

## **The Guidelines for Concerted Actions of Enterprises in Response to Environmental Sustainability**

Approved at the 1738th Commissioners' Meeting on February 12, 2025

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1. In response to global climate change, our government has enacted the Climate Change Adaptation Act and established a net-zero emissions target of 2050, actively encouraging enterprises to fulfill their responsibility to protect the Earth's environment, in order to create a sustainable green life, adapt to environmental resilience, and ensure the sustainable development of the nation. Under this development trend, the industry is increasingly focusing on climate change adaptation, renewable energy, and environmental protection issues. The Fair Trade Commission (hereinafter referred to as the Commission) has established this Guideline to provide enterprises with a reference for understanding the regulations regarding concerted actions that may involve the Fair Trade Act (hereinafter referred to as the Act) when responding to environmental sustainability, ensuring free and fair competition in the market.
2. The content of this Guideline provides behaviors and judgment processes that may lead to competition issues arising from business activities, while also illustrating relevant scenarios for enterprises to consider in order to reduce the risk of legal violations. This Guideline only illustrates scenarios related to concerted actions involved in the pursuit of environmental sustainability by enterprises. The Commission must determine whether a case is illegal based on its specific facts.
3. Concerted actions
  - (1) Concerted actions mainly refer to the actions of two or more enterprises mutually assent to decide not to compete, jointly determine the prices, quantities, trading counterparts, or other mutually binding business activities, which are sufficient to impact the order of market competition.
  - (2) The Requirements for business activities to constitute concerted actions:
    - I. The parties: Enterprises must have competing relationship and are in the same production and/or marketing stage.
    - II. Assent: In addition to contract, agreement, any communication of intention outside of contract and agreement, irrespective of whether such communication is binding, which can actually lead to joint actions.

- III. Content: Agreement on price, quantity, technology, equipment, trading counterparts, trading areas, or other mutually binding business activities related to goods or services.
  - IV. Effect: Mutual restrictions on business activities that are sufficient to have an impact on the market function with respect to production, trade in goods or supply or demand of services.
- (3) Any action taken by a trade association or other group to regulate business activities through its articles of association, resolutions of general meetings of members, meetings of directors or supervisors, or other methods shall also be deemed as concerted actions.
4. The following scenarios do not mutually restrict business competition activities, and there are no concern of concerted actions.
- (1) Share information on environmental sustainability that is unrelated to enterprise operations or competition, such as updates on the latest government policies and subsidies from industry authorities for environmental sustainability transformation.
  - (2) Advocate for sustainable environmental outcomes and jointly train or encourage employees to conserve energy and reduce greenhouse gas emissions.
  - (3) Collect information on environmental sustainability and jointly establish a database of relevant information such as products or services.
  - (4) Jointly release a statement in support of the government's environmental sustainability policies.
5. In the following scenarios, it is likely to constitute concerted actions, and if enterprises deem such activities as beneficial to environmental sustainability, they may apply for exemptions from concerted actions in accordance with the law.
- (1) To enhance energy utilization efficiency and improve operational effectiveness, enterprises jointly procure equipment.
  - (2) To enhance resource recycling rate and reduce cost, enterprises standardize specification of goods or parts.
  - (3) To increase the recycling of resources and improve the quality of energy-saving products, enterprises jointly research and develop innovative technologies.
  - (4) To reduce environmental pollution, enterprises jointly procure material less harmful to the environment or reduce the use of products made from non-environmentally friendly materials.

- (5) Other mutually restrictive business competition activities that are beneficial to environmental sustainability.
6. In the following scenarios, it is likely to constitute illegal concerted actions, and pose a significant threat to the order of market competition:
  - (1) Joint Pricing: On the grounds of providing environmentally sustainable goods or services, enterprises jointly determine the prices of goods or services.
  - (2) Allocation of trading counterparts: On the grounds of reducing environmental sustainability cost, enterprises mutually assent to allocation of distribution territories, restrict to trade with specific trading counterparts or agree not to compete with each other for trading counterparts.
  - (3) Joint decision on quantities: On the grounds of achieving environmental sustainability goals, enterprises mutually assent to decide production and sales quantities and capacity.
  - (4) Joint decision on procurement or sales strategies: On the grounds of promoting environmentally sustainable goods or services, enterprises mutually assent to purchase or sell only specific goods or services.
  - (5) Joint boycott on new market entrants: On the grounds of pursuing environmental sustainability, enterprises Jointly exclude other businesses from entering the market to compete.
7. In reviewing an application of exemptions to concerted actions submitted by enterprises on the grounds of pursuing environmental sustainability, the Commission will focus on the balance between the impact to market competition and benefit to environmental sustainability. Enterprises are advised to provide the following explanations to expedite the review:
  - (1) If there are concerns regarding restriction of competition, it is necessary for enterprises to explain the necessity of concerted actions in pursuing environmental sustainability, and that there are no alternative means with less impact on competition.
  - (2) The contemplated concerted actions are beneficial to production, sales, quality, technological advancements and other matters related to environmental sustainability development and the adverse competitive impacts have been minimized.
  - (3) The specific expected outcomes for achieving environmental sustainability, as well as the overall economic and public interest benefits and adverse impacts on upstream and downstream enterprises and their markets.

In the process of pursuing environmental sustainability, enterprises may establish codes of conduct suitable for their operational conditions based on their scale of

operations and development strategies, create internal supervision mechanisms, and conduct regular self-assessments. All such actions will help enterprises' business activities to comply with the provisions of this Act.

8. The purpose of this Guideline is to provide a reference for enterprise, and if enterprises have further questions regarding whether their actions may violate relevant provisions of this Act, enterprises may consult with the Commission by sending email to the service mailbox listed in this Commission's Worldwide Information Website ([www.ftc.gov.tw](http://www.ftc.gov.tw)).