



Sent via email

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Re: Public consultation on the *Competition Act's* new greenwashing provisions

We appreciate the opportunity to provide the following submission in response to the public consultation on the *Competition Act's* new greenwashing provisions.

Our organizations focus on advocating for the environment, environmental justice and health. Ecojustice is an environmental law charity led by lawyers, scientists and subject matter experts, whose mission is to use the law to defend nature, combat the climate crisis, and fight for a healthy environment for all. The Canadian Association of Physicians for the Environment (CAPE) is a Canadian-based non-profit organization of physicians dedicated to environmental issues, especially as they relate to human health.

Together we are uniquely placed to provide input on the new deceptive marketing provisions of the *Competition Act*, and tackle greenwashing to prevent harm to consumers, the environment and public health. Ecojustice and CAPE have been participating in the modernization of the *Competition Act* by advocating for reform to address green deceptive marketing and integrate sustainability.¹

¹ See our prior submissions: *Reforming the Competition Act to Address Deceptive Green Marketing and Integrate Sustainability* (Mar 31, 2023), [online](#) (pdf); *Briefing Note: amending Bill C-59 to more effectively combat greenwashing* (2024), [online](#) (pdf); *Briefing Note: addressing greenwashing through the Competition Act* (May 28, 2024), [online](#) (pdf).

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I. Introduction

The competition law regime sets out “a general framework that allows businesses to make whatever environmental claims they want, as long as those claims are not false, misleading or not adequately and properly tested or substantiated”.² While there has been substantial reaction from businesses and industry to the new deceptive marketing provisions in the *Competition Act*, on the whole, businesses and industry are not saying that there should not be truth in advertising in green claims, nor are they saying that requiring substantiation of green business claims is inappropriate. Rather it appears that they are looking for direction on the new provisions particularly on the adequate and proper substantiation requirements. This submission therefore aims to inform paths forward for robust and stringent guidance that provides certainty to business while maintaining Canada's global competitiveness in the emerging green economy.

Overall, robust green guidance from the Competition Bureau Canada (Bureau) is necessary to provide information to businesses who want to promote their credible environmental actions. It is also necessary to flag to those businesses who are not making credible green claims how their marketing is deceptive and how they must improve if they wish to promote green claims. Misleading claims undermine genuine business efforts and reward incumbent business interests that profit from externalizing environmental costs. This is a market failure which creates unfair competition and presents real and undisclosed health and environmental risks to consumers.

Publishing robust green guidance — that is aligned with the standards recommended by civil society — will also serve to restore consumer confidence in green claims that have been eroded and will contribute to creating an environment that enables consumer behavioural change based on accurate and factual data. It also ensures that excellent environmental performance by businesses is recognized and rewarded, spurring green innovation and R&D. If well drafted, the Bureau's guidance can reduce uncertainty around environmental benefit claims and how to comply with the greenwashing provisions in the Act.

A 2024 study of 200,000 people across countries found that despite cost-of-living concerns, consumers were willing to pay a significant premium of close to 10% for products perceived as sustainable.³ However, currently, consumers struggle to make, or understand whether they are making, low-carbon or less environmentally damaging choices. Making sustainable choices in a market saturated with high-carbon and polluting options is particularly difficult given the limited and biased information available to consumers. The difficulty of making sustainable choices is compounded by the competitive and cost advantages that highly polluting industries, which do not internalize environmental costs, already enjoy. Consumers suffer financial harm because of greenwashing, especially when they are willing to pay a higher price for a sustainable product or service, but the claims end up being unverified and misleading.

As environmental and health advocates, we are particularly concerned about how false environmental claims lead to undisclosed health impacts on consumers as well as the broader public. For example, cosmetic products often contain harmful chemicals that consumers are unknowingly exposed to because of greenwashing. These harms are further amplified when the deceptive marketing claims increase consumption of products or support the viability of businesses that are increasing climate change, a global existential crisis. False environmental

² Competition Bureau Canada, *Bulletin: The Deceptive Marketing Practices Digest - Volume 7* (Jul 22, 2024), [online](#).

³ PwC, *Press Release*, “Consumers willing to pay 9.7% sustainability premium, even as cost-of-living and inflationary concerns weigh: PwC 2024 Voice of the Consumer Survey” (May 15, 2024), [online](#).

claims also cause increased pollution and environmental degradation with consequent welfare losses beyond the consumer. These costs are distributed amongst potential consumers in the relevant market, those outside the market, as well as future generations and highlights the urgency of market regulation to curb false green claims.

Transparency in green claims is critical as it leads to credible business practices and credible consumer choices that ultimately benefit businesses, consumers, and the environment. As the energy transition accelerates, putting in place clear and strong greenwashing standards now will ensure the long-term competitiveness of our businesses to compete in global markets. Canada's key trading partners have been leading on addressing this while Canada until now has been lagging.

For example, the EU, Canada's third largest trading partner, has a strong anti-greenwashing regime that it continues to strengthen.⁴ The EU's dedication to reconciling the need for competitive markets to support the innovation needed for the energy transition is perhaps most clearly exemplified by the commission's focus on sustainable competitiveness and its recent appointment of a commissioner tasked with managing both the clean transition and antitrust enforcement.⁵ Considering the extreme pressure from highly-polluting incumbent business interests (that stand to benefit from lenient laws around greenwashing), there is a need to ensure fair play for emerging green businesses in this area by requiring rigorous standards regarding green claims.

Below we outline a summary of our recommendations, after which our submission proceeds to answer the questions raised in the consultation.

II. Summary of our recommendations

We make the following recommendations for the Bureau to set standards in the forthcoming guidance and to enforce the *Competition Act's* new greenwashing provisions.

A. Good practices to establish adequate and proper testing and substantiation for environmental claims.

1. The guidance should specify that to be adequate and proper, testing and substantiation must:
 - i. rely on a method that is recognized, up-to-date scientific evidence and state-of-the-art technical knowledge;
 - ii. demonstrate the significance of impacts, aspects and performance from a life-cycle perspective;
 - iii. take into account all significant aspects and impacts to assess the performance;
 - iv. demonstrate whether the claim is accurate for the whole product or only for parts of it (for the whole life cycle or only for certain stages, for all the trader's activities or only a part of them);
 - v. demonstrate that the claim is not equivalent to requirements already imposed by law;

⁴ European Commission, *Green Claims* (March 2023), [online](#).

⁵ The Guardian, *Spanish Socialist Teresa Ribera gets top EU role steering climate and antitrust policy* (Sept 17, 2024), [online](#).

- vi. provide information on whether the product performs environmentally significantly better than what is common practice;
 - vii. identify whether a positive achievement leads to significant worsening of another impact;
 - viii. include accurate primary or secondary information [Recommendation 1].
2. The guidance should specify that **internationally recognized methodologies (IRMs)** must meet the following minimum criteria to be considered “adequate and proper substantiation”:
 - i. Be based on an assessment that relies on current recognized scientific evidence and state of the art technical knowledge;
 - ii. Demonstrate the significance of impacts, aspects and performance from a life-cycle perspective;
 - iii. Take into account all significant aspects and impacts to assess performance;
 - iv. Be an independent, and not an industry-created standard; and
 - v. Be publicly available. [Recommendation 8]
 3. The guidance should specify that the **IRM for climate commitments** of businesses and financial institutions should be the United Nations High Level Expert Group *Integrity Matters* standards. [Recommendation 9]
- B. Direction on categories of claims that are prone to being deceptive, are deceptive, or cannot be adequately and properly tested.**
1. The guidance should specify that **future environmental performance claims** should be considered deceptive, unless substantiated with specific criteria on targets and a plan (including the allocation of resources to implement the plan and achieve the targets). These plans should be regularly and independently verified. [Recommendation 2]
 2. The guidance should specify that **emissions reduction or carbon neutral claims** that a product, service or business has a neutral, reduced, or positive climate impact cannot be made if the claim is actually based on buying carbon offsets. [Recommendation 3]
 3. The guidance should specify that **generic environmental benefit claims** cannot be adequately and properly tested or substantiated and, therefore, cannot meet the legal requirement for adequate and proper testing or substantiation and therefore should be regarded as deceptive. [Recommendation 4]
 4. The guidance should specify that **selective disclosure (i.e., cherry-picking)** made in voluntary environmental benefit claims should be regarded as deceptive. Adequate and proper testing or substantiation should be required to:
 - i. Demonstrate that the claim is accurate for the whole product;
 - ii. Ensure there is no omission of any relevant aspects of the production process; and

- iii. Identify whether a positive achievement leads to a significant worsening of another impact. [Recommendation 5]
5. The guidance should specify that certain **misleading commercial practices** should be regarded as deceptive marketing, without the need for case-by-case assessment, including:
 - i. Displaying a sustainability logo in relation to a product, service or business that is not based on a credible/verified certification scheme;
 - ii. Presenting the fulfillment of requirements imposed by law as a distinctive feature of the product, service or business;
 - iii. Presenting a common commercial practice as a distinctive feature of the product, service or business.
 - iv. Using “green” imagery, such as clear blue skies, lush forests, or other robust ecosystems as a way to strategically appropriate nature and environmental values in order to strengthen green messaging.
 - v. Claiming that a business or an industry is critical in solving other societal or environmental issues in order to justify the environmental impact of its operations or claiming that the business or industry is an essential part of the environmental solution. For example, oil industry groups claiming to have an important role in climate action⁶, or the manufacturing industry claiming that “Plastic Saves Lives.”⁷ [Recommendation 6]
 6. The guidance should provide general categories of products or practices that are **inherently harmful to the environment** or emissions intensive and for which environmental claims cannot be made credibly. This includes qualitative environmental benefit claims about fossil fuels and toxic/hazardous substances. [Recommendation 7]

C. Enhancing transparency, compliance, and enforcement

1. The guidance should require businesses to **publish the testing and substantiation** in support of their environmental claims online so that it is accessible to the public (or, at a minimum, provide it upon request by a consumer). [Recommendation 10]
2. The guidance should describe the mechanism for obtaining a **written opinion from the Commissioner**, as per the *Competition Act*, s. 124.1, on the adequate and proper standards for testing or substantiation. Any written opinions on testing and substantiation standards should be made public (removing any identifying info or trade secrets). [Recommendation 11]
3. The Bureau should **consider the severity or impact of the claim** on the environment, marketplace, consumer behaviour, as well as the health impacts that exist beyond the impacts on the immediate consumer or purchaser when it is investigating and enforcing environmental benefit claims. This should include the size and market reach of the company making the false or misleading claim. [Recommendation 12]

⁶ Rusill C., McCurdy P., Kliever J., (Apr 12, 2024), Oilsands disinformation is worse than you think, *Canada's National Observer*, [online](#).

⁷ Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC), *Billboard Truck Set Up to Counter UN Plastics Treaty* (May 1, 2024), [online](#).

4. The Bureau should **establish a green intelligence unit** to provide expertise within the organization to address green issues, as well as a resource for businesses, financial institutions, advertisers and the public on green competition issues. [Recommendation 13]
5. The Bureau should **revise the green claims guidance every three years** to ensure that it continues to protect consumers from greenwashing. [Recommendation 14]

III. Responses to Competition Bureau consultation questions

1. Commonly made environmental benefits claims

The consultation asks about the types of claims about environmental benefits that are made about products, services, businesses and business activities in the marketplace. It also asks why these claims are more common than others. This section responds to these questions.

1.1 *Common types of environmental benefit claims*

The following are examples of common types of environmental benefit claims:⁸

- i. **Claims about future performance or climate targets:** can apply to products, services or businesses as a whole. Such claims include publicly representing that a business has a goal to reduce their GHG emissions, achieve 'net zero' targets, reduce water consumption, incorporate recycled materials into a product or transition packaging to zero waste.⁹ A significant portion of the greenwashing complaints the Bureau receives are business claims about being 'net zero' or 'carbon neutral by 2030'.¹⁰

Examples of future-performance or climate targets claims that have been challenged publicly include competition law complaints against the Royal Bank of Canada for advertising their climate action while financing fossil fuel development¹¹ and against the Pathways Alliance for the "Let's clear the air" advertising campaign which represents the alliance of the oil sands producers as "making clear strides toward net zero" while expanding fossil fuels.¹²

- ii. **Emissions reduction or neutrality claims based on carbon offsets:** are a related type or subset of climate target claims that rely on purchasing carbon offsets. Carbon offsets

⁸ The Commerce Commission New Zealand has identified some common forms of environmental claims to include: composition claims (i.e., contains no harmful chemicals), claims about production processes (i.e., zero waste), claims about the future (i.e., biodegradable), comparative claims (i.e., better for the environment) and certification claims (i.e., organic certification). Commerce Commission New Zealand, *Environmental Claims Guidelines: a guide for traders* (Jul 2020) at p 3, [online](#) (pdf).

⁹ Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (December 2023) at p 10, [online](#) (pdf).

¹⁰ Letter by Matthew Boswell, Commissioner of Competition, to the Chairs and members of the House of Commons Standing Committee on Finance and Senate Standing Committee on National Finance (March 1, 2024), [online](#) (pdf). See also Competition Bureau Canada, *The Deceptive Marketing Practices Digest*, vol 7 (Jul 22, 2024), [online](#).

¹¹ Ecojustice, *Investigating Royal Bank for misleading advertising on climate action* (Oct 11, 2022), [online](#); Application for inquiry regarding the Royal Bank of Canada's apparent false and misleading representations about action on climate change while continuing to finance fossil fuel development (Jun 10, 2022), [online](#) (pdf).

