



Submitted via email to [greenwashingconsultationecoblanchiment@cb-bc.gc.ca](mailto:greenwashingconsultationecoblanchiment@cb-bc.gc.ca)

September 27, 2024

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

**Re: Public consultation on *Competition Act's* new greenwashing provisions**

Dear Commissioner Boswell, Senior Deputy Commissioner Lamoureux, and Deputy Commissioner Palumbo,

Thank you for the opportunity to submit feedback to inform the Competition Bureau's future enforcement guidance to accompany changes made to the Competition Act under Bill C-59, which received Royal Assent on June 20, 2024.

Ceres is a nonprofit advocacy organization with 35 years of experience working to accelerate the transition to a cleaner, more just, and sustainable world. We work with the world's leading investors and companies to drive sustainability in the bottom line, through ambitious climate and clean energy policy. Our Investor Network currently includes over 220 institutional investors, including 19 Canadian investors, that collectively manage over U.S. \$44 trillion in assets.

Ceres' Company Network includes 50 of the largest global companies whom we work with on an in-depth basis on climate strategy and disclosure, amongst other sustainability issues. The Ceres Accelerator for Sustainable Capital Markets aims to transform the practices and policies that govern capital markets by engaging with regulators, financial institutions, investors, and corporate boards to act on climate change as a systemic financial risk.

Ceres fully supports the overall intent of the Competition Act to address any vague or misleading representations to consumers and the public of the environmental benefit of a product, service activity or business. Organizations that claim to be environmentally friendly or aligned with net zero yet lack evidence or a credible plan to support their claims erode trust in the market.

However, we note there is a key difference between firms' publicly sharing their aspirational climate-related goals backed by detailed implementation plans, and firms claiming that their products, services or operations meet high environmental standards or align with net zero aspirations without accompanying evidence, through their marketing claims.

The comments provided herein represent the opinions of Ceres, and do not necessarily infer endorsement by each member of our Investor, Company, or Policy networks. We can state that investors in our network find climate change to be a material risk factor, and as such they depend on consistent, comparable, corporate climate-related financial disclosures to guide them in their investment decision-making. Investors' sense of urgency to address climate change is growing, highlighting the need for robust, authentic, comparable and decision-useful climate related financial data.

The robustness of Canada’s climate-related corporate disclosure landscape is dependent on well-crafted climate policy underpinned by clearly stated definitions and terms. The Competition Bureau can facilitate or create the conditions that allow for robust sustainability reporting, aligned with global sustainability reporting standards and requirements, which is in investors’ and Canada’s best interests and will help the Competition Bureau achieve the purpose of the Competition Act.<sup>1</sup> Many of Ceres’ non-Canadian investor members have holdings in Canadian companies and rely upon available sustainability reporting. Likewise, many TSX and TSXV companies seek secondary listings on U.S. exchanges, consistent with their growth strategy. As of 2023, 234 companies were dual listed on the TSX with a U.S. exchange, while 75 companies were dual listed on the TSXV with a U.S. exchange. Canada’s foreign direct investment (FDI) in the U.S. stock market was \$589.3 billion in 2022, up 7.3% from 2021, while U.S. FDI in Canada’s stock markets was \$438.8 billion in 2022, a 10.1% increase from 2021.

Investors in our network have actively engaged with companies across all sectors over the last decade, and continue to do so today, encouraging them to improve the quality of their sustainability disclosures. Ceres supports—in conjunction with SHARE, RIA and PRI—Climate Engagement Canada (CEC), a finance-led initiative that drives dialogue between the financial community and Canadian issuers, to promote a just transition to a net zero economy. The initiative includes 48 financial sector participants representing over \$6 trillion in assets, that engages with 41 companies considered to be the top emitters on the TSX (not in Climate Action 100+). Ceres, with other global partners, also supports the work of Climate Action 100+ (CA 100+), a global investor-led effort to ensure the world’s largest corporate greenhouse gas emitters take necessary action on climate change, involving 600+ investors seeking to influence 170 companies across sectors (including 4 Canadian firms).

