

Sustainability and competition law: What is discussed in the Guideline?

The European Commission updated its Guideline on competition law and added the title "Sustainability Agreements". The main purpose of these amendments is to encourage the business world to be more sensitive to environmental issues.

By including sustainability agreements in the Guideline, the European Commission has emphasized that agreements that serve environmental, social and other sustainability goals will not be blocked, regardless of the form of cooperation. These agreements are defined based on environmental, climate and social goals, as well as the United Nations Sustainable Development Goals. Sustainability agreements other than Article 101 of Treaty on the Functioning of European the European Union (TFEU) generally refer to agreements that do not adversely affect competition. These agreements are carried out in line with objectives that do not affect competition parameters but promote sustainability.

The guideline states that sustainability agreements are evaluated within the scope of Article 101 of TFEU in cases where they negatively affect competition parameters, but also emphasizes that such agreements are generally not seen as purpose restrictions and their effects should be evaluated first. When examining the effects of agreements on competition, the market power of the parties, decision-making independence, degree of market coverage, commercial information sharing and price/quality effects are taken into account. The guideline also states that sustainability agreements may be exempt from the scope of Article 101 if they meet certain conditions. These include tangible gains, indispensable restrictions, fair consumer transfer and no excessive competition restrictions. In addition, a 'soft safe harbour' application is included for sustainability standardization agreements that meet certain conditions. Sustainability standardization agreements include agreements used to determine various sustainability metrics among businesses in a supply chain. There are six conditions for these agreements to constitute a 'soft safe harbour'. These conditions are transparency of the sustainability standard, no obligation, flexibility of participating companies, protection of sensitive information, fair access and protection of competition. Meeting these conditions means that the agreement will not negatively affect competition, while if they are not met, an individual evaluation is required. Examples of such agreements include phasing out unsustainable products, promoting recycling, and purchasing sustainable production inputs.

The principles regarding sustainability agreements set out by the European Commission in the Guideline have received widespread support due to the need to adopt a consistent approach across the EU. While environmental and climate concerns continue, it is anticipated that the issue of sustainability will be encountered more frequently in competition law. In our country, updating the Guide on Horizontal Cooperation Agreements to include the Board approach to sustainability agreements may be beneficial for businesses that will operate in this field in the future.

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