

**Response on behalf of the Lifescape Project to the Competition and Markets Authority’s consultation
on the draft guidance on environmental claims on goods and services**

Introduction to the Lifescape Project

1. The Lifescape Project (“Lifescape”) is a UK rewilding charity which is operating in a number of different areas of expertise to promote and support rewilding and biodiversity across global jurisdictions. One area of focus is using the law and different legal mechanisms to challenge and/or enforce legislation, government policy and corporate actions in a way which supports and facilitates increased biodiversity and rewilding efforts.
2. We welcome this opportunity to comment on the CMA’s “Draft guidance on environmental claims on goods and services” (the “draft guidance”).
3. Our comments on the draft guidance are informed by our work relating to the misrepresentation of wood biomass energy as a low, zero carbon or carbon neutral energy source by energy generators and suppliers. As this is a technical area, both from a regulatory and scientific point of view, we provide a summary of these issues below in order to give background and context to our comments on the draft guidance.

Introduction to wood biomass energy

4. Wood biomass energy involves burning wood (for example in the form of wood pellets) to generate energy. Some of this wood is from industry waste, but a significant proportion is from forestry sources (either trees which have been specifically harvested for energy or forestry residues).¹ Burning wood for energy releases significant carbon dioxide emissions at the smoke stack (i.e. the chimney of the power station), more so than fossil fuels.² This is even acknowledged by relevant generators themselves: the annual report and accounts of Drax Group plc (the owner of the largest wood biomass power plant in the world which is located in Yorkshire) record that Drax emitted 13,273 ktCO₂e from burning wood biomass in 2020.³ However, energy from burning wood biomass which meets certain

¹ The following report describes how whole trees are commonly used as feedstock for wood pellets by Enviva, a large wood pellet producer in the USA which supplies to Drax in the UK: Partnership for Policy Integrity and Dogwood Alliance (2016) ‘Carbon Emissions and Climate Change Disclosure by the Wood Pellet Industry- A Report to the SEC on Enviva Partners LP’. 14 March. [Online]. Available at <https://www.pfpi.net/wp-content/uploads/2016/03/Report-to-SEC-on-Enviva-March-14-2016.pdf>.

² See the following Research Paper from Chatham House’s Environment, Energy and Resources Department at pp.9-10: Brack, D. (2017) ‘The Impacts of the Demand for Woody Biomass for Power and Heat on Climate and Forests’. 23 February. [Online]. Available at <https://www.chathamhouse.org/sites/default/files/publications/research/2017-02-23-impacts-demand-woody-biomass-climate-forests-brack-final.pdf>.

³ https://www.drax.com/wp-content/uploads/2021/03/Drax_AR2020.pdf at p.50. Drax’s annual report and accounts for 2020 records these emissions as “biologically sequestered carbon” on the basis that “[t]he biogenic emissions resulting from generation are counted as zero in official reporting to both UK authorities and under the European Union Emissions Trading System (UK ETS) as the use of sustainable biomass is considered to be CO₂

requirements is treated as if it had zero stack emissions for the purposes of regulatory frameworks in the UK and EU relating to renewable energy (for example renewable energy subsidies schemes and for the purpose of UK Fuel Mix Disclosure statements).

