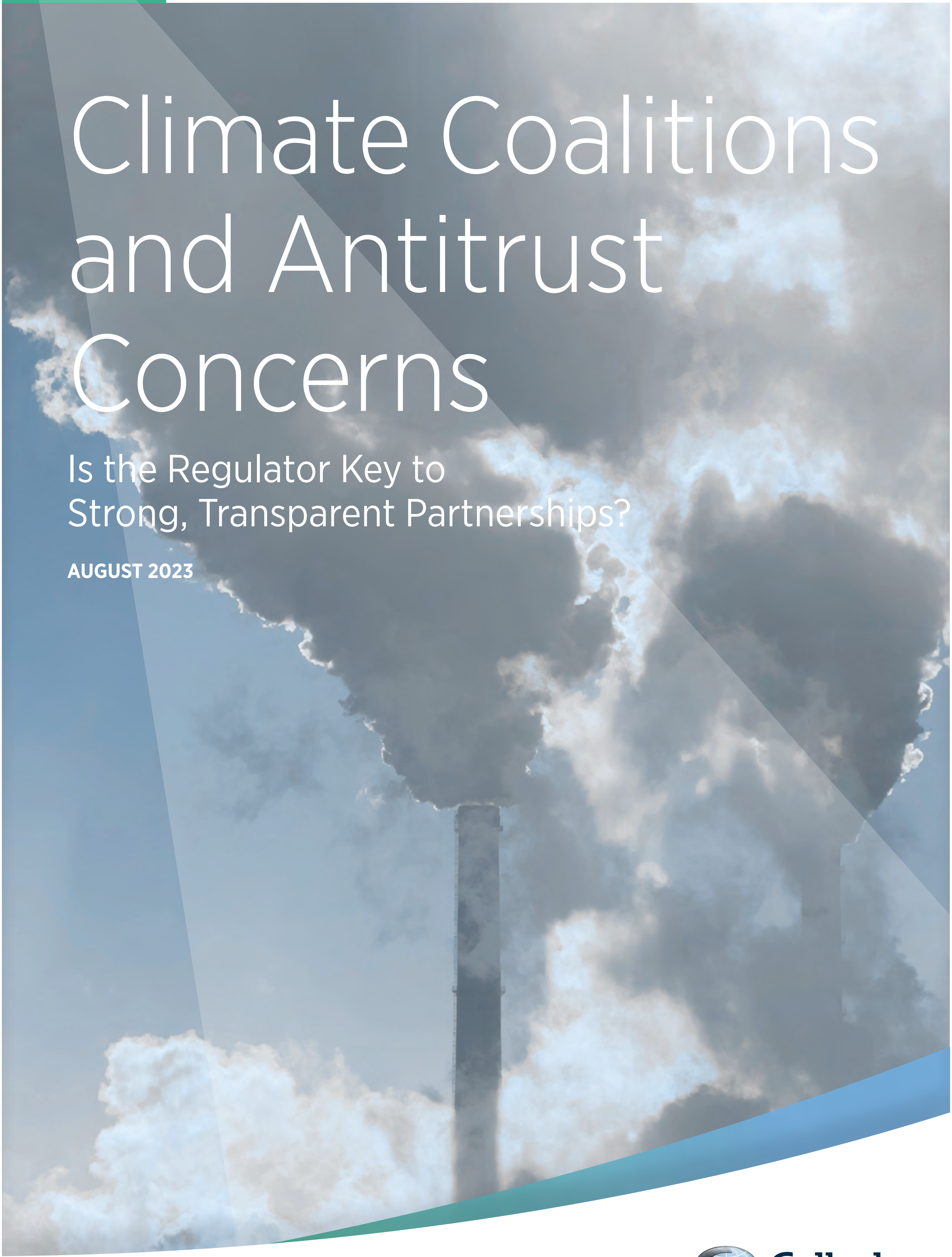
Spotlight

SHIFTING PERSPECTIVES

Climate Coalitions and Antitrust Concerns

Is the Regulator Key to Strong, Transparent Partnerships?

AUGUST 2023



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Questions asked

1 Are there teething problems that will result in stronger, more transparent coalitions?

2 What moves are regulators taking to provide coalitions with 'safe harbor' guidelines?

3 What are the risks (and opportunities) inherent in collaborating across industries on complex issues, such as climate change?

