February 27, 2025

Deceptive marketing practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, QC
K1A 0C9

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

Dear Sir/Madam,

Re: *CCGG's Response to the Competition Bureau's Canada's public consultation proposed guidance: Environmental Claims and the Competition Act*

The Canadian Coalition for Good Governance (CCGG) is the pre-eminent corporate governance organization in Canada. CCGG's Members are Canadian institutional investors that together manage approximately $5.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors.

CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A representative list of our Members is attached to this letter.

We welcome the opportunity to comment on the Competition Bureau's public consultation on the proposed guidance for enforcement of environmental claims and the *Competition Act* (the Act).

In our September 27, 2024 submission responding to the Competition Bureau's initial consultation on the Act's anti-greenwashing provisions, CCGG was supportive of the intention behind the amendments which extend the Act to expressly capture environmental claims made for consumer marketing or promotional purposes in the context of products, services and business impacts. We urged the Competition Bureau to provide clear guidance that both helps to prevent greenwashing and does not discourage meaningful climate disclosures. This continues to be our position.

GENERAL COMMENTS

As an organization focused on corporate governance in Canadian public companies, our comments are focused on ensuring that the disclosures about climate-related risks and opportunities that are required by investors to make investment decisions aligned with their own stewardship policies and commitments are credible and available.

In our view, the Competition Bureau's proposed guidance on environmental claims offers needed clarity on some questions and concerns raised by CCGG and other commenters from the investor/investment perspective. This includes confirming that there will not be retroactive enforcement and that there is a due diligence defence available whereby organizations who can show that they took the appropriate steps to establish a credible environmental claim will not face penalties. As a governance organization, CCGG is supportive of this guidance on the basis that it incents companies to implement appropriate policies, processes and governance oversight mechanisms in respect of environmental claims.

The Bureau, however, needs to go further in some areas to provide the strong and clear reassurance needed to facilitate the transparent, credible climate-related disclosures that institutional investors rely on in order to assess investment risks and opportunities in compliance with their stewardship obligations and fiduciary duties to their beneficiaries and clients.

Absent such clarity institutional investors are concerned that:

- existing climate commitments and disclosures will be removed or not updated which reduces the ability of investors to benchmark progress made (or not made) against commitments[1];
- companies that are not yet disclosing may be reluctant to begin to make public commitments or comments about efforts to mitigate or adapt to climate related risks and opportunities;
- innovations in new and emerging transition technologies may be stalled due to concerns about what can and cannot be communicated to investors about anticipated environmental benefits of emerging technologies that are as yet unproven; and
- liability concerns with respect to how narrowly or broadly the concept of public interest will be scoped when granting leave for private access to the Competition Tribunal for greenwashing claims could reinforce a chill on disclosures until the applicable definitions and terms in the new provisions in the Act are settled through a lengthy litigation process.

[1] See for one example Suncor which has removed its climate related disclosures in response to Bill C-59 making reports unavailable to investors. [https://www.suncor.com/en-ca/news-and-stories/suncors-response-to-recent-changes-competition-act]; also see Cenovus Energy which has "deferred" reporting on environmental performance plans [https://www.cenovus.com/Sustainability/Reporting]. This is problematic for investor initiatives such as Climate Engagement Canada, which rely on disclosures to engage with Canadian companies, including Cenovus, with the goal of helping Canadian public companies successfully transition to a net zero economy. CEC has developed a publicly available benchmark against which it issues annual reports [https://climateengagement.ca/cec-benchmark/2024-cec-net-zero-benchmark/].

We note that similar concerns and calls for clarity were raised by the Standing Senate Committee on National Finance when it considered the anti-greenwashing amendments in Bill C-59. The Committee observed:

> "...that a meaningful proportion of industry players active in Canada have made real efforts to support the move to a net-zero economy and to differentiate their firms on this basis. These legitimate efforts should not be deterred or impeded, for fears of the unintended consequences of the pursuit of greenwashing actions. Your committee believes that meaningful consultation by the Competition Bureau, to set out clear guidelines in this area, is important, and for any private right of action to be informed by such guidelines as to what may be considered deceptive in the area of environmental pursuits"[2].

The Bureau has the opportunity through its guidance to clearly disincentivize greenwashing in advertising while at the same time not stifling the robust climate disclosures needed by the capital markets.

