Response to the Competition Bureau's Consultation on the Draft Guidelines for the *Competition Act*'s New Greenwashing Provisions

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Submission on behalf of Environmental Defence Canada by:

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Re: Consultation on the Competition Bureau's Draft Guidelines for the *Competition Act*'s New Greenwashing Provisions

To Commissioner Boswell and the Deceptive Marketing Practices Directorate,

Thank you for reviewing Environmental Defence Canada's submission for the initial consultation to develop guidelines for implementing the *Competition Act'*s new greenwashing provisions. We are pleased to see the draft guidelines affirm with clear rationale that greenwashing can apply to business interests and activities, not just products, and that they include many of the recommendations we put forward in our initial submission. Our key recommendations for improving the guidelines are:

1. Strengthen "*Principle 6: Environmental claims about the future should be supported by substantiation and a clear plan*" by specifying that implementation plans must not rely on unproven technology for significant emissions reductions.
2. Ensure "internationally recognized methodologies" align with the highest standards by including a list of methodologies that are required where best-practices have clearly been established.
3. Close enforcement loopholes with requirements for completing investigations once initiated and delivering minimum penalties and corrective actions.

The clarity provided in the draft guidelines section *"Civil provisions of the Act that are relevant to environmental claims"* on *"False or misleading representations*" that emphasize the Bureau's focus on "marketing and promotional representations made to the public, rather than representations made exclusively for different purposes, such as to investors and shareholders in the context of securities filings" should be sufficient to assuage the concern from companies about so-called "greenhushing". Therefore, no further action on this matter should be necessary. While it is in the interests of shareholders and investors to have an accurate and fulsome account of a company's environmental performance, we recognize the value of this distinction for the Bureau's investigations and have been concerned by the preemptive decision to avoid reporting on climate and environmental performance taken by many oil and gas companies.

Recommendations

1. **Strengthen *"Principle 6: Environmental claims about the future should be supported by substantiation and a clear plan"* in "*Principles for compliance"***

We support the "*Principles for compliance*", and stress the importance of adequate and proper testing, avoiding vague claims and exaggeration, being specific in comparative claims, and above all being truthful as described in the *Principles*. There is an opportunity to strengthen *Principle 6*, claims about the future. As the Bureau has described, companies making claims about future environmental benefits must have a clear plan to accomplish their environmental benefit objectives, which must be concrete, realistic, verifiable, and include interim targets for measuring progress. Furthermore, plans must be financially feasible and companies must have already taken meaningful steps toward accomplishing the actions required by their plans. It is imperative that this language does not get weakened in the final version of the guidelines. To improve *Principle 6,* the Bureau must specify that implementation plans used to make claims about future environmental benefits must not rely on unproven technology or assumptions of future improved efficiency for significant reductions of emissions, pollution, resource waste, or other environmental harm. For example, claims about a business being "net-zero by 2050" that include significant future emissions reductions from carbon removal or carbon capture and storage (CCS) technology at a scale that is not currently operationalized should be considered greenwashing. This is because around the world[1] and in Canada[2] CCS projects regularly underperform or fail outright, and have not delivered the promised emissions reductions despite governments and corporations around the world pouring over $83 billion into CCS development over the last three decades.[3] A business' claims of future environmental benefits must be grounded in reality, not predominantly focused on an assumed future performance of unproven technology.

2. **Ensure "Internationally Recognized Methodologies" align with the highest standards**

The Competition Bureau should ensure "internationally recognized methodologies" align with the highest standards by including a list of methodologies that are required where best-practices have clearly been established. For example, the Competition Bureau should set expectations that businesses that seek to make claims about 'net-zero' align with the High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, rather than weaker 'net-zero' methodologies that may be put forward by industries or recognized by other countries. By considering any methodology to be internationally recognized if it is recognized *in* two or more countries, and, as the Bureau notes in its caveat, not necessarily recognized by the governments of two or more countries, the Bureau risks creating serious loopholes in the

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[1] Robertson, B & Mousavian, M. (2022)The carbon capture crux: Lessons learned. Institute for Energy Economics and Financial Analysis. Available: https://ieefa.org/resources/carbon-capture-crux-lessons-learned

[2] Schlissel, D. (2021) IEEFA: Carbon capture goals miss the mark at Boundary Dam 3 coal plant. Available: https://ieefa.org/resources/ieefa-carbon-capture-goals-miss-mark-boundary-dam-3-coal-plant

