

## **CMA Consultation**

### **Draft Guidance on Environmental Claims on Goods and Services**

#### **Scope**

1. Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims? If not, what else should this guidance include and why?

Yes. However, from a practical perspective, it would be helpful if the guidance cross-referred to other resources such as the ISO standards and OPRLs. By referring to them within the draft, the guidance would confirm their continued applicability and act as a gateway for businesses to locate other tools, which they might not be aware of. These additional resources are particularly helpful to smaller companies as they often outline the detail and practicalities of making environmental claims. This isn't focused on in the guidance itself and is essential for anyone with less experience of making environmental claims.

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 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships.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. We agree that it's helpful to have consistent guidance applied to both business-to-consumer and business-to-business (B2B) relationships. In order to achieve the objectives of the CMA and ensure reliable consumer information, it is important that B2B information is consistent, substantiated and not misleading across the entire supply chain. We would, however, appreciate further guidance on how the six principles would be applied in a B2B context.

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 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately?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

We don't believe the food and drink sector requires special treatment within the draft guidance and there's a danger that the guidance would lose focus and clarity by attempting to address sector specific issues. Moreover, many claims which relate to packaging and manufacturing apply in large part generically and cut across industry sectors.

To the extent that sectors require special treatment, this would be better covered off separately to avoid over complicating or confusing the guidance e.g. scope 3 agricultural emissions in the food and drink sector. This could be complemented with more worked examples and elaboration of the guidance as applied in their industry. It would be helpful if industry associations, such as the Food and Drink Federation, were encouraged to engage with their members and provide these additional materials/ training examples. The CMA should oversee this process to ensure they're comfortable that the guidance is being applied accurately and consistently across the board.

#### **Principles for Compliance**

4. The guidance sets out six principles for business compliance with consumer protection law to avoid "greenwashing". Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law.

We strongly welcome the application of these principles, which are comprehensive, appropriate and address the main issues in this area. However, the elaboration and worked examples are the essential element which brings the principles to life and allows businesses to apply them in practice.

### **Case Studies**

5. 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.

Yes. The guidance highlights the dangers of using very broad terms like “environmentally friendly”, “eco” or “sustainable” (Ref 3.50, 3.51, 3.101). It would be helpful to outline specific examples where these terms might be justifiably used (if ever) and the substantiation that supports the product’s positive impact or no adverse impact on the environment and which key metrics this is based on. The discussion on the use of “green” in Case Study 3 was helpful but we’d appreciate more case studies on this point. Further guidance on the use and communication of life-cycle assessment data would also be beneficial.

The guidance focuses on environmental claims for specific products and goods and, to a lesser extent, on claims relating to the business itself. We would invite further case studies on how a responsible business can develop a consumer facing narrative in respect of their forward-looking environmental goals (Ref 3.45). This would be helpful to businesses which want to communicate their sustainability journey and respond to growing consumer demand for companies to outline their environmental commitments. The case studies should, in particular, focus on the substantiation that supports these claims and the extent to which companies would need to re-evaluate their substantiation on an on-going basis.

### **General and additional issues**

6. 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.

**Implicit Claims** (Ref 2.7) We would appreciate some further guidance on “implicit” environmental claims. This concept remains vague and its scope is unclear, which would make it difficult for businesses to identify and address. The CMA notes that all aspects of the claim will be relevant but what does this mean in practice? Could a product that depicts the natural world or animals be considered implicitly indicating environmental credentials?

**Whole Life Cycle of the Product/ Impact of all Activities of a Brand or Business** (Ref 3.65, 3.66, Example 7) We understand the CMA’s concern around cherry-picking favourable information or making purposefully vague statements to create a misleading environmental impression of a product. However, as our business, brands and products reach significant milestones in our sustainability journey, e.g. Nespresso becoming net-zero, we would want to highlight the achievement. We believe that claims of this kind should be specific, clearly defined and, to the extent required, qualified but we don’t believe it’s necessary to include other factors *unrelated to that particular claim*. Having the ability to communicate specific environmental claims, potentially in isolation, is an important tool to incentivize businesses to make incremental positive actions as part of their sustainability journey.

