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**CMA Submission
on new greenwashing provisions
in the Competition Act**

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Introduction and context

The Canadian Marketing Association (CMA) is pleased to respond to the Competition Bureau's consultation on the greenwashing provisions that were recently added to the Competition Act.

Our membership encompasses private, not-for-profit, public, and post-secondary organizations representing virtually all business sectors, and all marketing disciplines, channels and technologies. We help our members maintain high standards of professional conduct through our Canadian Marketing Code of Ethics & Standards, our series of compliance and best practices guides – including a comprehensive guide on deceptive marketing practices – and through training and professional development.

The CMA and its members recognize that maintaining high standards of practice is a fundamental responsibility to the public and the foundation for a successful and strong Canadian business community. We provide resources to educate consumers about their rights and obligations, and we respond to inquiries from the public and work to resolve consumer complaints.

The CMA acknowledges the importance of truthful marketing claims and that these measures are part of ensuring the integrity of environmental claims. Our recommendations are rooted in our commitment to fostering and upholding ethical marketing practices while supporting business innovation and competitiveness. Primarily, they emphasize the need for greater clarity and guidance in the interpretation and application of the new provisions.

Packaging and marketing materials

Recommendation 1: We recommend a 36-month transition period following the release of guidance and clarity about acceptable methodologies and other details outlined later in this submission. The transition period should include a 12-month awareness and preparation phase to educate businesses and help them prepare for the changes. This would be followed by a 24-month implementation phase to facilitate the adoption of new greenwashing provisions and the phase out of existing packaging, marketing materials and other promotional materials that do not meet the new requirements.

Rationale: Companies need a reasonable timeline to complete environmental assessments, review all existing labels, packaging and promotional materials to determine what changes are needed, to redesign materials where necessary, and to produce new labelling and packaging in accordance with the new provisions. Financial resources are strained in the existing economic climate, and a longer transition period allows businesses to manage these activities through their normal production cycles, minimizing operational disruptions and distributing costs over a longer period. This approach mitigates environmental waste and the impact of cost pass-throughs to consumers at a time when Canadians' concerns about rising costs are persistently high.

Recommendation 2: We recommend that a confidential and secure process be established through which businesses can confidently provide information only to the regulator.

Rationale: Businesses need to balance transparency and the protection of proprietary information. Substantiation of environmental claims often requires detailed disclosures of manufacturing processes, supply chain information, product composition, and research and development details.

Clarification and guidance for environmental claims

Recommendation 3: The CMA recommends the Bureau:

- Define “internationally recognized methodology”. We caution against an overly rigid definition that may not keep pace with rapidly evolving sustainability landscape.
- Develop criteria for adequate substantiation and a clear definition and list of acceptable methodologies.
- Provide support to help businesses meet the burden of proof.
- Engage with professional bodies like the CMA to ensure that guidance is appropriate for the industry. We encourage ongoing stakeholder collaboration to review and update guidance and enforcement strategies.

Rationale: Businesses face uncertainty interpreting and applying the new provisions as ‘internationally recognized methodology’ is undefined. Without a clear definition, businesses face legal risk which could lead to hesitation about making any environmental claims, which could dampen efforts to pursue efforts to create environmentally friendly products that many consumers have come to expect.

The lack of definition can also lead to inconsistent application across industries or even within the same sector, which can create an uneven playing field. A further layer of complexity emerges when considering multinational corporations that are operating across jurisdictions with differing standards, potentially limiting Canadian businesses and placing them at a disadvantage globally if standards are less strict in other jurisdictions.

Enforcement and compliance

Recommendation 4: We urge the Bureau to establish a balanced approach to enforcement that encourages remediation towards compliance rather than routinely imposing harsh penalties.

Rationale: Given the sweeping measures that are being introduced, the degree of ambiguity built into some aspects of the law, and the fact that there was no consultation period prior to the rules being adopted, there will be a learning period where companies navigate how to apply the rules to their products. If companies are demonstrating best efforts to comply, the Bureau should help them adapt where necessary before imposing prohibitive fines, especially in the case of first-time offences. It will be helpful for the Bureau to publish its Deceptive Marketing Practices Digest on a regular basis, including decisions on greenwashing cases that provide the industry with practical insights about evolving interpretations using actual examples.

The CMA would be pleased to provide leadership in this area through providing training and guidance on deceptive marketing practices to contribute to the development of educational resources and initiatives. We have published several guest blogs from the Bureau on deceptive marketing topics, and we would be happy to collaborate on a web, social and podcast series geared to helping marketers understand and comply. We can also leverage our Consumer Centre to educate consumers about environmental claims.

In closing

While the new provisions in the Competition Act aim to address greenwashing, their implementation and enforcement needs to be balanced with the realities faced by businesses. Implementing our recommendations would create a regulatory environment that fosters truthful marketing while supporting business innovation and competitiveness.

For questions or to discuss our submission, contact:

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About the Canadian Marketing Association (CMA)

The CMA is Canada's largest marketing association and the voice of the marketing profession. We are the catalyst to help Canada's marketers thrive today, while building the marketing mindset and environment of tomorrow. We represent virtually all of Canada's major business sectors, and all marketing disciplines, channels, and technologies.

Our purpose is to champion marketing's powerful impact. We provide opportunities for our members from coast-to-coast to develop professionally, to contribute to marketing thought leadership, to build strong networks, to meet consumer needs and provide meaningful, trust-building relationships with their customers, and to strengthen the regulatory climate for business success.

Our Chartered Marketer (CM) designation signifies that recipients are highly qualified, with the skills they need to help businesses grow and up to date with best-in-class modern marketing practices, including those reflected in the Canadian Marketing Code of Ethics and Standards and our Consumer Centre helps Canadians better understand their rights and obligations.