



Response to Competitions & Market Authority Consultation on misleading environmental claims

Submitted by New Weather Institute and Possible

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About the New Weather Institute

The New Weather Institute is a think tank cooperative, created to accelerate the rapid transition to a fair economy that thrives within planetary boundaries. We find, design and advocate ways of working and living that are more humane, reasonable and effective.

About Possible

Possible is a UK based climate charity working towards a zero carbon society, built by and for the people of the UK.

Our general comment: Implications for businesses

We welcome the increase in ambition that the draft new guidance presents. It calls on businesses to act with honesty and integrity when making environmental claims and reduces the space available for willing deception. The onus placed on companies to substantiate any marketing claims will help with this.

More specifically, the guidance states that eco claims should be made based on an assessment of the whole life cycle of the product rather than separate, single stages such as its use or packaging. This is a welcome and considerable step forward for regulation in this area given that adopting a life cycle approach requires more integrated planning for companies. It should significantly reduce the possibility for some businesses to use green claims in their advertising if their wider business model has not taken this approach into account and has other impacts. For example, the British crisps manufacturer Walker who pioneered this approach within its business back in 2007 revealed that the greatest

environmental impact related to the sourcing of raw materials (44% of the 75g carbon footprint of crisps).¹ A strategy focussed on “green packaging” would therefore be deemed to be ineffective and deceptive to the public as long as it does not tackle the environmental damage from the food it sources.

The guidance also stresses the misleading nature of eco claims in terms of the visual representation (images, logos, packaging, colours) of the advertised products. This is another significant and welcome step for regulating misleading advertising, especially considering the powerful influence imagery can have upon consumers. We particularly call on this to be applied to automobile advertising (see below).

Limitations

The main limitation with the draft guidance is that it assumes that businesses will self regulate. The CMA relies on the good faith of businesses to act appropriately and follow the principles listed in this document. Self regulatory approaches have a very poor track record, typically requiring actual regulation after long periods of poor compliance. Furthermore, no provision is made as to how the CMA or the Advertising Standards Authority would enforce these principles and in particular where it concerns more subjective principles such as with the misleading use of imagery, or with regard to the provision around clear and unambiguous claims and fair comparisons.

Apart from principle a) (claims **must** be truthful and accurate) which implies an obligation for businesses to follow through, all other principles are listed as recommendations. This, alongside the lack of enforcement provisions, significantly limits and undermines the potential of this guidance.

It should also be noted that the guidance does not provide any example of misleading environmental claims by fossil fuel companies, which is a very common practice as reported by Client Earth investigation² and whose impact is most damaging in comparison with other products and businesses.

¹ <https://www.theguardian.com/environment/2007/jun/27/climatechange1>

² Revealed: 9 example of fossil fuel company greenwashing, April 2021

<https://www.clientearth.org/latest/latest-updates/news/revealed-9-examples-of-fossil-fuel-company-greenwashing/>

Lastly, the draft guidance has overlooked the role of advertising and marketing in **normalising** high carbon lifestyles. Whilst the guidance should prevent the most egregious forms of deceitful greenwashing, the ongoing display of heavily polluting products such as SUVs and airline flights sends an implicit message to society that current consumption levels of these products are normal and socially acceptable. A strong comparison can be drawn with how tobacco marketing normalised smoking as a damaging behaviour. The demands of achieving 1.5 degrees target under the 2015 Paris Climate Agreement mean this is not the case.

It is helpful in this instance to look more, historically, at how the tobacco industry was regulated incrementally over many decades, often in the face of vociferous industry opposition. Stipulating that cigarette companies should not be able to make misleading health claims about 'light' cigarettes was an important step forward. Ultimately however, it was the wholesale prohibition of tobacco advertising and sponsorship from 2003 that helped dislodge the industry's stronghold on cultural life.³ Given the urgency of climate breakdown, regulators should accelerate the current progress on ending the promotion of harmful products.

Sectors requiring specific guidance

1. Automobiles

Transport is now Europe's biggest source of carbon emissions, contributing a massive 27 percent to the EU's total carbon dioxide emissions in 2018, with cars and vans representing more than two thirds of these.⁴ Given these emissions and lethal air pollution in many UK cities, there is a clear need for tailored guidance to this sector. Whilst the sale of purely petrol and diesel vehicles will be prohibited in the UK from 2030, and Plug In Hybrid Electric Vehicles (PHEV) from 2035, that leaves nearly a decade for car companies to promote and sell as many of these polluting vehicles as possible which will then stay on the road for an extended period well beyond the 2030 and 2035 deadlines.

