

Submitted via email to:

misleadinggreenclaims@cma.gov.uk

09/07/2021

Dear Misleading Green Claims Team,

Good Energy's response to the Competition and Market Authority's (CMA) draft guidance on environmental claims on goods and services

Thank you for the invitation to respond to the consultation on draft guidance on environmental claims on goods and services. Good Energy supplies 100% renewable electricity and carbon-neutral gas to homes and businesses across the UK. Good Energy is working towards a renewable future, helping to support technologies including wind, solar, biofuel and tidal. Our purpose is to power the choice of a cleaner, greener future together.

Summary:

- **We welcome the publication of the draft guidance on misleading environmental claims, which is an important step towards developing a better understanding of misleading green claims.**
- **In order for the guidance to make a meaningful impact to consumers, we believe the CMA's consumer powers should be strengthened to match its current competition powers.**
- **A joined-up approach is needed with other industry bodies such as the ASA, CAP and sector specific organisations to prevent confusion for businesses and consumers.**
- **The energy case study should be amended before final publication to prevent the sector specific legislative loopholes leading to consumers being misled.**
- **We fully support the publication of a separate consumer guidance document, but this should be consulted on to allow input from consumer groups.**





In order to truly protect consumers, the CMA's consumer powers need to be strengthened

We support the publication of the draft guidance and hope that this is the start of a continued effort to help equip businesses and ultimately to protect consumers from misleading environmental claims. As a guide to understanding how misleading green claims sit within consumer law, we believe the six principles capture the main issues currently faced by consumers across the wider economy.

However, it is not clear from the publication exactly how the CMA will successfully take enforcement action against businesses who continue to repeatedly mislead consumers with inaccurate green claims. Compared to the CMA's competition powers, which through the Competition Act 1998 are extensive, the CMA's consumer powers by comparison are much weaker and much more bureaucratic.

As an example, if a business were to continually be in breach of any of the six principles, it is unclear what enforcement action the CMA could take that would not include going through the civil courts, which is often a very lengthy and resource intensive process.

Therefore, we believe that in order for the draft guidance to be truly effective, the CMA's consumer powers should be strengthened and aligned with their existing competition powers.

This position shares parallels with the CMA's annual plan for 2020-21, where there was a call for updated duties and powers to bolster consumer protection.¹ More recent work has also called for the CMA's consumer powers to be strengthened. In *Power to the People*, a recent report published by John Penrose MP, there were loud calls for the CMA's civil consumer enforcement powers to be updated and have the same importance as their competition toolkit.²

There seems to be a broad coalition of stakeholders who would like the CMA's consumer powers to be increased. However, if the CMA were unable to strengthen their consumer powers, we believe there is another alternative. We propose the creation of an independent 'net zero watchdog'. An independent consumer body, with a remit focused solely on combating misleading green claims across all sectors of the economy could fulfil a much-needed role and be a critical source of protection for consumers.

A joined-up approach is needed to ensure consistency and prevent confusion for consumers

With the guidance intended for use across multiple different sectors of the economy, it is absolutely vital that there is a clear, joined-up approach with other bodies such as the ASA, CAP, BCAP and relevant sector specific regulators.

¹ <https://www.gov.uk/government/publications/competition-and-markets-authority-annual-plan-2020-to-2021/annual-plan-2020-to-2021>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/96166/5/penrose-report-final.pdf, pp.17



If there is not a joined-up approach, this risks the danger that there could be several, subtly different approaches from multiple organisations across the economy. The net result of this could unintentionally create more confusion for consumers, which is precisely the opposite intention of the draft guidance.

Taking the ASA as an example, it is clear that the draft guidance will have a vital role in considering whether businesses are compliant with the advertising standards they are tasked with monitoring. Whereas the CMA did not partner with ASA on issuing this specific draft guidance, like was previously the case with guidance issued for social media influencers,³ we believe it is necessary for there to be a coordinated joined-up strategy across the relevant organisations. This will be key in delivering clarity and consistency for consumers.

Lastly, a key component of a joined-up strategy will be the alignment with specific sector bodies and regulators. In the energy sector, the key relationship will be with the sector regulator, Ofgem. Whilst we recognise that the CMA cannot overrule sector specific legislation, we believe there is still a crucial role for the CMA to contribute. By applying the draft guidance to specific sector issues, the CMA could play a valuable role in highlighting areas where legislation is not entirely compatible with the guidance on misleading environmental claims.

As highlighted in a recent report by Baringa, legislative loopholes still remain that have allowed some energy suppliers to market green tariffs despite not buying the equivalent renewable power.⁴ This results in a gulf between what consumers understand from claims of '100% renewable' supply, and the product they actually receive. In instances like this, we believe the CMA should highlight where legislation enables businesses to continue making misleading environment claims to consumers.

The energy case study should be amended before final publication to protect consumers

It is very welcome and encouraging to see that energy was one of the sectors chosen to be highlighted as a case study in the draft guidance. The issue of greenwashing in the sector is becoming an increasing concern to consumers and we welcome the CMA highlighting some of the current issues.

