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Deceptive Marketing Practices Directorate  
Competition Bureau  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

Email: [greenwashingconsultationecoblanchiment@cb-bc.gc.ca](mailto:greenwashingconsultationecoblanchiment@cb-bc.gc.ca)

The Railway Association of Canada (RAC) appreciates the opportunity to provide input to the public consultation on the *Competition Act's* new greenwashing provisions. RAC represents Canada's rail sector which spans coast to coast to coast. Our membership consists of nearly 60 railway companies including freight, intercity, commuter, and tourism operators. RAC members transport millions of passengers and approximately \$380 billion worth of goods across the country each year.

The rail industry has demonstrated robust environmental performance and remains committed to ongoing innovation, which includes taking steps to reduce emissions. Between 2018 and 2022, railways invested over \$12 billion into their Canadian networks, including on initiatives driving emissions reductions. These initiatives encompass investments in fleet renewal and modernization, fuel-saving technologies, operational efficiencies, and the use of low-carbon fuels. For example, from 2005 to 2022, the GHG emissions intensity of freight railways improved by 26.7%, while intercity passenger railways saw a 28.1% improvement. These efforts underscore the industry's commitment to environmental stewardship and its critical role in Canada's decarbonization efforts.

With the introduction of new provisions in the Competition Act requiring entities to substantiate environmental benefit claims based on "adequate and proper substantiation in accordance with an internationally recognized methodology," the RAC emphasizes the importance of clear guidance. The Competition Bureau should align what constitutes adequate and proper substantiation, as well as what qualifies as an internationally recognized methodology, with other bodies with widely recognized expertise in these matters, in line with materiality definition by securities law. Providing businesses with clear expectations is essential for ensuring certainty around environmental communications. In this context, the RAC offers the following comments for consideration.

## Consultation Questions

- 1. What kinds of claims about environmental benefits are commonly made about products or services in the marketplace? Why are these claims more common than others?**

A relevant example of environmental claims in the marketplace is the Railway Association of Canada's (RAC) communications about the rail sector's emissions and its environmental benefits, as highlighted in the annual Locomotive Emissions Monitoring (LEM) report<sup>1</sup>. This report, a product of RAC's voluntary collaboration with Transport Canada, provides detailed information on the rail industry's emissions of greenhouse gases and criteria air contaminants. The LEM report is publicly accessible and serves as a key resource for governments and Canadians to assess the environmental performance of rail.

One common claim made by the RAC, supported by the LEM report, is that rail is on average 3 to 4 times more fuel-efficient than trucking. For example, a single locomotive can transport the equivalent of goods carried by approximately 300 trucks and can move freight 220 kilometers or more on just one litre of fuel. These features of rail underscore its role as the most fuel-efficient form of ground transportation, positioning it as a critical part of Canada's climate strategy.

These environmental claims are grounded in factual evidence and are further validated by endorsements from recognized organizations, such as Transport Canada<sup>2</sup> and the International Energy Agency<sup>3</sup>, which highlight rail's potential to reduce national emissions.

Given the new provisions in the Competition Act, the RAC and its members seek clarification from the Competition Bureau on what constitutes "adequate and proper substantiation" and what qualifies as an "internationally recognized methodology" concerning environmental claims. Ensuring clarity about which standards these claims should meet is crucial for maintaining transparency and credibility.

**2. Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on “adequate and proper substantiation in accordance with internationally recognized methodology”? Is there something about those types of claims that makes them harder to substantiate?**

Certain types of environmental claims may be more difficult to substantiate using “adequate and proper” methodologies, especially when there are multiple methodologies available to support similar claims. For instance, when comparing passenger rail travel's greenhouse gas (GHG) impact to other modes of

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<sup>1</sup> [Locomotive Emissions Monitoring](#)

<sup>2</sup> [Transportation 2030: A Strategic Plan for the Future of Transportation in Canada](#)

<sup>3</sup> [The Future of Rail \(jea.blob.core.windows.net\)](#)

transportation such as air travel, different methodologies can be used, each of which may yield varying results. This can lead to discrepancies in claims about GHG emissions reductions. In such cases, it is crucial to understand how the Competition Bureau will assess the validity of claims, especially when multiple, potentially conflicting methodologies are in play. The Bureau should consider providing guidance on how to manage situations where different recognized methodologies generate diverging outcomes.

Additionally, the Bureau should consider claims of “environmental leadership” or being a “sustainability leader.” These generalized claims are often based on legitimate achievements, such as high CDP scores, sustainability awards, or recognition for innovation. However, such claims do not necessarily rely on quantifiable evidence like those listed in the third discussion question but can still be valid. This is similar to claims made in other areas, such as “leaders in customer service” or “best employers in Canada.” The Bureau should provide guidance on how to assess these broader leadership claims to ensure they are not misleading but also recognize their value when based on legitimate credentials.

