To: Deceptive Marketing Practices Directorate, Competition Bureau

From: Chris Russill, Academic Director; Patrick McCurdy, Research Associate

Date: Feb 25, 2025

Re: Submission to the Competition Bureau on the Dec 13 draft of proposed guidelines concerning environmental claims

Dear Deceptive Marketing Practices Directorate, Competition Bureau

We appreciate the opportunity to comment on the Bureau's proposed guidelines for environmental claims in the context of amendments made to the Competition Act in 2024.

The Bureau's work to increase awareness and reporting of greenwashing is notable. The new guidelines are an important step toward ensuring fair enforcement of laws that protect businesses and consumers from deceptive marketing and its anti-competitive effects. As researchers studying representations of energy and climate change in promotional communication, we recognize the utility of clear guidance that businesses can act on. We also recognize the guidance was drafted on an ambitious timeline to address uncertainties in the business community while allowing ample opportunity for public consultation with Canadians.

Our comments are divided into two sections. In the first section, we discuss how these guidelines will equip businesses to assess whether environmental claims adhere to the law while dispelling misplaced fears about the scope of enforcement or silencing. In the second section, we discuss opportunities to improve the clarity and usefulness of the guidelines.

1. How the Guidelines Reduce Uncertainty and Better Equip Businesses to Avoid Greenwashing

The proposed guidelines equip businesses with an understanding of which environmental claims are covered by the new provisions, why, and how to be compliant with the law.

A bit of context: The practice of making environmental representations has expanded rapidly over the last decade, and these claims are now used by businesses to manage a wide variety of stakeholder relationships.[1] This communication affects access to capital, investment, and government incentives while also conveying information about ratings assessments, public competitions, sponsorships, executive pay benchmarks, or other data of interest to shareholders and stakeholders – all of this in addition to the conventional uses of environmental representations to shape consumer perceptions of products and services. The expanded range of environmental and climate-protection claims-making has led to a reporting industry for sustainability, ESG, and climate information. It includes various practices, standards, norms, and intermediaries with expertise and services involving communication.

One concern with the new provisions is whether their enforcement will have consequences for this wider scope of environmental and sustainability communication. The proposed guidance makes clear that the answer is no. While applying to business representations more broadly, the new provisions do not cover stakeholder, shareholder, securities or other related communication. In this respect, the frequent reiterations of the scope of the amendments throughout the guidelines is a welcome development, including this statement:

> From the Bureau's perspective, an environmental claim is any representation related to the environment that has been made for the purposes of promoting a product or any business interest. The Bureau is concerned with representations made to the public for the purposes of marketing and promotion, rather than representations made solely for a different purpose.

These statements substantially reduce the uncertainty that led some businesses to curtail sustainability and climate-related reporting or, in some instances, to exaggerate fears around silencing or censoring of communication. Still, there are remaining opportunities to clarify matters. As noted in the FAQ section of the guidelines, the relevant criterion is whether a promotional claim is made to the public, not whether the claim originated from a marketing department, sustainability report, communication with investors or other source. This is stated clearly, but as discussed in the next section, the evolving nature of promotional communication creates situations where specific determinations might be more complicated.

2. How the Guidance Could Further Reduce Confusion and Deceptive Environmental Claims

The draft guidelines address many of the questions arising from the previous consultation and appear consistent with efforts in other countries to address

[1] Montgomery, A. Wren, Thomas P. Lyon, and Julian Barg. "No end in sight? A greenwash review and research agenda." *Organization & Environment* 37.2 (2024): 221-256.

Aronczyk, Melissa, Patrick McCurdy, and Chris Russill. "Greenwashing, net-zero, and the oil sands in Canada: The case of Pathways Alliance." *Energy Research & Social Science* 112 (2024): 103502.

greenwashing. However, there are opportunities to improve the guidelines and make them more usable.

First, the evidence generated by companies to support their environmental claims should be transparent and accessible. If so, it will aid consumer decisions and improve trust of businesses. It will also allow the norms and practices for evidence-based claims to evolve from business and consumer interactions. This should be strongly encouraged so that marketplace interactions shape assessments of evidence and due diligence.

