September 12, 2024

To the Competition Bureau's Deceptive Marketing Practices Directorate,
Josephine Palumbo, Deputy Commissioner
Via email: greenwashingconsultationecoblanchiment@cb-bc.gc.ca

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

We are writing to you as a broad industry coalition, to provide input on how the Competition Bureau of Canada ("the Bureau") should develop clear guidance on how to comply with the new provisions regarding environmental claims in section 74.01(1) of the *Competition Act*.

These provisions have caused significant concern with a wide range of Canadian industry stakeholders, from consumer goods and manufacturing to energy and natural resources, to agriculture and non-profit organizations. Without proper compliance guidelines these provisions will significantly and negatively impact the way in which Canadian businesses communicate their environmental performance and goals, and could negatively impact future investments in Canada due to the increased risks to businesses.

Strong environmental performance is important to each of our industries operating in Canada. Businesses must be assured that communications regarding environmental performance, so long as they are backed up by sound science, do not carry risk to business operations. The technological advancements necessary to improve environmental performance while maintaining our standard of living are critical pieces of Canada's innovation. The amendments to Bill C-59 could stifle communication regarding research and development, creating a challenging environment for innovation, particularly in hard-to-abate sectors. This will disincentivize the communication of environmental goals, targets or progress that will lead to missed opportunities for collaboration and future investment into sustainable programs. The amendments could also lead to Canadian firms being disadvantaged when competing with foreign companies if the new rules disproportionately disadvantage domestic companies while leaving importers and traders less accountable.

Clear definitions and guidance are needed prior to the implementation of these provisions to ensure an effective regulatory framework which achieves the desired environmental outcomes. Guidance must be aligned with domestic regulatory and securities reporting, including safe harbor provisions for forward looking representations, and also should not be in conflict with freedom of expression as outlined in the Charter of Rights and Freedoms Section 2(b).

Guidance for Industry

Since November 4, 2021, with the archiving of the *Environmental Claims: A Guide for Industry and Advertisers*, no guidance has been available to industry regarding environmental claims under the *Competition Act*. Further exacerbating regulatory uncertainty, the June 2024 amendments to the *Competition Act* introduce novel terminology for substantiating claims ("internationally recognized methodology"), a new burden of proof on environmental claims, and expanded private access to the Competition Tribunal.

To support much needed clarity and industry's ability to pursue environmental goals, we recommend:

1. **The Competition Bureau develop a definition for "internationally recognized methodologies" based on a set of guiding principles. This definition should be subject to regular review so as to remain flexible as environmental science continues to evolve.** There is no consensus definition for "internationally recognized methodology." The definition established in the guidance should incorporate qualities which lend legitimacy (e.g., science-based) and be non-exhaustive to ensure industry can pursue environmental outcomes with current best practices and also make claims as technologies continue to evolve. The definition should recognize that scientific methodologies can be contested and so evidence should not be discredited simply because it faces scholarly debate, or if other methodologies produce different results, or if they were not published recently. Addressing large environmental issues like climate change requires significant innovation. Communication regarding that innovation should not be stifled by a narrow list of acceptable methodologies. Methodologies used by Canadian federal-provincial-territorial governments, foreign governments (e.g., the United States, European Union), non-government organizations, intergovernmental organisations (e.g., the International Energy Agency, Task Force on Climate-Related Financial Disclosures), academic institutions (including all methodologies published in peer-reviewed journals), and securities regulators should be acceptable. It is important to note that there is no single set of international standards for substantiating all environmental claims. We urge the Bureau to conduct comprehensive comparative research to understand and glean appropriate content for guidance to Canadian businesses.

2. **The Competition Bureau revise and republish the archived guidance to reflect current practices and write new guidance to reflect the June 2024 amendments.** The *Environmental Claims: A Guide for Industry and Advertisers* provided comprehensive guidance for the use and substantiation of environmental claims in Canada. The Bureau should make necessary updates to the archived guidance to reflect the Bureau's current practices and the amended *Competition Act*. The Bureau should also provide clarity on how pre-existing case law will apply to claims about environmental benefits related to business activities, not just products.

3. **The Competition Bureau and Competition Tribunal exercise enforcement discretion and only proceed with enforcement measures for the June 2024 amendments following the publication of comprehensive guidance and adequate transition timeline.** Ongoing regulatory uncertainty, including the threat of private action, negates the ability of companies to effectively communicate environmental benefits to inform consumer choices. We urge the Bureau and Competition Tribunal to fully address these concerns and allow companies time to make good faith efforts to comply before proceeding with enforcement measures.

4. **The Competition Bureau should create a screening process to ensure that the reverse onus orientation is not abused.** The reverse onus creates an incentive for private parties to make claims with little risk to themselves if their complaints are deemed baseless as they do not have to prove those claims are substantive in any way aside from being "in the public interest". This could create significant costs and reputational risk, especially for Canada's Small and Medium Enterprises who cannot afford costly litigation. The reverse onus also contradicts Canada's long established legal principles and procedures.

These four joint recommendations reflect the needs of all industry for a clear regulatory landscape while supporting the effective implementation of the amendments and uninterrupted environmental communications to consumers. We thank you for considering our feedback on this important matter **and also request an opportunity to meet with you to discuss these recommendations.**

Sincerely,

Aluminium Association of Canada

Business Council of British Columbia

Canadian Association of Petroleum Producers

Canadian Chamber of Commerce

Canadian Consumer Specialty Products Association

Canadian Gas Association

Canadian Energy Marketers Association

Canadian Fuels Association

Canadian Hydrogen Association

Canadian Manufacturers & Exporters

Canadian Roofing Contractors Association

Canadian Propane Association

Canadian Steel Producers Association

Canadian Vehicle Manufacturers' Association

Canola Oilseed Processors Association

Cereals Canada

Chemistry Industry Association of Canada

Electricity Canada

Enserva

Fertilizer Canada

Forest Products Association of Canada

Mining Association of British Columbia

Mining Association of Canada

Pathways Alliance

Pulse Canada