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September 26, 2024
Deceptive Marketing Practices Directorate
Competition Bureau
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To the Competition Bureau,

This submission is in response to a call for feedback on the two new provisions of the *Competition Act* that target greenwashing. We welcome the new provisions and the opportunity to submit feedback. In brief, we submit that the Bureau's enforcement guidance should ensure that environmental claims are backed by rigorous, robust, and unbiased environmental research and are monitored through a fit-for-purpose enforcement regime characterized by sufficient scope to allow for application to different claim types and scenarios vulnerable to greenwashing across business models.

Below you will find our specific feedback to the questions the Bureau posed. We encourage the Bureau, both when reading this feedback and drafting enforcement guidance, to keep in mind the overarching goal of the *Competition Act*: to provide consumers with competitive prices and product choices. Consumers need good information to make good choices. Greenwashing stands in the way of consumers' ability to make informed choices and is a significant obstacle to tackling climate change. Indeed, the United Nations noted that "greenwashing promotes false solutions to the climate crisis that distract from and delay concrete and credible action."

Common Claims: what kind of claims about environmental benefits are commonly made about products or services in the marketplace/business and business activities? Why are these claims more common than others?

Given that the problematic claims are the ones that will be investigated by the Bureau, we chose to focus on claims that are frequently the subject of complaints, based on the Bureau's own report.

The following common claims are made about products or services:

- Composition claims
- Claims about production process
- Claims about disposal of products
- Comparison claims
- Vague claims

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The following common claims are made about businesses or business activities:

- Vague claims
- Claims about the future

In Canada, greenwashing claims are still relatively new. Most of these claims seem to focus on businesses or business activities. More specifically, a review of greenwashing claims brought before the courts and regulatory bodies found that "energy companies are particularly vulnerable to greenwashing claims when they portray themselves as leaders in non-fossil energy systems, and in circumstances where their investments in non-fossil energy systems are comparatively much lower than their investments in conventional fossil fuel production." Campaigns and advertisements by energy companies such as the Canadian Gas Association, Pathways Alliance and Shell have been the target of complaints from various groups.

A similar trend can be found in the banking sector, as banks try to minimize their role in the climate crisis. The Competition Bureau is investigating RBC's "Climate Blueprint" for making false and misleading representations.

The main driver behind these complaints is that environmental claims made by companies are often vague. This is in part because there is no clear methodology used by companies who make environmental claims. According to a study by the Energy Climate Intelligence Unit and Oxford Net Zero, which analysed over 4,000 significant entities, including all nations and all companies in the Forbes Global 2000 list, a "significant fraction" (14%) of the entities studied did not specify whether their net-zero targets covered carbon dioxide only or all greenhouse gases, while the remainder of entities were split almost equally between those covering all greenhouse gases versus CO_2 only. The lack of specificity in these types of environmental claims is misleading for consumers, who may be misled into thinking that a company's net zero targets include all greenhouse gases as opposed to only carbon dioxide. This is particularly problematic for industries such as agriculture which is responsible for 31% of Canada's total methane emissions.

Therefore, clarifying that claims must be backed up by adequate methodologies, identifying those methodologies, and investigating companies who do not comply will address a large segment of greenwashing claims in Canada.

What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been "adequately and properly substantiated"? Are there limitations to these methodologies that the Bureau should be aware of?

We recognize that there is no one methodology that will be appropriate for all claims about the environmental benefits of the business or business activities, and we would discourage a "one-size-fits all" approach. The Bureau's guidance should include examples of methodologies that would be appropriate in different circumstances. We suggest and approve of the following internationally recognized methodologies:

- 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.
- International Sustainability Standards Board (ISSB): the ISSB is developing standards that will result in a high-quality, comprehensive global baseline of sustainability disclosures focused on the needs of investors and the financial markets. This is commonly used for climate-related disclosures.
- 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.

