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FTC Focus: When Green Goals And Antitrust Law Collide

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This article is part of a monthly column that considers the significance of recent Federal Trade Commission announcements about antitrust issues. In this installment, we consider the FTC's recent inquiry into a number of truck companies' agreement to reduce emissions, which was brokered by the California Air Resources Board, covering the investigation and noting its implications for state regulations.

Companies considering climate-related action face a paradox: Sustainability goals might require industrywide collaboration, but the antitrust laws prohibit coordination among competitors.

As U.S. regulators sharpen their scrutiny over these kinds of agreements, converting green goals into practical plans now involves evaluating whether initiatives can survive antitrust review — or whether they risk being relabeled as anticompetitive cartels.

After the close of its investigation into the "Clean Truck Partnership," the Federal Trade Commission recently issued a statement that illustrates this tension. The truck partnership was an agreement between major U.S. heavy-duty truck manufacturers and the Truck and Engine Manufacturers Association, designed to align the industry's largest actors with California's zero-emission vehicle regulations.

Despite being initially framed as a step forward for environmental cooperation, the FTC compared the truck partnership agreement to a horizontal cartel aimed at restricting output and limiting competition. This article examines the FTC's statement, reflects on how other regulatory systems are examining this tension, and suggests a route forward for navigating similar partnerships in the future.

Regulatory Regime Turned Private Partnership

Starting in 2020, the California Air Resources Board, or CARB, put forward a series of first- of-its-kind regulations aimed at reducing truck-based emissions in the state.

Through a trio of regulations — the Advanced Clean Trucks, Advanced Clean Fleets, and Omnibus Low NOx Rules; or collectively, the emissions rules — California sought to phase out diesel-powered trucks and require manufacturers to use and produce increasing numbers of zero-emission vehicles.

While waivers from the U.S. Environmental Protection Agency allowed the emissions rules to avoid federal preemption, the antitrust laws still posed a problem. In July 2023, CARB brokered the truck partnership agreement, a deal between four major truck manufacturers and the Engine Manufacturers Association to ensure their compliance with the emissions rules, even if those regulations were invalidated. In June 2025, this came to pass when the president signed congressional resolutions condemning the EPA's waivers to California.

Green Goals Become Red Flags

The FTC then launched an antitrust investigation into the truck partnership agreement. Rather than simply responding to the emissions rules, the partnership was — in the FTC's view — an agreement among competitors who collectively controlled 99% of the heavy-duty truck market intended to restrict output and reduce competition.

The main defense for the partnership appeared to be protection under the Noerr Pennington doctrine, which can shield entities from antitrust liability when they petition the government, and the state action doctrine, which immunizes participation in state-directed regulatory processes. But the FTC believed three key features of the partnership took it outside Noerr Pennington or state action protections.

Private Output Restrictions

The truck partnership agreement capped the sale of diesel engines and collectively adopted emissions limits. The FTC was concerned with the impact that the commitment to innovation could have on the internal combustion engine industry.

The Dead-Hand Clause

By requiring the manufacturers to comply with CARB's standards even if those standards were struck down, the partnership created a private regime outside any government or political process. The FTC noted that this was decidedly different from the kinds of regulations imposed by a politically accountable actor, instituting requirements that neither voters nor lawmakers could revise.

Lack of Political Oversight

Finally, the FTC noted that California lacked the ability to enforce the terms of the truck partnership. Without this form of political accountability, and with the truck partnership's provisions that empowered the parties to enforce the rules against each other, the FTC argued in its statement that the truck partnership "sets in stone a quasi-regulatory scheme" that undermined the state action doctrine.

Impacts Follow

Following the FTC's investigation, each manufacturer and the Engine Manufacturers Association committed not to enforce or attempt to enforce the truck partnership, not to enter into future agreements with state regulators that restrict product supply or emissions levels beyond what state law allows, and to make independent business decisions regarding vehicle production and sales.

American Exceptionalism?

The tension between environmental action and antitrust enforcement may be specific to the American regulatory environment. Antitrust authorities elsewhere have issued specific guidance for actors looking to coordinate and take climate action. For example, the European Commission's 2023 Horizontal Guidelines added a dedicated sustainability chapter that explains how competitor cooperation aimed at environmental or other sustainability objectives is assessed under Article 101 TFEU.[1]

A key development is a soft safe harbor for sustainability standards that meet guardrails such as transparency, open and nondiscriminatory access, freedom to go beyond the standard, no exchange of unnecessary competitively sensitive information, and (in most markets) a combined market-share ceiling near 20%.[2]

The U.K. Competition and Markets Authority, or CMA, took a complementary approach in its October 2023 Green Agreements Guidance. Among other things, it commits the CMA to an open-door process for early engagement and clarifies a route for climate change agreements where consumer benefits can outweigh regulatory restrictions.[3]

The CMA has begun issuing informal opinions under this policy, including a March 31 opinion on a proposal to recommend a single-assurance provider for supply chain ESG data, which sets out safeguards to avoid foreclosure or information-exchange risks.

The FTC has taken a different approach. But it is not novel under U.S. jurisprudence. Consider the U.S. Supreme Court's 1978 holding in National Society of Professional Engineers v. U.S., where the court rejected public-interest defenses for a professional association's ban on competitive bidding, warning that courts should not "substitute their social and economic beliefs" for the market's discipline.[4]

Taken together, these contrasting approaches underscore the unique perspective of U.S. antitrust doctrine compared to the frameworks that are emerging abroad.

Conclusion: Steering The Course

The truck partnership may have begun as an effort to forward ambitious climate goals, but it ended as a cautionary tale about the potential for environmental agreements to run afoul of competition rules. With that backdrop, companies contemplating private sustainability collaborations could consider a few core principles to ensure compliance.

Start with a pro-competitive objective and a narrow scope.

Companies seeking to institute green goals might be better off framing their agreements as pro-competitive efforts to increase competition. This might include explicit documentation of the pro-competitive benefits of these partnerships.

Implement safeguards to avoid collusion.

Partnerships should consider prohibiting the discussion of current or future pricing, costs, margins, output or customer allocation, and using a clean-team or third-party administrators to aggregate data relevant to these aims. This can help avoid any appearance of making joint decisions on price, capacity or customer allocation that can run afoul of antitrust scrutiny.

Choose words carefully.

Climate agreements should avoid public calls for industry discipline, or statements about pricing decisions that could reflect collusion. Public statements run the risk of giving the appearance of collusion and should be drafted with care.

In short, while industrywide sustainability collaborations are not off limits, careful consideration of the antitrust laws is required in order for them to succeed. The FTC's investigation confirms its focus on traditional antitrust principles in this area and cautions that environmental aims do not necessarily excuse the coordination of conduct.

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[1] Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation

[2] Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation

[3] Green agreements guidance: how competition law applies to environmental sustainability agreements - GOV.UK.

[4] National Society of Professional Engineers United States, 435 U.S. 679 (1978).

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