Insight

Net-zero Pledges May Be at Odds With Antitrust Laws

FRED ASHTON, SHUTING POMERLEAU | NOVEMBER 19, 2025

Executive Summary

- Twenty-three state attorneys general wrote a letter to Science Based Targets initiative (SBTi) expressing concern that firms adhering to the group's net-zero standards – where greenhouse gas emissions released into the atmosphere are offset by an equal amount being removed – risk violating federal antitrust laws; this letter was reported in *The Wall Street Journal.*
- Unilateral net-zero commitments do not typically violate federal antitrust law; the risk arises when companies collaborate – either directly or through a third party – and the agreements result in group boycotts, illegal price fixing, market allocation, or a reduction in output.
- As the popularity of net-zero and other environmental, social, and governance (or ESG) initiatives grows, prescriptive guidelines from the Federal Trade Commission and Department of Justice are necessary to help firms and third-party organizations avoid running afoul of antitrust laws.

Introduction

The Wall Street Journal reported that 23 state attorneys general (AG), led by Iowa AG Brenna Bird, wrote a letter to Science Based Targets initiative (SBTi) expressing concerns that it had facilitated agreements among companies that may violate federal and state antitrust laws.

About 1,000 of the world's largest public companies – including Amazon, ExxonMobil, and Bank of America – have made unilateral net-zero commitments. Many others, meanwhile, are collaborating with third parties to develop industry standards to accomplish net-zero targets, which means greenhouse gas emissions released into the atmosphere are offset by an equal amount being removed.

Unilateral net-zero commitments do not typically violate federal antitrust law. Risks arise, however, when companies collaborate – either directly or through a third party – and the agreements result in group boycotts, illegal price fixing, market allocation or a reduction in output.

As the popularity of net-zero and other environmental, social, and governance (ESG) initiatives grows, prescriptive guidelines from the Federal Trade Commission (FTC) and Department of Justice (DOJ) are necessary to help firms and third-party organizations avoid running outside the bounds of antitrust laws.

Net-zero Corporate Strategies

The United Nations (UN) defines net-zero as "cutting carbon emissions to a small amount of residual emissions that can be absorbed and durably stored by nature and other carbon dioxide removal measures, leaving zero in the atmosphere." The rationale behind the net-zero goal is to limit global temperature rise to no more than 1.5°C above pre-industrial levels to prevent the worst impacts of climate change, as agreed upon in the 2015 Paris Agreement, an international treaty signed by 195 jurisdictions. Many corporations voluntarily followed suit and started setting net-zero company goals. Major U.S. corporations that have announced their net-zero emissions goals include Amazon, ExxonMobil, and Bank of America.

Third-party Collaboration on Industry Standards

It is common for businesses to rely on third-party independent organizations to set a wide variety of industry standards. For example, companies use the financial accounting and reporting standards set by the Financial Accounting Standards Board (FASB), an independent not-for-profit organization, to provide financial reports for their investors. The U.S. Securities and Exchange Commission recognizes the FASB as the designated accounting standard for public companies. For the U.S. electrical and electronic equipment industry, most U.S. standards are voluntary and established via industry consensus, with the exception of mandated federal and state government regulations. The American National Standards Institute, a not-for-profit organization, coordinates these private sector-initiated efforts for setting voluntary industry standards.

To ensure the net-zero targets are credible to investors and customers, businesses rely on independent third-party organizations, like SBTi, to help set and validate their net-zero plans.

SBTi Standards for Companies and Financial Institutions

SBTi, as a "voluntary standard-setter" according to its website, sets two broad categories of standards: the corporate net-zero standards (CNZS) and the financial institutions net-zero standards (FINZS). CNZS and FINZS are meant to complement each other and cover a broad range of emissions categories.

SBTi standards and targets are voluntary rather than legally binding. Companies and financial institutions can choose to follow the guidance and criteria to have their net-zero targets and progress validated by SBTi. The organization maintains a publicly accessible dashboard that lists all the companies that have utilized the SBTI standards to set net-zero targets. Any companies that fail to submit required documents for validation will have their names removed from the dashboard. In other words, the motivation for companies setting SBTi-validated net-zero targets is determined by how much a company values decarbonization in its corporate strategy, not driven by regulations.

SBTi's technical department conducts research to develop a draft of the standards, gets approval from its technical council ("an independent authority to provide expert assessment"), and goes through public consultations before releasing its finalized standards.

CNZS' key components include near-term and long-term targets to reduce emissions by 90 percent in total, a plan for neutralizing residual emissions, and investment targets for reducing emissions from the value chain (upstream suppliers and downstream customers). SBTi is currently going through the second round of public consultation to update its CNZS. Additionally, SBTi provides guidance in setting net-zero targets for companies in specific sectors, such as the apparel and footwear, power, steel, and cement sectors.

In July 2025, SBTi released the FINZS intended to "provide a science-based framework for financial institutions to align their lending, investing, insurance underwriting, and capital market activities with net-zero." The standards are designed for financial activities including lending, asset owner investing, asset manager investing, insurance underwriting, and capital market activities. The FINZS includes five steps for a financial institution to follow in setting its net-zero targets. One of the steps is setting policies and targets. Besides providing guidance on how financial institutions should set net-zero targets for different financial activities, FINZS also include the following policies:

> *Fossil fuel transition policy: Financial institutions must publish a policy to address new fossil fuel expansion-related financial activities. This policy requires:*
>
> - *Immediate cessation of project finance explicitly linked to fossil fuel expansion*