¹² Greenpeace Canada, *Backgrounder: Greenpeace launches complaint against Pathways Alliance to the Competition Bureau*, [online](#) (pdf); Application for Inquiry into false and misleading representations made by the Pathways Alliance about their climate action and the climate impact of their business (March 2023), [online](#) (pdf).

are tradable “rights” or certifications linked to activities (e.g., reforestation, renewable energy development, carbon-storing agricultural practices, etc.) that lower the amount of carbon dioxide in the atmosphere. Instead of taking actions to lower their own carbon emissions, companies buying these certificates are able to claim lower emissions.¹³

As an example the Switzerland Commission for Loyalty finding that FIFA broke rules against unfair competition when it claimed that the Qatar World Cup would be ‘carbon neutral’, when those claims could not be proven and relied upon unclear carbon offsetting measures.¹⁴ There is also a class action in the United States, for example, alleging that a “carbon neutral” claim about bottled water was deceptive even if such claims were based on carbon offsets.¹⁵

iii. Generic environmental benefit claims: are claims that are vague and lack precise meaning, such as ‘green’, ‘sustainable’, ‘environmentally-friendly’, ‘clean’, ‘eco-friendly’ and ‘natural’. These claims give the appearance of some undefined yet positive environmental attribute. Examples of generic product claims that have been challenged publicly include representing liquefied natural gas (LNG) - which is a fossil fuel - as a ‘green’ fuel,¹⁶ as well as clothing and shoes advertised as ‘sustainable style’ collection¹⁷ or ‘sustainability’ collection products.¹⁸

Case study – Fossil gas as “natural”, “green” and “climate-friendly”

A report from the United States investigating six major oil companies found that the fossil fuel industry is engaging in deceptive practices “to portray natural gas as a green, climate-friendly fuel, while internally acknowledging that there is significant scientific evidence that the lifecycle emissions from gas are as bad as coal and are incompatible with scientific emissions reduction targets.”¹⁹

Similar representations about “natural” gas are being challenged in Canada, including allegations of deceptive marketing by Enbridge Gas Inc. for advertisements suggesting that ‘natural’ gas is clean energy and low carbon²⁰ and by the Canadian Gas Association for

¹³ Angelo Gurgel, “Explainer: Carbon Offsets”, *MIT Climate Portal*, (Updated Nov 8, 2022), [online](#).

¹⁴ Paul MacInnes, “Fifa misled fans over ‘carbon-neutral Qatar World Cup’, regulator finds” in *The Guardian* (Jun 7, 2023), [online](#).

¹⁵ See *Dorris v Danone Waters of America*, Case No [7:22-cv-08717](#) (2022).

¹⁶ A complaint made in the UK to the Advertising Standards Authority (ASA) over the cruise ship industry’s misleading advertising of fossil liquefied natural gas (LNG) as a ‘green’ fuel. Note that the ASA’s decision on this complaint is pending. Opportunity Green, *Opportunity Green issues complaints to ASA over cruise industry’s systemic misleading advertising of fossil LNG as a ‘green’ fuel*, (Sept 2023), [online](#); Sabin Centre, *ASA complaint on cruise operators by Opportunity Green*, [online](#).

¹⁷ The Norwegian Consumer Authority was reported as saying clothing company H&M provides insufficient information about the sustainable nature of its ‘sustainable style’ collection. Natashah Hitti, “H&M called out for “greenwashing” in its Conscious fashion collection”, *Dezeen* (Aug 2, 2019), [online](#).

¹⁸ Class Action Complaint, *Ellis v Nike USA, Inc.*, Case No [4:23-cv-00632](#) (filed May 10, 2023). Note that a motion to dismiss this claim was granted by the Missouri Federal Court as the plaintiff failed to plausibly allege that the products were not made with any recycled or organic fibers. See Memorandum and Order, *Ellis v Nike USA, Inc.*, Case No [4:23-cv-00632-MTS](#) (Mar 28, 2024).

¹⁹ U.S. Joint Staff Report, *Denial, Disinformation, and Doublespeak: Big Oil’s Evolving Efforts to Avoid Accountability for Climate Change* (Apr 2024) at pp 3/65, [online](#)(pdf).

²⁰ Environmental Defence, *Complaint: Enbridge Gas Deceptive Marketing Practices* (last viewed Sept 21, 2024), [online](#).

advertising that 'natural' gas is clean and affordable.²¹ Additionally, in 2024, the Advertising Standards Canada found that Canada Action claims that liquefied natural gas (LNG) in British Columbia "will reduce global emissions" are inaccurate and misleading.²²

iv. Green disposal and end of life claims: include terms or representations such as recyclable, biodegradable, or flushable. These claims may arise from a product being recyclable in a single jurisdiction or flushable in a certain type of waste system, but that is not broadly applicable to many municipalities where the product is sold or advertised. It can include claiming that plastic products are recyclable or compostable when they are not (or cannot be recycled or composted at scale). Examples of such claims include representing single-use coffee pods as recyclable;²³ reusable bags as recyclable;²⁴ and single-use wipes (e.g., baby wipes and personal wipes) as 'flushable'.²⁵

1.2 Why environmental benefit claims are prevalent

Environmental benefit claims are increasingly common. One reason is because there is a growing recognition that sustainability will drive up future revenue.²⁶ As noted by the New Zealand competition enforcement agency, "[e]nvironmental claims can be a powerful marketing tool and traders are using environmental claims as a point of difference with their competitors."²⁷ More succinctly, sustainability sells. However, despite these evolving market conditions, law in Canada has not kept pace to address greenwashing.

Companies are making environmental benefit claims because consumer and investor behaviour is influenced by environmental and sustainability claims. For instance, 65% of Canadians feel that they have a moral obligation to use environmentally friendly products.²⁸ Younger generations, who are at the forefront of environmental movements,²⁹ are more inclined to align their buying

²¹ CAPE, *Canada's Competition Bureau opens investigation into the Canadian Gas Association's alleged greenwashing of methane gas as clean* (Nov 10, 2022), [online](#).

²² CAPE, *Claims that BC LNG will reduce global emissions are inaccurate, misleading and distort scientific data* (last viewed Sept 21, 2024), [online](#).

²³ The Competition Bureau concluded that Keurig Canada Inc.'s claims regarding the recyclability of its single-use coffee pods were false and misleading since, outside of Quebec and British Columbia, they were not widely accepted in municipal recycling programs. Competition Bureau Canada, *Keurig Canada to pay \$3 million penalty to settle Competition Bureau's concerns over coffee pod recycling claims* (Jan 6, 2022), [online](#).

²⁴ A Quebec class action claiming that false and misleading statements have been made that reusable bags are recyclable when they are not recycled or recyclable by sorting centers in Canada. See *Cohen c Dollarama SEC et al*, [2024 QCCS 2087](#) (filed May 22, 2024), (note that the class action has been authorized for Quebec claimants).

²⁵ Friends of the Earth Canada, represented by Ecojustice, filed an application seeking an investigation by the Competition Bureau into false and misleading claims made by manufacturers of 23 wipes and other single-use products represented as 'flushable'. However, the Competition Bureau closed its investigation. See Ecojustice, *Press Release: Calling wipes "flushable" is false and misleading, say environmental groups* (May 1, 2019), [online](#); *The Canadian Press*, "Canada's Competition Bureau won't determine whether wet wipes 'flushable' claims are misleading" (Oct 24, 2022), [online](#).

²⁶ A 2023 poll found that 74% of executives surveyed shared that a motivating factor for adopting sustainability was to increase future revenue. This is an increase from 52% in 2022. See Capgemini, *A World in Balance 2023: Heightened Sustainability Awareness Yet Lagging Actions* (2023) at p 14/76, [online](#) (pdf).

²⁷ Commerce Commission New Zealand, *Environmental Claims Guidelines: a guide for traders* (Jul 2020) at p 2, [online](#) (pdf).

²⁸ Agriculture and Agri-Food Canada, *Canadian environmental sustainability shopping habits* (date modified Jan 25, 2024), [online](#).

²⁹ See for example, *Mathur v Ontario*, [2020 ONSC 6918](#); *La Rose v Canada*, [2023 FCA 241](#); *Environnement Jeunesse c Procureur general du Canada*, [2021 QCCA 1871](#); "Who We Are", *Fridays for Future* (last viewed Aug 28, 2024), [online](#).

power with their morals.³⁰ Claims about green disposal and end of life cycle claims are common, particularly for consumer goods and packaging, because consumers are concerned about the impact of plastic packaging and waste on the environment and their health.³¹ Canadian executives are increasingly and rapidly realizing that sustainability must be a key part of their business.³²

The ability to garner a competitive advantage from sustainability - or at least the appearance of such - has led to widespread greenwashing. Studies in European and Australia find that a majority of claims (53.3% and 57%, respectively) about products provide vague, misleading, or unfounded information on their environmental characteristics.³³

While greenwashing has been common for some time, it is taking on new characteristics, increasing in complexity and scope. This shift has been termed by researchers as “Greenwashing 3.0” and entails practices such as future-looking claims and targeted messaging through social media and other channels directed at audiences beyond consumers, including investors and policymakers. A key recommendation of the researchers associated with Greenwashing 3.0 is for “regulators to increase vigilance and use a range of approaches to manage the changing nature of greenwashing.”³⁴

An example of the complexity and new characteristics in green tactics is discussed in the 2024 Joint Bicameral Staff report from the United States in relation to “Big Oil”. The report found that for decades fossil fuel companies worked to undermine public understanding and deny the underlying science that burning fossil fuels causes climate change, but that their tactics have changed. The report says that now “Big Oil’s deception campaign” has evolved “to deception, disinformation, and doublespeak” including deceptively positioning natural gas as a “bridge fuel”, misrepresenting the viability of carbon capture technology, and misrepresenting their support for achieving net zero emissions.³⁵

1.3 Approaches to guidance on green claims in other jurisdictions

Green guides are common in other jurisdictions to supplement the law on deceptive marketing or on greenwashing specifically. For example, the United Kingdom, Australia, New Zealand, the Netherlands, the European Union and France all have guidance or directives for businesses on advertising green claims. With the Bureau’s guidance on green claims archived since 2021, Canada has been lagging.³⁶

³⁰ Jeff Fromm, “As Gen Z’s Buying Power Grows, Businesses Must Adapt their Marketing” in *Forbes* (Jul 20, 2022), [online](#).

³¹ Environmental Defence, “New Poll: 84 per cent of People across Canada Want Grocery Chains to Get Rid of Unnecessary Plastic,” (July 31, 2024), [online](#).

³² In 2023, 49% of Canadian executives (more than double the amount as in the year prior), said that the business case for sustainability was clear. Environment Journal, *Canadians are among most suspicious when it comes to sustainability claims* (Nov 22, 2023), [online](#).

³³ European Commission (2020) *Environmental claims in the EU – inventory and reliability assessment*, accessed [online](#); Australian Competition and Consumer Commission (2023) *Greenwashing by Businesses in Australia*, accessed [online](#).

³⁴ Wren Montgomery et al, *Greenwashing 3.0: Why addressing greenwashing remains as important as ever* (2023) at p 10, [online](#) (pdf).

³⁵ House Committee on Oversight and Accountability Democrats and Senate Committee on the Budget, *Denial, Disinformation, and Doublespeak: Big Oil’s Evolving Efforts to Avoid Accountability for Climate Change* (April 2024), pp 2-3/65, [online](#) (pdf).

³⁶ Competition Bureau Canada, *Environmental Claims: A Guide for Industry and Advertisers* (published June 25, 2008, archived Nov 4, 2021), [online](#).

It is common for green guides to have general principles that apply to all environmental benefit claims. The Netherlands, Australia, New Zealand, the United Kingdom, South Korea and the United States all have general principles or rules in their guidance that are supplemented with guidance on specific examples.³⁷ The principles are important, because the guidance will not cover every type of environmental benefit claim that currently exists or may arise in the future.³⁸

2. Claims less likely to have adequate and proper testing or substantiation

The consultation questions ask whether there are certain types of claims about environmental benefits of: products or services that are less likely to be based on adequate and proper testing, and businesses or business activities that are less likely to be based on “adequate and proper substantiation in accordance with internationally recognized methodology”. It also asks what about these types of claims makes them harder to test or substantiate. In this section we highlight some overarching considerations, and then go into detail in the next section on examples of specific types of claims.

Claims about production processes under the control of the manufacturer are fairly straightforward to test. For example, “CO₂ emissions linked to this product halved as compared to 2020”, water use reduced, etc. Comparative claims showing excellent environmental performance related to competitors are also easier to test using methodologies such as Product Environmental Footprint (PEF) and Organisation Environmental Footprint (OEF) methods, collectively known as Environmental Footprint methods. These methods have been extensively developed in Europe and provide meticulous guidelines for modelling, calculating, and reporting life cycle environmental impacts of products and organizations.

However, there are other environmental claims that are more challenging to test due to issues of complexity and unknown variables. In particular, claims regarding impacts on ecosystems, human health and the climate cannot be tested in the same way that performance claims under controlled conditions can be. Such claims can, therefore, give an incomplete picture of the environmental credentials and overall health and environmental impact of a product.

For example, claims regarding recyclability or degradability are often difficult to test adequately and properly if the testing conditions do not reflect real world conditions. Similarly, it is more difficult to test claims: regarding sustainable fisheries, which often operate under circumstances of limited information regarding the sustainability of the targeted fish stock; regarding food and agricultural products with respect to farm level biodiversity and nature protection are difficult to measure; and, claims about microplastics release, human and animal toxicity, and other health impacts of the product may be poorly understood.