Introduction

Climate change presents a pressing issue and, as efforts to combat it continue, climate coalitions have emerged as a popular way to pool resources, share ideas and foster innovation. However, the viability and future success of coalitions have come under scrutiny due to concerns over antitrust laws and against a rising tide of anti-ESG sentiment and climate-related litigation.

This report explores the relevant issues and their significance to the current business environment and wider climate transition agenda.

Climate coalitions: A brief history

Climate action coalitions are progressively forming to accelerate the transition to net zero.

These alliances are not a new phenomenon. Businesses formed the first climate coalition—the Business for Innovative Climate and Energy Policy (BICEP)—in 2007. Since then, several initiatives and networks have been set up, including the nonprofit group We Mean Business Coalition, the Glasgow Financial Alliance for Net Zero (GFANZ), Net Zero Asset Managers Initiative, Net Zero Insurance Alliance, Net Zero Banking Initiative and The Climate Pledge.

Many of these groups are members of the UN-convened Race to Zero campaign, a global alliance committed to achieving net-zero carbon emissions by 2050, and setting an interim 2030 target. The coalitions aim to promote collaboration and knowledge-sharing among businesses and stakeholders to drive progress toward a low-carbon future.

The most recent UN climate change conference meetings, COP26 in Glasgow (2021) and COP27 Egypt (2022) meetings, saw the formation of a number of new industry coalition initiatives. In the post-COVID-19 era, there is a recognition that cooperation is essential to tackling complex, global and potentially existential issues, such as public healthcare, economic recovery and climate change.

Climate action groups offer the private sector an opportunity to take a leading role in fostering innovation, and offering solutions to facilitate and incentivize a speedy and just transition. But in order to achieve their ambitions, there are many hurdles to overcome. This includes the willingness to share data and information with competitors, and the ability to make decisions that benefit the wider collective, not just the individual organization.

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Rising antitrust concerns

Antitrust laws aim to promote competition, and prevent businesses from engaging in anticompetitive behavior. Fair competition and prevention of monopolistic practices are the main aims of such legislation.

One of the most prominent areas can be seen in the domination of tech giants, raising concerns among regulatory bodies and lawmakers. Anticompetitive mergers and acquisitions, unfair pricing, data privacy breaches, and abuse of market power are areas receiving heightened scrutiny. This has led to investigations, lawsuits, and calls for more stringent action to ensure a level playing field and protect consumers' interests.

Recently, the alarm has been raised that climate coalitions could be seen to violate antitrust laws by making decisions that unfairly distort or penalize markets. It is perhaps unsurprising that heavily regulated sectors have been among the first to vocalize these reservations.

In 2022, GFANZ announced it would no longer require its members to commit to 'Race to Zero', with founder and cochair Mark Carney saying the requirements had gone "too far." He cited potential legal issues around antitrust and concerns that Race to Zero's lobbying requirements could conflict with its members' fiduciary duties.[1]

For instance, the decision to phase out coal investments by a certain deadline can be viewed in two different lights. The climate-positive view is that it will incentivize the energy transition. But energy firms could argue that capital is being withdrawn too early into their own transition journeys—and before renewable infrastructure has been fully developed—reducing their ability to invest further in these pathways.

Such moves could also be considered unjust in the context of energy operators within emerging markets, which are in the process of powering their rapidly developing economies. Issues surrounding the current energy crisis, which has been exacerbated by Russia's war in Ukraine, is also shaping optics around the strategic goals and aims of climate action groups.

There are calls for supervisors to offer explicit guidance on how climate coalitions should operate, by providing—if deemed appropriate—a safe harbor where certain agreements are block exempted. And there is growing emphasis on the need for climate coalitions to operate more transparently and prioritize a just transition for all stakeholders.

It is a balancing act that will become more challenging as we move closer to Race to Zero's midpoint targets in 2030.

The wider context

ESG backlash in the US

Businesses and investors recognize the importance of environmental sustainability, social responsibility and strong governance leading to significant attention on ESG practices.[2] However, there is rising anti-ESG sentiment in some markets, particularly the US, which is itself shaping thinking around the work being carried out by climate action coalitions.

