



Competition Bureau

ATTN: Commissioner Matthew Boswell

Deceptive marketing practices Directorate

50 Victoria Street

Gatineau, Quebec K1A 0C9

Via email: environmentalclaims-declarationsenvironnementales@cb-bc.gc.ca

February 19, 2025

Re: Consultation on the Draft Environmental Claims Guidelines published on December 23, 2024 (Draft Guidelines)

Dear Commissioner Boswell:

Who We Are

The Canadian Association of Petroleum Producers (**CAPP**) is a non-partisan, research-based industry association that advocates on behalf of our member companies, large and small, that explore for, develop, and produce oil and natural gas throughout Canada. Our associate members provide a wide range of services that support the upstream industry.

CAPP's Continued Opposition to the New Greenwashing Provisions

CAPP continues to oppose the *Competition Act*'s new greenwashing provisions and amendments related to environmental claims with respect to the benefits of a business or business activity. CAPP believes these amendments should be fully repealed.

To be clear, CAPP and its members fully support legislation that prohibits businesses from making false and misleading environmental claims. In fact, the *Competition Act* already prohibited businesses from making false and misleading claims prior to the introduction of the new greenwashing provisions and CAPP and its members supported such prohibitions. Making false and misleading environmental claims harms consumers, investors, shareholders and stakeholders alike. Under the new legislation, however, environmental claims do not need to be false and misleading to be actionable. This distinction is a very important one that underscores the concerns that CAPP and its members have with the new greenwashing legislation.

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Initial CAPP Submissions

Environmental impacts and environmental policy are some of the most important issues facing Canadians today. Parliament's approach with this legislation and its threat of very significant penalties has had an immediate effect of limiting the ability of all Canadians to participate in meaningful discourse around climate and environmental policy.

In the interests of preserving the ability of businesses to talk about their environmental performance, CAPP submitted comments on the *Competition Act's* new greenwashing amendments on September 24, 2024 in response to the Bureau's initial consultation on these provisions (**Initial CAPP Submissions**). CAPP hoped the Initial CAPP Submissions would assist the Bureau to develop useful guidelines for implementation and enforcement of the new greenwashing provisions. However, as we note below, the Draft Guidelines do not provide businesses with the level of certainty they need to engage in healthy discourse about environmental performance, a discourse which is essential to building our economy today and for the future.

The only solution to this issue is to repeal the recent amendments to the *Competition Act*.

A. The Draft Guidelines are not law and are not binding on private litigants or the Competition Tribunal

The new private rights of action that come into effect on June 20, 2025 are a major concern for CAPP and its members. Businesses will be required to take on a significant and costly burden to defend their environmental claims against a potentially large volume of frivolous and vexatious claims by private applicants.

In the Initial CAPP Submissions, CAPP asked for clear guidance on how the Bureau plans to handle frivolous and vexatious claims by private applicants, as such claims risk significantly curtailing companies' disclosure and chilling their participation in climate and environmental policy discussions. The Draft Guidelines do not adequately address these concerns.

The Draft Guidelines make clear that the Bureau's approach to the interpretation and enforcement of the new greenwashing provisions is not binding upon the Bureau, but more significantly, it is not binding on private applicants or the Competition Tribunal. As the Draft Guidelines set out:

The Bureau's guidelines are not law but set out our perspective on environmental claims and, **not the perspectives of potential private applicants**. Further, the Competition Tribunal, which makes the decisions in such matters, is not bound by the Bureau's guidelines.

CAPP and its members remain concerned that private litigants will not take a measured approach to these provisions. Instead, they will use them to stifle the energy industry's participation in environmental discourse and prevent industry from transparently communicating with the public about their

environmental performance as well as early stage or other initiatives they are undertaking to mitigate environmental impacts.

In the Draft Guidelines the Bureau suggests that "if the Competition Tribunal grants leave to a person to file an application, the Bureau then has the right to intervene in the case, and it will have regard to these guidelines when doing so." With respect, the Bureau does not have unlimited resources, and lacks the ability to intervene in all cases the energy industry anticipates will be brought. In addition, the fact that the Draft Guidelines suggest that the Bureau will only intervene after leave is granted by the Competition Tribunal, cedes to private applicants the role of shaping what it is in the "public interest" and ultimately, the scope of application of the new legislation. It is very important for the Bureau to be involved at the "public interest" stage of the inquiry to ensure that claims that purport to assert a much broader scope for the new greenwashing provisions than that envisioned by the Bureau are properly denied leave at this stage.