Additionally, climate-related claims that are made based on carbon offsets are also particularly prone to being unclear, ambiguous, and difficult to test. This is because carbon offsets are generated outside the company's value-chain and are dependent on assumptions of long-term storage of carbon that cannot be assured upfront.

³⁷ See Appendix A.

³⁸ The UK also recognizes that its guidance is not exhaustive, and does not cover every situation that an infringement may occur. See Competition and Markets Authority, *Guidance, Green claims code: making environmental claims* (Sept 20, 2021), [online](#).

3. Considerations on whether testing is “adequate and proper”

This section responds to the question that asks what the Bureau should consider when it evaluates whether testing to support claims about the environmental benefits of products or services is “adequate and proper”. First, we outline considerations on the process and method for testing and substantiation that are needed to support the credibility of environmental benefit claims and then make recommendations on specific types of environmental benefit claims.

The already established principles applicable to an adequate and proper test under the *Competition Act*, s. 74.01(1)(b) should apply - with necessary modifications - to the new greenwashing provisions. As such, to meet the “proper” standard, the testing or substantiation must be “fit, apt, suitable or as required by the circumstances.”³⁹ A key component to meet this “proper” standard is that the environmental benefit claim must be understandable and give the correct general impression to the consumer. As environmental benefit claims can be difficult for the average consumer to understand and to compare to other options on the market, businesses and advertisers should be particularly attuned to ensure that the environmental benefit claims align with the findings of the testing and substantiation.

The Bureau’s guidance and enforcement of the adequate and proper standard should, at a minimum, follow the lead of the Green Claims Directive in the EU on substantiation of environmental claims. This Directive provides a useful guide for the minimum criteria to prevent claims from being misleading.⁴⁰

Recommendation 1 – In evaluating whether testing or substantiation of environmental benefit claims is adequate and proper, the guidance should require that the testing or substantiation:

- a. method relies on recognized, current scientific evidence and state of the art technical knowledge;
- b. assesses significant impacts, aspects and performance from a life-cycle perspective;
- c. takes into account all significant aspects and impacts to assess the performance;
- d. demonstrates whether the claim is accurate for the whole product or only for parts of it (for the whole life cycle or only for certain stages, for all the trader’s activities or only a part of them);
- e. demonstrates that the claim is not equivalent to requirements imposed by law, if relevant;
- f. provides information that can be used to demonstrate whether the product performs environmentally significantly better than what is common practice;
- g. identifies whether a positive achievement leads to significant worsening of another impact;
- h. includes accurate primary or secondary information.

Below we outline considerations for specific types of claims that are particularly problematic and common:

- Future claims, including climate commitments;
- Emissions reduction and climate neutrality claims based on carbon offsets;

³⁹ Competition Bureau Canada, *The Deceptive Marketing Practices Digest – Volume 2*, (Mar 7, 2016), [online](#).

⁴⁰ European Commission, *Directive of the European Parliament and of the Council: Explanatory Memo*, Brussels, 22.3.2023 at s 6.2, [online](#); European Parliament: Legislative Train Schedule, *Substantiating green claims In “A European Green Deal”* (June 20, 2024), [online](#).

- Generic claims
- Selective disclosure claims;
- Green disposal and end of life claims
- Inherently harmful products, services and businesses

3.1 Future claims, including climate commitments

The Bureau should implement strict requirements around making future environmental performance claims, including climate commitments.

Climate change presents a good example for looking at future claims. The general impression of a climate commitment is that a corporation is taking the action needed to combat climate change.⁴¹

The standard to substantiate advertised climate commitments, emissions reductions, and climate action must be rigorous and represent a high-watermark, rather than the lowest common denominator, because climate change impacts threaten health and safety. In *Imperial Brush*, the court decided that a higher standard was appropriate in the context of a deceptive marketing matter that involved consumer safety. *Imperial Brush* was about a product that helped to clean chimneys thereby avoiding the dangerous risk of chimney fires.⁴² The risk from climate change is even more dangerous, not only to the consumer, but to humans and ecology across the world. Therefore, the need for accurate claims that are adequately and properly tested is even more important.

Changes to the climate are putting communities at risk and threatening basic human needs, such as physical and mental health, food, water, and human security.⁴³ A 2022 Health Canada report estimated that over five recent years, poor air quality from wildfire smoke has caused as many as 240 premature deaths from short-term exposure and as many as 2,500 premature deaths due to long-term exposure.⁴⁴ Climate change also contributed to a heat wave in British Columbia in

⁴¹ See for example European Union, *Climate action* (last viewed Aug 30, 2024), [online](#); The Global Goals, *Goal 13 Climate Action* (last viewed Aug 30, 2024), [online](#).

⁴² *The Commissioner of Competition v Imperial Brush Co Ltd and Kel Kem Ltd. (c.o.b. as Imperial Manufacturing Group)*, [2008 CACT 2](#) at para 123. See also Competition Bureau Canada, *The Deceptive Marketing Practices Digest – Volume 2*, (March 7, 2016), [online](#).

⁴³ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2023: Synthesis Report, Summary for Policymakers* (2023) at pp 11/42, 30/42, ss A.2, C.1.3, [online](#) (pdf). (“Without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and well-being of current and future generations”). IPCC, *AR6 WGII, Summary for Policymakers*, paras. B.1.4, B.4.4, B.5.1, Figs. SPM.1, SPM.2 SPM.3, SPM.4, Chs. 7, 13; World Health Organization, *Mental Health and Climate Change: Policy Brief* (2022) [online](#) (pdf).

⁴⁴ Pierre Gosselin et al., *Natural Hazards, in Health of Canadians in a Changing Climate: Advancing our Knowledge for Action*, p. 21 (Peter Berry & Rebekka Schnitters eds., 2022), [online](#) (pdf).

2021⁴⁵ that resulted in the death of 619 people.⁴⁶ The Supreme Court of Canada has recognized that lives are at risk and health will suffer if global temperatures rise beyond 1.5°C.⁴⁷

It is very difficult for the average consumer (or the public more broadly) to understand whether a business is actually aligned with its stated climate commitments, or whether it is simply using climate as a marketing strategy. This is because climate science is complex and because consumers do not have the information or expertise necessary to understand all of the different aspects of a product, service or business and its impact on the climate.

In the EU, making a claim about future environmental performance is presumptively considered misleading, unless the claim is accompanied by specific information. In March 2024, EU Directive 2005/29/EC was amended to define “misleading commercial practice” to include:

“making an environmental claim related to future environmental performance without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, such as allocation of resources, and that is regularly verified by an independent third party expert, whose findings are made available to consumers.”⁴⁸

Other jurisdictions similarly address future claims in their environmental benefits guidance, like Australia and the Netherlands.⁴⁹

Recommendation 2 – The guidance should specify that future environmental performance claims are considered misleading unless they are accompanied by specific information in an implementation plan (including targets and the allocation of resources) that is regularly and independently verified.

3.2 Emissions reduction and climate neutrality claims based on carbon offsets

Claims about carbon neutrality, net-zero emissions, and emissions reductions that rely on carbon offsets are not only difficult to test, but also give an unclear general impression to consumers about GHG emissions compensation.

With carbon offsets it is difficult to ensure “additionality” (whether the emissions savings would have happened without paying for the offset) and “permanence” (whether the storage of carbon will last as long as is necessary to help address climate change).

⁴⁵ Piyush Jain et al., *Record-breaking fire weather in North America in 2021 was initiated by the Pacific northwest heat dome*, 5 *Communications Earth and Environment*, p. 1 (2024) [online](#). See also Human Rights Watch, *Canada: Disastrous Impact of Extreme Heat: Failure to Protect Older People, People with Disabilities in British Columbia*, (Oct. 5, 2021) [online](#).

⁴⁶ British Columbia Coroners Service, *Extreme Heat and Human Mortality: A Review of Heat-Related Deaths in B.C. in Summer 2021*, Report to the Chief Coroner of British Columbia. British Columbia Coroner’s Office, p. 4 (June 7, 2022) [online](#) (pdf).

⁴⁷ *Reference re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#), paras 8-9 (Majority decision); *Mathur v Ontario*, 2023 [ONSC 2316](#), para 23 (The Ontario Superior Court of Justice stated that “Deaths in Ontario are projected to increase significantly if global temperatures rise above 1.5°C”).

⁴⁸ “Directive (EU) 2024/825 of the European Parliament and the Council as of 28 February 2024”, *Official Journal of the European Union*, pp.11/16, [online](#) (pdf).

⁴⁹ Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023) at pp. 2, 10, [online](#) (pdf); Autoriteit Consument & Markt, *Guidelines Sustainability claims* at pp 17-18, [online](#) (pdf).

Relying on carbon offsets can also deter businesses from reducing emissions from their own operations and value chain.⁵⁰ This is a concern because drastic emissions reductions from all emitters are required to address climate change, and there are far more emissions being released into the atmosphere than there are natural sinks (e.g., forests) and artificial means (e.g., carbon capture and storage) to sequester them. Achieving climate goals, like a 1.5°C pathway or net zero, requires all emitters to urgently reduce their emissions in addition to the protection and enhancement of natural sinks. Relying on a carbon offset to claim a climate benefit, in place of actually reducing one's own emissions, is not a genuine climate action. Presenting it as such is therefore deceptive.

Research by advertising authorities has found that consumers are confused by carbon offsets, misunderstanding the role of offsets and believing that such claims imply an absolute reduction in carbon emissions had taken place.⁵¹

As such, the EU is restricting claims regarding carbon offsets. Under its recently adopted directive empowering consumers for the green transition, environmental claims that **a product** has a neutral, reduced, or positive environmental impact based on the use of carbon credits are prohibited.⁵² Similarly, the Dutch environmental claims guide prohibits companies from giving the impression that production processes do not generate any GHG emissions if carbon offsets are used. The stated aim of the Dutch approach is for companies to make their production processes more sustainable and produce fewer GHG emissions.⁵³

With respect to the use of carbon offsets for claims regarding **businesses**, the EU's Green Claims Directive (currently under draft form) suggests the following guidelines regarding the use of any claim regarding offset compensation:

- 'compensation claims' based on the use of carbon offsets (that is, where carbon offsets are used towards a climate target) may only be made in respect of the 'residual emissions' of a trader. The term "residual emissions" is to be defined within a year but has been referred to in the *European Sustainability Reporting Standards (ESRS)* as those remaining *after approximately 90-95% of GHG emission reductions have taken place (allowing for the possibility for justified sectoral variations in line with a recognized sectoral pathway.)*
- regarding carbon credits for compensation of residual fossil emissions, only permanent removals will be considered as adequate substantiation. Permanent carbon removal is defined as any practice or process that captures and stores "atmospheric or biogenic carbon for several centuries" and which is not combined with enhanced hydrocarbon recovery.

It should be noted that the proposed green claims directive would still allow companies to communicate climate mitigation financial contributions beyond their value chain so long as these

⁵⁰ European Parliament legislative resolution of 12 March 2024 on the proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) ([COM\(2023\)0166](#) – C9-0116/2023 – [2023/0085\(COD\)](#)), [online](#).

⁵¹ Advertising Standards Authority and Committee of Advertising Practice Ltd. (CAP), *Updated Environmental Guidance: carbon neutral and net zero claims in advertising* (Feb 10, 2023), [online](#).

⁵² European Parliament, *Briefing: 'Green claims' directive* (March 2024) p.7, [online](#) (pdf).

⁵³ Autoriteit Consument & Markt, *Guidelines Sustainability claims*, p 13, [online](#) (pdf).

are not used to claim an improved climate impact of their product or the company as so-called “contribution claims”. While these cannot count towards their climate targets, nor be included in their emissions reductions claims, this approach still allows a company to advertise beneficial environmental actions they are taking (E.g. we planted 1 million trees).

The approach of the EU to the use of offset claims is designed to incentivize businesses to make emissions reductions themselves and avoid offsets, which are fraught due potentially damaging environmental and social impacts, harm to Indigenous and local communities,⁵⁴ not to mention their demonstrated ineffectiveness.⁵⁵

The EU however, has faced criticism for taking an inconsistent approach to the use of carbon offsets for carbon neutrality claims of products and businesses since such claims are equally deceptive in both cases.⁵⁶ Here in Canada, the Bureau should take a more consistent approach in ensuring that consumers are not misled by emissions reduction and carbon neutral claims, and set stringent guidance that such claims about both products and businesses, including for residual emissions, cannot be based on using carbon offsets.

To provide transparency, claims regarding emissions reductions within the company’s supply chain needs to be clearly differentiated from those related to removals (offsets). For example, if a company claims a 10% reduction in GHGs, it must clarify whether this is a result of reductions or activities outside of the supply chain. Further, all claims to net-zero or carbon neutrality based on carbon offsets should be prohibited as these are inherently deceptive.

Recommendation 3 – The guidance should advise that **emissions reduction or carbon neutral claims** that a product, service or business has a neutral, reduced, or positive climate impact cannot be made if the claim is actually based on carbon offsets.

3.3 Generic claims

Generic claims, being inherently vague or general statements, are difficult (if not impossible) to substantiate.⁵⁷ The Bureau already states on its website that it is best practice to ensure that claims are specific and precise.⁵⁸ The Bureau’s statement should be taken further. The guidance should explain that generic environmental benefit claims cannot be adequately and properly tested or substantiated because the claims are vague and lack precise meaning testing cannot be suitable to prove the claims, such that no credible generic environmental benefit claims can be made.

