



**Vale Base Metals submission**

**to Competition Bureau of Canada**

**RE: consultation on new environmental claims and "greenwashing" provisions**

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Please find enclosed the response and recommendations of Vale Base Metals to the Competition Bureau's consultation on new "anti-greenwashing" provisions under the *Competition Act* specifically:

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(b.1) makes a representation to the public in the form of a statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation.

(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation;

Vale Base Metals is strongly committed to truth in communication and verifiable evidence in reporting, particularly on environmental, social and governance (ESG) matters. We firmly believe companies that willfully mislead should be held accountable to their shareholders, to regulators, to the courts and to the public. More transparency and accountability are good things for government, regulators, investors, communities, the public – and ultimately, we believe, for the environment.

Unfortunately, we believe these new provisions will not actually enhance the reporting and communication of environmental performance of companies operating in Canada but will likely encourage the opposite – less openness, a reduction in transparency and ultimately a reduction in ambition. These are regressive outcomes driven by fear of legal action under undefined compliance standards. Furthermore, we believe there are already adequate regulatory measures and legal consequences in place in Canada to take action against greenwashing, provided they are enforced. Therefore, these new provisions are redundant and unnecessary.

For these reasons, Vale Base Metals recommends the Government of Canada repeal these new provisions. If a repeal is not possible, we alternatively recommend the Competition Bureau suspend enforcement activities for one year while it better defines compliance standards (i.e. 2025), then provide an additional one-year phase in period (i.e. 2026) before any enforcement begins in 2027 or later.

## **Vale Base Metals' Recommendations<sup>1</sup>**

### **1. Repeal these new provisions.**

- *These new provisions should be repealed for they will foster regressive outcomes. They will cause companies to be less transparent on their environmental impact and climate ambition at a time when such transparent reporting encourages a positive shift in operating behavior. This opacity will stifle interest in innovation and development of technologies and opportunities for companies and governments to meet their climate goals.*
- *Section 74.01 is particularly problematic as it directly stifles industry from speaking about the possibilities developing technologies can bring to industry to reduce climate change, as such technologies are too raw to meet the standard of an "internationally-recognized methodology." Meeting climate change objectives requires innovation and section 74.01 unhelpfully steers such opportunities to the shadows instead of keeping such technologies in the spotlight where they should be so that development can be accelerated.*

### **2. Suspend potential enforcement action under the new provisions for one year (i.e. till 2026) until Bureau provides further clarity, definition and recognition of:**

- *How these provisions will be applied to statements of corporate environmental and climate ambitions, aspirations and future-states;*
- *Elimination of the retroactivity of the new provisions;*
- *Transparent definitions of "internationally-recognized methodologies" and the "adequate and proper testing" of environmental statements; and*
- *How the limitation of marketing freedoms for Canadian critical minerals will, ironically, have a negative impact on Canada's role in the global energy transition.*

### **3. Once clarity and guidance on compliance standards are determined, the Bureau provide an additional one-year phase in period (i.e. till 2027) for companies to comply.**

## **About Vale Base Metals**

Vale Base Metals is headquartered in Toronto and is one of the world's largest producers of nickel, copper, cobalt, precious metals and platinum group metal products. We employ more than 6,500 Canadians across our mines and refineries in Manitoba, Ontario, and Newfoundland and Labrador. In Bécancour, Québec we are working to build the first large-scale nickel sulphate plant in North America and the largest outside of China, one that will supply GM Canada with enough nickel sulphate to be put into 350,000 electric vehicle batteries each year.

In 2023, our Canadian operations produced 86,271 tonnes of refined nickel and 79,421 tonnes of copper. As for other prominent critical minerals, Vale Base Metals produced 1,945 tonnes of cobalt, 125,188 troy ounces of platinum and 149,464 troy ounces of palladium.

Vale Base Metals also has copper and nickel mines in Brazil and Indonesia, as well as refineries in Japan and the United Kingdom. Vale Base Metals is a subsidiary of Vale SA.

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<sup>1</sup> In descending order of preference.

Vale Base Metals is an active member of the Mining Association of Canada (MAC), the Canadian Chamber of Commerce (Critical Minerals Council), and Canadian Manufacturers and Exporters (CME), and other related Canadian business and trade associations.

Vale Base Metals and our fellow MAC members support climate action consistent with the Paris Agreement to limit global warming to well below 2 degrees Celsius above pre-industrial levels. Vale Base Metals fully recognizes the importance of decarbonizing our operations and supporting the energy transition.

Therefore, Vale Base Metals is of the view that these new provisions may have the unintended consequences of:

- **discouraging corporate ambition** to meet national and international targets for the energy transition, since aspirational claims about future results (e.g. 2030 emission reduction targets, net zero 2050 commitments, etc.) could be subject to investigation, review and severe penalties;
- **discouraging corporate transparency**, given companies will be incentivized to remain silent or opaque about their environmental performance, given the challenge of undefined compliance standards such as “internationally-recognized methodologies” or “adequate and proper testing;” and
- **discouraging ability of Canadian critical minerals companies to compete globally**, to raise capital and attract responsible investors and customers at a time of global scarcity, heightened consumer interest in responsible sourcing, and trade and supply chain disruption and global realignment.