³ Smoking Out the Climate: lessons from the advertising ban for tobacco on tackling the climate emergency, Badvertising, 2020 <https://www.badverts.org/s/Smoking-Out-The-Climate-FINAL.pdf>

⁴ Transport & Environment, April, 2018,, *CO2 Emissions from cars: the facts* https://www.transportenvironment.org/sites/te/files/publications/2018_04_CO2_emissions_cars_The_facts_report_final_0_0.pdf

Three aspects particularly need addressing by the CMA:

i) The term "self-charging hybrid" sounds green but actually means 'petrol charging' or 'diesel charging'. The term appears on a lot of hybrid vehicle adverts and is misleading because it obscures what proportion of time and distance that a car will run on fossil fuels compared to how much it will employ its battery. Three of the most popular plug ins in 2020 in Europe all emitted more CO₂ than advertised when tested in the real world, just as research on older Plug in Hybrid Electric Vehicles has shown.⁵

ii) Fuel efficiency information is confusing for consumers giving no real guide to engine performance. For example a 2020 print advert for the Audi A3 'Clever cogs The new Audi A3' quotes an emissions range of 24 - 187g/km' with no explanation of what that wide variation means in practice. Is a consumer buying a vehicle that might consistently have very low or very high emissions?

iii) Use of Imagery automobile advertising

Whilst the CMA's draft guidance does explicitly mention that the use of imagery can be misleading in advertisements, our research has shown that car advertising is particularly prone to using images of cars on empty roads and in rural and natural settings even if most vehicles end up in congested urban streets. For example, over three quarters of SUVs are registered to urban addresses despite being marketed as off road adventure vehicles.⁶

2. Aviation advertising

Given the lack of technological progress in reducing emissions from aviation, and the need for a reduction in demand to meet the recommendations of the UK Committee on Climate Change, we believe the aviation sector needs specific guidance.

In particular:

i) Use of 'carbon offsetting' instead of emissions reductions

Consumers are being advised that they can fly 'carbon neutral' by purchasing

⁵ Transport & Environment, 2020

<https://www.transportenvironment.org/press/plug-hybrids-new-emissions-scandal-tests-show-higher-pollution-claimed>

⁶ Mindgames on Wheels: how advertisers sold false promises of safety and superiority with SUVs, Badvertising, March 2021 <https://www.badverts.org/s/Mindgames-on-wheels-FINAL.pdf>

offsets.⁷ The problems with carbon offsetting are well documented; they include insufficient land availability to plant enough trees, pressure on food prices, the precarity of trees as carbon sinks due to wildfires and disease, dubious carbon accounting and double counting.⁸ They cannot stand as a substitute for actual cuts in emissions.

ii) Use of the term ‘Sustainable Aviation Fuel’ is misleading for consumers and policymakers as the emissions reductions are over stated.⁹

iii) Airports are deliberately excluding flight emissions from aircraft when making claims about environmental improvements to their airports. These include Bristol Airport, Gatwick Airport and Heathrow Airport.¹⁰

3. Fossil fuels advertising

To keep on track with the Climate Paris agreement of limiting global warming below 1.5°C, scientific evidence clearly indicates that it is incompatible with the promotion of new fossil fuel projects. As reported by the International Energy Agency (IEA), for Governments to meet their net zero emissions targets, this will require among other things the phasing out of all unabated coal and oil power plants by 2040.¹¹ This comes in stark contrast with fossil companies’ business scenarios projecting the further expansion of oil and gas fields.¹²

i) Promoting investments in green energy

Consumers are being informed that fossil fuel companies are at the forefront of the low-carbon energy transition as they are investing in renewable energy projects and supporting investment in green technology. The reality is that green energy only accounts for a very small percentage of the companies’ investment portfolios - less

⁷ British Airways and Leapfrog: https://www.pureleapfrog.org/ba/carbon_neutral/

⁸ Greenpeace UK, 2021

<https://www.greenpeace.org.uk/wp-content/uploads/2021/01/Net-Expectations-Greenpeace-CDR-briefing.pdf>

⁹ Transport & Environment, 2019

https://www.transportenvironment.org/sites/te/files/publications/2019_09_Corsia_assesment_final.pdf

¹⁰ <https://www.gatwickairport.com/business-community/sustainability/our-policy/>

<https://www.heathrow.com/latest-news/heathrow-targets-zero-carbon-airport-by-mid-2030s>

<https://www.thewestonmercury.co.uk/news/bristol-airport-carbon-neutral-dispute-8095922>

¹¹ International Energy Agency (IEA), May 2021. *Net zero by 2050 - A Roadmap for the Global Energy Sector* <https://www.iea.org/reports/net-zero-by-2050>

¹² UNEP, November 2019, *Production Gap Report 2019*

<https://www.unep.org/resources/report/production-gap-report-2019>

than 1% according to the International Energy Agency.¹³ It is important that any environmental claims by oil majors such as BP, Shell, Chevron, Total, ENI, etc must be contextualised by clearly communicating the actual, proportional energy mix of their activities and also stating their investments and activities in fossil fuels.