The approach of stopping the use of generic environmental benefit claims is increasingly common in other jurisdictions. The US Federal Trade Commission’s green guide says, “marketers should not make broad, unqualified general environmental benefit claims like ‘green’ or ‘eco-friendly.’

⁵⁴ Dunne, D., Quiroz, Y. (Sept 25, 2023) Mapped: The impacts of carbon-offset projects around the world. *Carbon Majors*. [online](#).

⁵⁵ Jones, J.P. and Lewis, S.L., 2023. Forest carbon offsets are failing. *Science*, 381(6660), pp.830-831.

⁵⁶ See Lindsay Otis, *Green Claims Directive: European Parliament votes to ban carbon neutrality for products but not companies* (Mar 12, 2024), [online](#).

⁵⁷ Competition and Markets Authority, CMA guidance on environmental claims on goods and services (Sept 20, 2021) at s 3.48, p 21, [online](#) (pdf).

⁵⁸ Competition Bureau Canada, Environmental claims and greenwashing (Dec 2, 2021), [online](#).

Broad claims are difficult to substantiate, if not impossible.⁵⁹ Similarly, the EU has prohibited companies from making generic environmental claims on products without providing proof.⁶⁰

Recommendation 4 – The guidance should state that, as generic environmental benefit claims cannot be adequately and properly tested or substantiated, such claims cannot meet the legal requirement for adequate and proper testing or substantiation.

3.4 Green disposal and end of life claims

Recycling claims imply that a product is more sustainable than it is. Research by the Advertising Standards Association (ASA) in the UK found that consumers were surprised when disposal of a product, in particular plastics, could result in harmful by-products, such as toxins. As such, ASA guidance stipulates that advertising “must not claim that the disposal process of a product, such as ‘biodegradable’ does not have any negative impact on the environment where this is not the case.”⁶¹

Guidelines on claims regarding green disposal should align with the regulations in the government’s Regulatory Framework Paper on plastics labelling and regulations under the *Canadian Environmental Protection Act* (CEPA) for recyclability and compostability labeling.⁶²

3.5 Selective disclosure and other commercial practices that should be recognized as deceptive marketing

Selective disclosure, or cherry-picking, is the practice of emphasizing one ‘sustainable’ aspect of a product’s composition or value chain or business to expressly or implicitly give the impression that the product or business is more ‘sustainable’ than it is. An example of selective disclosure is an airline advertising that it is ‘reducing emissions’ because it is using bio-based ‘sustainable aviation fuel’ on some of its routes but those flights make up less than 1% of the airline’s overall schedule or it is continuing to operate the majority of its flights using fossil fuels or it is projecting growth and increasing capacity, with total emissions rising over the next 5 years.⁶³

As such, even technically accurate claims may be deceptive if the specific claim only relates to part of a product, if there are also significant negative impacts from that product, or if the benefit comes at a significant environmental cost.⁶⁴ When green claims hide or omit important information, consumers do not have the full picture.⁶⁵ It also means that the testing or substantiation is not suitable to the context and would therefore not meet the adequate and proper standard.

⁵⁹ Federal Trade Commission, *Environmental Claims: Summary of the Green Guides* (last viewed Sept 13, 2024) at p 1, [online](#) (pdf).

⁶⁰ European Parliament, *Stopping greenwashing: how the EU regulates green claims* (last updated March 21, 2024), [online](#). See also Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Sept 20, 2021) at s 3.9, p 13, [online](#) (pdf) which warns against using generic claims without further information.

⁶¹ OsborneClarke, “New UK advertising guidance as ASA proposes to actively investigate green disposal claims in 2024” (Dec. 21, 2023), [online](#) (webpage).

⁶² See the Government of Canada’s regulatory framework paper from 2023, [online](#).

⁶³ Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023) at p 16, [online](#) (pdf).

⁶⁴ Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Sept 20, 2021) at s 3.17, p 14, [online](#) (pdf).

⁶⁵ Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023) at p 1, [online](#) (pdf).

Selective disclosure when making environmental benefit claims should be prohibited in the Bureau's guidance. This is common practice in other jurisdictions. For example, the UK's Competition and Market Authority's environmental benefits guidance states: "businesses should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects."⁶⁶

Additionally, in the EU, robust substantiation includes demonstrating whether the claim is accurate for the whole product or only for parts of it (for the whole life cycle or only for certain stages, for all the business's activities or only a part of them) and ensuring no omission of any significant aspects and impacts.⁶⁷ For example, if harmful by-products are produced during the disposal process, this needs to be disclosed, and if not, it would be considered a misleading omission.

Furthermore, it is also necessary to identify whether a positive achievement leads to significant worsening of another impact or is outside of the trader's supply chain. For example, a claim that a company has reduced their use of oil or gas energy when this is due to an increase in the use of coal-fired electricity should be deemed misleading.

Recommendation 5 – The guidance should confirm that selective disclosure made in voluntary environmental benefit claims is greenwashing and requires adequate and proper testing or substantiation to:

- a. demonstrate that the claim is accurate for the whole product;
- b. ensure there is no omission of any relevant aspects of the production process; and
- c. identify whether a positive achievement leads to a significant worsening of another impact.

There are several other commercial practices that should be regarded as deceptive marketing of environmental benefit claims without the need for case-by-case assessment.

Recommendation 6 – The guidance should confirm that certain commercial practices are regarded as deceptive, without the need for case-by-case assessment, including:

- a. Displaying a sustainability logo in relation to a product, service or business that is not based on a credible/verified certification scheme;
- b. Presenting requirements imposed by law as a distinctive feature of the product, service or business;
- c. Presenting a common commercial practice as a distinctive feature of the product, service or business.
- d. Using "green" imagery, such as clear blue skies, lush forests, or other robust ecosystems as a way to strategically appropriate nature and environmental values in order to strengthen green messaging.
- e. Claiming that a business or an industry is critical in solving other societal or environmental issues in order to justify the environmental impact of its operations or claiming that the business or industry is an essential part of the environmental

⁶⁶ Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Sept 20, 2021) at s 3.18, p 14, [online](#) (pdf).

⁶⁷ European Commission, *Directive of the European Parliament and of the Council: Explanatory Memo*, Brussels, 22.3.2023 at s 6.2, [online](#).

solution. For example, fossil fuel industry groups claiming to have an important role in climate action,⁶⁸ or the manufacturing industry claiming that “Plastic Saves Lives.”⁶⁹

3.6 Inherently harmful products, services and businesses

The production and use of certain products and industries - by their very nature - threaten significant harm to human health and the environment. Given the need to reduce the use of such products, practices, services and businesses, any claim they make regarding beneficial environmental performance would be inherently deceptive. As the advertising and environmental claims can encourage consumption of these harmful products, the Bureau should introduce restrictions or prohibitions into explicit environmental claims for such products or businesses.

For example, human use of fossil fuels has caused the climate crisis and the Intergovernmental Panel on Climate Change (IPCC) concludes that fossil fuel use needs to decline immediately and drastically for there to be any chance of limiting global warming.⁷⁰ As such, making any environmentally positive claim about fossil fuels is misleading because of the inherently harmful nature of their combustion.

Similarly, promoting substances classified as toxic, carcinogenic, causing endocrine disruption to human health or the environment, etc., as providing environmental benefits can lead consumers to believe they are safe to use and hold no health risks.

Several countries are already limiting green claims for highly polluting and health harming industries. For example, Norway has limited green claims for cars since 2007,⁷¹ while in France the corollary to the CRTC (the Autorité de Régulation de la Communication Audiovisuelle et Numérique) is responsible for promoting codes of conduct through “climate contracts” that forbid commercial communications that favourably present the environmental impact of goods or services that actually have a negative effect on the environment.

The EU is also looking into restricting environmental benefit claims of these products and currently requires that “environmental claims by highly-polluting industries shall be made in relative terms to allow consumers to understand the product’s overall negative impact on the environment” and that “Highly polluting industries may be required by courts or authorities to make it clear to the consumer in their environmental claims that the product has an overall negative impact on the environment.”

There are several pressing reasons to crack down on greenwashing by highly polluting industries and sectors. Research indicates that the biggest polluters are those that benefit the most from making deceptive and unfounded green claims. This is because firms expected to be polluting get even more of a competitive advantage from greenwashing and do not suffer comparative market consequences from their greenwashing, while genuinely green companies are held to a

⁶⁸ Rusill C., McCurdy P., Kliever J., (Apr 12, 2024), Oilsands disinformation is worse than you think, *Canada’s National Observer*, [online](#).

⁶⁹ Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC), *Billboard Truck Set Up to Counter UN Plastics Treaty* (May 1, 2024), [online](#).

⁷⁰ [IPCC, AR6 WGIII, Summary for Policymakers](#), para. C.3.2 (Referring to the pp 5-95 data. Note that without CCS the decline is even greater. “The use of coal, oil and gas without CCS in modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot is projected to be reduced to a greater degree, with median values of about 100%, 60% and 70% in 2050 compared to 2019.”).

⁷¹ <https://www.reuters.com/article/business/autos-transportation/cars-neither-green-nor-clean-new-norway-rules-idUSL06713234/>

high standard and suffer more.⁷² Greenwashing also serves to undermine consumer confidence in and trust in sustainability claims with lasting effects, discouraging green consumption which ultimately favours the largest polluters.

It is no surprise, then, that numerous reports, studies, and analyses demonstrate the deceptive practices used by the fossil fuel industry to greenwash their business and products.⁷³

Case Study - Carbon capture and storage is not a credible path to net-zero for the fossil fuel industry

Carbon capture and storage (CCS) is touted by the fossil fuel industry as the sector's primary emission reduction solution. However, CCS in the oil and gas sector is expensive, energy intensive, slow to implement, and unproven at scale. Importantly, CCS in oil and gas production only focuses on operational emissions and does not address the downstream emissions of fossil fuel use, which are the majority (~80%) of fossil fuel lifecycle emissions.⁷⁴

Nevertheless, as was found in the US, the fossil fuel industry has "massive public-facing campaigns" that "portray CCS as a viable and available solution to increasing greenhouse gas emissions, but the companies acknowledge internally that they are not planning to deploy the technology at the scale needed to solve the warming crisis."⁷⁵ Similarly, research on CCS claims by the fossil fuel industry in Canada notes that "CCS claims have not led to any verifiable actions". The research notes that green claims can be a political strategy to maintain corporate reputation and social license.⁷⁶

CCS is also often used for enhanced oil recovery (EOR), i.e. to facilitate additional oil extraction. Approximately 70% of the carbon captured in existing CCS facilities in Canada is used to increase the production of aging oil fields through EOR. CCS is thereby facilitating continued Canadian oil and gas production.⁷⁷

Companies talking about supporting environmentally safe business but lobbying against climate action and environmental protection are known as "talking green while lobbying brown."⁷⁸ Research by InfluenceMap shows that Canada's oil industry lobbies against vital climate policies

⁷² Dr. Annmarie Hanlon, *Blog - Greenwashing: How dirty firms are given an unspoken social licence to pollute and lie about it*, online Cranfield School of Management; George I. Kassinis et al, "Stigma as Moral Insurance: How Stigma Buffers Firms from the Market Consequences of Greenwashing" in *Journal of Management Studies* (Sept 27, 2022), [online](#).

⁷³ CAPE and Greenpeace, *Greenwashing Big Oil & Gas: The Fossil Fuel Deception Playbook* (undated), [online](#) (pdf); U.S. Joint Staff Report, *Denial, Disinformation, and Doublespeak: Big Oil's Evolving Efforts to Avoid Accountability for Climate Change* (Apr 2024) at pp 32/65, [online](#) (pdf); Environmental Law Center, *Reforming the Competition Act to Defend Climate: The Need to Regulate Deceptive Ads* (March 2023), [online](#) (pdf).

⁷⁴ Angela Carter and Laura Cameron, *Why Carbon Capture and Storage is Not a Net-Zero Solution for Canada's Oil and Gas Sector* (Feb 9, 2023), [online](#) ("Carter & Cameron - CCS is not a net-zero solution").

⁷⁵ U.S. Joint Staff Report, *Denial, Disinformation, and Doublespeak: Big Oil's Evolving Efforts to Avoid Accountability for Climate Change* (Apr 2024) at p 32/65, [online](#) (pdf).

⁷⁶ Melissa Aronczyk et al., *Greenwashing, net-zero, and the oil sands in Canada: The case of Pathways Alliance*, Energy Research & Social Science, Volume 112, 2024, 103502, ISSN 2214-6296, [online](#).

⁷⁷ *Carter & Cameron - CCS is not a net-zero solution*

⁷⁸ CAPE and Greenpeace, *Greenwashing Big Oil & Gas: The Fossil Fuel Deception Playbook* (undated) at p 24, [online](#) (pdf).

such as a proposed cap on oil and gas emissions.⁷⁹ In 2022, Natural Resources Canada had 318 reported meetings with oil and gas lobbyists, while Finance Canada had 104.⁸⁰

The forthcoming guidance provides an opportunity to draw a clear line in the sand between businesses and advertisers who are making genuine efforts to bring a product, practice, or service to market that demonstrates excellent environmental performance and those who are looking for an unfair competitive advantage or to save their business from obsolescence.

