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Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
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To the Competition Bureau,

This submission is in response to a call for feedback on the Bureau's proposed guidelines concerning environmental claims ("**Guidelines**"). We welcome the opportunity to submit feedback on these Guidelines.

We generally agree with the Guidelines, particularly the principles for compliance. However, we would like to provide feedback on two specific sections of the Guidelines: the first is the definition of "internationally recognized methodology," which will be unhelpful in many cases of vague or forward-looking claims, and remains too broad to provide the clarity businesses require to uphold the laws governing environmental claims. The second is the definition of "adequate and proper testing," which does not satisfactorily reflect the specific context of environmental claims.

Internationally Recognized Methodology

Paragraph 74.01(1)(b.2) prohibits a person from making a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology.

In the Guidelines, the Bureau defines "methodology" as "a procedure used to determine something," and considers a methodology to be "internationally recognized" "if it is recognized in two or more countries," but not necessarily by the governments of those countries.

There are two main issues with this. Firstly, this definition of "internationally recognized methodology" could allow for the use of methods that enable the continued extraction of oil and gas. Indeed, some methodologies that are recognized in multiple countries could perpetuate our dependence on fossil fuels and could thus increase an entity's vulnerability to making claims that constitute greenwashing. For example, methodologies that would allow entities to purport Carbon Capture and Storage (**CCS**) or Carbon Capture and Utilization as a net-zero solution for

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Canada's oil and gas sector would fail to guide entities away from greenwashing. The use of CCS creates an enabling environment for expanding the use and production of fossil fuels. In addition, CCS in this sector is energy intensive and unproven at scale. It also has no impact on downstream emissions, which account for 80% of fossil fuel emissions. Ultimately, CCS is misaligned with the ambition and time scale required to limit global warming to 1.5°C. Permitting businesses to adopt methodologies to substantiate their environmental claims that could allow for the proliferation of oil and gas extraction would signal a level of tolerance for greenwashing that is clearly misaligned with the intent of the provisions of the Act.

Therefore, to provide businesses with the clarity they require to uphold the law and avoid greenwashing the Guidelines should include a more comprehensive definition of both "methodology" and "internationally recognized," as well as a carefully curated list of examples of "internationally recognized methodologies" that businesses can use in circumstances particularly vulnerable to greenwashing. At minimum, we suggest the following internationally recognized methodologies be recommended in the Guidelines:

- Greenhouse Gas Protocol: global standardized frameworks to measure and manage greenhouse gas (**GHG)** emissions from private and public sector operations, value chains and mitigation actions. This is commonly used for GHG accounting.
- Partnership for Carbon Accounting Financials: a GHG accounting and reporting standard for the financial industry. It enables financial institutions to measure and disclose the GHG emissions of their financial activities.
- Science Based Targets Initiative: provides companies with a clearly defined path to reduce emissions in line with the Paris Agreement goals. This is most frequently used for net-zero targets.
- Taskforce on Nature-related Financial Disclosures: provides disclosure recommendations and guidance on nature-related issues allowing businesses and finance to incorporate nature-related dependencies, impacts, and opportunities into their strategic planning, risk management, and asset allocation decisions.

Secondly, the Bureau should establish a clear procedure for investigating claims that cannot be substantiated through any established methodology. This includes forward-looking claims and those that are overly vague. Vague claims often take the form of broad slogans or terms like "green," "eco-friendly," and "clean," which suggest environmental benefits without providing specific, verifiable information. Similarly, generic claims can also be misleading. For example, a study by the Energy Climate Intelligence Unit and Oxford Net Zero analyzed over 4,000 major entities—including all countries and companies listed in the Forbes Global 2000—and found that 14% of these entities did not specify whether their net-zero targets applied solely to carbon dioxide (CO_2) or to all GHGs. The rest were almost evenly divided between those targeting all GHGs and those focusing only on CO_2. This lack of clarity can easily mislead consumers, who might incorrectly assume that a company's net-zero commitments address all GHGs, not just CO_2. This ambiguity is particularly concerning in sectors like agriculture, which contributes 31% of Canada's total methane emissions.

It remains important that the Bureau clarify in the Guidelines how it will evaluate claims that cannot be substantiated by any methodology, internationally recognized or otherwise. The

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Bureau should also set out clearly what kind of vague claims it considers misleading to provide the clarity businesses require to operate according to the laws governing environmental claims.

Adequate and Proper Testing

Paragraph 74.01(1)(b.1) of the Act prohibits a person from making a representation to the public, for the purpose of promoting a product or any business interest, in the form of a statement, warranty or guarantee of the "product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test."

We generally agree with the Guidelines for performance claims not based on an adequate and proper test. However, the interpretation of "adequate and proper" testing under this paragraph should be more comprehensive and should better consider the specific context of environmental claims.

Some claims cannot be adequately "tested" in the environmental context. For example, claims related to carbon neutrality would likely be difficult to substantiate through a "proper and adequate test". Instead, such claims could be evaluated through auditing a businesses carbon accounting. The Guidelines should clarify what the Bureau would consider to be misleading in the context of claims that are made which "adequate and proper testing," cannot substantiate.

There are many cases where testing cannot substantiate environmental claims. For example, in the case of claims such as labelling rules for recycling and organic foods, where the law already establishes standards or regulations, the Bureau should consider these standards or regulations. A claim that goes against these standards or regulations should be considered misleading. Notably, claims about the compostability and recyclability of a product have more to do with existing facilities and rates of acceptance than about the product or business. It is misleading to put such a label on a product if the product cannot be recycled or composted in the jurisdiction where it is sold, even if it is recyclable or compostable in theory.

The Bureau should be clear about what can or cannot be claimed in cases where there are no guidelines or regulations, and where the claim could be misleading because it is based on theoretical attributes, rather than a feasible reality, or other qualities that are otherwise not able to be tested.

Additionally, companies should not use language that would mislead consumers about the results of the tests they do perform. As per the US Guidelines, "[t]hird-party certification should not eliminate a marketer's obligation to ensure that it has substantiation for all the claims reasonably communicated by the certification." This obligation should be clarified in the Guidelines.

Conclusion

The new greenwashing provisions are a welcome addition to the *Competition Act*. The Guidelines should make clear that to avoid greenwashing it is critical for entities to be transparent, to make only evidence-based claims, and to take a holistic approach to sustainability.

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Where the evidence fails to support the desired claim, the claim should be considered unsubstantiated and therefore not made. Through this process vague or generic claims that cannot be substantiated are likely to be avoided.

To ensure that these greenwashing provisions are upheld in line with Parliament's intent, the Bureau must ensure that its Guidelines provide businesses with sufficient clarity and an enabling environment, including a set of tools, to support them in their efforts to uphold the anti-greenwashing provisions of the Act. As such the Bureau should ensure that its interpretation of these provisions, as laid out in the Guidelines, adequately defines "internationally recognized methodologies", and delineates the nature of evidence or proof required in the context of environmental claims that cannot be substantiated by an "adequate and proper test" as defined, including claims about carbon neutrality or those that are vague or otherwise misleading. Ultimately, the Bureau should strive to deliver Guidelines that position businesses to uphold the laws related to environmental claims and offer enhanced protection from greenwashing to consumers in Canada.

Sincerely,

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