[3] Stapczynski, S. (2023) Big Oil's Climate Fix Is Running Out of Time to Prove Itself. Bloomberg. Available: https://www.bloomberg.com/features/2023-carbon-capture-technology-running-out-of-time/

Competition Act. The Bureau can still maintain a "flexible standard" for evidence-based claims, but it must prevent lowering the bar for climate or environmental claims where testing or reporting methodologies may be susceptible to industry capture. This must be prevented by the Bureau by ensuring that a company's selected methodology aligns with the most rigorous standards or best-practices. While we recognize the role of the courts in further interpreting "adequate and proper substantiation in accordance with internationally recognized methodology", it *should* still be the responsibility of the Bureau to identify and require, or at minimum recommend, the highest standards for internationally recognized methodologies where best-practices have clearly been established.

We urge the Bureau to make explicit recommendations within the guidelines for credible international methodologies. For example, financial institutions should produce credible climate transition plans in accordance with recommendations written by sustainable finance experts, such as the *Roadmap to a Sustainable Financial System in Canada*. For "net-zero" claims, recommended internationally recognized methodologies should include: *Science Based Targets Initiative*, the *Partnership for Carbon Accounting Financials*, the *Paris Agreement Capital Transition Assessment*, the *Transition Pathway Initiative*, the *International Organization for Standardization*, and the United Nations High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities recommendations as laid out in the *'Integrity Matters'* report. We would like to re-emphasize the importance of ensuring that scope 3 emissions are included in 'net-zero' claims, and that emissions reductions avoid an over reliance on speculative future technologies. The full lifecycle of products and services must be considered when assessing environmental impacts, and all environmental claims with respect to greenhouse gas emissions must account for both direct emissions as well as indirect emissions.

3. Close enforcement loopholes and strengthening penalties and corrective actions

Strong enforcement and corrective action must be a priority. We recommend that when greenwashing occurs minimum penalties should be mandatory. A company brought forward for investigation must be required not only to cease marketing and promoting the suspect claims, but the investigation must be completed, outcomes publicly reported, financial penalties applied where appropriate, and the company must be required to take action to provide customers with information correcting the misleading advertising.

The most significant gap in the greenwashing guidelines is a lack of enforcement for companies that greenwash but agree to remove their ads or stop promotion upon being investigated by the Bureau. Stopping the investigation under these circumstances, rather than completing it and laying penalties for past greenwashing, undermines the integrity of the regulations. This has previously occurred with fossil fuel companies, such as in a case against Shell for an advertising campaign it stopped promoting once it was under investigation[4]. When a company promotes false or misleading claims in an advertising campaign that gains millions of views, the harms of greenwashing have already occurred and must be met with penalties.

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[4] Logan, C. (2024) "*Competition bureau drops false advertising complaint against Shell"* in the National Observer. Available at:
https://www.nationalobserver.com/2024/01/17/news/competition-bureau-drops-false-advertising-complaint-against-shell

Advertising campaigns are typically designed with a set timeline for promotion. If a company stops promoting an advertising campaign that contains greenwashing once an investigation begins, that is simply a shorter advertising campaign, and is not a sufficient penalty. In some cases the advertising campaign may have run its full course, completed its goals, and had its intended impact, with very little incentive not to greenwash in the future.

If the Competition Bureau were to be sufficiently resourced, we believe that greenwashing prevention would be significantly strengthened if the Bureau were able to proactively monitor the fossil fuel industry, plastics industry and financial sector, as they are all sectors of concern with a history of greenwashing.

We appreciate the Competition Bureau's efforts to clarify the anti-greenwashing provisions of the *Competition Act* and look forward to the final guidelines. Greenwashing and climate misinformation continue to have damaging effects on the public, on environmental policies, on climate action and ultimately on everyone who will be affected by the climate crisis for generations to come.

Thank you for the opportunity to provide feedback.

About Environmental Defence Canada

Environmental Defence Canada (EDC) is a registered charity and non-profit environmental advocacy organization. For over 35 years EDC has worked at the municipal, provincial and federal level to safeguard our freshwater, create livable communities, decrease Canadians' exposure to toxic chemicals, end plastic pollution, tackle climate change and build a clean economy.

Environmental Defence is non-partisan and our work is based on research and the consultation of experts and peer-reviewed science. We have established our expertise on issues that matter to Canadians about threats to our health, climate and environment, and on good solutions. Our work is supported by over 260,000 people across Canada.