5. The rationales for this regulatory treatment are confused and unclear. What is clear, however, is that it is accepted (even by the biomass energy producers themselves) that at the point of burning, wood biomass energy produces greater quantities of carbon dioxide than fossil fuels. A key rationale for the energy's regulatory treatment lies in the international carbon accounting rules which count carbon dioxide emissions from wood biomass energy in the land sector in the country where wood is harvested rather than in the energy sector where the wood is burned to avoid double-counting. However this does not mean that wood biomass energy is *actually* zero carbon or that it should be promoted as such as at its core it is acknowledging that there are in fact emissions associated with the energy production. Should you wish to understand the confusing narrative of the rationales for this regulatory treatment in detail, we suggest you read pp.24-30 of the recent report "[Paper Tiger: Why the EU's RED II biomass sustainability criteria fail forests and the climate](#)" ("[the Paper Tiger report](#)").⁴
6. In addition to the rationales discussed in the Paper Tiger report, it is also sometimes suggested by producers of wood biomass energy that when trees are harvested to be manufactured into wood pellets, the carbon dioxide emissions released will be reabsorbed when the trees grow back. However, it takes decades to centuries for tree regrowth to even offset the carbon dioxide emissions from burning wood biomass to the point where the net cumulative emissions are the same as if fossil fuels had been burned instead.⁵
7. Despite the undisputed fact that burning wood biomass for energy releases significant carbon dioxide emissions and the strong scientific evidence undermining the various rationales used to justify the treatment of wood biomass energy as having zero stack emissions, wood biomass energy is often promoted by energy generators and suppliers as if it is genuinely a carbon neutral/zero carbon product (or low carbon if supply chain emissions are taken into account). In doing so, these generators and suppliers rely on the regulatory treatment of wood biomass energy as zero carbon at the stack or one or more of the flawed rationales referred to above without making this reasoning clear to consumers. Such representations lead consumers to believe that energy produced by burning wood biomass is good for the environment and will assist the world in its journey to net zero by 2050.
8. We believe that the draft guidance offers a much-needed opportunity and tool to tackle this type of greenwashing, which is ultimately taking advantage of the trend towards consumers being more

neutral at the point of combustion". However, as set out here this treatment of wood biomass energy as having zero carbon dioxide emissions at the stack does not reflect the reality.

⁴ Booth, M.S and Mitchell, B. (2020) 'Paper Tiger: Why the EU's RED II biomass sustainability criteria fail forests and the climate'. 6 July. [Online]. Available at <http://eubiomasscase.org/wp-content/uploads/2020/07/RED-II-biomass-Paper-Tiger-July-6-2020.pdf>.

⁵ Natural Resources Canada (undated). 'Bioenergy GHG calculator'. [Online]. Available at <https://apps-scf-cfs.rncan.gc.ca/calc/en/bioenergy-calculator>. Where 'green trees' are used as a feedstock, 'pellets' as transformation, place of use as 'export' to the UK, energy conversion as 'electricity' and either fossil system efficiency as 30% or above or biomass system efficiency as 30% or below.

environmentally-conscious. We think that the draft guidance goes a long way to achieving its goal and we are grateful to the CMA for their work on this to date. Based on our experience and knowledge of the issues described above, however, we have identified a number of ways in which we think the draft guidance can be improved in order to ensure its robustness and to allow it to achieve its goal of tackling greenwashing and ultimately protecting consumers.

9. Should the CMA wish to receive any further detail about the technical issues surrounding wood biomass energy or to discuss our response to this consultation, we would be happy to assist. Please contact [redacted]

Response to question 3.2

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?

10. Our view is that it is helpful for the guidance to cover both business-to-consumer and business-to-business relationships. This can be illustrated by understanding the business-to-consumer and business-to-business relationships that exist in the energy sector and the wood biomass energy example given above.
11. In the energy sector the relationship between the energy generator and the consumer is generally indirect, with energy being sold through other parties such as energy suppliers. In addition, some energy suppliers supply to businesses and not to consumers, with those businesses potentially themselves selling other (non-energy) products or services to consumers whilst making claims about their “green” credentials based on their choice of energy supplier. We think it is important that misleading environmental claims by energy generators or by energy suppliers who supply to businesses should be covered by the guidance. This is because there is a risk that:
- (1) Businesses supplying energy or providing other products or services to consumers may be misled by these claims and in turn mislead consumers.
 - (2) Where misleading environmental claims by energy generators are made widely available (e.g. if they are on the websites of generators or made to the press) they may still reach consumers and impact on their purchasing decisions even though energy is provided to consumers indirectly. Even if consumers do not know the identity of the energy generators which produced the energy which they are supplied with, it is possible that misleading statements about the environmental impacts of energy sources such as wood biomass by generators may influence consumer decisions about which energy sources they want to use and so e.g. which energy suppliers they purchase from or which energy tariffs they select from suppliers.
12. In this context, we have identified a number of clarifications that we think might usefully be made to the draft guidance in order to clarify its scope:

