

Response on behalf of Danone UK and Ireland, Manufacturer

3. Questions for consideration

Scope

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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?

We consider that the draft guidance covers the main general consumer protection law points applicable to environmental claims.

3.2 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships.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?

We consider the guidance should also apply to business-to-business relationships. One of the guidelines' goals, as highlighted in point 1.4, is to encourage businesses to invest in the environmental performance of their products so that they can communicate these efforts to the consumers. Part of these efforts may include improving their supply chain and investing in products and services with a better environmental performance. In this sense, companies may, for example, rely on the information provided by their suppliers to substantiate their claims and provide clear information to the consumers. Therefore, it is important to protect both business-to-consumer and business-to-business relationships.

3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately?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

As stated below we believe that more detail and signposting links should be added for the food industry especially packaging related information, any guidance for packaging should use recognised standards, such as ISO 14021 to ensure there is consistent rigour behind claims. For example, for packaging labelling, this could be through the UK's On Pack Recycling Label (OPRL).

Principles for compliance

3.4 The guidance sets out six principles for business compliance with consumer protection law to avoid 'greenwashing'.

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.

We consider that the six principles are adequate and broad enough to give a good overview of the main points to consider when making environmental claims. Likewise, this is complemented with the reference to any specific industry legislation.

Case studies

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.

Examples and case studies provided to illustrate the implementation of the detailed principles seem to focus on wrong practices. We believe it could be helpful if those were to illustrate best practices as well and support the practical application of these guidelines.

We have included the following case studies in our answers below, with anonymisation we are happy for these to be shared.

***Case Study 1** plastic drinks bottles

†Case Study 2 carbon neutral factory

General and additional issues

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.

We have identified the following aspect of the draft guidance which could benefit from better clarity:

References to acceptable standards, measurements or evidence used for substantiation – In **section 3.109** “Most environmental claims are likely to be objective or factual claims that can be tested against scientific or other evidence”.

To ensure a fair implementation of environmental claims across businesses, we believe the CMA with other authorities should consider establishing and keeping up to date a list of acceptable standards and measurements for objective verification.

Consumer awareness measurement - In **section 3.75** “changes in consumer awareness, expectations and behaviour are also likely to be relevant. As people become more conscious of the environmental impact of what they consume, the information they need to make informed decision is likely to change.”

Across this guidance, we understand the importance of ensuring that the information on environmental claims is kept updated so that consumers can make appropriate decisions.

However, we believe that more clarification could be brought on the ways to gather evidence on consumer awareness on environmental claims and examples of suitable measurement tools should be added. We would be happy to contribute furthermore with examples.

Recyclability - In **section 3.7** “businesses must not claim, or otherwise give the impression, that a product is ‘recyclable’ if it is not, or if only parts of it are and others are not, preventing recycling”

Danone recommends that the CMA liaise and adapt guidance based on ongoing DEFRA consultations regarding Consistency in Household and Business Recycling and Extended Producer Responsibility. Currently there are not explicit definitions for recyclability and there are intricacies.

***Case Study 1** evian and Volvic water bottles, alike many soft drinks bottles, are a combination of rPET and PET with a HDPE cap and OPP label (that covers less than 40% of surface area). The small cap and film label as individual components would be considered ‘not recyclable’ as small plastics (under 40x40mm) and plastic film are not widely collected or processed in the UK. Yet upon visiting a PRF (Plastics Recycling Facility) and re-processor facilities and with On-Pack Recycling Label (OPRL) and Recyclability by design guidance from Recoup and WRAP, we know if the cap and label are left on the bottle the materials are processed and separated to be recycled into plastic strapping etc.

There are therefore nuances in recyclability definitions. In order to keep promoting innovation and packaging’s improvement, Danone recommends guidance is adapted to stipulate that brands must make explicit reference to which elements are or are not recyclable and what to do with each component adhering to standards such as ISO 14021. As OPRL members, we are supportive of their

work with Lord Teverson to ensure that the requirement for clear consistent recycling labelling is set out in legislation.