Critics argue that ESG initiatives can prioritize political and social agendas over shareholder value and economic growth. They express concerns about the potential misuse of ESG ratings and metrics, as well as the influence of activist investors pushing companies to adopt specific policies.

This backlash has underscored the need to strike the right balance between pursuing sustainable practices while maintaining profitability and fiduciary responsibilities.

Greenwashing litigation

An increase in greenwashing allegations has prompted legal action against companies accused of misleading consumers or investors about their environmental practices. Individuals and environmental advocacy groups are increasingly holding organizations accountable for deceptive claims around progress on sustainability and 'green' credentials.

Large energy firms (including the Carbon Majors), airlines, supermarkets and even governments have been subject to climate litigation, with lawyers in this space warning the floodgates are only just beginning to open.

It is prompting greater awareness of the pitfalls of greenwashing, with 'greenhushing' a risk where the pendulum has swung too far. But ultimately, climate litigation should promote greater transparency and ensure that companies deliver on their sustainability pledges.

New ESG rules and disclosures

The EU Corporate Sustainability Reporting Directive (CSRD) came into force in January 2023, making it mandatory for large EU-based companies to report on sustainability issues, including ESG targets, transition plans and greenhouse gas emissions, effective from the 2024 financial year. Listed companies that fall foul of the new rules may be fined a percentage of their annual turnover.

Meanwhile, the US Securities and Exchange Commission (SEC) is encouraging companies to provide accurate and meaningful sustainability information to the public. Recognition of the equivalency of its proposed disclosure rules and CSRD requirements is one factor behind the delays impacting the release of the new requirements.