The guidance should strictly limit fossil fuel advertising. While quantitative numbers on emissions related to fossil fuels provide useful information, qualitative environmental benefit claims promoting fossil fuels should not be permitted. Products that contain substances that are classified as particularly harmful should also be addressed in the guidance. Due to their negative health and environmental impacts, green claims for such products are misleading. The list of products to be included in the list B) below should be cross-referenced through Canada’s list of hazardous products in CEPA as well as the Watch List outlined in Bill S-5.⁸¹

Recommendation 7 - The guidance should state that environmental benefit claims about general categories of products or practices that are inherently harmful to the environment or are emissions intensive cannot be made credibly. This includes:

- A) Qualitative environmental benefit claims about fossil fuel products, fossil fuel transport, and the businesses that produce them.
- B) Products that contain substances that are classified as:
 - toxic,
 - hazardous to the environment,
 - carcinogenic, mutagenic, or toxic for reproduction (CMR),
 - causing endocrine disruption to human health or the environment,
 - persistent, bioaccumulative and toxic (PBT),
 - very persistent, very bioaccumulative (vPvB),
 - persistent, mobile and toxic (PMT), or
 - very persistent, very mobile (vPvM).

4. The standard for IRMs to meet the adequate and proper substantiation requirement

The consultation asks what IRMs the Bureau should consider when evaluating whether claims about the environmental benefits of the business or business activities have been “adequately and properly substantiated and whether there are limitations to those methodologies that the Bureau should be aware of. In this section, we respond recommending that the Bureau should provide guidance that outlines general criteria for IRMs to meet the “adequate and proper” substantiation standard. The Bureau’s guidance should also establish the United Nations’ High Level Expert Group’s standards on net-zero pledges as the IRM for climate commitments of businesses and financial institutions.⁸²

⁷⁹ CAPE and Greenpeace, *Greenwashing Big Oil & Gas: The Fossil Fuel Deception Playbook* (undated) at p 24, [online](#) (pdf); Influence Map, *The Canadian Oil and Gas Industry and Climate Policy* (Feb 2023), [online](#).

⁸⁰ Logan, C. and Richer Vis, X. (Feb 7, 2023) Investigation: Big Oil lobbyists outgun environmentalists with access to the most powerful federal ministries. *National Observer*, [online](#).

⁸¹ Government of Canada. *Bill S-5: Strengthening Environmental Protection for a Healthier Canada Act* (Jun 2023), [online](#).

⁸² United Nations High Level Expert Group, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Nov 2022), [online](#) (pdf).

Overall, the requirement to substantiate green claims about a business in accordance with an IRM helps to ensure that our legislative framework is flexible enough “to incorporate global advancements in environmental matters” to allow Canada “to stay on the cutting edge of best practices and remain responsible to the progress achieved elsewhere”.⁸³ The notion of an IRM, while new to the *Competition Act*, is not wholly new to Canadian law, nor to greenwashing standards. For example, the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations under the *Canadian Environmental Protection Act* uses the similar term - “internationally recognized method” - when setting requirements for measuring carbon content and setting heating values of fuels.⁸⁴ The Australian environmental claims guide also recommends completing an emissions baseline assessment using “established Australian or internationally recognized methodologies” when making emissions-related claims.⁸⁵

Case study – Environmental Footprint Methods

The EU has pioneered the use of environmental footprint methods for modelling, calculating, and reporting life cycle environmental impacts of products and organizations. The methodologies build upon established international practices and standards, such as ISO 14000/44 from the International Organization for Standardization.

In particular, the Environmental Footprint methods have developed benchmarks corresponding to the Environmental Footprint profile of the average production in the market, also called a “representative product or/ organization” which facilitates comparative claims informed by life-cycle analysis. This methodology, while not suitable for all green claims, provides one rigorous best practice standard that is readily available.

4.1 Criteria for an “adequate and proper” IRM

A green claim about a business can only be adequately and properly substantiated if the IRM the claim is based upon sets an appropriate standard to support the claim. If the IRM is weak and obfuscates negative environmental impacts, greenwashing will proliferate and the goal and intent of the new greenwashing amendments in the Act will not be met.⁸⁶ The Bureau’s guidance should establish criteria for IRMs in a manner that does not set such a low bar as to unintentionally validate or support greenwashing.

The Bureau should avoid industry-created methodologies (even if internationally recognized), which may seek to implement standards that are not “adequate and proper”. Such IRMs may represent a lower standard of ambition, rather than a standard that is aligned with the best environmental and health sciences. This would permit the race to the bottom that this legislation

⁸³ Honourable Lucie Moncion, *Debates of the Senate (Hansard)*, 1st Session, 44th Parliament, Vol 153, Issue 214 (Jun 18, 2024), [online](#).

⁸⁴ See Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations ([SOR/2012-167](#)) under *Canadian Environmental Protection Act, 1999*, ss 23(2)(a)(ii)(B), 23(2)(b)(iii), 24(6)(a)(iii)(B), 24(6)(b)(ii)(B).

⁸⁵ Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023) at p 24-25, [online](#) (pdf).

⁸⁶ The bill containing the amendments that create ss 74.01(1)(b.1) and (b.2) were described as a “bill that aims to strengthen the fight against greenwashing.” Honourable Lucie Moncion, *Debates of the Senate (Hansard)*, 1st Session, 44th Parliament, Vol 153, Issue 214 (June 18, 2024), [online](#).

is designed to protect against and fail to ensure competitiveness on the global stage. As the Australian Competition and Consumer Commission confirms, independent and science-based evidence should be used as substantiation as such evidence is the most credible.⁸⁷

Finally, the criteria and assessment of any IRM should be publicly available. This will add to transparency and comparability as well as better general understanding of the test being used.

Recommendation 8 – The guidance should specify that IRMs must meet the following minimum criteria to be considered “adequate and proper substantiation”:

- a. Be based on an assessment that relies on current recognized scientific evidence and state of the art technical knowledge;
- b. Demonstrate the significance of impacts, aspects and performance from a life-cycle perspective;
- c. Take into account all significant aspects and impacts to assess performance;
- d. Be independent, and not an industry-created standard;
- e. Be publicly available.

4.2 Climate commitments should be substantiated by the United Nations High Level Expert Group standards

The UN High Level Expert Group’s standard, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*,⁸⁸ should be the Bureau’s recommended IRM for climate commitments. The standard applies across industries, including to businesses and financial institutions, establishing broad benchmarks that are based on the best available scientific requirements to meet climate targets.

4.2.1 The UN Expert Group Standard Aligns with Climate Science

To ensure that the IRM for climate commitments meets the adequate and proper substantiation requirement, the associated plans (i.e., climate transition plans) need to be based on a methodology that, at a minimum, includes the following elements:

- a. **Limit warming to 1.5°C.** The commitment and plan must align with the globally recognized goal of limiting average global warming to 1.5°C, which is necessary to prevent the worst impacts of climate change.
- b. **Set short- and medium-term emissions targets.** Effective action on climate change requires immediate and continued GHG emission reductions. As noted, scientific consensus is that GHG emissions must peak before 2025 and almost halve by 2030. Short- and medium-term targets are necessary because, if decarbonization efforts are delayed or emissions trajectories overshoot benchmarks, the transition may become unmanageable and disorderly and will lead to a failure to limit warming in line with climate goals.⁸⁹

⁸⁷Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023) at p 1, [online](#) (pdf).

⁸⁸ United Nations High Level Expert Group, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Nov 2022) at p 2, [online](#) (pdf).

⁸⁹ Transition Pathways Initiative, *TPI State of Transition Report 2024: Implications for Investors* at p 39, [online](#) (pdf).

- c. **Include the full scope of business activities and impacts.** Climate transition plans must account for the GHG emissions that are created directly from operations and direct energy use, but they must also account for the value chain of the business, such as the GHG emissions from the end use of the products and services (including financing) provided. Therefore, the transition plans and its targets must encompass the full scope of GHG emissions - both direct and indirect - that a company creates in its own operations and in its wider value chain (known as Scope 1, Scope 2, and Scope 3 emissions).
- d. **Pledge specific targets aimed at ending the use and/or support for fossil fuels.** Fossil fuels are the largest contributor to climate change, responsible for over 75% of global GHG emissions.⁹⁰ The pathway to limit warming to 1.5°C relies on near-term emissions reductions achieved through a rapid phase-out of fossil fuels.⁹¹ Current fossil fuel infrastructure, without early retirements, will emit more emissions than is compatible with limiting warming to 1.5°C.⁹²
- e. **Be based on the proven method of reducing emissions and not future unprovable or currently unscaled technological advancements.** While climate commitments are representations that discuss future performance; they must be based on the currently existing technology. As such they must be based on current proven measures to reduce GHG emissions, such as moving from fossil fuels to renewable energy, and not ineffective and unproven measures.⁹³ This is critically important for the fossil fuel industry, which has been identified as publicly relying on CCS, while internally acknowledging the ineffectiveness of the technology.⁹⁴

The UN Expert Group's standard requires the above elements of a credible transition plan and is, therefore, an adequate and proper methodology. Among other requirements, the standard requires that climate commitments should: be aligned with climate science to limit warming to 1.5°C;⁹⁵ have "stepping stone targets for every five years"; have short-, medium- and long-term absolute emissions reduction targets, and if relevant, relative emissions reduction targets; cover

⁹⁰ SEI, IISD, ODI, E3G and UNEP (2021). *The Production Gap Report 2021* at 73, [online](#) (pdf).

⁹¹ See the "C1" pathways. [IPCC, AR6 WGIII](#), Ch. 3, para. 3.2, Summary for Policymakers, paras. C.2-C.4, fig. SPM.5. Cf.; UNEP et al., *The Production Gap Report 2021*, pp. 4, 12, 14-15 (Oct. 2021) (concluding that a 1.5°C consistent pathway requires an immediate and steep decline in fossil fuel production, [online](#)).

⁹² [IPCC, AR6 WGIII](#), *Technical Summary*, Box. TS.8. See also [IPCC, AR6 WGIII](#), *Summary for Policymakers*, para. B.7.1, Ch. 17, para. 17.5.

⁹³ [IPCC, AR6 WGIII](#), *Summary for Policymakers*, para. C.4.6, *Technical Summary*, para. 5.1. See also [IPCC, AR6 WGIII](#), Ch. 6, para. 6.7.4. See also Angela Carter & Laura Cameron, *Why Carbon Capture and Storage is Not a Net-Zero Solution for Canada's Oil and Gas Sector*, IISD (Feb. 9, 2023), [online](#); [IPCC, 1.5SR](#), Ch. 2, p. 95. See also IPCC, AR6 WG II, *Summary for Policymakers*, paras. B.5.4-B.5.5, *Technical Summary*, para. TS.C.11.10; [IPCC, AR6 WGIII](#), Ch. 3, paras. 3.3.2.23-36, *Summary for Policymakers*, paras. C.11, C.11.1, C.11.2. [IPCC, AR6 WGIII](#), Ch.12, *Cross-Chapter Box 8*, para. 12.3; SEI, Climate Analytics, E3G, IISD & UNEP, *The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*, Executive Summary, p. 2 (Nov. 8, 2023) [online](#).

⁹⁴ U.S. Joint Staff Report, *Denial, Disinformation, and Doublespeak: Big Oil's Evolving Efforts to Avoid Accountability for Climate Change* (April 2024) at pp.30-34, [online](#) (pdf) ("The companies' massive public-facing campaigns portray CCS as a viable and available solution to increasing greenhouse gas emissions, but the companies acknowledge internally that they are not planning to deploy the technology at the scale needed to solve the warming crisis." at p.32).

⁹⁵ The UN Expert Group is based on the best available science requiring that net zero commitments require stepping stone targets, every 5 years, and concrete ways to reach net zero on pathways modelled to limit warming to 1.5C. United Nations High Level Expert Group, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Nov 2022) at p 12, [online](#) (pdf).

the entire value chain of a business, including end-use emissions and, have plans that do not support new supply of fossil fuels.⁹⁶

Case study: Net-zero commitments are not leading to adequate action or climate plans or actions by financial actors

There are concerns that greenwashing is increasing significantly in the financial sector, with the number of greenwashing incidents reported to have tripled in the past five years.⁹⁷

A report from March 2024, by independent think tank InfluenceMap, found that “Canada’s five largest banks may be undermining their own net zero goals.” It states:

Analysis of the climate performance of the Royal Bank of Canada (RBC), Toronto-Dominion Bank (TD Bank), Scotiabank, Bank of Montreal (BMO) and Canadian Imperial Bank of Commerce (CIBC) – all of which are signatories of the Net Zero Banking Alliance – finds that all five appear misaligned with climate science across all three assessment areas: climate governance, financing portfolios, and climate policy engagement.⁹⁸

Since all the banks are members of the Net Zero Banking Alliance (NZBA) they have committed to taking into account the best available scientific knowledge, yet these efforts appear to have fallen short. One reason for this may be because the NZBA commitment and guidance allows targets to be based on absolute or sector specific emission intensity and an intermediate target for 2030 or sooner.⁹⁹ Another reason may be that the standards are voluntary and lack strong enforcement or consequences.

Methodologies and standards that lack scientific rigour give a false general impression of a climate commitment. There are other standards that discuss net zero disclosure and standards, but critical components are missing from many of those standards, like failing to require alignment with a 1.5°C pathway,¹⁰⁰ or failing to require the entire business or value chain to be included in the commitment.¹⁰¹ The details and metrics associated with climate change can be difficult for the general public to understand, and therefore a company should be careful not to give a false impression of its current ability to transition and align with climate goals.

⁹⁶ United Nations High Level Expert Group, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Nov 2022) at pp. 12, 17, 21, [online](#) (pdf).