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

Overall, we believe the principles raised in the CMA Guidance are clear and fair in regards with the expected conditions of use for environmental claims. These guiding principles are aligned with expectations regarding other types of claims applied on food as set in Retained EU Regulation 1924/2006 on nutrition and health claims made on foods as well as Retained EC Directive 2006/114/EC concerning misleading and comparative advertising.

Alignment with existing guidance - We would recommend ensuring these guidelines are harmonised and consistent with similar guidance on environmental claims issued by CAP/ASA and DEFRA.

To that extent, ASA in its "Environmental claim: General" [online advice](#) distinguish absolute claims and comparative claims (e.g. green and greener or environmentally friendly and environmentally friendlier) and seem to deem more acceptable the use of the latter. This advice is partially inconsistent with the principles laid down in this CMA Guidance and so, consistency should be reached.

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

We would like to add the following comments:

Definition of "Environment claims" - In Introduction 2.5: "Environmental claims are claims which suggest that a product, service, brand or business is better for the environment".

This definition suggests that environmental claims are de facto comparative claims aiming at highlighting a comparative advantage on the environment of a product, service, brand or else versus its previous version or its competitors.

We believe this definition is partially incorrect as environmental claims can also be interpreted as simple statement of fact (i.e. recyclability claims) and could be defined as followed:

"Claims which states, suggests or implies a particular characteristic of a product, service, brand or business in regards with the environment." (*Inspired by the definition of "claims" given Article 2.2(1) of the retained EU regulation 1924/2006 on nutrition and health claims made on foods*).

The voluntary characterisation of an environment claim should also be specified.

We believe that new claims, fuelled by consumer insights, including those about the environment, drive innovation and growth. We support the CMA's ambition to encourage action and commercial return, but we are concerned that if guidelines are too prescriptive on potential claims, there is a risk that businesses will choose not to innovate in this space.

In Chapter 3. Principles, 3.66, 3.72, 3.98, 3.106 there are recommendations that claims cannot be shared unless impact of total Life Cycle is considered. This is a challenging and costly activity and there is risk that businesses will choose to not invest in environmental alternatives if they cannot claim (or need to incur additional fees to make claims). This 'all or nothing approach' risks contradicting the goal mentioned in point 1.4 "the law also has the effect of encouraging businesses to invest in the environmental performance of their products. It enables businesses to communicate these genuine efforts to consumers transparently and to reap the commercial benefits." Danone recommends rewording point 3.100 to echo points 3.102 and 3.104

“When considering making environmental claims, businesses should aim to consider the effect of the total life cycle of a product or service, or of their overall activities, on the accuracy of their claims, if this is not possible clarity on which aspects they refer to and any limits should be explicitly referenced.”

i.e. there must be explicit reference to the impact and scope of changes rather than the need for a total product life cycle comparison to ensure encouragement of environmentally preferable practices that brands can then claim, driving commercial benefit and return on the investment of the practice.

†Case Study 2 carbon neutral factory

Danone’s Wexford baby formula plant was certified Carbon Neutral by the Carbon Trust in 2020. This was a ten year journey from ambition to achievement including large scale projects and investments such as installing a biomass boiler that is fuelled with sustainable biomass from local wood producers in Ireland and investing in independent verification by an external certification body (Carbon Trust). Explicit reference to which element is carbon neutral (the factory), backed by independent certification ensures transparency on environmental claims, helps consumers to make informed choices and fair market practices.

About Danone (www.danone.com)

Danone is a leading multi-local food and beverage company building on health-focused and fast-growing categories in 3 businesses: Essential Dairy & Plant-Based products, Waters and Specialized Nutrition. With its ‘One Planet. One Health’ frame of action, which considers the health of people and the planet as intimately interconnected, Danone aims to inspire healthier and more sustainable eating and drinking practices.