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### **Draft guidance on environmental claims on goods and services**

EDF is the UK's largest producer of low carbon electricity. We operate low carbon nuclear power stations and are building the first of a new generation of nuclear plants. We also have a large and growing portfolio of renewable generation, including onshore and offshore wind and solar generation, as well as energy storage. We have around five million electricity and gas customer accounts, including residential and business users.

EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the decision of the Competition and Markets Authority (CMA) to produce economy-wide guidance that helps businesses understand and comply with their existing obligations under consumer protection law when making environmental claims.

Within the retail energy supply sector consumers are placing increasing importance on products and services that minimise harm to, or have a positive effect on, the environment<sup>1</sup>. This demand largely centres on 'green' energy tariffs that are backed by low-carbon generation, such as renewables. The number of 'green' energy tariffs available in the UK market has grown from 9% of all energy tariffs in 2016 to 50% in 2019<sup>2</sup>. Consumer insight suggests that awareness of how 'green' energy tariffs are designed is low, and that consumers hold different views around the legitimacy of schemes used to label a 'green' energy tariff<sup>3</sup>. It is therefore crucial that consumers are able to make an informed choice when making purchasing decisions that is based on complete, clear and accurate information. The key issues we have identified are outlined below:

- Environmental claims should focus on carbon content in order to promote consistency and comparability for consumers.
- The use of ambiguous terminology that can mislead consumers, such as 'green', should be prohibited in order to improve transparency for consumers.

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<sup>1</sup> Ofgem (2020) [Household Consumer Perceptions of the energy market](#)

<sup>2</sup> Which (2019) [How green is your energy tariff?](#)

<sup>3</sup> Baringa (2021) [Renewable tariffs in the UK: what makes a tariff green?](#)

- In order to avoid conflicting and contradictory regulatory frameworks it is important there is a joined up approach across the CMA, Department for Business, Energy and Industrial Strategy (BEIS), Office of Gas and Electricity Markets (Ofgem) and Advertising Standards Authority (ASA).
- Government has committed to consult on reforms in the energy sector to ensure consumers are provided with more transparent and accurate information on carbon content when they are choosing their energy services and products. Therefore, the guidance should be adaptable to future change in the energy sector.
- The current regulatory framework of the retail energy supply sector already presents significant challenges when making environmental claims. The CMA should therefore seek to avoid the creation of any additional complexity that increases the risk of further confusion for consumers.
- Further clarification is needed on the compatibility of energy sector-specific requirements, such as Fuel Mix Disclosure (FMD), with the comparative and life-cycle principles set out within the draft guidance.
- In relation to the energy case study included within the guidance, clarification is needed on how the re-organisation of tariffs can impact the likelihood of a claim being deemed to be misleading. This should consider the different approaches to 'green' energy procurement that energy suppliers adopt and their contribution to Net Zero.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact [REDACTED] or myself.

I confirm that this letter and its attachments may be published on the CMA website.

Yours sincerely

[REDACTED]

[REDACTED]

**Head of Customers Policy and Regulation**

**Attachment**  
**Draft guidance on environmental claims on goods and services**  
**EDF's response to your questions**

**Q1. 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, generally the draft guidance reflects consumer protection law issues relating to the making of environmental claims. However, we would note that the draft guidance extends further than current regulation of environmental claims in a number of areas, for example at paragraph 3.100, the guidance states that when considering making environmental claims, businesses should always consider the effect of the total life cycle of a product or service, 'or of their overall activities' on the accuracy of their claims. The reference to considering overall activities as part of considering claims is not something we believe currently exists within existing regulation, and equally in relation to the life cycle of the advertised product, current regulation allows for a full cycle basis of claim not to be used provided this is made clear as part of the claim.

See our answer to Question 4 below regarding consideration of the life cycle of a product or service. Further clarity on the CMA's intention in these areas would be helpful.

**Q2. 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, it is helpful that the draft guidance covers both business-to-consumer and business-to-business relationships.

**Q3. 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?**

No, we do not consider any sector to require special treatment either in the draft guidance or separately. However, the draft guidance should consider any inconsistencies between the high-level principles and sector-specific requirements in order for the guidance to provide the most help to businesses when making environmental claims.

**Q4. 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 consider the following 5 principles are correct and simply reflect the existing position under existing regulation of environmental claims:

- claims must be truthful and accurate
- claims must be clear and unambiguous
- claims must not omit or hide important relevant information
- comparisons must be fair and meaningful
- claims must be substantiated

However, we would note that the following principle is unclear and conflicts with existing regulation:

- claims must consider the full life cycle of the product

Pursuant to Rule 11.4 of the CAP Code, 'Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle.' The current ASA position therefore allows businesses to elect whether or not to make claims based on the full life cycle of the product, provided that they are transparent as to the basis of the claim in their marketing.