We are concerned that the Competition Act will result in reduced corporate climate-related disclosure for the benefit of investors, with resultant impacts on investment analytics and benchmarking data. We note that some large Canadian issuers have withdrawn sustainability-linked disclosures from their websites, either because they are unable to test their claims, or because the Competition Act to date lacks specificity regarding the criteria of what constitutes both “an adequate and proper test,” and proper “substantiation in accordance with internationally recognized methodology.” Furthermore, clear definitions are required to inform both quantitative and qualitative reporting, and to avoid greenwashing. Given that the field of sustainable finance generally interprets the absence of environmental, social and governance (ESG) disclosures as poor ESG performance, a pattern of reduced or absent disclosure may lead some investors and investment benchmarks to effectively attribute an ESG performance downgrade for these

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<sup>1</sup> The purpose of the Competition Act is, “to maintain and encourage competition in Canada in order to: promote the efficiency and adaptability of the Canadian economy; expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada; ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; provide consumers with competitive prices and product choices.” Competition Bureau Canada, Our mandate, available at <https://competition-bureau.canada.ca/how-we-foster-competition/our-organization/our-mandate>.

companies. This could potentially subject the firms to significant financial costs, and reputational risk.

We also note that the Competition Act has implications for legal liability. Parliament has created an unprecedented right for private litigants to pursue proceedings before the Tribunal for monetary relief on behalf of themselves as well as on behalf of others. While a private party must still obtain leave from the Tribunal to begin a proceeding, reducing the risk of ‘nuisance lawsuits,’ Parliament has liberalized the existing test for leave, making it easier for private parties to bring applications challenging corporate representations they find to be misleading or anti-competitive. Companies may, in turn, feel inhibited by potential liability, reputational risk and resource considerations and err on the side of caution by removing or reducing their climate related disclosures.

Both sets of concerns underscore the need for clarity and guidance regarding how corporations should interpret key provisions of the Competition Act. We urge the Competition Bureau to follow through on its commitment to develop an accompanying, clear, and easily interpreted guidance on an accelerated basis. We suggest that the guidance first clarify the overarching principles and intent of the regulation, in consideration of the dynamic sustainability reporting environment, before addressing what comprises an adequate and proper test, and an internationally recognized methodology, with examples where possible. At the time of writing, we are awaiting the release of the Canadian Sustainability Standards Board’s (CSSB) disclosure standards 1 and 2, which should prove useful and which we expect to align with the International Financial Reporting Standards (IFRS) S1 and S2 standards.

We respectfully request the Competition Bureau take the time to fully consider and address the investor perspective, which seeks overarching climate disclosures in line with global frameworks such as the International Sustainability Standards Board (ISSB) or Task Force on Climate-related Financial Disclosures (TCFD), and national ones such as the OSFI’s Guideline B-15: Climate Risk Management (both focused on climate governance, strategy, risk management and metrics and targets), including with respect to corporate emissions disclosure as well as future-focused or ‘indicative’ climate-related disclosures.

Rather than answering the specific consultation questions, which are more focused on the consumer perspective than the investor perspective, we have chosen to list a series of key points for the Competition Bureau to consider when developing the guidance. Ceres supports the goal of avoiding greenwashing marketing claims, and emphasizes that investors need climate-related data, including forward-looking data, to determine value at risk and inform their investment decisions. A robust climate data disclosure landscape is key to the competitiveness of the Canadian market and will serve to attract investors who are committed to the transition to a net zero economy and capital needed to help Canada meet its net-zero goal.<sup>2</sup>

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<sup>2</sup> The Globe and Mail, Jeffrey Jones, *Lack of commitment on sustainable finance rules means Canada risks losing out on green capital, institutional investors say* (September 9, 2024), available at <https://www.theglobeandmail.com/business/article-lack-of-commitment-on-sustainable-finance-rules-means-canada-risks/>.

