



Canadian
Hydrogen
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To:

Josephine Palumbo, Deputy Commissioner

Deceptive Marketing Practices Directorate

Competition Bureau of Canada

Via email: greenwashingconsultationecoblanchiment@cb-bc.gc.ca

Dear Ms. Palumbo,

RE: CHA Feedback on Public Consultation for Bill C-59 Greenwashing Provisions

On behalf of the Canadian Hydrogen Association (CHA) and our over 200 members, we appreciate the opportunity to contribute to the ongoing public consultation regarding the new greenwashing provisions established within Bill C-59. As the voice of Canada's hydrogen sector, CHA is committed to ensuring that environmental claims made within our industry are transparent, scientifically sound, and supportive of Canada's larger objectives for sustainability and innovation.

We strongly support the Government of Canada's efforts to combat greenwashing and ensure that environmental claims are legitimate and verifiable. While we understand that the amendments to the *Competition Act* that were introduced in Bill C-59 aim to prevent misleading environmental claims, we have significant concerns regarding how these provisions may unintentionally create barriers to progress in the hydrogen sector. The proposed changes pose unique challenges to emerging industries like hydrogen, which are central to Canada's future energy strategy. Below, we outline the key areas that we believe require attention and adjustment.

1. Clear Definitions for “Internationally Recognized Methodologies”

The current provision's lack of clarity around “internationally recognized methodologies” poses a challenge for businesses attempting to comply with these regulations. The hydrogen sector, which is innovating rapidly, relies on a range of evolving tools and standards to substantiate environmental claims, such as those from **ISO** and the **Intergovernmental Panel on Climate Change (IPCC)**.

Furthermore, several hydrogen production pathways, including "green," "blue," and "turquoise" hydrogen, are leading emissions reduction efforts but may not be fully captured by international methodologies. As many of these methodologies are still being developed by Canada's National Research Council (NRC), we urge the Bureau to:

- Provide a clear and flexible definition of “internationally recognized methodologies,” ensuring it adapts to evolving technological and scientific advancements and in instances where companies use recognized Canadian methodologies and standards ensure these are recognized as sufficient verification.
- Accept national regulatory tools and methodologies as valid for substantiating environmental claims.

2. Impact on Innovation and the Hydrogen Industry

As stated in the Canadian Hydrogen Strategy, Canada has made it a priority to become a global leader in hydrogen, with major goals for hydrogen production, exports and infrastructure in the coming decades. However, the regulatory burden introduced by the new provisions could cause **indefinite delays** or stop projects before they begin. For emerging industries like hydrogen, this can have serious implications:

- **Fear of Censorship and Overregulation:** There is concern that the industry could become bogged down in the minutiae of the Competition Bureau’s requirements, potentially pausing projects while under investigation. This uncertainty could stifle critical advancements and prevent companies from communicating their environmental benefits openly.
- **Market Growth:** To position itself as a global leader in the hydrogen industry, Canada must actively reduce regulatory roadblocks that currently stifle growth and innovation. These regulatory burdens not only delay project development but also discourage foreign direct investment in a highly competitive global market. Simplifying and streamlining the regulatory framework will be critical to making Canada an attractive jurisdiction for international investors and ensuring the country can capitalize on the rapidly expanding hydrogen economy.

By fostering a more predictable, agile and supportive policy environment, Canada can accelerate the growth of its hydrogen sector and secure its place as a key player in the global clean energy transition.

3. Reducing the Regulatory Burden for Emerging Industries

A supportive regulatory environment doesn't mean compromising on environmental protection or public safety. Instead, by making compliance more predictable, streamlined, and flexible, regulations can become both more effective and less costly to enforce. Rather than imposing overly restrictive measures, we advocate for a regulatory framework that fosters growth while upholding high standards. This approach would allow the hydrogen sector to flourish while advancing Canada's environmental objectives. We recommend that the Bureau consider adjustments to penalty enforcement for emerging sectors to encourage innovation and development. Specifically:

- The Competition Bureau and Competition Tribunal should **exercise enforcement discretion** and only proceed with enforcement measures for the June 2024 amendments following the publication of comprehensive guidance and adequate transition timeline.
- Ongoing regulatory uncertainty, including the threat of private action, negates the ability of companies to effectively communicate environmental benefits. This would be highly damaging to an incipient industry where education and awareness are paramount. We urge the Bureau and Competition Tribunal to fully address these concerns and allow companies time to make good faith efforts to comply before proceeding with enforcement measures.
- **Reverse the onus of proof from company to claimant:** as drafted, industry is deemed guilty until proven innocent. This makes it costless and easy for any individual or group to bring forward a frivolous lawsuit, this not only burden courts but will force both established and nascent industries to dedicate resources and time to frivolous lawsuits. Claimants, not defendants should be responsible for the onus of proof of wrongdoing.

4. Harmonization with Existing Tools and Standards

The hydrogen industry, like many others, uses government tools such as the **Life Cycle Analysis (LCA) tool** to substantiate claims. However, the new provisions' ambiguous standard of "internationally recognized methodology" raises concerns about whether these tools will meet the Bureau's requirements. While international standards such as ISO provide the framework to be used in Life Cycle Assessment, the individual LCA models provide the datasets and ultimately determine product Carbon Intensity (CI). As currently written, it is uncertain if the Competition Act deems the ECCC LCA model – used to calculate the CI of hydrogen for the CFR and CH ITC – as substantiated using internationally recognized methodologies. Similar uncertainty exists for other national LCA models such as GREET used in the United States.

To avoid conflicting regulatory demands and unnecessary confusion, we strongly urge the Bureau to:

- Recognize all science-based methodology as substantiated, and without this explicit recognition, provide certainty as businesses face risks in communicating the Carbon Intensity of their products as determined in accordance with domestic regulations.
- Republish the archived **Environmental Claims: A Guide for Industry and Advertisers**, updating it to reflect the June 2024 amendments and providing clarity for businesses.

5. Transition Period and Enforcement Flexibility

Given the complexity of these new requirements, particularly for innovative sectors like hydrogen, it is essential that businesses are given sufficient time to adapt to the new regulations. We recommend that:

- The Bureau provides a **reasonable transition period** before enforcing these new provisions.
- During this transition period, businesses should be allowed to make good-faith efforts to comply without the immediate imposition of penalties.

We believe that while Bill C-59's greenwashing provisions aim to improve the integrity of environmental claims, they currently miss the mark for emerging industries like hydrogen. Without clear guidance, flexibility, and a more supportive regulatory environment, these provisions could create unnecessary barriers to innovation and growth in a sector that is critical to Canada's future energy security.

We urge the Bureau to reconsider aspects of these provisions, particularly in how they apply to new and developing industries. We welcome the opportunity to further discuss these recommendations and are available for a meeting at your convenience.

Sincerely,



Ivette Vera-Perez,
President and CEO