⁹⁷ Sophie de Vries, “Blog, Greenwashing in the financial sector: separating fact from fiction”, *PwC*, (Sept 2, 2024), [online](#). To maintain a trusted market the European Commission in May 2022 sought input into greenwashing in the financial sector. European Securities and Markets Authority, *Progress Report on Greenwashing* (May 2023), p 5, [online](#) (pdf).

⁹⁸ InfluenceMap, *Press Release*, “New Study: Canada’s Big Five Banks Undermining Own Net Zero Commitments” (March 2024) at p1, [online](#) (pdf).

⁹⁹ Net-Zero Banking Alliance, *Guidelines for Climate Target Setting for Banks* (Apr 2024), v. 2, [online](#) (pdf).

¹⁰⁰ For example, alignment of climate transition plans with a 1.5C is not required by the International Sustainability Standards Board, IFRS S2, Climate-related Disclosures, [online](#).

¹⁰¹ For example materiality is left to be considered by the entity for scope 3 emissions in Race to Zero and TCFD. Race to Zero Expert Peer Review Group, “Interpretation Guide: Version 2.0,” (June 2022), [online](#) (pdf), [Race to Zero Guide] at p.4; Task Force on Climate-related Disclosures, “Guidance on Metrics, Targets, and Transition Plans” (Oct 2021), [online](#) (pdf), [TCFD Guidance] at p.19.

4.2.2 *The UN Expert Group standard is an IRM that represents a credible standard for net-zero commitments*

The UN Expert Group's standard is also an appropriate IRM for climate commitments because it is independent, created by an international organization through a robust process and is recognized by international bodies.

The UN Expert Group is independent from national governments and industry and drew upon broad, international engagement to establish its criteria. Catherine McKenna, former Minister of Environment and Climate Change Canada and a competition lawyer, chaired the UN Expert Group. Members of the UN Expert Group consisted of 18 independent experts with significant experiences across diverse sectors and regions across the globe.¹⁰²

The standards of the UN Expert Group were created following in-depth consultations, built on existing frameworks, had thematic consultations with more than 500 organizations across the globe, heard from a range of stakeholders and considered almost 300 written submissions.¹⁰³

The UN Expert Group's standards are recognized internationally. For example, leading representatives from international regulators and experts announced in December 2023 that they would be participating in a Taskforce on Net Zero Policy to support the implementation of the UN Expert Group's core recommendations. The taskforce members include the Principles for Responsible Investment, the United Nations Environment Program - Finance Initiative, the UN Conference on Trade and Development, the Vulnerable 20 Group, the International Financial Reporting Standards and others.¹⁰⁴ The UN Expert Group's standards have also been incorporated into the United Nations Development Programme's Sustainable Development Goals (SDGs) Impact Standards Guidance, which is a decision-making framework to help private sector organizations integrate sustainability and the SDGs into their management practices in a holistic and systematic way.¹⁰⁵

Recommendation 9 – The guidance should adopt the United Nations' High Level Expert Group *Integrity Matters* standards as the IRM for climate commitments of businesses and financial institutions.

¹⁰² United Nations, *Integrity Matters: Net-Zero Emissions Commitments of Non-State Entities* (last viewed Aug 29, 2024), [online](#).

¹⁰³ United Nations High Level Expert Group, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (Nov 2022) at p 2, [online](#) (pdf). Note that in addition to the comprehensive report, the UN Expert Group also has resources to assist businesses and financial institutions with implementation, including creating a checklist criteria for making a pledge, for preparing for the mandatory components of a transition plan, for the components of the transition plan and for verification of plans that are cross-referenced to the *Integrity Matters* recommendations (available for download here: United Nations, *Implementing the recommendations of the High-Level Expert Group's report "Integrity Matters"* (last viewed Aug 29, 2024), [online](#)). A taskforce has also created to build upon the UN Expert Group's work to create a space that encourages sharing of knowledge, practices and insights among policymakers and regulators, including providing research and technical support (Principles for Responsible Investment, *Press Release*, "Leading international agencies form Taskforce on Net Zero Policy to further HLEG recommendations" (Dec 2023), [online](#)).

¹⁰⁴ Principles for Responsible Investment, *Press Release*, "Leading international agencies form Taskforce on Net Zero Policy to further HLEG recommendations" (Dec 2023), [online](#).

¹⁰⁵ SDG Impact, *UN HLEG Recommendations on the Net Zero Emissions Commitments of Non-State Entities Incorporated into UNDP SDG Impact Standards Guidance* (last viewed Aug 30, 2024), [online](#).

5. Challenges with compliance for businesses and advertisers

This section responds to the consultation questions asking what challenges businesses and advertisers will face in meeting the requirements under both the new provisions ss. 74.01(1)(b.1) and (b.2) of the *Competition Act*.

Some matters that businesses may see as challenges to meeting the new greenwashing rules include ensuring the data behind their green claims is up to date, the costs of testing and substantiation, as well as the need to change their practices to ensure their claims are not misleading.

Businesses will need to ensure that the conditions underlying its green claims remain true, and if circumstances change, respond accordingly to ensure their green claims are not deceptive. Overall, a business should be accustomed to staying up to date on important information about its sector and business, like changes to operations, facilities, and supply chain. Therefore, while environmental claims might become inaccurate over time, businesses have an obligation, and should be familiar with tracking changes, to ensure information is kept up to date so as to avoid misleading consumers. For example, if a business chooses to make a claim that it is sourcing less environmentally harmful material to make their product, those claims could become false if there are changes in the supply chain. The business would need to respond appropriately and change their green claim. Businesses must assess how often they need to review their environmental benefit claims depending on the nature of the product, service or business, the type of claim and the market they operate in.¹⁰⁶

Additionally, there are costs associated with choosing to make an environmental benefit claim, just as there are costs associated with making claims about the efficacy or performance of a product. The costs to back up environmental benefit claims vary depending on the nature and complexity of the claim that a business chooses to make. The European Parliament and Council provides estimates of substantiation costs. For a simple claim on materials used in production, it estimates that substantiation costs would be €500 (or ~ 750 CAD). Whereas if a business chooses to make a claim on the environmental footprint of one of their products, conducting a study using the product environmental footprint method, is estimated to range from €4,000-8,000 (or ~ 6,000-12,000 CAD).¹⁰⁷ Making an environmental benefit claim gains a business a competitive advantage and there are costs associated with gaining that advantage.

Another challenge that businesses and advertisers may face in complying with the new greenwashing provisions is that they may need to change their current practice in how they report and represent their environmental attributes. Businesses will need to ensure that their claims are clear, coherent and accurate. Currently it appears that businesses are using non-standard accounting to report on environmental metrics and targets. Research finds that using such non-standard accounting (such as multiple standards/baselines, non-explicit or incomplete measures, undercounting, and communicating on the wrong metrics) to report on environmental metrics and targets is a form of greenwashing. These practices lead to vagueness, undercounting and underreporting of harmful environmental impacts and make it difficult to verify environmental

¹⁰⁶ The obligation to keep information up to date is recognized as an obligation for environmental claims in New Zealand's guidelines. Commerce Commission New Zealand, *Environmental Claims Guidelines: a guide for traders* (Jul 2020) at p 4, [online](#) (pdf).

¹⁰⁷ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims (Green Claims Directive), [online](#).

progress.¹⁰⁸ The new requirements on adequate and proper testing and substantiation should mean that rather than using multiple or various non-standard environmental accounting practices businesses will need to ensure their practices are robust and transparent. This required change in practice may be a challenge for some businesses.

Case study – Using non-standard accounting: years of underreporting Canadian oil sands pollutants

The National Pollutant Release Inventory, which is responsible for tracking more than 300 pollutants from more than 7,000 facilities across Canada relies on self-reporting by industry.¹⁰⁹ Self-reporting can result in underestimation either through reporting errors or an absence of a reliable estimation method for industry to use.

A study published in the journal *Science* in January of this year, concluded that aircraft-based measurements of total gas-phase organic carbon concentrations over the Athabasca oil sands region of Alberta, Canada, revealed that emissions from that region alone were much larger than earlier estimates, such that the total gas-phase organic carbon emissions exceeded oil sands industry-reported values by 1900% to over 6300%.¹¹⁰

6. Other relevant information for claims enforcement

The consultation asks what other information the Bureau should be aware of when thinking about how and when to enforce the new greenwashing provisions under sections 74.01(1)(b.1) and (b.2) of the *Competition Act*. We make four recommendations:

- that businesses make testing and substantiation public;
- that the Commissioner’s written opinions be made public;
- that the impacts of misleading green claims be considered in the Bureau’s investigation and enforcement; and
- that a green intelligence unit be created in the Bureau.

6.1 *Transparency of testing and substantiation*

The Bureau’s guidance should direct businesses to be transparent and provide the testing and substantiation to back up their green claims. Consumers are asking for greater standards of transparency and disclosure than those currently included in the greenwashing provisions. While consumers generally want to support sustainable businesses and products,¹¹¹ there is a worrying trend of consumers being suspicious of brands’ sustainability claims and wanting better information:

¹⁰⁸ Melissa Aronczyk et al., Greenwashing, net-zero, and the oil sands in Canada: The case of Pathways Alliance, Energy Research & Social Science, Volume 112, 2024, 103502, ISSN 2214-6296, [online](#).

¹⁰⁹ Government of Canada, *National Pollutant Release Inventory* (last modified July 11, 2024), [online](#).

¹¹⁰ Megan He et al, “Total organic carbon measurements reveal major gaps in petrochemical emissions reporting” in *Science*, Vol 383, Issue 6681 (Jan 25, 2024) see Abstract, [online](#). See also Natasha O’Neill, “Canada ‘vastly underestimating’ oil sands carbon emissions: study”, *CTV News* (Feb 3, 2024), [online](#).

¹¹¹ Commerce Commission New Zealand, *Environmental Claims Guidelines: a guide for traders* (Jul 2020) at p 2, [online](#).

- almost 25% Canadian consumers are frustrated by how hard it is to separate authentic from inauthentic sustainability claims,¹¹²
- 43% of Canadians believe that brands are greenwashing their sustainability initiatives, which is 10% higher than the global average,¹¹³ and
- 49% of Canadian consumers are skeptical about the authenticity of sustainability claims.¹¹⁴

This distrust impacts purchasing and investing behaviour, leading to a skewed market.

Other jurisdictions require companies to be transparent with their substantiation, which would help consumer understanding and combat their frustration. In France, the law requires certain green claims to be accompanied by information proving the credibility of the claim that is available at the time of purchase, like through a QR code.¹¹⁵ The Netherlands has incorporated requirements for providing proof of substantiation in its green guide which states that “[u]pon request, consumers that seek additional information must be informed about the claim’s proof”.¹¹⁶

Recommendation 10: The guidance should direct businesses to provide consumers with online access to the testing and substantiation to back up their environmental benefit claims, or at a minimum upon request.

6.2 Transparency in written opinions on the applicable standard

The Bureau’s guidance should outline the process that businesses can use to obtain a written opinion on the testing and substantiation requirement for a specific green claim. There is a mechanism in s.124.1 of the *Competition Act* that allows any person to apply to the Commissioner for a written opinion, including for guidance on conduct or a practice the applicant proposes to engage in and the applicability of any provisions of the Act.¹¹⁷ This process could help businesses and advertisers understand their obligations under the new greenwashing provisions.

The Bureau should however, make its written opinions on the new greenwashing provisions in ss. 74.01(1)(b.1) and (b.2) publicly available. Publishing the written opinions would increase transparency, consistency, and information sharing, allowing consumers and businesses to learn from requests made by others. This would also help the Bureau avoid responding to the same type of requests.

However, the fee for both complex and non-complex written opinions is set at \$5,000,¹¹⁸ an amount that is likely to deter some businesses, particularly small and medium sized enterprises

¹¹² Deloitte Canada, *Creating value from sustainable products: How business purpose and brand trust can make the difference* (Apr 2023) at p 3, [online](#).

¹¹³ Environment Journal, *Canadians are among most suspicious when it comes to sustainability claims* (Nov 22, 2023), [online](#).

¹¹⁴ Deloitte Canada, *Creating value from sustainable products: How business purpose and brand trust can make the difference* (Apr 2023) at p 3, [online](#).

¹¹⁵ France, *Code de l’environnement*, article [L541-9-1](#).

¹¹⁶ Autoriteit Consument & Markt, *Guidelines Sustainability claims* at p 14, [online](#) (pdf). Other jurisdictions indicate that it is good practice to be transparent and providing supporting information. See Commerce Commission New Zealand, *Environmental Claims Guidelines: a guide for traders* (Jul 2020) at p 5, [online](#) (pdf); Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023) at p 16, [online](#).

¹¹⁷ Competition Act, RSC, 1985, [c C-34, s 124.1](#).

¹¹⁸ Competition Bureau Canada, *Competition Bureau Fee and Service Standards Policy* (Updated Jan 16, 2024), [online](#).

(SMEs), from seeking an opinion. The Bureau should introduce flexibility into the fee schedule so that SMEs are subject to a lower fee for written opinions.

Recommendation 11 - The guidance should describe the mechanism in s.124.1 of the Act for obtaining a written opinion from the Commissioner on the adequate and proper standards for testing or substantiation should be described in the guidance. The Bureau should publish all such written opinions (removing any identifying info or trade secrets) and should reduce the fee for SMEs.