We were, therefore, surprised at the analysis provided at Example 7. We believe that the language used by the ‘manufacturer’ was quite clear in relating to the product and its ingredients and that the claim still had value despite being silent about the composition and disposal of the carton. As a consumer, we would not have expected packaging to be in scope of that claim. If we need to outline all impacts of a product, packaging, brand or even an entire business such as Nestlé before making a sustainability claim, they would be almost impossible to do. It also becomes very unclear what information is within scope and this would inevitably be interpreted very differently. If the manufacturer in Example 7 included, for instance, a ‘non-recyclable’ on the carton, would the ‘Nature’s Friend – organic and sustainably farmed’ claim be permissible? Would more information on the product be required? If the CMA could provide further guidance on how the environmental claim in Example 7 could be made acceptable, that would provide helpful elaboration.

**Carbon Neutral Claims** (Ref 3.68) We anticipate that claims in this arena are going to increase drastically in the coming years and we’d value further guidance with UK relevant examples, which are aligned with ISO standards (ISO – 14021, 14025), on how carbon footprint, carbon reduction, carbon neutral and comparative environmental footprint claims can be made without misleading consumers. Does the CMA consider that there should be a limit on the extent to which a “carbon neutral” claim can be based on off-setting?

**Conditions/ Caveats** (Ref. 3.10, 3.69) Important qualifying information should be sufficiently close to the main aspects of the claim for consumers to be able to see it easily and take account of it before they make any decision. It would be helpful to provide examples of what is meant by “sufficiently close”. For example with our recent packaging size reduction on confectionery sharing bags, we made a front of pack claim, asterisked it and then added the substantiating information in a box of the same colour and shape on back of pack (since front of pack space is limited).

**Benchmarking** (Ref 3.96, Example 8) We would appreciate if the CMA could be more explicit on acceptable benchmarking for comparable claims. For instance, if the comparison in Example 8 was done against the average of the top 10 best-sellers in the market which account for e.g. 75% of category sales, is that precise, clear and ‘honest’ enough?

7. Overall, is the draft guidance sufficiently clear and helpful for the intended audience?

We agree with the CMA’s approach to draft guidance that clarifies the interpretation and applicability of *current* consumer protection law but does not create new and potentially even more complex obligations. The guidance should not oblige businesses to make certain claims or to add specific information on a product. Instead, it should enable businesses make these claims voluntarily. Any obligation for mandatory disclosure should come directly from legislation.

Whilst the guidance is a helpful resource, this area of law and advertising is nuanced and complex. The CMA should appreciate that it will remain challenging for businesses, and especially smaller businesses, to navigate making compliant environmental claims due to the nature of the topic. In this context, it would be helpful for the guidance to draw upon practical resources (see our response to Question 1). In addition, the CMA and other regulatory bodies should collaborate with businesses to implement the guidance and increase standards in this difficult and continually evolving area of compliance.

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

It’s not clear how the guidance will be enforced in practice and how the CMA will work with other bodies such as the Trading Standards Services and the ASA when handling complaints. There is the potential for uncertainty if separate regulatory bodies approach complaints differently or reach

opposing views on the same environmental claim. In most instances, we believe complaints should be considered by the ASA who are experienced at making investigations and can facilitate voluntary remedial action by the potential violator. It's important that the potential violator has the ability to voluntarily remedy a breach before more further enforcement action is taken since, in the vast majority of cases, we anticipate breaches would arise from businesses misunderstanding the current regime.

There are several references to the changing attitude of the consumer as over time they'll demand more information to enable them to make an informed choice. The CMA anticipate that, as the general expectations of the consumer grows, businesses will also need to develop and provide more extensive, detailed information about the full life cycle of their products. We would appreciate updates/ guidance from the CMA when they identify step-changes in consumer attitude so that businesses can understand the development and react accordingly.

An executive summary or condensed version of this guidance would be helpful for marketeers.