



September 27, 2024

Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

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

RE: Public Consultation on the *Competition Act's* New Greenwashing Provisions

On behalf of the 190,000 farm businesses represented through our membership, the Agricultural Carbon Alliance (ACA) respectfully shares these comments on the *Competition Act's* new greenwashing provisions.

ACA was established to ensure that Canadian farmers' sustainable practices are recognized through a policy environment that maintains their competitiveness, supports their livelihoods, and leverages their critical role as stewards of the land. We are a coalition of 16 national farm organizations committed to promoting meaningful and collaborative dialogue around carbon pricing and agri-environmental policy. Our membership encompasses major agriculture commodities, including grains, oilseeds, pulses, cattle, sheep, pork, fruit and vegetables, dairy, forage and grasslands, seed, ornamental plants and poultry. Collectively, we steward over 62 million hectares of land, or 7% of Canada's land mass, to feed and fuel Canadians and the world.

ACA is aligned with the Bureau's objectives regarding clarity, transparency, and predictability, as well as ensuring that the anti-greenwashing provisions provide Canadians with greater decision-making power to support both public and private environmental and economic objectives. However, the ACA has several concerns regarding the proposed greenwashing provisions and the potential unintended consequences resulting from the lack of consultation and clarity, undefined terms, and potential increase in frivolous lawsuits, all of which can negatively impact the sector.

ACA's key concerns include:

- **Lack of consultation**
Many organizations were not given the opportunity to provide feedback or speak to the new amendments prior to Bill C-59 receiving royal assent in June. As a result, the amendments are extremely vague and left open to interpretation. They will require significant clarification prior to compliance by impacted organizations.

- **Vague and undefined**

The amendments require businesses to prove claims based on ‘proper and adequate tests’ and ‘internationally recognized methodologies.’ However, it is not clearly determined what ‘internationally recognized methodologies’ means (e.g. is it methodologies published in scientific, peer-reviewed journals, recognized by a certain international body, etc.). There may also be cases where such methodologies, depending on how the Bureau plans to define the term, may not exist or accurately reflect the Canadian context. This means Canadian standards, even if world-leading, may not qualify – potentially putting Canadian industries at a competitive disadvantage. Further, the bill needs to clearly state what ‘proper and adequate tests’ will be recognized by this legislation.

- **Chilling effect**

The new provisions could have wide-reaching negative impacts on investment, innovation, adoption, and marketing. The ambiguity of the bill undermines the industry’s genuine efforts to advance sustainability and discourages sectors from making claims regarding the environmental benefits of their products or activities, *even when those claims are backed by evidence*. This is because of the uncertainties and costs of defending against accusations of greenwashing. As a result, we could see negative impacts on food prices, and global and domestic food security as well as industry hesitance to invest in innovation and sustainability or share the beneficial results of their research. The potential for a significant increase in costly legal fees due to frivolous claims could negatively impact Canada’s reputation as a high-quality agricultural producer or decrease the frequency in which Canada speaks to the sustainability of the sector.

This is a problem that would extend far beyond the agriculture industry and would be experienced by many other sectors, including energy, mining, forestry, transportation, finance, and others.

- **Frivolous or vexatious lawsuits**

We are deeply concerned that the undefined nature of ‘adequate and proper tests,’ and of ‘internationally recognized methodologies,’ combined with the unusual ‘reverse onus’ provision which places the burden of proof solely on the claim maker, and a shift toward ‘Private Rights to Action,’ will expose sectors to a variety of risks, including escalated costs, reduced ability to secure investment, and the possibility of vexatious litigation. In addition, significant resources within the Bureau will be strained while attempting to handle the likely increase in frivolous lawsuits.

- **Negative perceptions and consumer lack of trust**

Farm business have been continually improving animal health and welfare, natural resource management, and environmental stewardship for generations. These new provisions could undermine genuine efforts to improve our industry standards by casting doubt on all sustainability claims while simultaneously fostering consumer distrust.

ACA's recommendations include:

- **Clear implementation guidance**
The Competition Bureau should develop clear implementation guidance to help industries comply with the new greenwashing rules and avoid unnecessary lawsuits.
- **Accepted methodologies**
Clearly define what constitutes 'internationally recognized methodologies' and an 'adequate and proper tests,' and allow for science-based evidence in support of claims. The Competition Bureau should not be prescriptive on what methods can be used but should support the best available science and data without undue cost.
- **Delay the expansion of private right to action**
The Competition Bureau should study the unintended consequences of the provisions and delay the enactment of the expansion of the Private-Action provision until sufficient evidence can inform Tribunal decisions. This will give the Bureau more time to assess and clarify expectations, develop internal and external guidelines, and allow for some development of precedent.
- **Balance burden of proof**
Ensure that accusers also provide evidence with 'proper and adequate tests' and in line with 'internationally recognized methodologies,' before a Private-Action can proceed, balancing the onus of proof and deterring frivolous or vexatious litigation. In addition, if the burden of proof is shared between the accusing organization and the accused, the Bureau must ensure the appropriate individuals are involved when determining which science-based test result was interpreted correctly to substantiate the environmental claim in question. In addition, clarification is needed on which entity (e.g., bureau, panel, etc.) will adjudicate the scientific arguments presented by both parties and ultimately decide the outcome.
- **Enhance federal-provincial collaboration on agricultural regulation**
Consulting provincial governments and tailoring regulations to regional practices will make the policy more practical, effective, and easier to implement. This cooperative approach will ensure consistency, fairness, and smoother compliance across the agriculture sector, benefiting producers and advancing national sustainability goals.

ACA asks that the Competition Bureau revisits the amendments and establishes transparent, predictable, and clear guidance for organizations. Further study of the amendments' unintended consequences will help mitigate some of the risks and uncertainties posed to companies seeking to authentically communicate their environmental actions and benefits in the marketplace.

Thank you for your consideration of this submission, and please do not hesitate to reach out should you have additional questions.

Our members include Canadian Canola Growers Association, Canadian Federation of Agriculture, Canadian Cattle Association, Grain Growers of Canada, Canadian Pork Council, Chicken Farmers of Canada, Turkey Farmers of Canada, Fruit and Vegetable Growers of Canada, Canadian Hatching Egg Producers, Canadian Forage and Grassland Association, National Sheep Network, National Cattle

Feeders' Association, Canadian Seed Growers' Association, Mushrooms Canada, Canadian Nursery Landscape Association and Canadian Ornamental Horticulture Alliance.

Sincerely,

Original signed by

Dave Carey
Co-Chair
Agriculture Carbon Alliance

Original signed by

Scott Ross
Co-Chair
Agriculture Carbon Alliance