B. Canadian federal and provincial regulatory and reporting methodologies and frameworks may not be relied on by Canadian businesses

CAPP supports the intent to accept internationally recognized methodologies developed by industry as there are numerous examples of robust and credible standards development by industry bodies. However, we have deep concerns about the Bureau's treatment of Canadian federal and provincial regulatory and reporting methodologies and frameworks.

The Draft Guidelines provide that the Bureau only "starts with the assumption that methodologies required or recommended by government programs in Canada for the substantiation of environmental claims are consistent with internationally recognized methodologies." However, the onus is on businesses to "exercise due diligence to ensure that the methodology is internationally recognized." This additional work will put a significant and unnecessary cost burden on all businesses. However, small and medium sized businesses will disproportionately bear these costs, contrary to one of the express purposes set out in section 1.1 of the *Competition Act*, which is to "ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canada economy".

The Bureau should clearly and unequivocally confirm that businesses may rely on Canadian federal and provincial regulatory and reporting methodologies. Canadian federal and provincial agencies have, in consultation and conjunction with experts, both domestically and internationally, invested considerable time and effort to develop and adopt robust methodologies and standards. When such reporting obligations form part of a legislative scheme, businesses are legally required to comply with them. The Bureau's failure to recognize these standards and to seemingly assert its own expertise or the requirements of another jurisdiction in substitution of provincial and federal legal requirements is a serious problem for Canadian businesses.

Moreover, it is untenable, and an affront to our legislative process, for the Bureau to take the position that information about environmental performance that is reported to government agencies in accordance with legislative requirements or in alignment with governmental recommendations cannot be disclosed by businesses as part of their public dialogue without "second-guessing" whether the regulatory methodology is in accordance with internationally recognized methodology. This approach is unacceptable. There will be less, rather than more, consumer trust if environmental matters that businesses report to federal and

provincial authorities are inconsistent with environmental claims that businesses make to the public in order to comply with the *Competition Act*.

The methodologies that Canadian federal or provincial governments require or recommend should be considered to automatically comply with the new greenwashing provisions. Any other approach is illogical, overly burdensome for businesses and contrary to the public interest.

C. Securities and Securities Adjacent Disclosure

The Draft Guidelines indicate that the new greenwashing provisions do not capture the representations a business makes to its investors and shareholders for a "different purpose" (i.e. not to the public for marketing, advertising or promotion). However, the example used in the Draft Guidelines is quite narrow. The Draft Guidelines indicate that a "different purpose" includes representations to investors and shareholders "in the context of securities filings". Is the Bureau suggesting that if a representation is required to be made to comply with securities legislation, it is not subject to the new greenwashing provisions? What if the representation is included in a securities filing, but strictly speaking, isn't "required by" securities legislation? Does it need to be specifically required, or is it exempt simply because it is in a document filed with the securities regulator? Is it the Bureau's intention that a representation made by a publicly traded company that is disclosed in a securities filing would not violate the new greenwashing provisions, while the same representation made by a private entity would? Without providing greater certainty, the Draft Guidelines potentially provide a "competitive advantage" to publicly traded companies subject to securities legislation over private companies, who are not. This is a significant grey area that needs to be addressed.

The Draft Guidelines make a distinction between representations made for marketing or promoting a business and representations made for a "different purpose", but it is unclear what that means. Currently, securities regulators do not require environmental claims disclosures, such as those included in environmental, social and governance reports (**ESG Reports**) and investor presentations to be filed. Are ESG Reports and investor presentations that are not "securities filings" (or that include environmental disclosures included in documents filed with the securities regulator) representations made for a "different purpose" to investors, shareholders and other stakeholders? Or are they representations made to the public in marketing materials for the purpose of marketing and promoting a business?

These are important questions that the Draft Guidelines fail to address.

