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**CMA Submission
on the Competition Bureau's proposed
environmental claims guidelines**

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Introduction and context

The Canadian Marketing Association (CMA) is the voice of Canada's marketing profession, representing corporate, public and not-for-profit organizations across Canada. Our membership spans organizations from virtually all business sectors and marketing disciplines, channels and technologies.

We help our members maintain high standards of professional conduct through our Canadian Marketing Code of Ethics & Standards, compliance and best practices guides, and professional development.

For example, the CMA Guide to Truthful Marketing contains essential information to help marketers understand and avoid misleading representations and deceptive marketing practices. It helps marketers create compliant strategies and campaigns from the outset, that contribute to a strong brand reputation and help foster consumer trust. Our Consumer Centre helps Canadians understand their privacy rights and obligations, and we respond to marketing-related enquiries from consumers and organizations.

We appreciate the consultation process that the Competition Bureau set in place as it develops environmental claims guidelines, and its efforts to provide clarity on the new provisions of the Competition Act. We participated in the September 2024 consultation about new greenwashing provisions in the Competition Act, and we are pleased to see several of our recommendations partially reflected in the proposed guidelines, particularly in the areas of providing examples for each provision of the Act, providing some clarity for "internationally recognized methodology", emphasizing the importance of clear and specific environmental claims, addressing the need for substantiation of future environmental claims, and recognizing the need for a balanced approach to enforcement that considers the circumstances of each case.

The CMA and its members acknowledge the importance of ensuring that environmental claims are not false or misleading. We recognize that the Bureau would not create guidelines that unduly bind its ability to adjudicate a specific case in the future. At the same time, it is important for the guidelines to achieve two key objectives:

- To provide enough clarity for businesses to be able to reasonably rely on them to provide meaningful guardrails and insights into how they can navigate complex regulatory requirements.
- To ensure that the standard of proof is not set so high that businesses cannot communicate genuine environmental initiatives effectively. Unreasonably high testing standards would unduly inhibit innovation and competitiveness, particularly for small and medium-sized enterprises that are the backbone of the Canadian economy.

The following recommendations reflect these objectives.

Comparative claims

Robust examples of best practices in comparative environmental claims are essential for businesses to better understand and comply. It is important for these examples to illustrate the best practices across different sectors.

Substantiation criteria

Examples that clearly illustrate what would be considered adequate substantiation are needed along with a list of acceptable methodologies for testing environmental claims. For example, would internal testing that is not conducted by a third party be acceptable if it adheres to international standards.

Confidentiality and proprietary information

We envision a regulatory approach that results in high compliance, reducing the need for investigations and instilling consumer confidence. To best achieve this outcome, the Bureau should establish a confidential and secure process through which businesses can provide substantiation information only to the regulator. This process could be based on the robust model for submitting confidential information that is used by the Canadian Radio-television and Telecommunications Commission.

The process should be designed to provide companies with confidence that proprietary and sensitive information would be protected without the risk of broad public disclosure. This is especially critical in industries where disclosure could compromise security. For example, disclosing the location and operation of assets related to critical infrastructure projects could trigger safety and security issues.

Internationally recognized methodology

The guidance should clarify what criteria would be used to determine that a methodology is acceptable. The guidance should indicate any criteria that would apply to the methodology in specific sectors. If some methodologies are known to be acceptable (or not acceptable), this information should be shared so that a business does not, in good faith, rely on a standard that is later found to be unacceptable.

Standardized terminology and communication guidance for environmental claims

Guidance on how businesses can effectively communicate incremental environmental improvements without risking exaggeration would be helpful.

Specifically, we propose:

- A set of standardized terms or phrases that businesses can use to ensure clarity and specificity in their environmental claims. Terminology would streamline the language in use in marketing materials, reducing the risk of non-compliance for businesses. Consumers would also benefit from consistency across products and industries, enabling comparison and a more positive user experience. For example, common terms like carbon neutral, biodegradable or 100% recyclable could be standardized.
- Guidance on how businesses can effectively communicate complex environmental information without risking misinterpretation. For example, would a layered information approach with the packaging of a product specifying 20% lower carbon footprint with a QR code for more information satisfy the requirements? This approach would benefit businesses by allowing them to highlight their sustainability initiatives and reduce the risk of greenwashing claims. It would benefit consumers by providing transparency about a product's environmental journey, which supports informed decision-making.
- Clarification through examples in the FAQs on how businesses can make specific claims about certain aspects of a product or process without implying benefits across the entire life cycle, as well as guidance on how to clearly communicate the scope and limitations of environmental claims.

Enforcement and education

We appreciate the Bureau's indication that it will consider the circumstances of each case when exercising its enforcement discretion. We urge the Bureau to take a measured approach to enforcement with an emphasis on education, particularly in the first year, to help companies navigate the new requirements, rather than imposing harsh penalties, especially for first-time offenses or when companies demonstrate best efforts to comply.

We recommend that the Bureau expand the FAQs to include more detailed information on how these principles will be applied in practice. This could include case studies or hypothetical scenarios that illustrate the application of each principle across various industries and claim types.

Publishing anonymized outcomes of investigations and findings would also provide real world examples of how the law is being applied. This would promote ethical practices, enable companies to conduct risk assessments and internal audits, and allow businesses to adapt their practices as needed to achieve greater compliance.

In closing

The proposed guidelines provide welcome clarity on some aspects of the new greenwashing provisions in the Competition Act. Our recommendations would strengthen the ability of companies to achieve compliance while thriving in a competitive market. The CMA welcomes the opportunity to collaborate on tailored guidance to brands and marketers to support these positive outcomes.

For questions or to discuss our submission, please 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.