

Antitrust laws may hinder socially-responsible business collaboration

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A new study suggests that U.S. antitrust laws could hamper the efforts of companies to collaborate on sustainable and socially-responsible business practices, even as consumers and businesses increasingly value them.

Both the public and many businesses are worried about natural resource limitations and the threat of [climate change](#). Current anti-trust laws don't fit with today's global concerns, said Inara Scott, an attorney and assistant professor in the College of Business at Oregon State University.

"When it comes to the environment, we're used to thinking of companies as part of the problem," said Scott, who studies environmental law issues. "But today a lot of companies want to be part of the solution. They want to become more socially-responsible and drive sustainability for themselves and the consumer.

"The question for them becomes 'How do I promote better environmental practices without losing market share?' "

Antitrust laws alone may not completely prevent businesses from collaborating, but the ways in which the laws have been interpreted and applied over time has had a chilling effect on businesses, said Scott, whose research on the issue was published in the spring issue of the *American Business Law Journal*.

Businesses do not want to risk even the appearance of impropriety, she said.

"The law is increasingly recognizing the role that sustainability has to play in the marketplace," Scott said. "But out of an abundance of caution, companies avoid anything that looks like it might be considered a violation of [antitrust laws](#)."

A chief concern that Scott found is that some types of behavior trigger accusations of "per se" antitrust violations, in which the facts are secondary to any appearance of impropriety. In such cases, she said, it is difficult for companies to defend themselves when faced with those types of accusations.

Price-fixing is one example. Companies go out of their way to avoid even the appearance of it, lest they face antitrust penalties. But fixing prices might not be a bad idea in some circumstances - it might be worth considering if it could help protect valuable rainforests or provide better income for independent coffee growers around the world, Scott said.

The per se standards were designed with the idea that markets are functional and operate properly, but that is not always the case, especially in today's global marketplace, Scott said. Environmental factors, limited resources or even a dominant regime may unduly influence markets around the globe.

"Some kind of defense to antitrust law violations should be available if there is a market failure," Scott said. "Behaviors that benefit consumers should be allowed. We can find ways to make exceptions for that."

People who have a strong mistrust of big businesses may fear a change to the laws might lead to abuse, Scott said. But that fear and mistrust may be limiting our options for tackling the big issues of climate change and declining natural resources. Changes to the law could allow for better disclosure, transparency and monitoring to ensure businesses are working for societal good, she said.

"We are so deeply rooted in our assumptions about markets and competition," Scott said. "It is very hard to challenge that. But these laws were written at a time when resources seemed inexhaustible, whereas today we live in an era of [limited resources](#)."

Changing antitrust laws to allow for more flexibility will likely require legislative action, given companies' limited ability to challenge them in court. But it is time for people to begin considering such changes, Scott said.

"Climate change and sustainability are such overwhelming problems," she said. "We need businesses to take on those problems. Government and individuals are not going to be able to solve them on their own. How can we foster the positive power of businesses and not shut down opportunities?"

More information: Inara Scott. Antitrust and Socially Responsible Collaboration: A Chilling Combination?, *American Business Law Journal* (2016). [DOI: 10.1111/ablj.12073](https://doi.org/10.1111/ablj.12073)

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