

InfluenceMap Response: CMA Draft Guidance on Environmental Claims on Goods and Services

The following is presented by InfluenceMap CIC in response to an [invitation for comment](#) on the CMA's draft guidance on environmental claims on goods and services, for the consultation closing July 16th, 2021.

Introduction

InfluenceMap CIC is a global think tank providing open-source data on corporate influence on climate change to investors and other stakeholders. InfluenceMap has worked extensively with investors since 2015 on understanding corporate behavior on public policy matters related to climate change, including lobbying and other forms of policy engagement. The scope of InfluenceMap's analysis of influencing activities is defined by the 2013 UN Guide for Responsible Corporate Engagement in Climate Policy, which includes the use of advertising and social media that are material to misleading environmental claims made to consumers and businesses.

InfluenceMap's work has been cited as evidence in a number of legal cases relevant to consumer messaging. For example, research on ExxonMobil spending on climate focused branding and lobbying (from March 2019 [Big Oil's real Agenda on Climate Change](#)) is referenced twice (**pages 179 and 181**) in the complaint filed with Massachusetts' Superior Court. A separate piece of InfluenceMap analysis focused on ExxonMobil's claims around biofuels and its refining capacity is also referenced on **page 178**. The lawsuit accuses ExxonMobil of a broad sweep of misconduct that includes using deceptive advertising to mislead consumers in the state about the central role its fossil fuel products play in causing climate change, and intentionally misleading Massachusetts investors about material climate-driven risks to its business. ([Click here to download the court filing](#)).

InfluenceMap has also conducted a series of research pieces on climate misinformation in advertising. The [first](#) identified 51 climate disinformation adverts running on Facebook's US platforms in the first half of 2020, and received endorsement from US Senators Elizabeth Warren and Sheldon Whitehouse. The second analyzed adverts from oil and gas companies and was recently featured on [Channel 4 news](#), focusing on advertising that claims gas is a clean climate solution.

Feedback on Section 3: Questions for consideration

[3.2: The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships. Is it helpful to cover both?](#)

Yes, misleading environmental claims such as the ExxonMobil example noted above are often 'reputational' rather than product specific, meaning that the communications seek to convey a broad message regarding company activity in order to improve perceptions of the brand or contribute to the wider discourse around certain technologies rather than sell a specific product. In InfluenceMap's analysis of oil and gas advertising, as *referenced above*, 6,782 advertisements were found promoting natural gas as a green or low-carbon form of energy supply in 2020 alone. These ads had been seen approximately 69 million times by US consumers, just on Facebook. The scope of the CMA's guidance should be broad enough to include such claims, which could be considered to be targeting both business-to-consumer and business-to-business relationships.

3.5: Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law.

The draft principles represent a very positive step forward in setting clear guidelines for environmental claims. The following statement from principle (a), 3.17 "businesses should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects", is particularly encouraging as it relates to a number of instances of misleading environmental claims InfluenceMap has detected from the oil and gas industry, including the ExxonMobil example referenced in the introduction, where small investments in renewable energy are promoted without reference to the majority of capital expenditure still going to fossil fuels.

The emphasis on the importance of scientific evidence to substantiate claims in principles (c) and (f) is also very welcome, including the recognition that scientific guidance is improving and that environmental claims should be reviewed in light of developments in the evidence base, for example in the statement: 3.74 "developments in scientific and environmental evidence and understanding are also likely to affect how claims are kept up to date." The scientific grounding for claims is the strongest mechanism to avoid greenwashing. Points for clarification in this area are noted within comments to question 3.7 below.

3.6: To help businesses engage with the principles, guidance and consumer protection law compliance more generally, we have included a range of case studies. Would further case studies be helpful? If so, please suggest topics for these case studies and, if possible, provide examples of when these issues would arise.

