Antitrust Law Update

August 2025

Court Holds that ESG Collusion May Violate Antitrust Laws and Denies Motion to Dismiss States' Suit

Key Notes:

- Federal court denied motion to dismiss antitrust claims brought by state attorneys general alleging unlawful ESG collusion.
- There is no ESG exemption to the antitrust laws.
- Federal antitrust enforcement against ESG collaborations is likely.

On August 1, a Texas federal court denied motions to dismiss antitrust claims brought by 13 state attorneys general against institutional investors BlackRock, State Street and Vanguard. The plaintiffs allege that investors acquired significant minority shareholdings in all publicly held U.S. coal producers and used their influence to suppress coal output, thereby raising prices by advancing environmental, social, and governance (ESG) initiatives aimed at reducing greenhouse gas emissions.[1] The decision underscores the antitrust risk posed by coordinated efforts to promote ESG goals and reinforces the principle that there is no ESG exemption from the antitrust laws.

The ruling may also bolster the efforts of U.S. antitrust agencies, which filed a joint Statement of Interest in the Texas case supporting the states. The agencies wrote that "[t]his case . . . alleges not merely typical investor behavior, but the active, anticompetitive use of common shareholdings to reduce the production of American coal to the detriment of American consumers and businesses."[2] Alongside other public statements from agency leaders, the filing sends a clear signal that the federal government intends to scrutinize conduct aimed at advancing environmental and social initiatives under the antitrust laws, including ESG and DEI efforts.[3] Notably, in a May 2025 podcast, the FTC Chair confirmed that the agency is investigating ESG-related collusion.[4]

Another important note on this topic is the contrast between the approaches taken by the U.S. antitrust

[1] Memorandum Opinion and Order (Aug. 1, 2025), *State of Texas, et al. v. BlackRock, Inc., et al.*, U.S. District Court, Eastern Dist. of Tex., Case No. 6:24-cv-00437-JDK, available at https://www.courthousenews.com/wp-content/uploads/2025/08/texas-v-blackrock-motion-to-dismiss-denied-usdc-tx-eastern.pdf.

[2] Statement of Interest of the FTC and USA (May 22, 2025), *State of Texas, et al. v. BlackRock, Inc., et al.*, U.S. District Court, Eastern Dist. of Tex., Case No. 6:24-cv-00437-JDK, available at https://www.ftc.gov/system/files/ftc_gov/pdf/StatementofInterest-TexasvBlackRock.pdf.

[3] FTC Chair Andrew Ferguson has stated his intention to "[i]nvestigate and prosecute collusion on DEI, ESG, advertiser boycotts, etc." as part of the agency's enforcement agenda. *See* https://punchbowl.news/wp-content/uploads/FTC-Commissioner-Andrew-N-Ferguson-Overview.pdf. And on X in November 2024, he expressed concern about "ESG and DEI coordination" and wrote that "[a]ntitrust enforcers should take this seriously." *See* https://x.com/AFergusonFTC/status/1855065186899742796.

[4] Triggered, "TCB at the FTC, Interview with Commissioner Andrew Ferguson" (May 5, 2025), https://rumble.com/v6szutr-tcb-at-the-ftc-interview-with-commissioner-andrew-ferguson-triggered-ep.239.html.

agencies and international regulators. Most notably, the EU has issued guidelines encouraging cooperation on environmental sustainability, including a framework that exempts certain ESG-related sustainability agreements from antitrust and competition laws.[5]

Bottom line: Companies should recognize that any coordinated conduct, even when driven by well-intentioned goals, remains subject to antitrust scrutiny. In today's enforcement climate, the risk is greater than ever. Caution is advised not only for institutional investors and asset managers, but also for private equity funds and any business considering participation in industry initiatives focused on ESG, DEI or similar issues. Companies and investors should consult counsel to assess the antitrust implications before moving forward.

FOR MORE INFORMATION

For more information, please contact:

Mark R. Butscha, Jr.
216.566.5897
Mark.Butscha@ThompsonHine.com

[5] European Commission, *Guidelines on Horizontal Cooperation Agreements* (July 21, 2023), CELEX No. 52023XC0721(01), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023XC0721%2801%29&qid=1720545852777.