrust assessment.
- **Strict avoidance of exchanging competitively sensitive information:** Companies must not exchange information on pricing, costs, terms and conditions, volumes, margins, market shares, or future commercial strategies. The sharing of supplier names to address specific human rights issues is often necessary and generally low-risk, but should always be limited to what is strictly necessary for the remediation purpose at hand.
- **Robust meeting protocols:** Every meeting or discussion among competitors should be governed by a pre-circulated agenda focused exclusively on the human rights or sustainability issue in question. Participants should be reminded at the outset not to share competitively sensitive information. Minutes or recordings should be maintained. If competitively sensitive information is inadvertently disclosed, the exchange must stop immediately, the incident documented, and all relevant information should be pulled back or returned.

- **Careful database design:** Supplier databases are a powerful tool for collaborative due diligence, but must be designed with the boundaries set by competition laws in mind. Databases should contain general information about suppliers and audit results, but should not identify which members purchase from which suppliers or which member commissioned a particular audit, unless that information is already publicly available.
- **Heightened caution for transatlantic activities:** Any joint discussions or remediation efforts that could affect prices or output or the competitive process in the US market require particular care. Where competing members with US market presence are involved, discussions must never touch on pricing, price-related terms, or any proxy for price, even a general acknowledgment that price increases may be necessary to achieve a sustainability goal. Companies with significant US exposure should consider seeking antitrust counsel review on a case-by-case basis before engaging in joint remediation.

LOOKING AHEAD

The legal landscape for ESG cooperation under competition law is dynamic and varies across jurisdictions.

For companies operating globally, this divergence demands a dual-track compliance strategy: leveraging the flexibility offered by EU law while respecting the more restrictive boundaries of other jurisdictions. The good news is that the core principles of compliant collaboration (voluntary participation, avoidance of competitively sensitive information exchange, independent commercial decision-making, and strict focus on the sustainability objective) are universally sound and will serve companies well under many regimes. Collaboration on ESG remains not only possible but essential; the key is structuring it with the discipline that competition law demands.





MAYER | BROWN

MAYERBROWN.COM

AMERICAS | ASIA | EMEA

Mayer Brown is a leading international law firm positioned to represent the world's major corporations, funds, and financial institutions in their most important and complex transactions and disputes.

Please visit mayerbrown.com for comprehensive contact information for all our offices.

Mayer Brown is a global legal services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England & Wales), Mayer Brown Hong Kong LLP (a Hong Kong limited liability partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively, the "Mayer Brown Practices"). The Mayer Brown Practices are established in various jurisdictions and may be a legal person or a partnership. PK Wong LLC ("PKW") is the constituent Singapore law practice of our licensed joint law venture in Singapore, Mayer Brown PK Wong Pte. Ltd.

More information about the individual Mayer Brown Practices and PKW can be found in the Legal Notices section of our website.

"Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown. © 2026 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.