The Honourable Pamela Wallin
Chair – Senate Standing Committee on Banking, Commerce and the Economy
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Delivered electronically

May 31, 2024

Dear Madam Chair and members of the Senate Standing Committee on Banking, Commerce and the Economy:

We are writing on behalf of the Competition Bureau further to our appearance at your committee on May 29, 2024.

During that meeting we undertook to respond to concerns raised by Pathways Alliance, a consortia of Canada's largest oil sands companies, about a proposed amendment to the Competition Act contained in Bill C-59 relating to deceptive environment claims or "greenwashing".[1]

As a general principle, when companies make claims to promote a product or business interest, they should be able to back them up. Bogus claims are false or misleading and undermine competition on the merits. In the context of greenwashing, the harm of unfounded claims is even more pernicious given the existential threat posed by climate change and the need to accelerate a green transition.

Clause 236(1) of Bill C-59 originally included a limited amendment stipulating that claims about a "product's benefits for protecting the environment or mitigating the environmental and ecological effects of climate change" must be "based on an adequate and proper test". While this was a positive step, the Commissioner of Competition[2] and numerous other stakeholders[3] raised concerns about the narrow, product-specific focus of this provision. Senator Galvez raised similar questions during the pre-study of Bill C-59 carried out by the Senate Standing Committee on National Finance.[4]

As explained in our written brief, a significant portion of the greenwashing complaints the Bureau receives do not involve claims about products, but concern more general or forward-looking environmental claims about a business or brand as a whole (e.g., claims about being "net zero" or "carbon neutral by 2030"). Accordingly, we recommended that policymakers "study whether the

[1] Letter from Pathways Alliance re: Competition Act Amendments to Bill C-59, dated May 28, 2024.
[2] See written brief submitted by the Commissioner of Competition (March 1, 2024).
[3] See, e.g. testimony provided to the House Finance Committee by the Canadian Association of Physicians for the Environment (April 11, 2024), the Québec Environmental Law Centre (April 9, 2024), and Option Consommateurs (April 9, 2024). See also joint written brief submitted by Ecojustice, Équiterre, CAPE and QELC (February 29, 2024).
[4] See, e.g. questions by Senator Galvez on April 9, 2024 ("We all know that climate change is a competition issue. Can the government explain why the bill focuses primarily on product-based claims rather than encompassing broader environmental claims?") and March 20, 2024 ("Some of us received a 12-page letter from the Commissioner of Competition saying that he would like to have more power to tackle greenwashing (…) My question is this: Why don't we give more power to the commissioner? Is this too little and too late at this time?")

approach to greenwashing taken in Clause 236(1) could be expanded to cover all environmental claims made to promote a product or business interest."

Although we recommended further study, we respect the decision by the House of Commons Standing Committee on Finance to make amendments to Clause 236(1) on this important issue. As noted above, it took this decision after hearing from various stakeholders. The amendments were ultimately adopted unanimously by the House of Commons at third reading on May 28, 2024.

A substantiation requirement protects competition by ensuring that consumers can trust the statements that are made about businesses and business activities. It safeguards honest and reputable manufacturers and merchants who compete with those making claims about the environmental impacts of production. Increasingly, consumers make purchasing decisions based on the environmental impacts of production, and as such, the harm from unsubstantiated claims in relation to businesses and business activities is just as serious a harm to competition as the harm in respect of unsubstantiated claims in respect of individual products.

These amendments will strengthen our ability to police deceptive greenwashing claims. While we take the concerns of Pathways Alliance seriously, we are confident that enforcement guidance from the Bureau can help address their concerns and provide assistance to all stakeholders in complying with the law. The Bureau remains firmly committed to a principled approach to enforcement of the Act.

The letter from Pathways Alliance also cites concerns about private litigation under this new provision. We note, however, that there is a requirement to obtain leave before making a private application to the Competition Tribunal. This allows the Tribunal to exercise a gatekeeper function to screen out frivolous and vexatious litigation. This is a role that the Tribunal has scrupulously discharged in the past and we would expect that it will continue to do so going forward.

In our view the proposed amendments to the Competition Act made in Bill C-59 represent a long-awaited and much-needed upgrade in our competition law framework that will better serve the needs of Canadians.

Regards,

Durocher, Anthony 0

Digitally signed by Durocher, Anthony 0
DN: C=CA, O=GC, OU=IC, CN="Durocher, Anthony 0"
Reason: I am the author of this document
Location:
Date: 2024.05.31 14:08:37-04'00'
Foxit PDF Editor Version: 13.1.0

Anthony Durocher
Deputy Commissioner - Competition Promotion Branch

Callaghan, Bradley

Digitally signed by Callaghan, Bradley
Date: 2024.05.31 14:20:54 -04'00'

Bradley Callaghan
Associate Deputy Commissioner - Policy, Planning and Advocacy Directorate