6.3 Consider all impacts of the environmental benefit claim

Consumers need help and this law is an opportunity to ensure clarity for both consumers and businesses. Greenwashing harms consumers, genuine green businesses, and the health and well-being of all. There are also undeniable market impacts of false and misleading green claims:

- i. **Impacts on consumers:** the central danger in greenwashing is that it can mislead well-intentioned consumers into acting unsustainably, purchasing toxic, dangerous and/or environmentally damaging products without being aware of the risks. As consumers are willing to pay a premium for more sustainable goods and services, they also suffer financial losses when they are misled into paying more for a product or service, they thought was sustainable.
- ii. **Impacts on genuine green businesses:** greenwashing is harmful to businesses making legitimate green claims. These businesses have undertaken the additional costs of testing and substantiation to have a genuinely sustainable product or business but have to compete with businesses who have not taken on costs but benefit from misleading environmental marketing.
- iii. **Impacts on broader society:** false and misleading green claims cause consumers to purchase and use products and services that have increased GHG emissions, environmental pollution, and health impacts. These societal impacts are far-reaching, long-lasting, and hard to reverse.
- iv. **Impacts on environmental action:** greenwashing creates consumer distrust and business apathy regarding environmental action, thereby hindering the trust, ambition, and action needed to bring about the global change needed to secure a sustainable planet. An unregulated free market has failed in bringing about this type of necessary change on its own, so legislatures and regulators must step in to ensure effective action from the private sector.

The Bureau should also consider the size of the company making false or misleading green claims. Since larger companies typically have more products or services and a broader market share, the effects of their greenwashing have a greater impact.

Recommendation 12 - In investigating and enforcing environmental benefit claims the Bureau should consider the severity or impact of the claim on the environment, marketplace, and consumer, as well as the broader climate, environmental, and health impacts. This approach should be outlined in the Bureau's guidance.

6.4 Creating a green intelligence unit within the Competition Bureau

To be effective, businesses and consumers must have confidence that competition law, policies and standards are supported by strong regulatory action and knowledge. To increase the strength of, and confidence in, the enforcement and administration of green competition issues, the Bureau's powers and capacity must be enhanced. The Bureau should establish a green intelligence unit to ensure that it has the capacity to address green issues and to help situate Canada as a leader and not a laggard on green competition issues while combating the skepticism and confusion related to environmental benefit claims.¹¹⁹

The creation of branches with expertise in emerging issues is not new to the Bureau.¹²⁰ Other federal agencies, that are not focused on environmental issues, have also taken steps to modernize by creating environmental units. For example, the Office of the Superintendent of Financial Institutions (OSFI) created the Climate Risk Hub, a team of experts whose primary focus is to lead OSFI's response to climate-related risks.¹²¹ In the UK, the Competition and Markets Authority established a cross-organizational sustainability taskforce to be a focal point for policy issues relating to sustainability. This taskforce leads engagement, develops internal thinking, and maintains a network of experts, while also providing advice to its government and drafting guidance.¹²²

The Bureau should also hold workshops for different types of claims (e.g., climate, health, etc.) to help businesses, advertisers and the public understand and discuss specific deceptive marketing issues and how to avoid making a non-credible claim. A green intelligence unit can take the lead on this.

Recommendation 13 - The Bureau should establish its own green intelligence unit to provide organizational expertise to address green competition issues and to serve as a resource for businesses, financial institutions, advertisers and the public on these issues.

6.5 Revising the green claims guidance

Given that environmental and climate sciences are rapidly evolving, standards and best practices regarding green claims may change over time. The Bureau should commit to reviewing and updating the green claims guidance periodically to ensure it remains relevant, continues to align with best practices, and continues to protect consumers from greenwashing and achieves the goals of the *Competition Act*.

Recommendation 14 - The Bureau should commit to revising the green claims guidance every three years to ensure that it continues to protect consumers from greenwashing.

¹¹⁹ Anne Brouwer, *Revealing Greenwashing: A Consumers' Perspective*, International Conferences on Internet Technologies & Society, Educational Technologies, and Sustainability Technology, and Education (2016), at p 245, [online](#).

¹²⁰ For example, the [Digital Enforcement and Intelligence Branch](#) was created as a center of expertise to help the Bureau.

¹²¹ Office of the Superintendent of Financial Institutions, *OSFI Launches Climate Risk Forum* (Jun 13, 2023), [online](#).

¹²² UK Competition and Markets Authority (Feb 2023) *Press Release: New guidance to help businesses co-operate on environment*, accessed [online](#).

III. Conclusion

As Commissioner Matthew Boswell wrote in his March 2024 letter to the Senate Standing Committee on National Finance, “while the Act is just one tool to protect and promote greater competition in Canada, it is a foundational one and has been in need of modernization for some time.” To that end, we applaud the new greenwashing provisions in the *Competition Act* and hope that the Bureau seizes this opportunity to implement strong guidance that demands a high standard of substantiation. It is our opinion the above recommendations will help eliminate vagueness and uncertainty in the new provisions and will support increased compliance from businesses and enforcement from the Bureau.

Thank you for the opportunity to provide input. We would welcome the opportunity to meet to discuss any of our recommendations.

Sincerely,

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Appendix A: Examples of Greenwashing Guidance in Other Jurisdictions

The following chart outlines a few examples of greenwashing guidance in other jurisdictions. Similar to our recommendations, the chart shows that authorities in other jurisdictions have created guidance for industry and business that describes not only general principles applicable to environmental benefit claims, but also provide more detailed examples.

Country and Authority	Guidance, Date & Brief Description
<p>Australia</p> <p>Australian Competition & Consumer Commission (ACCC)¹²³</p>	<p><i>Making environmental claims: A guide for business</i> (PDF),¹²⁴ 2023</p> <p>Australia’s guide outlines principles for trustworthy environmental claims and also describes its compliance and enforcement approach. The goals of the guidance include demonstrating how true, clear, evidence-based claims can be made, decreasing greenwashing, helping businesses comply and understand their obligations when making environmental claims and explaining the ACCC’s enforcement approach. It recognizes that the guide is not law and that environmental claims will continue to evolve as markets, technologies and understanding develops.¹²⁵</p> <p>The 8 principles the ACCC identifies as necessary to make trustworthy environmental claims are: (1) Make accurate and truthful claims; (2) Have evidence to back up your claims (3) Do not hide or omit important information (4) Explain any conditions or qualifications on your claims (5) Avoid broad and unqualified claims (6) Use clear and easy to understand language (7) Visual elements should not give the wrong impression (8) Be direct and open about your environmental sustainability transition.¹²⁶</p>
<p>Netherlands</p> <p>Autoriteit Consument & Markt (ACM) / Netherlands Authority for</p>	<p><i>Guidelines Sustainability claims</i> (PDF)</p> <p>The Dutch guideline outlines general rules of thumb (i.e., principles) and gives real world examples to provide companies guidance on drafting and evaluating sustainability claims.¹²⁸ Outlines five rules of thumb of companies that wish to make sustainability claims: (1) Make clear what sustainability benefit the product offers. (2) Substantiate your sustainability claims with facts and keep them up to date. (3) Comparisons with other products,</p>

¹²³ The ACCC is an independent Commonwealth statutory authority that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. Its primary responsibility is to enforce compliance with the *Competition and Consumer Act 2010*. Australian Competition & Consumer Commission, *Making environmental claims: A guide for business* (Dec 2023), p 5, [online](#) (pdf) [Australian Environmental Guide].

¹²⁴ Australian Environmental Guide, [online](#) (pdf).

¹²⁵ Australian Environmental Guide at pp 3-4, [online](#) (pdf).

¹²⁶ Australian Environmental Guide at pp 2, 30-31, [online](#) (pdf).

¹²⁸ Autoriteit Consument & Markt, *Guidelines Sustainability claims* at p 5, [online](#) (pdf) [Dutch Sustainability Guidelines].

Consumers and Markets ¹²⁷	services or companies must be fair. (4) Be honest and specific about your company's efforts with regard to sustainability. (5) Make sure that visual claims and labels are useful to consumers, not confusing. ¹²⁹
New Zealand	<i>Environmental Claims Guidelines: a guide for traders</i> (PDF) ¹³¹ , 2020
Commerce Commission New Zealand ¹³⁰	New Zealand's guidance aims to help businesses understand their obligations when making environmental claims. ¹³² It directs businesses to: (1) Be truthful and accurate; (2) Be specific; (3) Use plain language; (4) Do not exaggerate; (5) Consider the overall impression.
South Korea	<i>Guidelines for review of environmental labeling and advertising</i> (HTML), 2009 ¹³³
Korea Fair Trade Commission	The Guidelines put forth 8 basic principles, which are identical to those in the <i>Environmental Technology and Industry Support Act</i> , for labeling and advertising eco-friendly business activities. The Guidelines go beyond the principles by providing specific explanations and examples. ¹³⁴ It was last revised in 2023. ¹³⁵ Some key features include requiring any green marketing to be clear, complete and concrete and demand eco-friendliness throughout the entire lifecycle of the product at issue. ¹³⁶
United Kingdom	<i>CMA guidance on environmental claims on goods and services</i> (PDF , HTML), 2021
Competition and Markets Authority (CMA) ¹³⁷	The UK's guidance is to help businesses understand and comply with their existing obligations when making environmental claims. The guidance is not an exhaustive but covers the areas that the CMA considers most likely to be relevant and more likely to be of concern of enforcement authorities. ¹³⁸

¹²⁷ The Dutch ACM is an independent regulator, whose "mission is to ensure that markets work well for people and businesses, now and in the future" and who protects companies against unfair competition while helping ensure consumers have sufficient information so they can make well informed decisions when purchasing products or services. Dutch Sustainability Guidelines at p 5, [online](#) (pdf).

¹²⁹ Dutch Sustainability Guidelines at pp 2-3, [online](#) (pdf).

¹³⁰ The Commerce Commission of New Zealand is an independent Crown entity. It administers and enforces laws on competition, fair trading, consumer credit and economic regulation. Commerce Commission New Zealand, *About Us* (last viewed Sept 6, 2024), [online](#).

¹³¹ Commerce Commission New Zealand, *Environmental Claims Guidelines: a guide for traders* (Jul 2020), [online](#) (pdf) [New Zealand Environmental Guidelines].

¹³² New Zealand Environmental Guidelines at p 2, [online](#) (pdf).

¹³³ Fair Trade Commission, *Guidelines for review of environmental labeling and advertising* (Sept 1, 2023), [online](#) [South Korea Environmental Guidelines].

¹³⁴ Yoon Jeong Lee et al, *Announcement of the Guidelines on Labeling and Advertising of Eco-friendly Business Activities* (Dec 5, 2023), [online](#); Bae Kim & Lee, *The Korean Antitrust Agency Releases Proposed Amendments to its Review Guidelines Concerning Environment-Related Labels and Advertisements, to Better Regulate 'Greenwashing'* (Jun 30, 2023), [online](#); Kim Sung-woo, *Greenwashing: implications of recent amendment to KFTC guidelines* (Sept 10, 2023), [online](#).

¹³⁵ South Korea Environmental Guidelines, [online](#).

¹³⁶ Kim Sung-woo, *Greenwashing: implications of recent amendment to KFTC guidelines* (Sept 10, 2023), [online](#).

¹³⁷ The CMA is the United Kingdom's primary competition and consumer authority. The CMA's objective is to make markets work well for consumers, businesses and the broader economy.

¹³⁸ Competition and Markets Authority, *Guidance, Green claims code: making environmental claims* (Sept 20, 2021), [online](#)(pdf) [UK Green Guidance].

Appendix B – Approaches to Certain Types of Claims or Greenwashing Tactics

The following chart outlines some non-exhaustive examples of how other jurisdictions have approached specific types of environmental benefit claims or deceptive marketing practices.

Type of Claim	Approach in Other Jurisdictions
Generic Claims	<p>(A) Europe: prohibits the making of a generic environmental claim without recognized excellent environmental performance that is relevant to the claim.¹⁴⁵</p> <p>(B) Australia: recommends avoiding generic terms and establishes as a principle in its environmental claims guide to “Avoid broad and unqualified claims” noting that “[b]road claims can be interpreted widely and more easily mislead consumers than clear, specific claims that are substantiated.” Common broad or unqualified claims like ‘green,’ ‘go green,’ ‘environmentally friendly,’ ‘eco-friendly’ and ‘sustainable,’ convey sweeping benefits that can mean different things and without qualification “consumers can be easily misled that the product, service or business is better for the environment than is actually the case.”</p> <p>(C) United States: states that marketers should not make broad, unqualified general environmental benefit claims, like ‘green’ or ‘eco-friendly,’ because such claims are difficult, if not impossible, to substantiate. “Marketers should qualify general claims with specific environmental benefits. Qualifications for any claim should be clear, prominent, and specific.”¹⁴⁶</p> <p>(D) Netherlands: requires that the sustainability benefit be described concretely. Its sustainability guidelines state: “do not use general terms such as “eco”, “environmentally friendly”, “clean”, “green”, “good for the environment”, “non-pollutive”, “honest”, “fair”, “responsible”, “organic”, “ethical”, “sustainable”, “ozone-friendly”, “environmentally safe” and so forth without further detailing the specific sustainability benefits of the product.”¹⁴⁷</p> <p>(E) New Zealand: requires companies to be specific. The Commerce Commission of New Zealand’s environmental claims guidelines states: “Claims that are vague can be difficult to make sense of and can have multiple meanings. Such claims can easily mislead consumers because consumers may take the claim to mean something different from what the trader intended to communicate. It may also be difficult to back up if the Commission asks you to do so.”¹⁴⁸</p> <p>(F) United Kingdom: advises that broader, more general or absolute claims are much more likely to be inaccurate and to mislead. It states that unless a business can prove that a product, service, process, brand or</p>

¹⁴⁵ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 at p 3/16, [online](#)(pdf).