Second, as discussed above, the question of what counts as an environmental representation to the public is not always self-evident given the changing nature of advertising and promotion. This question might be addressed with examples or scenarios that better clarify the Bureau's perspective. Some instances to consider include:

A) As discussed in Principle 1, the problem of missing information is as important as misleading information when considering deceptive marketing. Consideration of the specific meanings and general impressions created by marketing representations is clearly stated as an important consideration. In addition, we recommend an example where a specific claim about a product or project is validated but encourages misleading inferences. For instance, some carbon majors promote renewable energy investments while misleading consumers about the environmental performance of their companies more generally. This is done by omitting information about key attributes of the wider business. As a result, ads might convey warranted claims (a solar technology investment made by the company) but encourage inferences leading to false impressions (that they are clean energy companies). This issue is why regulation of environmental claims about business activities (not just products) is necessary.

B) Advertising is often image-based, and there is little sense in the guidelines or previous digest [July 22, 2024] of how visual elements contribute to deceptive marketing or are assessed when determining compliance with the law.[2] The research literature on greenwashing often points to visual elements and might be consulted.[3] Including examples or scenarios that also cover this aspect of advertising and promotion might be considered.

C) As discussed in Principle 6, the use of future-oriented claims about environmental performance presents special difficulties. While the previous Bureau digest recommended that businesses avoid aspirational claims about the

[2] The Deceptive Marketing Practices Digest — Volume 7 (July 22, 2024): https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/deceptive-marketing-practices-digest-volume-7#sec06

[3] Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015). Can evoking nature in advertising mislead consumers? The power of 'executional greenwashing'. *International Journal of Advertising*, *34*(1), 107–134. https://doi.org/10.1080/02650487.2014.996116; de Freitas Netto, Sebastião Vieira, et al. "Concepts and forms of greenwashing: A systematic review." *Environmental Sciences Europe* 32 (2020): 1-12.

future (section 6f)[4], the current guidelines are more reserved. Instead of advising against such claims, which is a strong position to assume, the guidelines now recommend concrete, realistic, and verifiable plans be in place in advance of such publicity. This approach is useful for addressing issues where clear standards for assessing plans exist and where the anti-competitive consequences of deception are significant (the example of net zero is well chosen). However, the stipulation that all aspirational messages about the future require realistic and verifiable plans runs counter to many advertising approaches and raises questions that require more consideration.

D) Marketing on social media and ad-technology systems for digital platforms has evolved rapidly in the past decade. The mixing of informative and promotional content online can blur the boundaries between reporting and marketing. For instance, some companies promote their sustainability reporting on social media. This means a document originally produced for shareholders or institutional audiences might be repurposed as a marketing claim (or perhaps offered as evidence for a marketing claim). For example, a company might invite the public to come see how it is doing by linking to an ESG report that contains environmental claims. In other cases, companies pay media producers to create promotional content that uses an informational or journalistic format. For example, Pathways Alliance removed public promotion of its net zero plan when the new greenwashing law came into effect last year; however, their net zero claims remain publicly available on theHub.ca podcast (episode 251), which is identified as part of "a paid promotional partnership with Pathways Alliance".[5] Clarifying whether these examples and others like them contain environmental representations covered by the greenwashing provisions would be valuable.

   In addition to these issues with social media and 'native advertising,' the growing popularity of Google and META ad technologies for auto-generating and displaying promotional ads raises other challenges. These advertising materials are hard to access, document, or authenticate when recorded by users, and businesses may not have pre-approved the design or placement of these online ads (and sometimes do not even know where these ads are being placed). Ad-technologies are intended to capitalize on timely opportunities for influence, often generating ads from the website materials of their clients, and the greenwashing concerns and principles outlined by the Bureau are not likely to be integrated into these automated or AI tools. It is worth acknowledging these tools and clarifying questions of responsibility and due diligence for these situations.

[4] The Deceptive Marketing Practices Digest — Volume 7 (July 22, 2024): https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/deceptive-marketing-practices-digest-volume-7#sec06

[5] https://open.spotify.com/episode/42IhrsmZeI0YoMZ59HAl7i?si=ouEUg--TQEO3ToyeHT9jRA&nd=1&dlsi=4761e2bdb6884751

Third, it is worth restating the Bureau's perspective on competitor collaborations undertaken under the auspices of sustainability and climate-protection in these guidelines.

In summary, we recognize the usefulness of the guidelines and understand the need to clarify the finer aspects of the provisions through case law and legal argument. We intend our suggestions as opportunities for constructive improvement offered from the perspective of communication researchers. We are happy to discuss our comments with you or otherwise support your efforts.

Best,

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