Our comments on the Principles in CMA draft guidance

Principle a) Claims must be truthful and accurate

The draft guidance states:

"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."

"Terms like "green", "sustainable" or "eco friendly", especially if used without explanation, are likely to be seen as suggesting that a product, process, brand or business as a whole has a positive environmental impact, or at least no adverse impact. Unless a business can prove that, it risks falling short of its legal obligations."

Our comment: These principles are effectively acknowledging that most brands overstate or exaggerate the sustainability of their products by overusing terms like "green", "sustainable" or "eco friendly". This is a welcome first step but it relies on businesses' good faith to provide accurate and fact based information about their products' green credentials.

¹³ International Energy Agency (IEA), January 2020. The Oil and Gas Industry in Energy transitions <https://www.iea.org/reports/the-oil-and-gas-industry-in-energy-transitions>

Principle b) Claims should be clear and unambiguous

The draft guidance states:

"General or all encompassing sustainability claims such as "environmentally friendly", "eco", or "sustainable" don't provide any real indication of what is meant. If anything, they are likely to create an overall impression that a product has a positive, or no, environmental impact".

Our comment: This is helpful in recognising the misleading interpretation of these terms, which companies heavily rely on in their marketing. However, evidence suggests that even when additional information is provided, consumers are more likely to remember simple claims like "environmentally friendly, "eco" or "sustainable" rather than the actual data and facts that accompany them.¹⁴ Therefore it is not enough to ask for companies to be more clear and less ambiguous.

Principle c) Claims should not omit or hide important information

The draft guidance states:

"What claims don't say can also influence the decisions consumers make. Claims made by businesses must not omit or hide information that consumers need to make informed choices."

"Claims should not just focus on the positive environmental aspects of a product, service, brand or business, where other aspects have a negative impact and consumers could be misled. This is especially so if the benefits

¹⁴ Clemens Kaupa, European Journal of Market and Consumer Law, 2021. 'Smoke Gets In Your Eyes', p.17
<https://verbiedfossielereclame.nl/wp-content/uploads/2021/02/20201123-Reclame-Artikel-EN-12-SS-RN-version.pdf>

claimed only relate to a relatively minor aspect of a product or part of a brand's or a business's products and activities.”

Our comment: This is a particularly welcome addition, which if appropriately enforced would have the potential to greatly limit misleading "green" marketing for many businesses whose operations are damaging as a whole (ie. fossil fuel companies, airlines, car manufacturers). Based upon this principle, for instance fossil fuel companies would not be able to advertise emissions reductions of one relatively small section of their business whilst their entire business model remains focussed on the exploration for and production of oil and gas reserves. Similarly, airports and airlines should not be able to make environmental claims from one small improvement in their ground operations, whilst omitting that they are pursuing and lobbying for an increase in overall flight numbers.

Principle d) Comparisons should be fair and meaningful

The draft guidance states:

“Comparisons should enable consumers to make informed choices about competing products and businesses. They should not say or imply, through the use of language or imagery, that one product is, for example, 'greener', or 'environmentally friendlier' or 'more energy efficient' than another if it is not.

Our comment: Businesses tend to rely on comparative claims where it benefits them. To subject those to principles of fairness and meaningfulness would limit the extent to which business can engage in deceptive comparisons. It remains to be seen to what extent this principle can be enforced effectively considering its subjective interpretation.

Principle e) In making the claim you should consider the full life cycle of the product

The draft guidance states:

All aspects of a product's or service's environmental impact over its life cycle, including its supply chain, could be important, including:

- its component parts;
- how and where it is manufactured, produced or carried out;
- its use or performance;
- the disposal of a product, and any waste or by products;
- the consequences of any environmental benefit claimed; and
- whether the product or service has an overall adverse impact.

Our comment: This would represent a significant and helpful step in regulating misleading environmental claims, considering that life cycle methodology provides the most thorough assessment of a product or service's environmental impact. Companies should refer to international standards when carrying out life cycle assessments for products, included in the latest ISO14040, and provide a clear and transparent analysis of their calculations.

Principle f) Claims should be substantiated

The draft guidance states:

"Most environmental claims are likely to be objective or factual claims that can be tested against scientific or other evidence. Given the requirement that claims must be truthful and accurate, businesses should have evidence to support them."

Our comment: This is a welcome and entirely reasonable ask for businesses to support their claims with scientific fact based evidence. However, as for most other principles listed in this guidance, for it to be effective, it must be accompanied with adequate monitoring and enforcement provisions. In order to create an effective deterrent, the CMA and Advertising Standards Authority should seek additional powers and capacity to issue monetary fines on companies who willfully breach this principle.

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