

On 9 July 2025, the European Commission (“Commission”) issued its first informal guidance letter under the revised 2022 Notice on Informal Guidance, clarifying the application of EU competition law to a sustainability agreement in the transport sector. The agreement, proposed by APM Terminals and other port operators, aims to accelerate the transition from diesel powered to electric container-handling equipment in European ports.

This marks a significant development in the Commission’s approach to sustainability agreements and shows that it can offer practical reassurance to businesses that seek to work together to achieve environmental objectives while complying with competition law.

## The Agreement

The proposed initiative involves joint purchasing and the setting of minimum technical specifications for electric straddle and shuttle carriers – equipment widely used in container terminals. The objectives are to pool part of the future demand for electric equipment, reduce procurement costs, incentivise supplier investment and improve interoperability between charging systems. The overall aim of the initiative is to facilitate the decarbonisation of the ports sector.

The parties to the proposed agreement sought the views of the Commission on whether it would comply with EU competition law, under the Notice on Informal Guidance. This allows businesses to seek informal guidance on the application of EU competition rules to novel or unresolved questions, in order to support their own self-assessment of their agreements or practices.

The Commission concluded that the agreement does not raise concerns under Article 101 of the Treaty on the Functioning of the EU (“TFEU”), which applies to anticompetitive agreements, provided that certain safeguards are implemented. These include ensuring that each terminal operator retains the freedom to purchase equipment independently, capping the volume of pooled demand and strictly limiting the exchange of competitively sensitive information.

The guidance is valid for five years and applies across the European Economic Area.

## Background: The Commission’s 2023 Horizontal Cooperation Guidelines

As well as being the first informal guidance letter issued by the Commission under the 2022 Notice on Informal Guidance, this is also the first example of the Commission applying Article 101 TFEU to a sustainability agreement since the adoption of the 2023 revised Guidelines on Horizontal Cooperation Agreements. The latter Guidelines, which explain how the Commission applies competition law to common types of agreements between competitors, included a dedicated chapter on sustainability agreements.

The Guidelines define a sustainability agreement as any form of horizontal cooperation agreement (i.e., an agreement between competitors) that pursues a sustainability objective. They clarify that not all such agreements fall within the scope of Article 101(1) TFEU, the prohibition of anticompetitive agreements, particularly where they do not affect key competition parameters such as price, output or innovation. Where agreements do raise competition concerns, the Guidelines set out how they may still qualify for exemption under Article 101(3) TFEU provided that they generate verifiable efficiency gains, are indispensable to achieving those gains, deliver a fair share of benefits to consumers and do not eliminate competition.

The Commission’s positive response to the agreement proposed by APM Terminals and others confirms that competition law need not be a barrier to well-designed cooperation that pursues environmental objectives. It also signals the Commission’s openness to supporting industry-led initiatives that address market failures, such as fragmented demand or high upfront costs, which may otherwise hinder the adoption of sustainable technologies.

## Key Takeaways for Businesses

Companies considering sustainability collaborations, especially those involving joint purchasing, standard-setting or supply chain coordination, should take note of the following:

- **Early engagement with regulators is now viable** – The commission’s informal guidance procedure allows parties to gain clarity on novel legal questions, which may often arise in the relatively new area of sustainability agreements. Other competition authorities, including in France, the Netherlands and the UK, have provided guidance in similar circumstances.

- **Appropriate safeguards are critical** – Although sustainability agreements may be received favourably, their potential impact on competition must be mitigated – for example, by limiting market coverage, ensuring voluntary participation and allowing opt-outs, and controlling exchanges of sensitive information.
- **Be aware of cross-border concerns** – While European authorities are increasingly supportive of sustainability agreements, enforcement approaches vary internationally. Competition authorities in the US, in particular, have been less accommodating of collaboration between competitors for green aims.

The Commission's guidance confirms that carefully designed sustainability agreements between competitors can be compatible with competition law. The latest development in this area shows that businesses seeking to contribute to environmental goals through collaboration and partnerships benefit from a clearer path forward, as well as a receptive regulatory environment.

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