> *activities*
>
> - *No further general purpose finance of companies involved in coal expansion*
> - *Ideally immediate cessation of general purpose finance to oil and gas companies involved in expansion, with an absolute cut off of 2030, designed to allow financial institutions to engage with oil and gas companies*
> - *Net-zero transition for portfolio energy activities by 2050*
>
> *No-deforestation assessment: Financial institutions must commit to assess and publish their deforestation exposure by no later than 2030. Should exposure be significant, financial institutions must publish an engagement plan to address deforestation in their portfolios by their next target cycle (usually five years after target validation) at the latest.*
>
> *Real estate policy: Financial institutions are recommended to publish a policy that commits to cease new financial activities for buildings that are not zero-carbon ready, and increase financial activities dedicated to retrofitting existing buildings.*

Antitrust Concerns

The Attorneys' General Concerns

The AGs' letter to SBTi expressed concerns over the organization's involvement in net zero programs, calling them "unrealistic" and claimed that they "harm both American agriculture and industry" by creating risks to energy independence while increasing the cost of food.

The AGs also pointed to SBTi's 2025 FINZS that called for financial institutions "to cease financing for fossil fuel, coal, oil and gas, and a net-zero transition for portfolio energy activities by 2050." The AGs alleged that these agreements – similar to those proposed by the Net Zero Asset Managers Alliance and Net Zero Insurance Alliance – risk violating federal and state antitrust laws. They cited FTC guidelines, which explain that "an agreement among competitors not to do business with targeted individuals or businesses may be an illegal boycott, especially if the group of competitors working together has market power," and added that "agreements to fix prices, which can be '[a]n agreement to restrict production, sales or output is just as illegal as direct price fixing."

Members adhering to FINZS, according to the AGs, "appear to have banded together…to cut off funding and insurance to the oil and gas industry."

Climate Agreements and Antitrust

Firms that unilaterally implement policies to achieve net-zero pose little risk of violating antitrust laws. Collaborative efforts, however – especially agreements made among competitors – are much more likely to be scrutinized.

The FINZ Standard is an example of the latter – it was developed via a collaborative effort among competitors – and risks violating Section 1 of the Sherman Act, which prohibits agreements in restraint of trade. In other words, agreements to fix prices, reduce output, lower quality, or harm innovation would violate antitrust laws.

The AGs contend that the effect of SBTi's FINZS would amount to an unlawful boycott that would limit the output of the fossil fuel, coal, and oil and gas industries.

The legal question, however, is a complex one. A recent article in The Georgetown Environmental Law Review took a deep dive into the recent debate over the proper approach to the antitrust analysis of climate agreements. They concluded that "climate agreements generally do not violate antitrust laws" and "most Climate Agreements do not constitute illegal group boycotts; even the most restrictive directives…to stop financing new coal or fossil fuel projects are likely to withstand scrutiny." Part of their argument, however, relies on the premise that "Climate Agreements are often signed by diverse participants in a variety of industries that will make it difficult to show the signatories' collective market power in a specific product and geographic market."

While this is often the case, FINZS was not targeted for use by a group of "diverse participants" but is specific to just two industries: finance and insurance. It is possible that the participants – collectively – have enough market power that to be denied their services would result in a lower output of a specific product market.

The authors also argued that these agreements "which will be analyzed under the rule of reason" – an analytical framework that weighs anticompetitive harms against procompetitive benefits – "are not…output restrictions because any restrictions on output relate to greenhouse gases, a byproduct for which no consumer market exists." Yet the byproduct – greenhouse gas emissions – is a function of output. Collaborating to choke off financing and insurance to the fossil fuel industry to limit the output of the byproduct could cause anticompetitive harm to firms that do not have the technology – or are unable to make the investment – to reduce the byproduct while maintaining the same level of output. In other words, the FINZ agreement could result in lower output and affect firms' ability to compete.

The Georgetown Environmental Law Review also listed the Paris Agreement (from which the United States has withdrawn), the UN Race to Zero, and other international agreements as initiatives that "weight against finding…Climate Agreements violate the antitrust laws," given that they are "intergovernmental in nature and non-commercial in motive." A recent statement from the FTC – which outlined the details of a Statement of Interest jointly filed with the DOJ against asset managers BlackRock, State Street, and Vanguard – however, casts doubt on this argument. The joint statement noted that "public, industry-wide initiatives may still violate the Sherman Act and Clayton Act, even when purportedly justified out of social concerns."

What the Antitrust Agencies Can Do

It is clear that state AGs and members of Congress are concerned that net-zero and other climate-related agreements could be weaponized against targeted industries.

It is unclear, however, how the antitrust agencies will approach these agreements. During a Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights hearing in 2022, Senator Tom Cotton (R-AR) asked FTC then-Chair Lina Khan if there is an antitrust exemption "because you call something ESG," which is the broader evaluation framework of net-zero. Khan responded, "No. To the contrary, we've seen firms come to us and try to claim an ESG exemption and we've had to explain to them clearly that there is no such thing." Similarly, former Assistant Attorney General for the Antitrust Division Jonathan Kanter "made clear that ESG agreements receive no special exemption or special consideration under the antitrust laws."

The FTC and DOJ claimed that the asset managers "engaged in an anticompetitive conspiracy to drive down coal product as part of an industry wide 'Net Zero' initiative to further anti-coal Environmental, Social, and Governance (ESG) goals," by allegedly exercising "their influence as shareholders in competing coal companies to push them to reduce industrywide coal output," according to the Statement of Interest jointly filed by the agencies.

While the mechanism through which FINZS could limit output differs from the allegations against the three asset managers, net-zero and broader ESG initiatives will likely face increased antitrust scrutiny. As these initiatives grow in popularity, prescriptive guidance from the FTC and DOJ is necessary to help individual firms and third-party organizations navigate the current state of ambiguity with respect to antitrust law.