Furthermore, the new greenwashing provisions appear to extend beyond product claims and into public targets and objectives set by companies. In the current context, where climate action is important, both governments and businesses are expected to commit to ambitious GHG reduction targets. However, the inherent uncertainties associated with climate change make these commitments challenging. For example, unforeseen technological or regulatory changes could impact a company’s ability to achieve bold targets. Without further clarification from the Competition Bureau, these greenwashing provisions could inadvertently discourage organizations from setting aggressive climate goals out of fear that they might not be able to meet them and could face scrutiny under the new regulations. This could result in organizations scaling back on setting high-impact climate targets, slowing progress toward achieving meaningful emissions reductions.

To avoid this, the Bureau should strike a distinct balance between encouraging ambition in climate targets while ensuring that all service or product performance claims remain transparent, supported by sound methodologies, and realistic based on the best available information at the time the targets are set. Providing clear guidance on how to address uncertainty in climate-related targets could help prevent this unintended consequence.

**3. What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been “adequately and properly**

**substantiated”? Are there limitations to these methodologies that the Bureau should be aware of?**

When evaluating environmental claims made by businesses, it is important to apply a materiality test to determine which claims require detailed substantiation. Materiality testing can help identify the environmental claims that are most relevant and impactful, both for stakeholders and the business itself. By assessing the materiality of a claim, the Competition Bureau can focus on the claims that have a significant influence on consumer decision-making, business operations, or market outcomes. Once the materiality of a claim is established, the appropriate methodology can then be considered.

The rail sector relies on numerous internationally recognized methodologies, frameworks, and institutions when substantiating claims about the environmental benefits of rail business or operational activities. These include, but are not limited to, the following:

- CDP (formerly Carbon Disclosure Project)
- Global Reporting Initiative (GRI) Standards
- ISO Standards
- Science Based Targets initiative (SBTi)
- S&P Global
- Sustainability Accounting Standards Board (SASB)
- Task Force on Climate Related Financial Disclosures (TCFD)

These frameworks and standards are widely respected for their rigorous criteria and comprehensive approaches to sustainability reporting and environmental impact assessment. Companies that report and communicate in alignment with these standards should be deemed compliant with the new provisions, as these methodologies ensure that environmental claims are grounded in scientific evidence and aligned with global best practices.

However, it is also important to acknowledge the limitations of solely relying on international standards. A focus solely on international frameworks discounts several national, provincial, and industry specific methodologies that can be equally robust and better suited to local contexts. For instance, when conducting waste audits on railway operations in Ontario, the Ontario Circular Innovation Council certification is used by auditors to ensure compliance with local regulations. Similarly, the Locomotive Emissions Monitoring (LEM) report produced by the Railway Association of Canada (RAC) relies on emissions factors developed by Environment and Climate Change Canada (ECCC) to calculate rail sector emissions, which aligns with national regulatory expectations. While rail industry specific standards from organizations such as the International Union of Railways

or the American Railway Engineering and Maintenance-of-Way Association develop and provide standards specific to the railway industry including in environmental matters.

Additionally, the Bureau should be aware that many international standards are continuously evolving, regularly revised based on new information and may not be fully developed for all sectors or regions. Other subjects such as biodiversity and waste management are areas lacking widely adopted international standards which makes it more difficult to corroborate the environmental claims made in these areas. Furthermore, certain international metrics, such as global load or passenger load factors, may not accurately reflect the Canadian context, potentially leading to discrepancies between international and national reporting. Indeed, subjects like Scope 3 GHG emissions are based on frameworks that can be, at times, subject to interpretation. Given this shifting landscape, the Competition Bureau should avoid being overly prescriptive in its approach to specifying certain frameworks and rather focus on guidance that articulates the merits or features that constitute an acceptable standard or methodology to support business environmental or climate related claims.

Another consideration is the risk of inadvertently disadvantaging smaller businesses by over-relying on international standards that may require significant financial resources, including subscription fees, and are often designed with large organizations in mind. For instance, smaller-scale companies might struggle with the complexity or resource demands of adhering to such standards. This can create a barrier to compliance, indirectly leaving smaller organizations behind while disproportionately benefiting larger ones with more capacity.

**4. What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on “adequate and proper substantiation in accordance with internationally recognized methodology”?**

When evaluating claims about the environmental benefits of businesses or business activities, the Competition Bureau should consider factors beyond strict adherence to internationally recognized methodologies. Section 74.1(3) of the Competition Act allows for the defence of due diligence, and the Bureau should take the principle of good faith into account when assessing claims under the new provisions.

Moreover, the Bureau should differentiate between environmental claims focused on specific business performance (e.g., claims of a product or service being carbon neutral) and long-term environmental commitments or targets. While performance-

related claims must be substantiated with current data, long-term objectives are integral to corporate governance and strategic planning. They provide stakeholders with insight into a company's strategic direction and risk mitigation efforts.

Environmental targets and objectives are essential components of corporate governance, driving internal alignment across business processes, including resource allocation, training, and investment planning. These commitments often influence long-term business strategies and decisions throughout the value chain, where the returns and environmental benefits may not materialize in the immediate term. The Bureau should consider these aspects when evaluating environmental communications and recognize that targets, unlike specific claims, may involve a degree of uncertainty due to the evolving nature of environmental challenges.