Many of the examples of misleading environmental claims detected by InfluenceMap fall into the category set out in principle (a), 3.17 "businesses should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects". However, this type of misleading environmental claim does not appear to be represented in the examples currently set out in the draft guidance. The CMA might consider the following cases to build an example that effectively represents this type of misleading environmental claim.

- In December 2019, ClientEarth lawyers lodged a complaint alleging BP's global 'Keep Advancing' and 'Possibilities Everywhere' ad campaigns misled the public by focusing on BP's low carbon energy products, when more than 96% of BP's annual spend is on oil and gas. The UK National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) *assessed ClientEarth's world first complaint* as being material and substantiated, despite the complaint not proceeding due to BP ending its ad campaign.
- ExxonMobil's high-profile campaign to promote its algae-powered biofuels. ExxonMobil's stated goal of reaching *10,000 barrels of biofuel a day by 2025* would still only equate to *0.2%* of its current refinery capacity. This was deemed misleading by the Massachusetts Attorney General who in 2019 *judged* that the company "systematically and intentionally has misled Massachusetts investors about material climate-driven risks to its business and has deceived consumers about the central role its fossil fuel products play in causing climate change."

The CMA might also consider including a carbon related example, based on the cases listed below, for the leading category within principle (a), 3.6: "They must not state or imply things that are factually incorrect or untrue. Nor should they overstate or exaggerate the sustainability or positive environmental impact of a product, service, brand or business".

- In January 2020, the Italian oil major, Eni, was *fined* 5 million Euros by the Italian Competition and Market Authority over advertisements on TV and in newspapers, digital media and petrol stations that falsely claimed Eni Diesel+ was 'green'. The watchdog stated that the marketing campaign deceived consumers when it claimed that the 'green' diesel has a positive impact on the environment, saves fuel and reduces air pollution.
- In March 2020, Shell was *investigated* by the Advertising Standards Authority for its "drive carbon neutral" campaign, advertising net zero petrol. The Advertising Standards Authority also *investigated* Equinor after advertising campaigns claiming natural gas was a 'low-carbon' energy source. The case was resolved informally when Equinor removed the campaign and agreed not to repeat the claim in future campaigns.
- InfluenceMap recently *found* 6,782 advertisements promoting natural gas as a green or low-carbon form of energy supply, 4,854 of which were posted by the American Petroleum Institute (API) trade body and they promoted "gas as a climate solution". The API spent \$647,123 on these adverts, which were seen more than 54 million times.

3.7: Which, if any, aspects of the draft guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section of the draft guidance (and, where appropriate, the issue) each of your comments relate to.

While the focus on scientific evidence in principle (f) is welcome, the way in which the guidance indicates that scientific evidence should underpin environmental claims should be more clearly defined. The current drafting does not set strict criteria for what scientific guidance should be considered legitimate evidence, which may result in the use of scientific sources which do not align with the UK Government's commitment to legally binding emissions reductions according to its *legislated carbon budgets*, and its *legally binding commitment* to reduce carbon emissions to net zero by 2050.

Use of authoritative scientific benchmarks will be essential to ensure that the scientific evidence used to justify claims is consistent with the scientific consensus on the technologies that will be needed, and the technologies which must be phased out, if the UK is to meet its emissions targets. InfluenceMap's *research* has shown that the fossil fuel value chain has evolved from its initial position of denying climate science, to a more nuanced strategy of misrepresenting the science to promote their own business models. As the cases listed for statement 3.6 demonstrate, these efforts focus in large part on promoting a range of products and solutions as 'green' despite scientific evidence to the contrary.

The UK will *soon develop* a sustainable finance taxonomy, "setting the bar for investments that can be defined as environmentally sustainable". The criteria it introduces, designed "to clamp down on greenwashing", should be aligned with the guidance produced by the CMA. Given that the CMA's guidance will be published in advance of the UK taxonomy, research by external authorities such as the International Energy Agency should be considered as an interim benchmark, in particular the IEA's recent *Net Zero by 2050 Scenario*, which aligns with the UK's net zero by 2050 commitment.