As such, below are Ceres' recommendations:

- In consideration of the dynamic sustainability standards and reporting landscape, as previously mentioned, we recommend that the Competition Bureau first determine in its preamble which principles it will use to assess what is considered adequate and proper, and list examples of adequate disclosure across sectors and disclosure types (e.g., promoting accountability, doing no significant harm, mitigating greenhouse gas emissions, aiming for circularity, adapting for a changing climate and increasing resiliency, supporting a just transition, implementing nature-based solutions, promoting biodiversity, or saving water). Detailed guidance is needed to ensure data comparability and to clarify what qualifies as good disclosure, thereby helping remove uncertainty for companies.
- Ceres understands that any formal climate-related disclosures made within or alongside financial disclosures are the purview of the Canadian Securities Administrators (CSA), and that the CSA is waiting on the CSSB to finalize the Canadian Sustainability Disclosure Standards (1 and 2) before finalizing its climate disclosure rule. As such, Ceres recommends the Competition Bureau strive to ensure any climate-related marketing disclosure guidance is aligned, to the extent possible, with the (proposed) CSSB standards, any forthcoming CSA rules (such as NI 51-107) and climate reporting guidance to be issued by CSA, including with respect to forward-looking disclosures. Ceres also notes that clear guidance from the Competition Bureau is needed soon, and it should not be delayed until the CSA issues a climate disclosure rule.
- While any corporate claims regarding existing products and services should certainly be backed by reputable scientific bodies, Ceres finds that where companies make climate-related goals and net zero commitments, these should also be aligned with science and supported with a robust plan. Investors seek evidence to support corporate climate-related commitments in order to ensure authenticity, and will evaluate corporate net zero commitments using established criteria, such as set out in the CEC and CA 100+ benchmarks, the EU or other taxonomy, or on a sector-specific basis. Criteria and evidence that investors seek include historical emissions inventory (Scopes 1, 2 and 3 where possible) and year-over-year reductions in emissions, as well as shorter-term interim targets, a detailed, transparent implementation plan with accompanying timeline, and an aligned capital allocation plan to achieve emissions reductions, adaptation, or nature-based solutions and carbon removals, at a minimum.
- Ceres cautions the Competition Bureau that the sustainable finance methodology landscape is in flux, so new and emerging metrics and frameworks may be more difficult to assess. For example, the CA 100+ Net Zero Company Benchmark methodology has had several iterative updates since its launch in 2020 and after public consultation a more significantly updated framework was released in March 2023. It will continue to evolve based on investor priorities and the latest available information and methodologies for assessing companies' climate transition preparedness and alignment with the goals of the

Paris Agreement. New standards are also in development, as illustrated by the launch of Nature Action 100 and the publication of the Taskforce on Nature-related Financial Disclosures Recommendations in 2023. Emerging metrics and framework include consideration of embodied carbon, biodiversity, nature-based solutions, and avoided emissions, to name a few. This evolution is welcome to ensure data comparability and help companies better identify what qualifies as good disclosure. The Competition Bureau will need to reconcile the overarching principle of data comparability with the reality of a dynamic standard environment when developing its guidance.

- Testing of claims should include industry-specific comparisons and methodologies. To that end, Ceres recommends testing be conducted under normative or in the range of expected circumstances (such as weather) rather than under ideal circumstances, and testing should include dependent factors (i.e., it should not occur in isolation). Material claims should be verified by an internal audit first, then audited by an external independent third party. The focus should be on assuring the process and verifying the results, in an easily repeatable manner. Ceres posits that, as climate disclosure is increasingly correlated with financial performance, climate data should be subject to the same level of rigor that financial data receives, as illustrated in our recent “Closing the Gap” report.<sup>3</sup> We note, however, that small- and medium-sized entities may be challenged to find the resources to pay for appropriate third-party testing and verification, and that the additional time for external testing may slow down the process to market.
- While companies should be able to highlight the environmental performance of one division or line of business, we caution the Competition Bureau against corporate cherry-picking. We recommend the guidance request that overarching claims made by companies reflect their entire enterprise and business model and not simply one single business unit (for example, the renewable energy business of an oil and gas company), or all aspects of their business (for example, a local initiative to recycle water versus a global company strategy to do so). Also, companies should clearly describe the scope of their claims.
- We agree that the entity should be able to demonstrate that its claims are adequate and proper, based on sector-specific guidance and/or by transparently disclosing the methodologies used for reporting, any assumptions, and main data points. For example, the field of carbon accounting is rapidly evolving. It would be important to know whether an entity is relying upon carbon offsets to achieve net zero. Ceres has published guidance about the use of carbon credits in corporate commitments and appropriate disclosures in our reports “Evaluating the Use of Carbon Credits: Critical Questions for Financial

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<sup>3</sup> Ceres, Closing the Gap: Investor Insights into Decision-Useful Climate Data Assurance (January 2024), available at <https://www.ceres.org/resources/reports/closing-gap-investor-insights-decision-useful-climate-data-assurance>.