SPECIFIC RECOMMENDATIONS

We refer the Competition Bureau to the issues we raised and the recommendations we made in our September 27, 2024 submission[3]. In addition, we would provide the following additional recommendations responsive to the Bureau's draft guidance:

1. **Strengthen the language in the guidance that regulated environmental disclosures made to investors and shareholders fall outside the scope of the Bureau's focus.**

While the draft guidance states: "Like all of the civil deceptive marketing practices in the Act discussed in these guidelines, *the Bureau's focus is on marketing and promotional representations made to the public, rather than representations made exclusively for a different purpose, such as to investors and shareholders in the context of securities filings*" [Emphasis added]. This statement is *prima facie* helpful to issuers and investors in understanding the Bureau's perspective on its scope of authority. Other statements in the guidance, however, create caveats and raise questions as to where the Bureau will draw the line.

For example, FAQ number 8 provides further information with respect to how the Bureau would treat mandatory environmental information filed with government bodies including securities regulators. The Bureau confirms that its focus is not on non-marketing/non-promotional regulated filings but then adds the following qualifying language which modifies the position taken in the guidance: "However, if the information in those materials is then used by the business in

[2] Claude Carignon, Chair, Seventeenth Report of Senate Committee on National Finance, "Observations to the seventeenth report of the Standing Senate Committee on National Finance (Bill C-59), Thursday June 13, 2024.
[3] CCGG letter to the Competition Bureau Canada's public consultation on the Competition Act's new greenwashing provisions, September 27, 2024.

promotional materials, the Bureau will consider the representations to be marketing representations".

In our view, if the information is consistent with the securities filings and is not subject to enforcement action by the primary regulator, the Competition Bureau should not be reassessing the claims.

Also of note, the Bureau defines "business activity" as "[a]ny activity carried on by a business, including but not limited to manufacturing, transporting, storing, acquiring, or otherwise dealing in articles and services, *as well as raising funds*" [Emphasis added]. This definition would appear to capture some communications to investors and in securities filings, which often have the purpose of raising funds[4].

In some circumstances such communications are also within the authority of securities or capital markets regulators which also have enforcement powers for misrepresentation and have issued their own independent guidance or requirements for environmental or climate related disclosures[5]. Taken together the response to FAQ 8 and the definition of "business activity" lead to an equivocal position on legally required or regulated filings that will not serve to incent robust climate related disclosures.

> **RECOMMENDATION 1:** We urge the Bureau to clearly indicate that it will not take enforcement action in respect of mandatory environmental disclosures made to investors in compliance with Canadian federal corporate regulation or provincial securities regulatory filings and will defer to/cooperate with the jurisdiction of the primary regulator in respect of such disclosures[6].

[4]See Torys: https://www.torys.com/our-latest-thinking/publications/2025/01/competition-bureau-publishes-draft-greenwashing-enforcement-guidelines "The draft guidelines do not address how claims about intangible products, such as financial products, can actually be tested; however, they do indicate that "raising funds" is an example of a business activity, as least opening the door for the view that certain financial activities should be substantiated in accordance with an internationally recognized methodology".

[5] Also see IFIC and PMAC submissions to Competition Bureau in September 2024.

[6] Although not yet introduced in law, Annex 3: Legislative Measures of the 2024 Federal Fall Economic Statement includes an intention to amend the *Canada Business Corporations Act* to create a regulatory authority that provides for climate-related financial disclosures by large federally incorporated private corporations. In addition, the Office of the Superintendent of Financial Institutions Guideline B-15: Climate Risk Management at Annex 2-2 – Minimum mandatory climate-related financial disclosure expectations requires climate related disclosures from federally regulated financial institutions; Also, ibid., see the IFIC submission with respect to its commentary about the cooperation MOU between the Competition Bureau and the Ontario Securities Commission.

Likewise, we urge the Bureau not to take enforcement action in respect of mandated disclosures made in compliance with international securities filing requirements such as the UK's Financial Conduct Authority's climate-related reporting requirements[7].

2. Provide clearer guidance in respect of what constitutes an "internationally recognized methodology" and recognize the Canadian Sustainability Disclosure Standard (CSDS) 2

The Bureau's guidance states that it "*will likely consider a methodology to be internationally recognized if it is recognized in two or more countries. Further, the Bureau is of the view that the Act does not necessarily require that the methodology be recognized by the governments of two or more countries*".

With respect, this interpretation appears arbitrary and raises more questions than it answers in its practical application. The Bureau does not provide guidance as to what "recognized" means or which entities or authorities within a country have authority to "recognize" a methodology. The use of countries as the reference point is also potentially problematic. Would a methodology endorsed by the European Commission be considered internationally recognized? Would a methodology embedded in a sub-sovereign non-Canadian jurisdiction, such as California, be internationally recognized?

