

DAIRY UK RESPONSE TO THE CMA GUIDANCE ON GREEN CLAIMS

Background

Dairy UK is a processor-led organisation representing farmer-owned co-ops and private dairy companies producing safe, nutritious and sustainable dairy foods.

Our mission is to promote the consumption of UK dairy products domestically and internationally. We do this through being a strong and influential processor-led organisation, with strong partnerships with farmers and stakeholders along the supply chain.

Dairy UK Position on Green Claims

Dairy UK is committed to promoting continuous environmental improvement and best practice within the UK dairy supply chain. For over a decade, we have demonstrated our commitment to sustainability through the Dairy Roadmap – the farm to fork sustainability strategy for the UK dairy sector – and through our participation in industry commitments to address the environmental impact of our products such as the Courtauld Commitment, the UK Plastics Pact and the UK Roundtable on Sustainable Soya.

This commitment has borne results, and as a sector, we have made vast strides in our environmental performance, and as a result, the UK dairy sector is rightly recognised a global leader in sustainable dairying.

As UK milk and dairy products provide an important source of safe, affordable, and sustainable nutrition, Dairy UK supports the use of consumer protection laws to ensure consumers can be confident of the claims being made on the food they buy.

Above all, Dairy UK believes that any claim made on food or beverages be these relating to health, animal welfare or the environment must be accurate, unambiguous, meaningful, and always substantiated by reliable and credible evidence. It is also imperative claims are non-discriminatory between products, and that detrimental or damaging comparative claims are avoided.

It is therefore important that any guidance on green claims is clear, unambiguous, and readily understood by businesses intended to make green claims.

Overall, Dairy UK strongly supports the CMA's ambition to protect consumers from misleading environmental claims and to help businesses comply with the necessary consumer's protection law obligations when making green claims.

In response to the draft guidance, whilst we welcome the ambition and high-level principles outlined, we are concerned that in its current form aspects of the guidance are not readily usable for claims being made on food and beverages. In particular, we would urge greater clarity in the guidance on specific or partial claims to avoid ambiguity and ensure equal application and enforcement of claims. Additionally, we would also call for clearer guidance on the use of comparative claims noting existing approaches used for nutrition and health claims as examples already familiar with industry.

BUSINESS BRIEF

Response to Specific Questions

- 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?**

Overall, we feel this guidance covers the key consumer protection law issues relating to 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 believe that it is important to provide guidance on environmental claims intended for both business-to-consumer and business-to-business relationships.

- 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?**

Dairy UK would welcome discussion on additional guidance on the application of green claims for the food and beverage sector. As highlighted throughout our response, the current guidance is at times ambiguous and open to interpretation. In addition, there are issues relating to comparative claims between food and beverages that are not currently addressed within this guidance.

- 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.**

Dairy UK recognises and supports the six principles outlined in the guidance. We agree that claims must be truthful and accurate, clear, and unambiguous, must not omit or hide information, comparisons must be fair and meaningful, must consider the full lifecycle of a product, and must always be substantiated.

Whilst we support the high-level description of these principles, we have several concerns in how these are described within the guidance, which is at times ambiguous and open to interpretation. In addition, we have concerns that in its current form the guidance does not adequately account for claims related to food and beverage products.

We raise particular concern on the interpretation of two of these principles. Firstly, on the need to consider the full cycle impact of the product we note several contradictory statements regarding claims made on a specific part of the products life cycle, wherein in some instances these would be permitted, but in others, they would not. Secondly, on comparative claims, we are concerned about the ambiguity of how these could be raised, and the potential for detrimental or damaging comparative claims to be made between different food and beverages.

In addition to the above, areas of concern are raised in response to Question 6.

- 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.**

Dairy UK would welcome additional case studies related to claims made by food and beverages.

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.

We would draw particular attention to the following areas within the guidance where we believe further clarification or explanation is required:

Specific Green Claims

The guidance on making claims relating to a specific aspect of a business, brand or products environmental footprint is at times unclear and potentially contradictory.

Lines 3.13 and 3.14 indicate that *"Claims may be able to focus on specific aspects of a product's, brand's or business's environmental impact"* however, where they do so *"They should explain, or otherwise make clear, what is being claimed and what it relates to."* This is similarly echoed and encouraged line 3.33 states *"It is not necessarily a problem for businesses to make claims that focus only on one aspect of a product, process, brand or business. In some cases, more focused claims may be more accurate than broad, general or absolute ones."*

This is expanded upon in Principle E which goes as far as to say that broad, general claims *"risk misleading consumers"*

However, the guidance also indicates that specific claims even where clearly explained can be inherently problematic if wider impacts are deemed environmentally damaging for example line 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."* and lines 3.34 *"Even where that is clear, claims which ignore significant negative environmental impacts in order to focus on minor benefits or small parts of a business's activities are still at risk of misleading consumers."*

This is also expanded upon in Principles C and E, for example, line 3.65 amongst others which states *"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 claimed only relate to a relatively minor aspect of a product or part of a brand's or a business's products and activities Cherry-picking information like this is likely to make consumers think of a product, service, brand or business as a whole is greener than it really is."* whilst line 3.106 states *"If a business makes a claim highlighting just one of several impacts a product has on the environment, that could be misleading"*

Whilst we would agree, that products, brands and businesses should not omit or hide important information, it is inevitable that many if not the majority of products or businesses will experience both positive and negative environmental impacts. Following the current guidance, a business's ability to make a claim at best would hinge on the interpretation of what classifies as a 'minor' or 'main' part of their business's activities and at worst would not be possible at all despite specific claims being recommended.

In addition, the guidance of 3.17, 3.34 and 3.65 could prevent claims being made due to completely unrelated activities unlikely to mislead. This is evidenced in Example 7, where a product is unable to make a positive environmental claim on its farming supply chain due to the negative impact of the product packaging. Following this logic, a product would similarly be unable to make a positive claim about the packaging used, if the product itself is deemed to pose an environmental impact.

Comparative Claims

Dairy UK strongly supports the principle that comparative claims must be fair and meaningful, and they should not benefit one product or brand to the detriment of another if the comparison is

BUSINESS BRIEF

inaccurate or false.

We have particular concerns over where comparative claims would be permitted and how this would be applied to food and beverages. Lines 3.91 state that “*Comparative claims should compare like with like.... any products compared should meet the same needs or be intended for the same purpose;*”

In its current form, the guidance could arguably allow comparative green claims between widely different food and beverage categories, because they are both intended for human consumption.

In response, we believe that further guidance is required in this area, and it may be appropriate to apply a similar principles for comparative claims to those already adopted within the nutrition and health claims guidance. Namely comparative claims must be limited to foods within the same category must be limited to which requires comparisons to be limited to foods within the same category. Claims must also be between the product bearing the claim and the range of products within the same category to prevent detrimental claims based on a single product not representative of the market. We would also advise that any comparative green claims should apply the same methodologies, and where relevant relate to comparisons on the same geographic or temporal scales.

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

As highlighted in our response to Questions 4 and Question 6 there are several areas we do not believe the guidance is sufficiently clear.

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

We have no further comments to raise at this stage, however, we would welcome further opportunities to discuss this issue with the CMA.

[X] [REDACTED]

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