

February 28, 2025

To the Competition Bureau

Via email: [environmentalclaims-declarationsenvironnementales@cb-bc.gc.ca](mailto:environmentalclaims-declarationsenvironnementales@cb-bc.gc.ca)

Re: Bureau draft guidance regarding *Competition Act's* new greenwashing provisions

We are writing to you on behalf of a broad range of industry associations in response to the draft guidance issued by the Competition Bureau of Canada (“the Bureau”) to support compliance with the environmental claims in section 74.01(1) of the *Competition Act*.

While our first priority is for legislators to repeal these changes to the Competition Act, we recognize that is not within scope for the Bureau. Our intent is to provide input to ensure fair guidance that prevents greenwashing while allowing Canadian businesses to credibly inform the public about the great work they are doing to improve environmental performance.

We appreciate the Bureau’s efforts in developing these draft guidelines, which offer greater clarity in several areas. However, we remain concerned regarding the lack of clarity in several key areas which we believe will continue to negatively impact the way that Canadian businesses communicate their environmental performance and goals and future investments. These include:

1. **Enforcement scope:** The draft guidelines stipulate that the Act’s deceptive marketing provisions are intended to capture marketing and/or promotional representations made to the public “for the purpose of promoting a product or business interest.” However, the term “business interest” is not clearly defined, leaving its exact meaning uncertain.
2. **“Internationally recognized methodologies”:** In the Bureau’s Guidance, “Internationally recognized methodologies” are defined as those that are “generally” accepted by two or more countries. “Internationally recognized methodologies” is an entirely new concept which has never been legally interpreted, and the qualifier “generally” continues to make industry vulnerable to legal challenges. The guidance should also recognize that Canada’s domestic regulatory and reporting standards, federally and provincially, are some of the best in the world and should be recognized as such and deemed compliant under the Bureau’s guidance. The Bureau risks undermining the legitimacy of governments in Canada by not being more affirmative on this point. The Bureau should also consider how this affects alignment with the U.S. Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims.
3. **Reverse onus:** Further, for government endorsed or mandated methodologies, the onus is on business to proactively confirm whether these methodologies meet the standard. 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 for companies, especially for Canada’s Small and Medium Enterprises, and nascent sectors who are excessively burdened by costly litigation. Importantly, this reverse onus contradicts Canada’s long established legal principles and procedures.
4. **“Adequate and proper” testing of products:** There are no adequate or proper boundaries around what constitutes adequate testing, leaving businesses open to unnecessary risk,

confusion and liability. We recommend that the Bureau develop a clear definition of “adequate and proper testing” that is not unnecessarily burdensome for Canadian companies.

5. **Private applicants:** Private applicants seeking redress under the deceptive marketing provisions are not bound by these guidelines, which continues to leave businesses vulnerable to reputationally damaging and costly litigation. We urge the Bureau to publish binding guidelines for private applicants through the Competition Tribunal as soon as possible, and to exercise its powers to dissuade frivolous private action as much as possible.

In closing, we want to reinforce that strong environmental performance and ensuring the credibility of environmental claims 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 credible substantiation, do not create excessive risk to business operations.

Sincerely,

Business Council of British Columbia

Calgary Chamber of Commerce

Canadian Chamber of Commerce

Canadian Consumer Specialty Products Association

Canadian Fuels Association

Canadian Gas Association

Canadian Hydrogen Association

Canadian Manufacturers & Exporters

Canadian Roofing Contractors Association

Canadian Propane Association

Canadian Oilseed Processors Association

Chemistry Industry Association of Canada

Enserva

Fertilizer Canada

Forest Products Association of Canada

Mining Association of British Columbia

Mining Association of Canada

Pathways Alliance

Prospectors & Developers Association of Canada

Pulse Canada

The Transport Canada Project