In the context of securities filings, we acknowledge that, at this time, there are no dedicated mandatory regulations covering climate-related disclosures[8]. This topic has been under active consideration by the Canadian Securities Administrators (CSA) for several years and updated draft regulations are presumed to be forthcoming[9].

In the meantime, many companies have been making voluntary disclosures through ESG, sustainability or dedicated climate reports. We are aware that such reports can be used for greenwashing but, as noted above, the potential loss of credible historical commitments, progress and future disclosures in such reports is problematic for investors.

The Canadian Sustainability Standards Board (CSSB), which is recognized as an independent national standard setting body, has recently issued Canadian Sustainability Disclosure Standards (CSDS) 1 (General sustainability requirements) and CSDS 2 (Climate-related) after a period of robust public consultation. CSDS 1 and 2 substantively adopt sustainability standards from the International Sustainability Standards Boards. The CSA has indicated that it is considering the

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[7] See the UK Financial Conduct Authority, Climate-related reporting requirements which require Taskforce on Climate-related Financial Disclosures aligned disclosures for certain public companies and financial institutions.

[8] CSA Staff Notice 51-358, *Reporting of Climate Change-related Risks*, August 1, 2019 [https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190801_51-358_reporting-of-climate-change-related-risks.pdf]

[9] CSA Press Release in response to CSSB final standards [https://www.securities-administrators.ca/news/csa-issues-market-update-on-climate-related-disclosure-project/]

feedback from the CSSB's consultation in the context of its anticipated climate disclosure regulations[10].

CSDS 2 is focused on climate-related disclosures relevant to investors as the primary users of the disclosures, and includes transition planning and scenario analysis disclosures. Notably the disclosures in CSDS 2 are intended for investor, not marketing or promotional use, and allow for iterative and proportional disclosures as companies and methodologies mature. Investors have been encouraging Canadian companies to voluntarily begin aligning sustainability disclosures with CSDS 2/ISSB S2 pending any mandated adoption by securities regulators.

It would seem to be consistent with the objectives of the *Competition Act* and the Bureau's draft guidance that disclosures made to investors in accordance with the CSSB's CSDS 2 would be considered to be consistent with an internationally recognized methodology and would not be considered to have been made for promotional or marketing purposes. In our view, such disclosures should be recognized as such.

While not appropriate for all organizations and not a comprehensive answer to how all environmental claims and methodologies would be considered under the Act, a recognition by the Competition Bureau that CSDS S2 is an "internationally recognized methodology" and would not be considered to be in scope of promotional or marketing claims would provide helpful clarity to investors and public companies that voluntary disclosures adhering to this standard would not be subject to enforcement.

> **RECOMMENDATION 2:** In general, we encourage the Bureau to rethink its approach to "internationally recognized methodology" and revisit the principles based approach advocated for by CCGG and other investor focused organizations in the initial round of consultations.
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> **RECOMMENDATION 3:** To support consistency and certainty in capital markets disclosures pending any mandatory climate regulations, the Competition Bureau should recognize CSDS 2 as an "internationally recognized methodology". As CSDS 2 substantively adopts the International Sustainability Standards Board International Sustainability Disclosure Standard for Climate-related disclosures (ISSB S2), this recognition should also logically extend to ISSB S2.
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> **RECOMMENDATION 4:** Referring to Recommendation 1 above, it is our position that clarity with respect to the Bureau's scope of enforcement will also support a more coherent approach to the requirement to substantiate claims in accordance with "internationally recognized methodologies". Clearly indicating an intention not to exercise its enforcement powers where environmental disclosures to investors are made pursuant to a Canadian domestic legal or regulatory framework or disclosure standard would alleviate the need for the Bureau to jump through tautological hoops trying to reconcile otherwise domestically compliant claims or

[10] https://www.securities-administrators.ca/news/csa-issues-market-update-on-climate-related-disclosure-project/

disclosures with the need to *also* be substantiated in accordance with an *additional* internationally recognized methodology [11].

3. Provide greater clarity with respect to the Bureau's position on what is in the public interest in the context of the new right of private access to the Competition Tribunal

The Bureau indicates that it expects to publish guidance with respect to private access to the Competition Bureau [FAQ 9].

We acknowledge that the guidance for both the environmental claims generally and any future guidance on private access are not legally binding on either the Bureau, the Tribunal or any third party seeking access but rather provide the Bureau's perspective. In our view, however, this does not prohibit the Bureau from providing a stronger message to stakeholders as to how it will consider what is in the public interest and how active it intends to be in supporting that perspective in the context of its right to intervene in a case before the Tribunal. It should be recognized that securities regulators also have a public interest power within their mandates.