¹⁴⁶ US Federal Trade Commission, *Environmental Claims: Summary of the Green Guides* at p 1, [online](#) (pdf).

¹⁴⁷ Dutch Sustainability Guidelines at pp 9-10, [online](#) (pdf).

¹⁴⁸ New Zealand Environmental Guidelines at p 5, [online](#) (pdf).

	<p>business as a whole has a positive environmental impact, or at least no adverse impact, it risks falling short of its legal obligations.¹⁴⁹</p>
<p>Future Claims, including Climate Commitments</p>	<p>(A) Europe: the European Commission has amended its directive on empowering consumers for the green transition to make it a misleading action to make “an environmental claim related to future environmental performance without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, such as allocation of resources, and that is regularly verified by an independent third party expert, whose findings are made available to consumers.”¹⁵⁰</p> <p>(B) Australia: environmental claims guide says that businesses “should be cautious about making aspirational claims about your future environmental objectives unless you have developed clear and actionable plans detailing how you will achieve those objectives,” including “having appropriate business plans and investment approvals in place to make the changes necessary to meet the goals.”¹⁵¹</p> <ul style="list-style-type: none"> ● The Australian authority advises using acceptable methodologies for future claims. It states that companies should provide “consumers with regular updates about how you are performing against your goals, including disclosing if you are not on track to achieve them and what steps you are taking to address any setbacks so as to meet your goals.”¹⁵² ● Businesses in highly polluting industries are warned to “be realistic and transparent about the environmental impact.”¹⁵³ ● The Australian guide notes that a company “<i>should ensure genuine progress has been made before making environmental claims. You should also ensure that you have realistically portrayed the environmental harm still associated with your business as you transition to more sustainable operating models, to reduce the risk of misleading consumers.</i>”¹⁵⁴ <p>(C) Netherlands: the guidelines say that there must be clear, concrete and verifiable strategies for claims about future goals. Those strategies need to already have been started to be implemented or must be started very soon. The Dutch guidelines advise that when initiatives are still in early stages, companies need to avoid making future claims. The details about goals and achieved results must be accessible to consumers.¹⁵⁵ Additionally, in the Netherlands, claims about sustainability aspects of a business must be proportional to the</p>

¹⁴⁹ UK Green Guidance at ss 3.9, 3.22-3.24, pp 13, 15, [online](#) (pdf).

¹⁵⁰ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 at p 11/16, [online](#)(pdf).

¹⁵¹ Australian Environmental Guide at pp 1-2, 10, 25, [online](#) (pdf). Note that the guide also says “[i]f you can transition to more sustainable business operations and want to tell consumers about it, be direct and open. Transitioning to a more sustainable business model takes time and is often not linear. For example, if you can’t reduce your greenhouse gas emissions in the short term, but are instead offsetting your impact on the environment, make this clear to consumers.”

¹⁵² Australian Environmental Guide at p 11, [online](#) (pdf)

¹⁵³ Australian Environmental Guide at p 25, [online](#) (pdf)

¹⁵⁴ Australian Environmental Guide at pp 30-31, [online](#) (pdf).

¹⁵⁵ Dutch Sustainability Guidelines at pp 17-18, [online](#) (pdf).

	<p>actual sustainability efforts <u>and</u> impact. Companies must be able to prove that they have reduced the negative impact and cannot exaggerate the company’s sustainability efforts or benefits.¹⁵⁶</p> <p>(D) South Korea: the environmental claims guidelines requires future sustainability claims to be supported with a specific implementation plan that must be disclosed, with a plan to secure human resources, other resources, and measurable goals and deadlines.¹⁵⁷</p> <p>(E) United Kingdom: Competition and Markets Authority guidance states that “claims about future goals should only be used for marketing purposes if the business has a clear and verifiable strategy to deliver them”. Additionally, it requires that claims about a business’ environmental ambitions must also be in proportion to its actual efforts.¹⁵⁸</p>
<p>Claims of standards required by law or industry standards</p>	<p>(A) Netherlands: states that if statutory requirements apply to a product, a company cannot use those requirements as a sustainability claim. A claim must be a benefit that goes beyond what is required in law.¹⁵⁹</p> <p>(B) Australia: says environmental claims should only be made where there is a genuine environmental benefit associated with the product, service or business. Its environmental benefits guide says that claims about a specific environmental benefit of a product, service or business should not be made if all similar products or businesses have the same feature, or the feature is a legal requirement. Even though such environmental benefit claims “may literally be true, they are likely to mislead consumers into believing what is being advertised is special, when it is a necessary or ordinary feature.”¹⁶⁰</p> <p>(C) United Kingdom: “Businesses should not claim an environmental virtue out of something which is a necessity or just an ordinary feature or consequence of products, services, processes, brands or businesses of the type concerned,” as stated in the UK Competition and Market Authority’s guidelines.¹⁶¹</p>
<p>Selective claims (i.e., cherry picking)</p>	<p>(A) Europe: adopted in the Directive on Empowering Consumers of the Green Transition that is another misleading commercial practice that should be prohibited in all circumstances is making an environmental claim about the entire product or the entire business when it actually concerns only a certain aspect of the product or a specific, unrepresentative activity of the trader’s business. A business can make environmental claims about its entire business as long as those claims are accurate and verifiable and do not overstate the environmental benefit.¹⁶²</p> <p>(B) Australia: requires and sets as a principle that businesses do not hide or omit important information. The Australian Competition & Consumer Markets Commission notes that: “Consumers cannot make informed decisions if they are not provided with relevant information that gives the full picture, or if important information</p>

¹⁵⁶ Dutch Sustainability Guidelines at p 16, [online](#) (pdf).

¹⁵⁷ South Korea Environmental Guidelines, [online](#).

¹⁵⁸ UK Green Guidance at ss 3.49, 3.50, p 21, [online](#) (pdf).

¹⁵⁹ Dutch Sustainability Guidelines at p 11, [online](#) (pdf).

¹⁶⁰ Australian Environmental Guide at pp 8-9, [online](#) (pdf).

¹⁶¹ UK Green Guidance at s 3.34, p 18, [online](#) (pdf).

¹⁶² Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 at s (11), p 4/16, [online](#)(pdf).

is placed where they are unlikely to notice or find it. Consider all the relevant information about your environmental impact and be transparent about it.”¹⁶³

- The Australian guidelines note that giving consumers incomplete information or hiding important information is typically misleading and leaving out important details also might create the wrong impression. It notes as an example that “highlighting the positive aspects of your product, service, or business while omitting information about the negative aspects can give consumers the impression that your business, product, or service has a lower environmental impact overall than it really does.”¹⁶⁴
- The Australian guide also notes that a claim about a particular characteristic of a product or service can be true, but still mislead consumers if it suggests that the product is more beneficial to the environment than it is by ignoring negative aspects of its lifecycle.¹⁶⁵

(C) New Zealand: says that claims should not expressly or implicitly overstate an environmental benefit. It tells businesses to “avoid implying a significant environmental benefit if the benefit is small”. It notes the following example: “A claim of “now 100% more recycled content” is capable of creating a misleading impression if the product contains only 1% recycled content initially. The doubling may be accurate, but the recycled content is proportionately negligible, so the claim new formulation. is liable to create an exaggerated impression about the environmental impact of the new formulation.”¹⁶⁶ Additionally, the New Zealand authority states that providing incomplete information risks misleading consumers by not providing an accurate picture of goods or services.¹⁶⁷

(D) United States: says that marketers should not highlight small or unimportant benefits. It notes that “[i]f a qualified general claim conveys that a product has an overall environmental benefit because of a specific attribute, marketers should analyze the trade-offs resulting from the attribute to prove the claim.”¹⁶⁸

(E) Netherlands: requires businesses to inform consumers about important improvements and not emphasize minor sustainability benefits if the product has a significant negative impact on human/animal rights or the environment. “The claim cannot suggest a larger benefit than the product in reality offers, and small improvements compared with another product or company must be presented as such.”¹⁶⁹

(F) South Korea: guidelines notes that environmental labeling and advertising must consider the impact throughout the entire product lifecycle. It also notes that green claims must be complete, such that facts or

¹⁶³ Australian Environmental Guide at p 1, [online](#) (pdf).

¹⁶⁴ Australian Environmental Guide at p 16, [online](#) (pdf).

¹⁶⁵ Australian Environmental Guide at p 17, [online](#) (pdf).

¹⁶⁶ New Zealand Environmental Guidelines at p 7, [online](#) (pdf).

¹⁶⁷ New Zealand Environmental Guidelines at p 5, [online](#) (pdf).

¹⁶⁸ US Federal Trade Commission, *Environmental Claims: Summary of the Green Guides* at p 1, [online](#) (pdf).

¹⁶⁹ Dutch Sustainability Guidelines at p 11, [online](#) (pdf).

	content that may have a significant impact on consumers' purchasing choices must not be omitted, concealed or reduced. ¹⁷⁰
Carbon neutrality, emissions and offset claims	<p>(A) Netherlands: environmental benefits guide says that the claim of carbon neutral can only be used if a calculation has been made of the total emissions of GHG produced by the product and if the total emissions are zero. The Dutch authority states that the aim is that companies make their production processes more sustainable and produce fewer GHG emissions, so CO2 compensation can play a supplementary role and serve as a temporary measure until true sustainability is achieved; however, any CO2 compensation needs to be clearly indicated and details. If CO2 compensation is used, a company is prohibited from giving the impression that the production process does not generate any GHG emissions at all. Additionally, where customers have the option of purchasing CO2 emissions compensation, that is a separate product.¹⁷¹</p> <p>(B) Australia: advises companies to exercise “particular caution” when making representations about GHG emissions associated with their products, services, business and their overall impact on climate change, given the complexities in quantifying such impacts. The environmental claims guideline outlines the steps that a business should take if it chooses to make an emissions related claim including avoiding representing only a small portion of the business’ overall emissions profile.¹⁷²</p> <p>(C) South Korea: companies are required to provide accurate information on whether carbon neutrality claims are based on carbon emissions reduction or offsets. Companies need to take care not to use terms like ‘low carbon’, ‘reduced carbon emissions’ or ‘carbon offset’ if they cannot be supported.¹⁷³</p> <p>(D) New Zealand: states that carbon neutral claims should take into account the whole lifecycle of the good or service. It also cautions that the term ‘carbon neutral’ may have a wide range of meanings.¹⁷⁴</p> <p>(E) European Union: the Directive on Empowering Consumers of the Green Transition was adopted and is in force as of March 2024. The Directive states “[i]t is particularly important to prohibit the making of claims, based on the offsetting of greenhouse gas emissions, that a product, either a good or service has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions.”¹⁷⁵</p>

¹⁷⁰ South Korea Environmental Guidelines, [online](#).

¹⁷¹ Dutch Sustainability Guidelines at p 13, [online](#) (pdf).

¹⁷² Australian Environmental Guide at pp 24-25, [online](#) (pdf)

¹⁷³ South Korea Environmental Guidelines, [online](#).

¹⁷⁴ New Zealand Environmental Guidelines at pp 11-12, [online](#) (pdf).

¹⁷⁵ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 at s (11), p 4/16, [online](#)(pdf).

<p>Substantiation</p>	<p>(A) Australia: ‘Have evidence to back up your claims’ is Principle 2 in the guide. The Australian guide says that: evidence that is independent and scientific is the most credible, advises not to overstate the level of scientific acceptance.¹⁷⁶ The guide acknowledges that the scope and extent of due diligence will vary depending on the size of the business, as smaller businesses may not have access to the same resources.¹⁷⁷</p> <ul style="list-style-type: none"> • “For example, any information that is directly relevant to understanding your claim should be available directly on the product or at the point of sale. It may be appropriate to also provide additional supporting information through a website or QR Code, but this should not contradict or qualify the impression created by the claim.”¹⁷⁸ <p>(B) Netherlands: sets as its “Rule of thumb 2” that companies must substantiate their sustainability claims with facts and keep them up to date. Companies must be able to prove their claims, regularly check whether their claims still hold up or revise as needed.¹⁷⁹</p> <ul style="list-style-type: none"> • States “From the moment you make a claim, you will need to have proof that supports your claim or be able to refer to verifiable sources/studies. This proof must be factual and correct. You will need to be clear about the procedure, scientific method, and criteria on the basis of which you make your claim. In that context, you can use, for example, the international standards that the International Organization for Standardization (ISO) has developed for various types of environmental claims.”¹⁸⁰ <p>(C) New Zealand: requires claims be substantiated on ‘reasonable grounds’ that include having evidence, research, test results or similar credible information. The New Zealand guide notes that businesses should consider making the evidence backing up claims accessible to customers so they can review it and better understand the information the claims rely on.¹⁸¹</p>
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¹⁷⁶ Australian Environmental Guide at pp 1, 6, 13, [online](#) (pdf).

¹⁷⁷ Australian Environmental Guide at p 13-14, [online](#) (pdf).

¹⁷⁸ Australian Environmental Guide at p 16, [online](#) (pdf).

¹⁷⁹ Dutch Sustainability Guidelines at p 2, [online](#) (pdf).

¹⁸⁰ Dutch Sustainability Guidelines at p 14, [online](#) (pdf).

¹⁸¹ New Zealand Environmental Guidelines at pp 5-6, [online](#) (pdf).