CANADAWEST FOUNDATION

Recent *Competition Act* Changes Require Clarification

Vague "Anti-Greenwashing Provisions" Create Risk and Unintended Consequences across Multiple Industries, Hampering Canada's Green-Economy Leadership

Summary

We the undersigned are pleased to respond to the Competition Bureau's public consultation regarding the recent changes to Canada's Competition Act, which ostensively target deceptive "greenwashing" statements by firms about their products or practices.

We believe that the modifications are fundamentally unclear, which will cause, and is already causing, an array of unintended consequences for a broad range of vital Canadian industries and deter rather than advance positive environmental and economic outcomes.

Concerns about these wide-ranging impacts and risks are growing across key Canadian sectors, including agriculture & agri-business; forest products & land management; manufacturing; construction; chemicals & materials; mining & critical minerals; environmental services; transportation & logistics; Indigenous businesses in all sectors; emerging clean-technologies firms; finance, investment, insurance and law. Many of these are among the proponents of this response.

We ask that the Bureau delay implementation of the private action provisions one additional year (June 20, 2026, rather than June 2025), to allow further clarification of these provisions and requirements.

Response

Deceptive marketing or misleading representation of environmental claims is contrary to the interests of consumers, to the reputation of Canadian industries, and to honest business competitors investing in green technologies and practices. Greenwashing foments distrust of legitimate claims and should be addressed under the law as are other instances of deceptive marketing. Organizations making "fake green claims", in the words of the Bureau, should indeed be held to account under the Act, with the Bureau acting on behalf of Canadians "...to ensure transparency and predictability". However, as currently formulated, the amendments to deceptive marketing practices provisions (Section 74.01) are vague and poorly defined; fail to provide clarity on how legitimate claims of environmental benefit may be put forward without risk of frivolous or vexatious challenges; and weaken the value and importance of Canada's world-class regulatory and standards systems as essential pillars of Canadian industries' global climate-action leadership.

Presumably, the drafters and proponents of the greenwashing provisions intended to send a message that unsubstantiated environmental claims would not be tolerated, even though multiple paths already existed to address deceptive marketing claims. Some believe that hydrocarbon-based subsectors of Canada's diverse energy industry were a specific focus of these changes. The reality is that the new provisions impact and create risk for virtually every sector of the Canadian economy. The following trifecta of legislated elements are of particular concern:

1. The undefined nature of "adequate and proper test[s]" and of "internationally recognized methodolog[ies]" incumbent on any firm making any claim of environmental, social and ecological benefits on the part of the firm's products, services, processes or practices;
2. The highly unusual "reverse onus" requiring all firms making any claim of environmental benefit to first prove (using the undefined "tests" or "internationally recognized methodologies") the validity of the claim in order to be free of risk of Bureau action (and, imminently, private action) on the claim's defensibility before making the claim; and
3. The substantial shift from Commissioner action against deceptive marketing such as greenwashing to greatly enhanced avenues for "private action" - that is, for private parties to seek leave to bring actions directly before the Tribunal (to come into effect June 20, 2025).

Taken together, these elements expose firms to a variety of risks, including escalated costs, reduced ability to secure investment (e.g., new product development), and the possibility of frivolous or vexatious litigation. The new provisions disincent firms from making claims regarding the environmental benefits of their products or activities, *even when those claims are backed by evidence*, because of the uncertainties and costs of defending against accusations of greenwashing by private parties with potentially diverse motivations (including vexatious ones). Contrary to what proponents of the legislation likely intended, it seems probable that the above risks will result in decreased transparency and impede Canada's progress on climate action.

Many of Canada's industries are and have been at the forefront of global climate action and of environmental leadership, with decades-long track records in the development, advocacy, and adoption of ESG methodologies that became internationally recognized as global standards and benchmarks. Examples include the Mining Association of Canada's Towards Sustainable Mining (TSM) standard, developed 20 years ago and adopted by mining associations in 12 countries, a globally recognized sustainability program that supports mining companies in managing key environmental and social risks; leadership from Canada's forest sector in the development of Forest Stewardship Council (FSC) certification for responsible management of the world's forests; the four-decade leadership by Canada's chemistry sector of the UN-recognized Responsible Care sustainability initiative across over 70 countries; our agricultural companies' roles in shaping the Global Food Safety Initiative (GFSI) and many other global food-safety standards; our construction sector's early adoption and deployment of Leadership in Energy & Environmental Design (LEED) as a globally-recognized certification program for green buildings; these and many other examples all indicate the global environmental, ecological and societal leadership of Canadian industries and companies.

Considering this history of leadership, it is deeply ironic that that our country's greenwashing provisions now identify (in the vaguest of terms) that only methodologies and standards from other jurisdictions are considered meaningful benchmarks for the environmental benefits of Canadian products and Canadian business practices. Can Canadian industries no longer be proponents of best practices and assessments that *become* globally recognized? Does Government of Canada data (e.g., ecological impact data, environmental benefit demonstration) clear the bar now set by the Act? Until these and other aspects of the modified "tests and methodologies" provisions are examined, assessed, and clarified for

industry by the Bureau, the risks, costs, and uncertainties to honest companies seeking to demonstrate environmental leadership are too high, particularly with the increased avenues for private action.

Taking all of the above into consideration, we strongly urge the Competition Bureau to consider delaying the enactment of private-action provisions by no less than one year, from June 20 2025, to June 20 2026. This will give the Bureau more time to assess and clarify expectations, develop internal and external guidelines, and allow for some development of precedent. Ideally, this delay would be extended to all aspects of these legislative changes, providing greater clarity for companies, claimants, and consumers alike. Should there be opportunity for the Bureau to request or support such delay for further assessment of the legislated Competition Act changes on the part of the Government of Canada, we also would support such a course of action.

Conclusion

Canadian companies are generally known to "follow the rules." What we ask is that rules be clear and understandable. Through this consultation the Bureau seeks "… to ensure transparency and predictability" for Canadians. We, the undersigned, are fully aligned with the Bureau's objectives regarding clarity, transparency, and predictability, as well as ensuring that the anti-greenwashing provisions provide Canadians with greater decision-making power to support both public and private environmental and economic objectives. The minimum step of delaying enactment of the newly modified private action provisions to June 20, 2026, or beyond would help mitigate some of the risks and uncertainties posed to companies seeking to authentically communicate their environmental actions and benefits in the marketplace.

Sincerely,

Canadian Cattle Association

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