Further, we are unclear as to what is intended by the obligation to 'consider' the full life cycle of the products and would suggest that the principle is not specific enough to provide clarity to businesses. Once a business has considered the full life cycle, it is not clear what actions or requirements are applicable to the marketer and/or marketing communication. It would be helpful if the guidance could provide clarity on whether claims can only be based on full life cycle or not, and for the language used in the principle to clarify this accordingly.

**Q5. 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.**

No, the draft guidance includes a range of case studies that cover a multitude of scenarios, including energy. These are helpful for businesses in different sectors however, others are better placed to comment on the case studies, or lack of, that are relevant to their sector.

**Q6. 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.**

[Case Study 3: Energy](#)

'It has just re-organised its tariffs so that some of them are said to comprise 100% renewable energy at the expense of others. Even more focused claims about 'going greener' are likely to be misleading in these circumstances'

Adopting an overly simplistic view of 'green' tariffs without considering the complexities and variation in approaches within the energy sector could produce outcomes that do not support the UK achieving Net Zero by 2050. With this in mind, we would welcome further clarification from the CMA on how the re-organisation of tariffs can impact the likelihood of a claim being deemed to be misleading, as set out in Case Study 3.

The amount of renewable energy a supplier procures for sale to its customers depends on the approach it takes to purchasing energy, and therefore may not procure enough renewable energy to provide 'green' energy tariffs to all of its customers. For example, a supplier may have made significant investment in building critical infrastructure such as renewable generation assets and may use the energy produced from these assets to supply its customers on the 'green' energy tariffs it offers. However, the quantity of energy generated from these assets may not be sufficient to supply all of its customers with 'green' energy tariffs and therefore that supplier may make some tariffs 'green' at the expense of others. Despite not offering 'green' energy tariffs to all of its customers the supplier has made a significant contribution to maintaining and furthering the amount of renewable energy in the UK, has helped to decarbonise the UK energy supply mix and has facilitated further economic benefits such as creating jobs.

Alternatively, a supplier could purchase enough Renewable Energy Guarantees Origin (REGO) certificates to match the total energy consumption of all of its customers at low cost<sup>4</sup>. This would allow the supplier to offer 'green' energy tariffs to all of its customers without making any investment in renewable energy generation or contributing to the decarbonisation of the UK energy supply mix.

Principle E: In making the claim you should consider the full life cycle of the product (Principle E).

3.100 'When considering making environmental claims, businesses should always consider the effect of the total life cycle of a product or service, or of their overall activities, on the accuracy of their claims.'

Within the retail energy supply sector, the primary source of information for consumers on the energy mix of a supplier and the carbon content of that energy is the annual Fuel Mix Disclosure (FMD)<sup>5</sup>. The relevant sector-specific regulations provide that the carbon emissions from each

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<sup>4</sup> The average annual cost per domestic customer is approximately £1.50 based on a REGO value of £0.50 per MWh and a Typical Domestic Consumption Value (TDCV) for electricity of 2,900 kWh.

<sup>5</sup> <https://www.edfenergy.com/fuel-mix>

generation source is to be provided as of the point of generation and does not consider the total life cycle of any generation source<sup>6</sup>.

In addition to the information contained within FMD, the majority of 'green' energy tariff claims tend to focus on the type of generation or the technology itself, for example '100% renewable', rather than the carbon content or emissions from the generation source. This approach relies on a consumer having knowledge of the technology when making purchasing decisions rather than providing clear information on the carbon content of the energy they are purchasing. In order to improve transparency for consumers and their understanding of Net Zero there needs to be a shift in focus towards carbon content and emissions rather than generation type and ambiguous terms such as 'green'.

With the above in mind, we would welcome clarification on how 'green' energy tariff claims comply with Principle E given that the sector-specific requirements relating to FMD do not consider the total life-cycle of electricity generation.

**Q7. Overall, is the draft guidance sufficiently clear and helpful for the intended audience?**

Generally, the guidance is helpful but there are a number of areas where the clarity could be improved to avoid any ambiguity and ensure consistent application by all businesses.

The areas requiring additional clarification that we have identified are set out in Appendix A.

**Q8. Are there any other comments that you wish to make on the draft guidance?**

Overall the draft guidance is helpful to businesses when making environmental claims on goods and services. However, given the range of sector-specific regulatory frameworks it is important a joined up approach is adopted by the CMA and sectoral regulators in order to avoid adding complexity and confusion for businesses and consumers. In relation to the energy industry this would mean the adoption of a consistent approach that improves transparency for consumers by the CMA, BEIS, Ofgem and ASA on the making of environmental claims by energy suppliers.

It is also worth noting the commitment of government to consult on reforms in the energy sector to ensure consumers are provided with more transparent and accurate information on carbon content when they are choosing their energy services and products<sup>7</sup>. With this in mind it is important any guidance remains adaptable to future change.