## **Rationale for Vale’s Recommendations**

### **Discouraging Corporate Ambitions**

The vision of the Government of Canada’s own Critical Minerals Strategy is to “increase the supply of responsibly sourced critical minerals and support the development of domestic and global value chains for the green and digital economy.” Furthermore, the Government of Canada boldly states:<sup>2</sup>

Critical minerals represent a generational opportunity for Canada’s workers, economy, and net-zero future. They are the foundation on which modern technology is built. From solar panels to semiconductors, wind turbines to advanced batteries for storage and transportation, the world needs critical minerals to build these products. Simply put, there is no energy transition without critical minerals, which is why their supply chain resilience has become an increasing priority for advanced economies. By growing Canadian expertise at every point along the critical mineral value chain — from mining to manufacturing, to recycling — we will create good jobs, build a strong, globally competitive Canadian economy, and take real action to fight climate change. As a result of this strategy, we will also better position Canada as a reliable supplier of critical mineral resources to our allies.

Vale Base Metals supports such an ambitious vision for the expansion of critical minerals extraction, processing and recycling in Canada for the energy transformation. In fact, we aspire to be a leading contributor to this future outcome. However, we believe these new changes work at counter purposes to the Government of Canada’s own Critical Minerals Strategy and climate ambitions. This is an instance where regulatory change will drag industry backward into

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<sup>2</sup> [The Canadian Critical Minerals Strategy - Canada.ca](#)

generalities or silence instead of enabling industry to be more specific and transparent in its drive for better environmental performance.

Our primary concern with section 74.01 of the *Competition Act* is that these legislative changes will discourage corporate ambitions in Canada to achieve net-zero by 2050. The nature of the decarbonization community is generally constructive and transparent; companies look to what others are doing to not only motivate similar ambitions, but to support innovation and investment by evaluating others' plans and ideas for their own needs. This openness spurs conversations and partnerships. Setting stretch targets is a common practice for driving higher performance and demonstrating a company's commitment to sustainability. This would be diminished should a company not be able to promote its decarbonization ambitions and spur the collective aspiration of industry to innovate.

Measures such as these that curtail bold public ambition have the potential to stall Canada's national environmental and climate achievements. According to EY's Top 10 business risks and opportunities for mining and metals in 2024,<sup>3</sup> environmental, social and governance (ESG) issues already rank as the top concern among mining companies, with increasing scrutiny from all stakeholder groups. The report outlines that miners such as Vale Base Metals are already striving for a net-positive impact across a variety of ESG measures, which can yield significant benefits, such as improved access to capital, a healthier talent pipeline, and a stronger license to operate. Therefore, there are societal benefits to communicating corporate environmental ambition.

Vale Base Metals is committed to responsible environmental performance and transparent, verifiable sustainable practices and products. We are willing and prepared to be scrutinized to show that our statements and claims are verifiable. However, our ability to tell our story ambitiously to a global audience is critical to the future success of Canada's national critical minerals strategy and its role in the global energy transition – and should not be unduly constrained.

The Bureau's own Deceptive Marketing Practices Digest<sup>4</sup> specifically recommends *against* companies communicating net-zero ambitions. Furthermore, the Bureau states any such "claims about the future" be accompanied by a "concrete, realistic and verifiable plan." Yet neither Vale Base Metals nor the critical minerals mining industry – nor even the Government of Canada with its own legislated ambition to be net-zero by 2050<sup>5</sup> – have all the answers today as to how to achieve this future goal, but we will not find them if we do not have the open ambition to look for them. On a multi-decade timeline and in a hard-to-abate industry, this is not only impractical, it stifles motivation and progress. Thus, a spirit of collective effort and collaborative innovation is needed more than ever but will be undermined if we are unable to communicate our ambition.

### **Discouraging Corporate Transparency**

A second key concern is the vagueness of the compliance standards, both the undefined "internationally-recognized methodology" and the "adequate and proper testing." The lack of clarity in how environmental claims are to be judged injects uncertainty that will require business to mute important environmental developments. Moreover, the lack of clarity on how environmental claims will be substantiated invites spurious legal claims and unhelpful retroactive scrutiny. Imposing a corroboration requirement through an "internationally-recognized

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<sup>3</sup> [Risks and opportunities for mining and metals in 2024 | EY - Australia](#)

<sup>4</sup> Volume 7: [The Deceptive Marketing Practices Digest — Volume 7 \(canada.ca\)](#) 22 July 2024

<sup>5</sup> Canadian Net-Zero Emissions Accountability Act (2021): [Net-zero emissions by 2050 - Canada.ca](#)

methodology" implies business is or will not be truthful and places an onus on business concerning environmental representations that is not justified given existing prohibitions in the *Competition Act* concerning deceptive marketing practices.