13. It would be helpful if paragraph 2.18 of the guidance could be clarified further. This paragraph states: “[i]f the claims are ultimately aimed at consumers, this guidance will apply, even if the claims are made by a manufacturer who does not have direct contact with a consumer. Retailers should therefore assure themselves that any claims made by manufacturers are accurate and not misleading”. It would be helpful to have example(s) demonstrating what it means for a claim by a manufacturer to be “ultimately aimed at consumers”. For example, would this apply in the situation referred to in paragraph 11 above, where claims are made on an energy generator’s website or in the press which may be seen by a consumer even if there is no direct relationship? We suggest that the draft guidance should apply in this situation, as such claims by a generator about e.g. wood biomass energy may encourage consumers to select energy tariffs from suppliers which include this energy source, even if consumers do not know whether they are actually being supplied by that particular generator.
14. Similarly, it would be helpful to have example(s) of what is meant by “a direct impact on consumers” in paragraph 2.2 of the consultation document, which sets out that the draft guidance would apply to “manufacturers and wholesalers to the extent that the claims they make about their products have a direct impact on consumers”. It would also be helpful if the third bullet point in paragraph 2.2 of the consultation document (stating that the draft guidance would apply to “manufacturers and wholesalers to the extent that the claims they make mislead the businesses to whom they are supplying their products or services”) could be reflected in the draft guidance itself. The draft guidance should also apply where claims by manufacturers and wholesalers directly mislead consumers (for example in the ways set out in paragraph 11(2) above).
15. Regarding paragraph 2.19 of the draft guidance (“This guidance also applies (to a more limited extent) to businesses marketing to other businesses”) it would be useful to have further clarification on the extent to which the guidance applies in this situation.

Response to question 3.3

3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately? If so, which sectors and why?

16. As set out in response to question 3.2, the energy sector has special features which may mean that it is helpful for misleading claims in this sector to be considered specifically in the guidance. In particular, the fact that there is generally an indirect relationship between the energy generator and the consumer means that thought should be given to how misleading environmental claims by energy generators on websites or made through the press should be treated where these appear to be ultimately aimed at encouraging consumers to use a particular energy source on the basis that it is supposedly environmentally friendly. In our view this situation should be covered by the draft guidance.
17. In addition, where energy suppliers make misleading claims about the environmental benefits of their energy when they supply to businesses, those businesses may then go on to misleadingly claim to consumers that they are supplied by green, carbon-neutral or zero-carbon electricity. It would be

helpful for the guidance to specifically consider this situation and confirm its application in this instance in relation to both the claims made by the energy supplier and the recipient business.

Response to question 3.6

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.

18. We would suggest using wood biomass energy as an example case study for the three suggested additions to the guidance set out below in response to questions 3.7 and 3.9.
19. The wood biomass energy issue would also be a helpful case study to provide to illustrate the problem described in paragraphs 3.67-3.68 of the draft guidance. These paragraphs set out the importance of being clear about the distinction between not producing any carbon dioxide emissions (on the one hand) and reaching carbon neutrality through offsetting (on the other) in claims about the environmental benefits of products or services. As described above, one rationale used by energy generators for presenting wood biomass energy as having no or low carbon dioxide emissions is that emissions from harvesting and burning trees are offset by tree regrowth. Because of this, even if this rationale is taken at face value (see paragraph 6 above where we explain why this itself is misleading), wood biomass energy is different in kind to renewable energy sources such as solar or wind power, which produce zero carbon electricity without relying on offsetting. Where wood biomass energy generators and suppliers wish to discuss the emission profile of wood biomass energy, it is important that they make clear that there are actual smoke stack emissions, but that these can be offset in the future as trees grow back, albeit rarely completely offset (as mentioned above, this offsetting happens on timescales which are far too long to cancel out the carbon dioxide emitted in time to help meet climate targets/avoid climate change impacts in any case).

Responses to questions 3.7 and 3.9

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.

3.9 Are there any other comments that you wish to make on the draft guidance?

20. We have three suggested additions to the draft guidance to tackle the problems raised by the issue of misrepresentation of wood biomass energy described above.