On the other hand, we would discourage the use of any methodology that may enable the extraction of oil and gas and perpetuate our dependence on fossil fuels. By their very nature, these methodologies would 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 Canada's oil and gas sector would fail to guide entities away from greenwashing. In fact, in addition to CCS in this sector being expensive, energy intensive, and unproven at scale, it has no impact on downstream emissions which account for 80% of fossil fuel emissions. Moreover, the use of CCS creates an enabling environment for expanding the use and production of fossil fuels. Ultimately, CCS is misaligned with the ambition and time scale required to limit global warming to 1.5°C.

We believe the best approach is flexible enough to be adapted to a variety of circumstances. However, this should not be an invitation for companies to use methodologies that are not independently verified. The Bureau should have a process for a company or organization to request the use of an internationally recognized standard for unique cases that fall outside of the approved list.

Additionally, it should be clear that the onus is on businesses to demonstrate that any claim they make about the environmental benefits of their business or business activities has been "adequately and properly substantiated" according to the requirements of an approved methodology. Furthermore, we believe that it would be prudent for businesses to make available to the public evidence to support their claims.

What should the Bureau consider when it evaluates whether testing to support claims about the environmental benefits of products or services is "adequate and proper"?

We agree with the Bureau's 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 stringent and consider the specific context of environmental claims. We have compiled examples of how other jurisdictions have interpreted similar provisions. What these interpretations have in common is the notion that environmental claims should include the following information: 1) Whether testing was conducted by a third party and 2) How the results of testing are being used to support the claim made.

The United States' Guide for the Use of Environmental Marketing Claims defines evidence as consisting of "tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true."

Furthermore, companies should not use language that would mislead consumers about the results of those tests. 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."

The EU has further defined what is misleading in the context of a comparative claim. Its Greenwashing Directive, which was approved by the European Parliament in January 2024, considers a comparative claim to be misleading if it is not accompanied by information about (i) the method of comparison; (ii) the products that are the subject of comparison; (iii) the suppliers of those products; and (iv) the measures to keep information up to date.

We would like to see these factors reflected in the Bureau's guidelines.

What other information should the Bureau be aware of when thinking about how and when to enforce these provisions?

The EU Greenwashing Directive prohibits certain practices. We believe that the Bureau should follow suit in making clear that the following practices would be considered false and misleading under the new provisions:

- Practices related to early obsolescence (the premature failure of goods);
- The use of "generic" environmental claims (for example, "eco-friendly", "ecological", and "biodegradable");
- The display of sustainability labels that are not based on a certification scheme or not established by public authorities;
- Claims of carbon neutrality when they are not supported by clear, objective and verifiable commitments and targets;
- The use of environmental claims that simply reflect a common practice in the relevant market;
- Environmental claims relating to future environmental performance when this does not involve clear commitments;

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- Environmental claims made in respect of an entire product or business that only apply to a specific aspect of the product, or specific activities carried out by the trader.

The above-noted practices are all examples of misleading advertising that is in line with the new provisions of the *Competition Act*. Clarifying that these practices are prohibited would put into words the intention of Parliament, which is to allow consumers to make more informed choices.

Furthermore, businesses often make claims about their GHG emissions, whether in respect of a product or their business. We argue that businesses should specify whether their claims relate to Scope 1, Scope 2, and/or Scope 3 emissions. In other words, whether their claim relates to their direct emissions (Scope 1), from indirect emissions relating to the generation of purchased energy (Scope 2), or from any other emissions in the value chain (Scope 3). For example, a company cannot claim to be "net zero" if only its offices are net zero, and not its factories.

We also believe that the Bureau should address how claims made about future technologies in the context of investment pitches should be considered, categorized, and addressed and how claims being made by a business regarding their intentions to use a yet-to-be developed technology should be considered, categorized, and addressed. In other words, more guidance is needed to define what constitutes greenwashing in the context of claims surrounding future technologies in different scenarios.

Conclusion

The new greenwashing provisions are a welcome addition to the *Competition Act*. To ensure that the Bureau enforces these provisions in line with Parliament's intent, it should ensure that claims made by companies are backed by rigorous scientific research, and that the result of this research is not described in a way that is vague or otherwise misleading.

Sincerely,

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