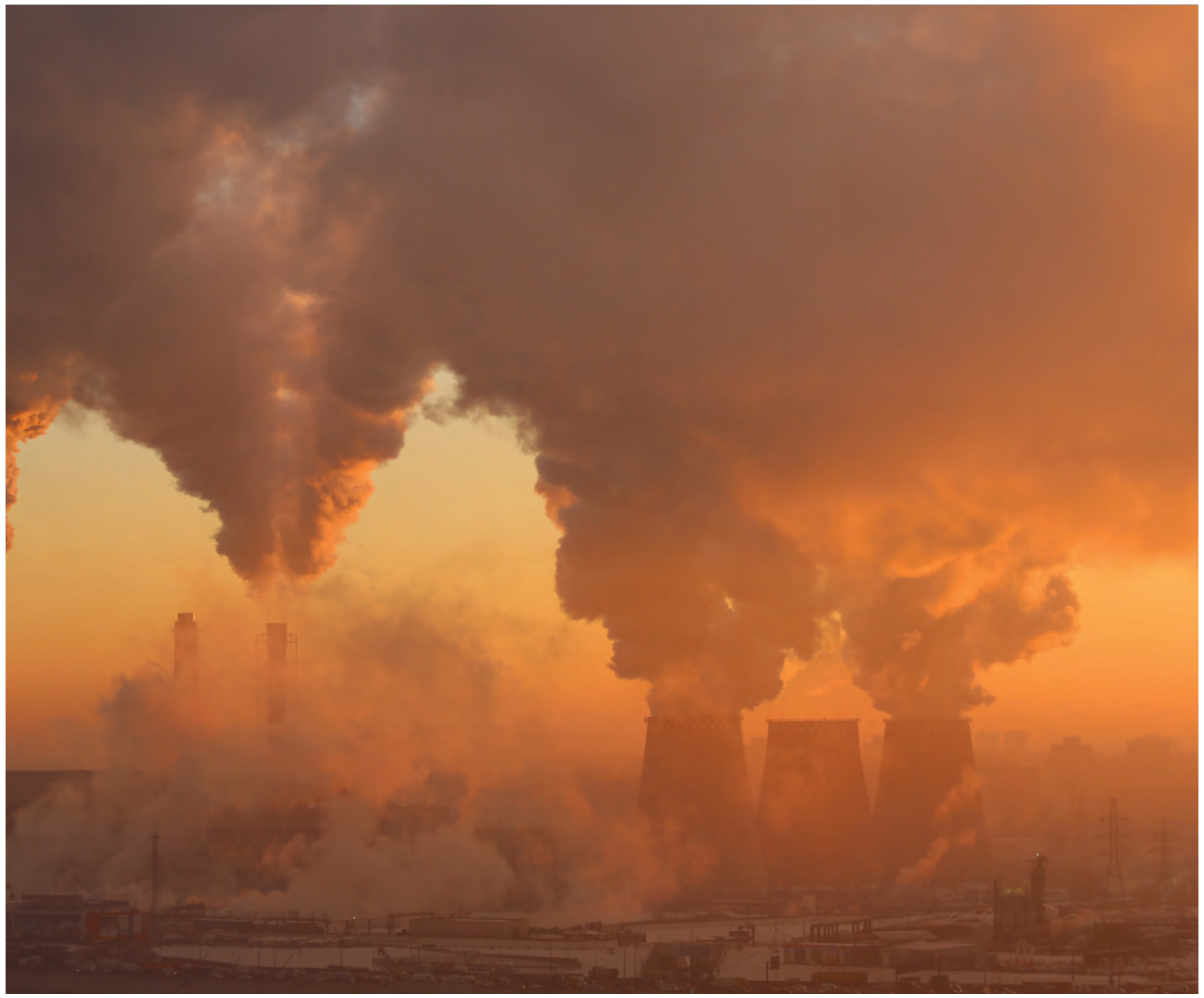
Considerations and solutions

The potential ramifications of antitrust concerns on the progress of climate action coalitions are significant. They raise questions about the viability and future success of some initiatives, and the reputational and existential consequences of getting it wrong. Although there are advantages and disadvantages, there is broad consensus that collaboration will remain essential to achieving the momentum that is needed.

One potential solution to address antitrust concerns is for climate coalitions to operate with increased levels of transparency. This involves disclosing all activities and discussions, and ensuring that all stakeholders are represented and have an equal voice when strategic decisions are implemented.

It means continuing to prioritize a 'just transition' for all stakeholders, including assistance for sectors and communities likely to be most impacted by the transition to a net-zero economy.

Meanwhile, it is essential that regulators step up and provide climate coalitions with the clarity they need. By making it clear what activities fall within the scope of antitrust legislation, climate action groups will be empowered to pursue their joint goals with the sense of urgency currently required. Regulators must offer clear guidance on how industry groups should proceed to achieve their objectives, unimpeded by fears of legal and regulatory repercussions.