Targets provide companies with flexibility to make strategic investments and adjustments as needed to meet long-term environmental goals. The Bureau should be mindful of the role these targets play in sustainable business operations and assess them in the context in which they were set, rather than as absolute obligations. For example, if a company sets ambitious decarbonization targets but faces unforeseen obstacles, the claim should be evaluated based on the reasonable efforts made. Unless there is clear evidence of negligence or misrepresentation, the inability to meet a target should not result in sanctions. Progress against climate and other environmental related targets and objectives will be incremental, characterized by periods of innovation, research, development and ultimately potential wide scale deployment. Not all technologies or solutions to decarbonization are in development or accessible for deployment today. Businesses need the space to create, fail and succeed to achieve stated long-term climate and environmental objectives.

Moreover, the Bureau should adapt its evaluation criteria depending on the nature of the environmental initiative. Not all actions, such as tree planting or wetland protection, have standardized methods of validation and substantiation will vary significantly between different fields of activity. Therefore, the concept of "adequate and proper substantiation" should be flexible, recognizing that different initiatives may require different types of corroborative evidence. In some cases, this evidence may not align with internationally recognized standards but could still be valid based on the initiative's unique context.

Additionally, the Bureau should clarify whether the new provisions apply to social commitments often associated with sustainability, such as community impact initiatives. If these are covered, the Bureau's guidelines should provide clear criteria for evaluating the evidence accompanying such claims.

Lastly, when evaluating environmental claims under the new provisions, the Bureau should also consider the need for commercial sensitivity. Some claims may rely on proprietary or commercially sensitive data and information, such as unique technologies, processes, or intellectual property. Requiring full disclosure of this information could place businesses at a competitive disadvantage. The Bureau should ensure that, while claims are adequately substantiated, there is a mechanism to protect confidential business information, allowing companies to provide necessary evidence without exposing commercially sensitive details.

In summary, the Bureau should:

- Consider the good faith efforts of companies when assessing their environmental declarations.
- The Bureau should differentiate between environmental claims focused on specific business performance (e.g., claims of a product or service being carbon neutral) and long-term environmental commitments or targets.
- Adapt evaluation criteria based on the specific nature of the environmental initiative.
- Clarify whether social sustainability commitments are included in the provisions, and if so, provide guidance on how they will be evaluated.
- Maintain flexibility in assessing initiatives that may not be supported by recognized methods, to encourage transparency and continued communication from companies.
- Ensure that confidential business information remains protected.

## **5. What challenges may businesses and advertisers face when complying with this new provision of the law?**

When the Competition Bureau evaluates whether environmental claims are based on “adequate and proper substantiation,” it is important to consider a minimum standard that all organizations can reasonably meet, regardless of their size or resources. While larger organizations may have more resources to allocate towards environmental reporting and validation, smaller organizations should still be able to substantiate their claims using appropriate methodologies that align with their capacities and stakeholder expectations.

It would be helpful for the Competition Bureau to recognize that organizations have varying resources however all businesses should meet a baseline of transparency and accountability in their claims. This can be achieved with scalable and accessible methods that reflect the size, sector, and resources of the business while still adhering to sound scientific principles and industry best practices.

In setting these standards, it is also crucial to consider Canada's competitive advantage globally. As the country pursues decarbonization efforts, the Competition Bureau should ensure that its approach does not inadvertently create barriers that make it more difficult for businesses, especially smaller organizations, to attract investment. By maintaining a balance between rigorous substantiation of environmental claims and ensuring that the regulatory framework remains accessible, Canada can continue to be a leader in sustainability while fostering an attractive investment climate.

By establishing this baseline, the Competition Bureau can ensure that environmental claims are both credible and achievable for all organizations, while encouraging continuous improvement and the adoption of higher standards as capacities grow.

**6. What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?**

When evaluating environmental claims, the Competition Bureau should specify how and to what extent changes in recognized methods will affect previously made declarations. It is important that companies are assessed based on the standards that were in force at the time the initial declaration was made, provided these practices complied with the regulatory requirements at that time. This approach would ensure a level of stability and predictability for businesses, allowing them to make claims with confidence that their efforts will not be retroactively penalized due to future changes in methodologies.

Additionally, the Bureau should focus on providing clarity around key points of ambiguity in the new provisions, ensuring businesses can confidently navigate the rules and avoid inadvertent non-compliance. Rather than emphasizing broad education efforts, the Bureau should prioritize offering clear and specific guidance on the most complex and uncertain aspects of substantiating environmental claims. This would help to minimize confusion and ensure that companies can meet the substantiation requirements effectively without unnecessary complications.

Ensuring proportionality between the claim, the impacts, and the enforcement action is necessary rather than taking a purely punitive stance. The potential for precedent setting must also be considered as the first instances of application and interpretation may influence future cases.



Thank you for consideration of the RAC's comments. RAC and its members look forward to reviewing future guidance materials published by the Competition Bureau.

Sincerely,



Lora Smith  
Vice-President, Public and Government Affairs  
Railway Association of Canada