



May 31, 2024

The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance
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The Honourable François-Philippe Champagne, P.C., M.P.
Minister of Innovation, Science and Industry
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Dear Ministers:

Re: Bill C-59 – **Proposed addition of Paragraph 74.01(1)(b.2) to section 236(1) of the *Competition Act***

I am writing on behalf of the Chemistry Industry Association of Canada (CIAC) and its member companies to express our concern with respect to the addition of the referenced proposed paragraph to section 236(1) of the Competition Act as proposed in Bill C-59. The proposed provision states:

“...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.2) make 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.”

The Chemistry Industry Association of Canada

Any action by CIAC members to address the environmental, economic and community impacts of our operations are governed by Responsible Care®. Responsible Care is the flagship program of our industry that guides our members to work continuously to improve their environmental, health and safety performance. Launched in Canada in 1985 and now adopted globally in 73 countries and recognized by the United Nations, Responsible Care compels CIAC member-companies to “do the right thing and be seen to do the right thing.”

Concerns with Proposed Provision of the *Competition Act* in Bill C-59

Greenwashing Provisions:



The initial draft of Bill C-59 proposed to introduce a prohibition targeting product-specific environmental benefit claims to address "greenwashing." However, the Commissioner of Competition informed Parliament that this provision would be limited to product-specific claims and exclude broader statements like "net-zero" or "carbon-neutral" claims. The Commissioner recommended further study to potentially expand these provisions. Instead, the current provision was added late in the legislative process without the recommended study. Without such a study being completed, it is unknown whether the current provisions will address the specific concerns raised by the Commissioner. Our view is that the clause as drafted is overbroad and will have unintended consequences.

Vagueness and Compliance Risks:

The vagueness of the proposed amendment, combined with the threat of strategic private actions, creates substantial uncertainty about compliance standards and places the burden of proof on businesses for their claims. Immediate enforcement may also undermine the intended delay in private enforcement rights, allowing retroactive targeting of conduct without giving companies a fair chance to comply. This ambiguity and the threat of private actions may deter companies from making any environmental claims, which in turn will impact their ability to support the government's climate goals and subsequently discourage responsible environmental action.

Additionally, the lack of clarity around what is the "internationally recognized methodology" raises serious concerns. It is well known that there are many different methodologies that have been recognized internationally for measuring environmental and ecological causes or effects of climate change. Given the diversity in methodologies, it is unclear how the Bureau or Tribunal would apply this standard. This ambiguity could lead to ongoing compliance uncertainty and risk. Furthermore, the lack of clarity could expose the provision to constitutional challenges on the basis that it is too vague to be "prescribed by law" or to meet the requirement of minimal impairment under section 1 of the Charter.

Implications for federal / provincial environmental regulatory tools and supports:

This also has important implications for environmental tools developed by governments, including the Clean Fuel Regulations Fuel Life Cycle Analysis model used to calculate carbon intensities or the National Pollution Release Inventory (NPRI) reporting tool. Industry relies on government tools to promote reduction and environmental benefits and at this time, industry is not sure these tools would meet "internationally recognize methodology". Under the clause as drafted, the onus would be on industry to prove it. Even federal funding programs tied to a companies' net-zero commitments could be implicated (i.e., Net-Zero Accelerator Fund). This could even be extended to provincial claims and tools (for example a "Net-Zero Grid" or "Carbon Capture and Storage Reductions" or "Net-Zero emissions vehicles").

Recommendation:

We ask that the government seek to withdraw the amendment and conduct a further study, as initially recommended by the Commissioner of Competition.

Please feel free to reach out to me with any questions.

Yours sincerely,



Bob Masterson,
President and CEO

Cc: Hon. Jonathan Wilkinson, Minister of Natural Resources and Energy
Hon. Stephen Guilbeault, Minister of Environment and Climate Change
Marc Gold, Leader of the Government in the Senate
Members of the Senate Committee on National Finance
Gerard Deltell, Conservative Party Shadow Minister for the Environment
Shannon Stubbs, Conservative Party Shadow Minister for Natural Resources
Jasraj Singh Hallan, Conservative Shadow Minister for Finance
Adam Chambers, Conservative Shadow Minister for National Revenue