Institutions When Engaging with Companies”<sup>4</sup> and “The Role of Natural Climate Solutions in Corporate Climate Commitments: A Brief for Investors.”<sup>5</sup>

- Enforcement will be imperative to drive accountability, yet the Competition Bureau should actively consider the intent of the corporation, and the corporation should be extended leniency in the early days, unless it is found to be actively attempting to defraud and confuse customers, investors and other stakeholders.

We trust these recommendations are useful to the Competition Bureau. In addition, we note existing organizations and frameworks that investor members commonly rely upon in their investment decisions and portfolio allocation, for their own climate-related disclosures and that of their investee companies, such as the International Sustainability Standards Board (ISSB), Task Force on Climate-related Financial Disclosures (TCFD), Sustainability Accounting Standards Board (SASB), Global Reporting Initiative (GRI), CDP (including water, forests and climate), the CEC and CA 100+ benchmarks, the Science-Based Targets Initiative, the Climate Bonds Standard and Certification, or the International Capital Market Association’s sustainable finance Principles and Guidelines.

We note that the Government of Canada is expected to release its approach to development of the Green and Transition Finance Taxonomy for Canada shortly enabling guidance starting in 2025, which should bolster the Competition Bureau’s efforts by defining core business activities that would qualify as sustainable, in keeping with the aims of the Paris Agreement. In addition, the CSSB is planning on releasing the Canadian Sustainability Disclosure Standards (1 and 2) shortly, which will further robust sustainability disclosure. We also note that global and national taxonomies and/or standards may be useful to consider when developing the guidance. For example, as we flagged in Ceres’ response to the U.S. Federal Trade Commission’s request for comments on potential updates to its Green Guides, the Voluntary Carbon Markets Integrity Initiative distinguishes between commitment claims and achievement claims.<sup>6</sup> We continue to think that this distinction is key. In addition, the EU Taxonomy and the EU Green Claims Directive (GCD) each define what constitutes an environmental claim, describe different types of claims (including explicit versus implicit green claims), and set out clear guidelines to substantiate various types of green claims to ensure transparency and accuracy in environmental marketing. Moreover, the EU Directive on Empowering Consumers for the Green Transition (ECGT) aims to protect consumers by requiring increased transparency regarding product durability, and by prohibiting misleading environmental claims. We note that the EU includes minimum thresholds for social factors such as claims of no forced labor in its greenwashing criteria, which we also fully support.

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<sup>4</sup> Ceres, Evaluating the Use of Carbon Credits (March 2022), available at <https://www.ceres.org/resources/reports/evaluating-use-carbon-credits>.

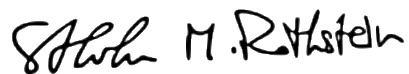
<sup>5</sup> Ceres, The Role of Natural Climate Solutions in Corporate Climate Commitments: A Brief for Investors (May 2021), available at <https://www.ceres.org/resources/reports/role-natural-climate-solutions-corporate-climate-commitments-brief-investors>.

<sup>6</sup> Ceres, letter to the Federal Trade Commission (April 11, 2023), available at <https://www.regulations.gov/comment/FTC-2022-0077-0392>.

We finally note that the question of uneven or missing climate-related financial disclosure can be addressed by making certain disclosures mandatory for issuers, as the EU has done. In this case, we fully expect companies to continue sustainability-related marketing and voluntary disclosure, and the Competition Bureau plays a critical role in ensure that reporting is not misleading.

In closing, we would be glad to meet with you to discuss the guidance as it is being developed. If you have questions or would like further information, please contact Laetitia Pirson at [laetitiapirson.consultant@ceres.org](mailto:laetitiapirson.consultant@ceres.org).

Sincerely,



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