RECOMMENDATION 5: We encourage the Bureau to clarify its perspective as to how it will consider what is in the public interest in the context of greenwashing claims.

RECOMMENDATION 6: We encourage the Bureau to take a strong position and signal that it would not be in the public interest for environmental disclosures made pursuant to a mandatory Canadian corporate law or securities regulation requirements to be litigated before the Competition Tribunal. Likewise, litigating voluntary disclosures aligned with CSSB adopted standards for investors as primary users, notably CSDS 2, should not be considered to be in the public interest. The Bureau should indicate that it would, barring exceptional circumstances, seek leave to intervene on any such application or hearing at the Tribunal on this point.

In our view a strong statement from the Bureau in this regard would go a long way to both supporting capital markets regulators to move toward mandating needed climate-related disclosures and provide companies and investors with the comfort needed that transparent disclosures made compliant with regulatory requirements and subject to primary regulator oversight would not be subject to tangential enforcement in another forum.

RECOMMENDATION 7: We urge the Bureau to publish its proposed guidance for private access to the Competition Bureau as soon as possible, in order to ensure that there is clarity prior to the private access mechanism coming into force in June 2025.

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[11] See the text of FAQ 21 "My business already complies with a methodology required or endorsed by Canadian governmental programs for certain environmental claims. Is that good enough? A: The Bureau 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, businesses should exercise due diligence to ensure that the methodology is internationally recognized. Businesses should also remember that for the methodology to be adequate and proper, it needs to be suitable for the claim, having regard to all the circumstances".

4. Provide further guidance on claims about the future

We support the Bureau's efforts to ensure that public commitments are supported by credible plans to meet net-zero commitments. However, we encourage the Bureau to acknowledge that environmental claims with respect to the future are needed to anchor action, engagement and the measurement of progress but such claims are grounded in current facts and assumption, which may change over time.

Net zero and transition plans typically have differing time horizons to meet interim and long-term net zero targets. In addition, these plans are subject to numerous dependencies, unknowns and uncertainties. This includes accounting for the need for technologic advancements, regulatory and policy support from governments, changing consumer preferences, along with broader global factors such as economic, geopolitical and market conditions. These dependencies can directly influence the potential pace and scale of decarbonization efforts.

We refer to the submission of the Department of Environment and Climate Change Canada to the Competition Bureau's initial consultation which also raises this issue as follows:

> "We recommend that there be flexibility and encouragement for businesses to make a public commitment to net-zero emissions and put forth a credible plan to get there, even if the business can only identify, through scenario analysis, early mitigation strategies and their effects. Without incorporating a degree of flexibility and an acknowledgment of best efforts based on the latest, most reliable information available to companies, we run the risk of stifling or penalizing commitment and actions in the meantime. In this context, it may be counterproductive to potentially hamper the ambition of companies and create a situation where they are reluctant to announce well-intentioned aspirational commitments and take real action for fear of legal risk"[12].

> **RECOMMENDATION 8:** The Bureau must clarify that "concrete, realistic and verifiable plans" cannot realistically account for every aspect of a plan going across multiple decades and acknowledge that these plans will entail some uncertainty based on external dependencies. We encourage the Competition Bureau to look to the forward looking information regime under securities regulation which provides liability relief for future focused statements when there is transparency as to the factors, reasonable basis and assumptions upon which the claim is made, the potential material risks and uncertainty of outcomes[13].

[12] ECCC letter to Competition Bureau: https://competition-bureau.canada.ca/sites/default/files/documents/GW-Environment-Climate-Change-Canada.pdf
[13] See NI 51-102 Continuous Disclosure Obligations 4A.2 and 4A.3

Conclusion

We encourage the Competition Bureau to meaningfully address the recommendations noted in this submission and provide clear, principled and comprehensive guidance in respect of Bill C-59.

Please feel free to contact either CCGG's CEO, Catherine McCall, at cmccall@ccgg.ca, or our Director of Policy Development, Sarah Neville, at sneville@ccgg.ca, if you require further information or if we can be of any assistance.

Yours truly,

'Amit Prakash'

Amit Prakash
Chair, Canadian Coalition for Good Governance

CCGG MEMBERS 2025*

- Alberta Investment Management Corporation (AIMCo)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépot et placement du Québec (CDPQ)
- Capital Group Canada
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
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- National Bank Investments
- NEI
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Provident[10]
- Public Sector Pension Investment Board (PSP Investments)
- Qube Investment Management Inc.
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
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- Vestcor Inc.
- York University Pension Fund

*As a coalition, CCGG strives to build and reflect a consensus but, while supportive of CCGG's mission and mandate, CCGG's Members are not individually bound by CCGG's positions.