We agree with the Mining Association of Canada that there is no global consensus of an "internationally-recognized methodology." Decarbonization roadmaps, especially as we look forward to 2050, are built upon technologies with varying levels of readiness for deployment. There is insufficient definition in these provisions to support normal technology development processes to address any subject matter (e.g. GHG emissions) where the technological landscape and associated science is rapidly changing.

In fact, this question of international standards is very much a matter of global debate among competing or parallel methodologies including but not limited to: International Organization for Standardization (ISO), Towards Sustainable Mining (TSM), Copper Mark, the International Council on Mining and Metals (ICMM), the Initiative for Responsible Mining Assurance (IRMA) and so on. It is important to note that no single set of international standards can substantiate all environmental claims comprehensively. The convergence or interoperability of such global standards remains unresolved to date.

Therefore, Vale Base Metals suggests the Bureau allow companies to make claims in good faith and with appropriate explanation in their disclosures, using reasonable methodologies, techniques, or processes to be considered equivalent to "internationally-recognized methodologies." Claims based on information used for regulatory reporting, sustainability standards, or reasonable industry standards and practices should also be recognized as equivalent.

Methodologies used by Canadian federal, provincial, and territorial governments, foreign governments (e.g., the United States, European Union), non-government organizations, intergovernmental organizations (e.g., International Energy Agency, United Nations Specialized Agencies), ISO, academic institutions, and securities regulators should all also be considered acceptable.

The ultimate definition established by the Bureau should therefore incorporate qualities that ensure legitimacy, such as being evidence-based and grounded in science, while remaining broad, non-exhaustive, and iterative to support the dynamic advancement of low-carbon technologies to validate environmental statements.

### **Discouraging Canadian competitiveness**

Finally, we are concerned these provisions will create a "Canadian disadvantage" for critical mineral companies who already operate openly and transparently. For example, the new provisions will encourage Canadian companies to remain silent or opaque about their activities, processes and products, rather than communicating publicly and being accountable – while global miners in other jurisdictions are not held to similar standards. Such a situation will create an overall chill effect for Canadian mining companies, who will reduce their risk by remaining silent and not discussing their environmental performance – not because they cannot substantiate their claims, but for fear of violating these new uncertain standards.

These legislative changes will cause Canadian mining companies to fall behind our international competitors who are not required to wait for an independent entity to validate an environmental statement. If Canadian companies are less vocal or more reserved about their environmental effort, they risk losing out to global rivals who are more assertive and confident in their sustainability practices. This will be a material disadvantage to raising capital for future

extraction, processing and recycling of critical minerals that are, by the Government of Canada's own words, essential for the global energy transition: "Simply put, there is no energy transition without critical minerals."

When complying with these provisions, companies such as ours will face the increased risk of litigation stemming from the inherent regulatory uncertainty as noted above. As a result, we and other critical minerals companies will be hesitant to communicate ambitions, intentions, proposed plans and report environmental performance, fearing potential legal repercussions.

Unlike global counterparts, who may operate under clearer or more established guidelines in other jurisdictions – *or even none at all* – Canadian critical mineral companies may struggle to differentiate themselves or capitalize on their environmental achievements due to the fear of spurious legal challenges against undefined compliance standards. This reluctance could also result in Canadian companies missing out on investment opportunities, as investors increasingly seek out businesses with strong sustainability commitments and ambitions.

This unduly hesitant approach – when we are already required by law to make truthful claims – will limit the ability of Canadian firms to engage in positive environmental marketing and performance enhancement that benefits the Canadian economy and Canadian workers, ultimately placing all of us in this industry – and ironically its potential positive impact on the energy transition – at a competitive global disadvantage.

## **Conclusion**

In our view, the new provisions under the Act present significant concerns for Vale Base Metals, both on communicating present environmental performance as well as future ambition and intent. These undue limitations risk dampening customer demand for Canadian minerals and reducing investor confidence urgently needed to raise capital and expand critical minerals production in Canada.

While these new provisions may aim to improve the transparency and accountability of environmental claims, they actually introduce uncertainty and impose undue burdens, particularly on critical minerals companies that seek to contribute positively to the energy transition. Fundamentally, this appears at odds with the Government of Canada's policy direction to accelerate critical minerals extraction, processing and recycling to support demand at home and abroad to support the energy transition.

Simply put, these new provisions could impair the Government of Canada's own Critical Minerals Strategy, which in turn could negatively impact the federal government's ability to achieve its own climate ambitions, commitments and targets.

Therefore, our primary recommendation is the Government of Canada repeal these new provisions. Failing that, Vale Base Metals recommends the Bureau take one year to suspend enforcement activities while it reviews and defines compliance standards, then provide an additional one-year phase in period before any enforcement begins in 2027 or later.

Vale Base Metals thanks the Competition Bureau for the opportunity to respond to these recent changes.

Sincerely