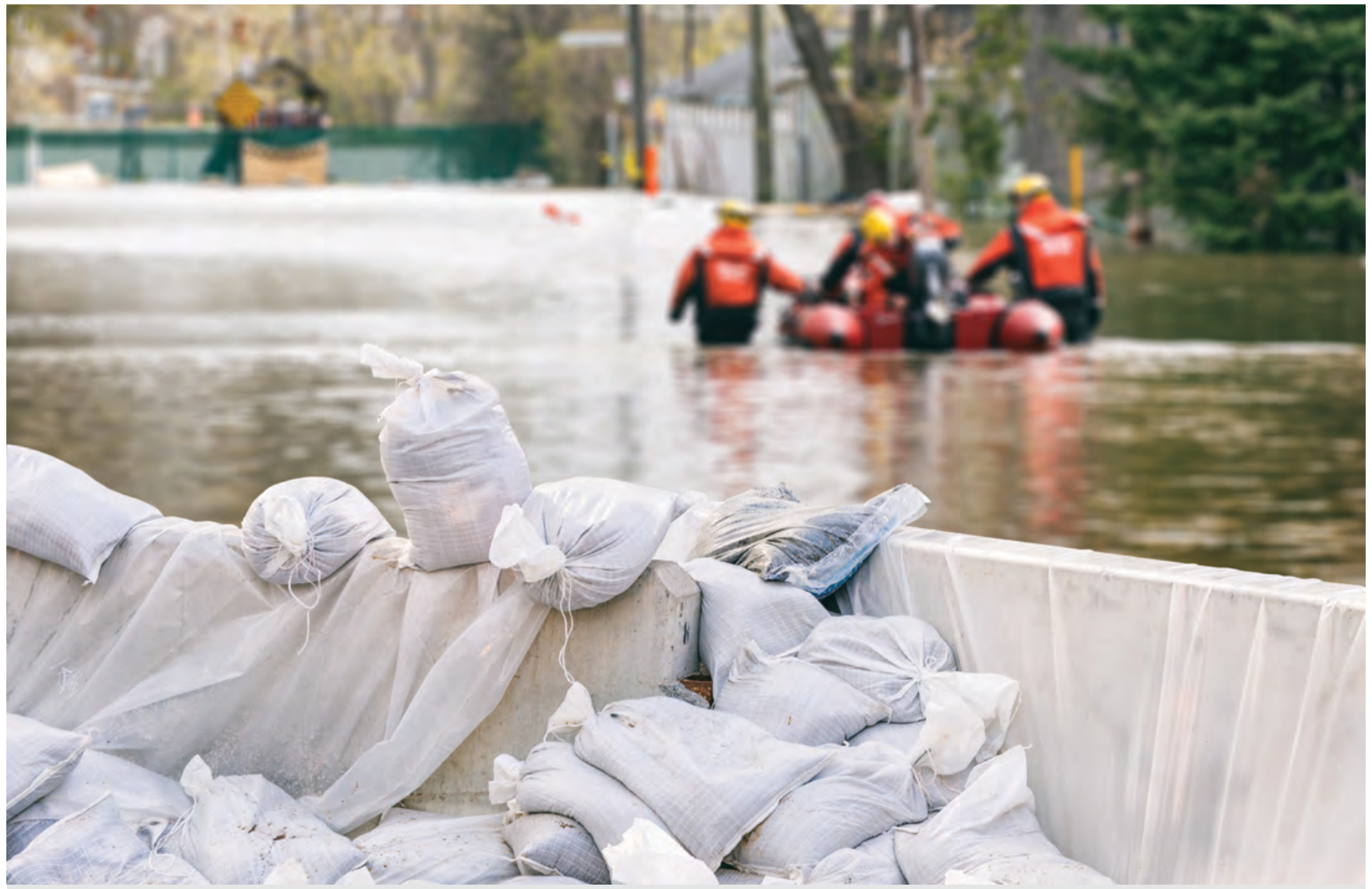
Conclusion

Across industries, leads on climate, ESG and sustainability recognize the critical role that coalitions can play in driving the transition to net zero. Collaboration among organizations can result in sharing ideas and best practices, pooling resources, and developing innovative solutions. The current debate around antitrust is a hurdle that must be addressed for this to happen.

The answer lies in striking a balance between competition and cooperation, to bring about change, with stronger climate coalitions emerging going forward. These groups must operate as accountably as possible, prioritizing a just transition for all stakeholders. Assisting this process, it is hoped regulators will come forth with more explicit guidelines to address antitrust concerns and offer safe harbor provisions, where applicable.

In conclusion, climate action coalitions are essential for addressing the urgent issue of climate change in a joined-up way. Nevertheless, organizations must carefully weigh the risks and opportunities of their involvement in such initiatives, taking into account their corporate risk appetite and individual decarbonization strategy.

The debate around antitrust concerns and climate coalitions will likely continue as more industries come together to tackle the climate crisis and as regulation in this space continues to develop.



Climate transition: The role of insurance

Insurance companies have been at the forefront of understanding the risks associated with climate change, such as those presented by extreme weather and natural catastrophes. They have also been involved in working with businesses to help them understand these risks and take action to mitigate them, including via risk transfer mechanisms.

As a result, insurers and reinsurers have been actively involved in discussions surrounding the climate transition. Over time, these endeavors have become more collaborative in nature, through various climate action initiatives.

(Re)insurance companies have a significant and growing influence in helping industries to decarbonize and invest in new, green technologies, including the growth of renewable energy producers and infrastructure.

Emerging economies, such as green hydrogen and carbon sequestration, rely on the support of insurance to successfully develop. As prototypical technologies typically lack historical claims data, (re)insurance companies are using different types of data to price and underwrite the risk, for instance.

The development of underwriting guidelines and new risk transfer solutions will continue to be essential to a successful transition.

Citations

1 https://www.reuters.com/business/cop/carney-defends-dropping-un-climate-initiative-over-antitrust-concerns-2022-11-04/

2 https://www.nortonrosefulbright.com/en/knowledge/publications/8cbd0122/greenwashing-and-esg-disputes - Greenwashing and ESG

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