Nonetheless, the case study highlights some of the sector specific challenges the energy sector currently faces. If this version were to be published, we believe there is long term risk that consumers will still continue to be misled. Therefore, we would like to see the CMA review the energy case study before final publication to account for future conflicts with the guidance and the sector specific legislation. By making changes at this stage, the hope would be that consumers will be protected both in the short and long term.

We would welcome a review of the following inclusions:

³ <https://www.asa.org.uk/uploads/assets/9cc1fb3f-1288-405d-af3468ff18277299/INFLUENCERGuidanceupdatev6HR.pdf>

⁴ https://www.baringa.com/BaringaWebsite/media/BaringaMedia/Campaign_LCF/Webpages/30-April-21-Renewable-tariffs-in-the-UK-what-makes-a-tariff-green.pdf

- i.) REGO certificate evidence – allowing for REGO certificates to be sufficient evidence presents significant issues. Section 21D of Ofgem’s Supply License conditions requires that an energy supplier offering a tariff with ‘an Environmental Claim to the effect that some or all of the electricity supplied under that tariff is generated from renewable sources’ must hold the requisite number of Guarantees of Origin (GoOs) to support the volume of claimed renewable supply; and retire any associated Levy Exemption Certificates.

However, the closure of the Levy Exemption Certificates scheme in 2015 created a loophole to third party trading of REGOs and GoOs, making it simpler for energy suppliers claiming to offer ‘100% renewable electricity’ without actually buying the renewable power they relate to.

This has created a marketplace where a 100% renewable tariff is often a confusing and misleading space for consumers to navigate. This is in direct contrast to suppliers, like Good Energy, who procure their power through Power Purchase Agreements (PPAs) with renewable generators, offering full transparency to consumers.

With a call for evidence on green tariffs expected from the Department of Business, Energy and Industrial Strategy (BEIS) shortly, there is a possibility that the guidance will be inapplicable if BEIS change the rules. We would therefore urge the CMA to bear these considerations in mind when publishing the full guidance to consumers.

- ii.) Life cycle emissions – whilst the issue of life cycle emissions is clearly becoming more important for consumers, regulating claims made by businesses in the energy sector is likely to present conflicts with current government rules. If an energy case study were to encourage consumers to ask energy suppliers about life cycle emissions, then we would urge the CMA to bear in mind and make a disclaimer to the official guidance from BEIS.

Under the guidance from BEIS on fuel mix disclosures, the environmental impact (Co2 emissions) from renewables and nuclear is stated as 0g/ kWh, and is accompanied by the statement ‘Data relates only to generator emissions in the operational phase and does not include emissions related to the fuel supply chain or maintenance activities.’¹⁵ Suppliers are required to use this emissions factor when communicating with their customers under the Electricity Supply Licence (SLC 21). It is important that any case study, or wider guidance on life cycle emissions works in synchronization with official government guidance. Otherwise, there is a risk that this creates even further confusion for consumers.

- iii.) Cheapest among comparable tariffs – this links back to the first point on REGO guidance and the wider concerns around additionality. The current legislation means it is near on impossible to have a comparable tariff if it is marketed as ‘100% renewable’.



Cheaper tariffs will often imply that a supplier is backing their tariff with certificates rather than purchasing the renewable power directly either through a PPA, or from their own assets. Focusing on the additionality provided by a green tariff rather than the cheapest option in the marketplace would be a more relevant and meaningful question for consumers to ask their energy providers.

To protect consumers, we believe the energy case study should not be drawn into sector legislation but instead focus on the higher-level principles. For instance, the example used on page thirty-seven is a great illustration of how the guidance can be used effectively. Companies who offer a truly green product should be able to demonstrate how they buy or invest in renewable energy in order to nullify any doubts about misleading claims.

The expectation from consumers now is that the 'extra element' or the premium from a green tariff should be spent on investing in renewables.⁶ If the CMA's guidance states that certificates are substantiating evidence, then this could create long term trust and confidence issues for consumers, whilst also holding back necessary investment in our renewable infrastructure.

To allow for consumer groups input, there should be a consultation on the consumer guidance document

We welcome the CMA's decision to publish a consumer guidance document alongside the final guidance document. Whilst it is clear that these proposals will be extremely important for businesses, it is consumers who will be the beneficiaries of these changes. We therefore encourage and are supportive of proposals to provide consumers with a toolkit to ensure that they understand and ask the right questions about this guidance.

In order to facilitate this, we believe that the CMA should consult on the consumer guidance document first before publication. It would be fair and appropriate for consumer groups in particular to have oversight of this guidance before publication, to ensure that the documents meet the requirements for consumers.

In regard to timings, it makes sense for a consultation to follow the publication of the final guidance documents. Swift publication would benefit all involved, but the most important thing here is making sure that consumer groups and wider stakeholders have an opportunity to feedback on the document before it is published for consumer use.

⁶ [30-April-21-Renewable-tariffs-in-the-UK-what-makes-a-tariff-green.pdf \(baringa.com\)](#) pp. 2



I hope you have found our response helpful. If you would like more information, or have any questions about our views, please do not hesitate to let me know.

Kind regards,

[Redacted signature]

[Redacted name]

[Redacted contact information]