First suggested addition

21. The first suggested addition is relevant to principles (a) (claims must be truthful and accurate), (c) (claims should not omit or hide important information) and (f) (claims should be substantiated) as set out in chapter 3 of the draft guidance. As set out above, wood biomass energy is treated as having zero stack emissions for various purposes in UK and EU regulation, even though this does not reflect

the reality that burning wood releases large amounts of carbon dioxide. This may in part be due to an accounting technicality in the international carbon accounting treatment of wood biomass energy, which counts carbon dioxide emissions from burning wood for energy as zero in the energy sector in the country where the wood is burned because these emissions have already been counted in the land sector when the wood was harvested. Importantly, this is not the same as wood biomass energy actually being zero carbon. The accounting treatment only means that carbon dioxide emissions are not counted in the UK when wood is burned for energy in the UK, not that there are in fact no carbon dioxide emissions (the emissions are counted in another part of the 'accounts' and therefore clearly exist).

22. Energy generators and suppliers rely on the regulatory treatment of wood biomass energy as a justification for presenting this as zero carbon or similar in their marketing and advertising. However, a consumer (including even a business customer) seeing this claim cannot be expected to know that the regulatory treatment of wood biomass energy is based on a technicality in the international carbon accounting rules and various other rationales which are inconsistent with scientific evidence, rather than reflecting the true position.
23. We suggest that the guidance should deal expressly with the issue of when it is appropriate for businesses to substantiate environmental claims with reference to the way their products are treated or described for the purposes of specific regulatory frameworks. We would suggest that where this regulatory treatment is based on a technicality or has been called into question by the scientific community that this should (at least) be made clear to the consumer so they are properly informed about the environmental claim being made.

Second suggested addition

24. Our second suggested addition relates to principle (e) (claims should consider the full lifecycle of the product) but is also relevant to principle (c) (claims should not omit or hide important information) and principle (f) (claims should be substantiated). These principles are discussed in chapter 3 of the draft guidance.
25. As set out above, it is sometimes claimed by energy generators and suppliers that wood biomass energy can be treated as zero carbon because trees grow back and re-sequester the carbon dioxide released from burning. However, this ignores the fact that it takes decades to centuries to even reduce net cumulative carbon dioxide emissions from burning to the level where these are the same as if fossil fuels have been burned instead,⁶ let alone a level where the emissions caused by the burning are fully offset. This is far too late from the perspective of meeting international and domestic climate change targets and avoiding serious adverse impacts from climate change. The timescale on which

⁶ Natural Resources Canada (undated). 'Bioenergy GHG calculator'. [Online]. Available at <https://apps-scf-cfs.rncan.gc.ca/calc/en/bioenergy-calculator>. Where 'green trees' are used as a feedstock, 'pellets' as transformation, place of use as 'export' to the UK, energy conversion as 'electricity' and fossil system efficiency as 30% or above or bioenergy system efficiency of 30% or below.

offsetting through tree regrowth happens is key to understanding the negative environmental impacts of the product and is something which consumers should be made aware of.

26. Based on this example, we would suggest that the draft guidance should specify that the timescales over which environmental benefits are realised or negative environmental impacts are mitigated may be crucial to understanding the full lifecycle of the product. Where this is the case for a product (such as wood biomass energy), claims about the environmental benefits of the product should make consumers aware of this. This point could perhaps be included at paragraph 3.99 of the draft guidance, which sets out examples of aspects of a product's or services' lifecycle which may be important.

Third suggested addition

27. Our third suggested addition relates to principles (c) (claims should not omit or hide important information) and (f) (claims should be substantiated) as discussed in chapter 3 of the draft guidance. As set out above, energy generators and suppliers rely on a number of rationales to justify marketing wood biomass energy as carbon neutral or low carbon. However, it is accepted (even by the energy generators themselves in their annual accounts) that wood biomass releases significant carbon emissions when burned for energy. Claims that such energy is low or zero carbon are either based on technical carbon accounting principles or flawed rationales which are contradicted by strong scientific evidence. This scientific evidence is likely to be highly material to consumer decision-making if they were made aware of it.
28. Because of this, we suggest that it would be helpful if the guidance stated that where a business relies on evidence or a particular method of calculation to substantiate its claim that a product has environmental benefits or does not cause environmental harm, the business should ensure that consumers are made aware if there is a body of reasonable scientific opinion which contests that evidence/method.