D. Forward Looking Statements and the use of scenario analysis and aspirational target-setting generally

The Draft Guidelines do not address the use of scenario analysis and aspirational target-setting generally. To the contrary, the Draft Guidelines specifically caution against disclosures about future plans and targets unless the business has: "(a) a clear understanding of what needs to be done to achieve what is being claimed; (b) a concrete, realistic and verifiable plan in place to accomplish the objective, with interim targets; and (c) meaningful steps underway to accomplish the plan." When businesses are setting longer-term targets, it is unreasonable to expect them to have fail proof plans given the many uncertainties

associated with market variables, such as technological developments and enabling policy. The Draft Guidelines do not make it clear that engaging in scenario analysis or aspirational target-setting in accordance with the recommendations of international organizations, such as the Task Force on Climate-Related Financial Disclosure (TCFD) in the Final TCFD Recommendations (i.e. an internationally recognized methodology) will not violate the new greenwashing provisions.¹

The TCFD encourages businesses to disclose different climate-related scenarios to better understand the implications of climate change on their organization. Scenarios are intended to test the resilience of an organization's strategy, to explore alternatives that could significantly alter the basis for "business as usual" assumptions and are not considered to be plans. Problematically, the new greenwashing provisions could be interpreted in such a manner that publicly available scenario analysis disclosure will violate the *Competition Act*. In addition, the new greenwashing provisions, as well as the Draft Guidelines are unclear and likely to have potentially have a chilling effect on the space required for aspirational and innovative discourse. Challenging conventional wisdom requires an exchange of ideas and the marketplace of ideas is where transformational innovation comes from. Stifling the exchange of ideas will have a negative effect on moving forward with transforming the energy industry. Scenario analysis conducted and disclosed in accordance with the TCFD and other similar methodologies should be expressly acknowledged as consistent with the new greenwashing provisions. Furthermore, the new provisions have the effect of constraining dialogue with Indigenous communities on potential project development.

Conclusion

Climate change and protecting the environment are among the most important issues facing Canada today. Industry has long participated in these public policy discussions and contributed to them in a meaningful way. Industry's contributions arise not just from statements about how they operate, but through the disclosures made to regulators and other parties. Not only have the changes to the *Competition Act* already severely limited industry's ability to provide much of this information and cut off their participation in this crucial public debate, but they have limited companies' ability to communicate important information to their shareholders, Indigenous partners, and other stakeholders.

CAPP and its members hoped that the guidance that the Competition Bureau provided would clarify and re-open that discourse while still protecting against misinformation and false statements. It has not.

The cost of compliance, as well as the potential imposition of significant penalties to businesses for re-engaging in this very important public policy debate is far too high given the ambiguity of the legislation, the failure of the Draft Guidelines to provide much needed clarity and the fact that the Draft Guidelines are not binding on the Competition Tribunal or private parties that exercise private rights of action. The only solution is that this legislation should be repealed.

¹ See The Use of Scenario Analysis in Disclosure of Climate-related Risks and Opportunities (Task Force on Climate-Related Financial Disclosure (TCFD) at <https://www.tcfddhub.org/scenario-analysis/#:~:text=Scenario%20analysis%20is%20a%20tool,%2Das%2Dusual%E2%80%9D%20assumptions>.

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CAPP Submission to Competition Bureau
Re: Draft Environmental Claims Guidelines
February 19, 2025

We appreciate the opportunity to provide these comments.

Sincerely,

CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS

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President & Chief Executive Officer

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About CAPP

The Canadian Association of Petroleum Producers (CAPP) is a non-partisan, research-based industry association that advocates on behalf of our member companies, large and small, that explore for, develop, and produce oil and natural gas throughout Canada. Our associate members provide a wide range of services that support the upstream industry.

CAPP's members produce nearly three quarters of Canada's annual oil and natural gas production and provide approximately 450,000 direct and indirect jobs in nearly all regions of Canada. According to the most recently published data, the industry contributes over \$70 billion to Canada's GDP, as well as \$45 billion in taxes and royalties to governments across the country. CAPP is a solution-oriented partner and works with all levels of government to ensure a thriving Canadian oil and natural gas industry.

We strive to meet the need for safe, reliable, affordable, and responsibly produced energy, for Canada and the world. We are proud to amplify industry efforts to reduce GHG emissions from oil and gas production and support Indigenous participation and prosperity.