**EDF**  
**July 2021**

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<sup>6</sup> [The Electricity \(Fuel Mix Disclosure\) Regulations 2005](#)

<sup>7</sup> BEIS (2020) [Energy White Paper: Powering our Net Zero Future](#), page 34

**Appendix A**  
**Areas requiring additional clarification**

CMA Guidance Paragraph	EDF Response
<p>3.9 Use of broader, more general or absolute claims are more likely to be inaccurate and mislead. 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.</p>	<p>It is not clear from paragraph 3.9 which circumstances will result in the business ‘as a whole’ being considered, as opposed to the product it is advertising.</p>
<p>3.13 Claims may be able to focus on specific aspects of a product’s, brand’s or business’s environmental impact. For example, truthful and accurate claims about part of a product or process.</p> <p>3.16 While claims that are more specific may be less likely to mislead, that will not always mean they are acceptable. For example, a specific claim relating to part of a product that only draws attention to a minor sustainability benefit could still mislead consumers even if it is true, if: • there are also significant negative impacts from that product, or • that benefit comes at a significant environmental cost (for example, a product or its components could accurately be described as organic but a huge amount of water is used in its production).</p>	<p>It is not clear from paragraph 3.13 and 3.16 whether claims will be permissible in respect of a specific aspect, as opposed to as a whole. The use of wording such as ‘may be able to’ means that it would be difficult for a business to determine whether a claim is legal or not. We would suggest that definitive language here would make the position clearer.</p>
<p>3.17 Similarly, businesses should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects.</p>	<p>We consider that the paragraph 3.17 is ambiguous and subjective. It is not clear what ‘significant negative effects’ would comprise.</p>
<p>3.19 Businesses should consider carefully whether the visual symbols they use create a misleading effect. There should be a direct and verifiable link between these</p>	<p>In respect of paragraph 3.19, it is not clear what the business must do in respect of such consideration. We would suggest that definitive wording would make the position clearer i.e. if there is a misleading effect from</p>

<p>symbols and the meaning consumers are likely to draw from them.</p>	<p>such visual symbols, such use is prohibited and the business may not display the same in its claims.</p>
<p>3.23 Businesses contemplating making these kinds of broad and absolute claims should consider whether they have clear evidence that their products, processes, brands and activities have a positive environmental impact (or no negative one). Without it, such claims are much more likely to mislead consumers.</p>	<p>In respect of paragraph 3.23, it is not clear what is required in respect of such consideration. Specifically, after the business has considered the position, what is it required to do? It is unclear as to whether holding sufficient evidence is permissible, or whether the evidence would need to be reflected in the advertising.</p>
<p>3.24 Some terms may have developed a meaning that is generally understood by consumers. That meaning may have developed out of specific rules that apply to particular products but have come to be applied in other contexts too. Businesses should consider whether the same applies to other specific terms they use.</p>	<p>In respect of paragraph 3.24, it is not clear what is required in respect of such consideration. After such consideration has been made, it is unclear as to whether there is a restriction on the business from using the term if it considers that it may not meet the general meaning.</p>
<p>3.35 What the average consumer knows about a product, process or business, and the way they are likely to view claims and make decisions, can be important. In some cases, consumers are likely to have limited knowledge about a product or business. They are more likely to be misled by narrowly focused claims. In other cases, consumers' general knowledge may be greater and the risk of them being misled lower.</p>	<p>In respect of paragraph 3.35, we would query how businesses should decide the level of knowledge assumed by consumers. In particular we note the wording that 'In some cases, consumers are likely to have limited knowledge about a product or business. They are more likely to be misled by narrowly focused claims.' We would query how the applicable business would know that it should avoid narrowly focused claims?</p>
<p>3.37 The overall impression created by a claim must match the environmental impact of what is being marketed. Businesses should consider how a consumer is likely to interpret what they are told and what they are shown, and whether this matches the product's, service's or brand's environmental credentials.</p>	<p>We would appreciate further clarity on the second sentence of paragraph 3.37. Can businesses market "environmental" products/services they sell as if this does not align with all the products/services sold by the business? Would this be interpreted as creating a false impression of the brand's credentials to the consumer? If so, this would considerably limit business' ability to market and promote products with environmental benefits.</p>
<p>3.38 Product names and branding are key elements. So, too, are any logos,</p>	<p>In respect of the consideration requirement set out at paragraph 3.38, we would suggest that further clarity is added to set out what is</p>



<p>labels or indications of certification. Businesses must consider whether they give a misleading impression of the product's, brand's or business's impact on the environment.</p>	<p>required of the business after such consideration has been made.</p>
<p>3.40 Symbols, trust or quality marks awarded by independent third parties on the basis of a formal assessment against objective criteria are less likely to be misleading. Self-assessed and self-declared marks or symbols are more likely to raise concerns. They risk suggesting that a product, service, brand or business meets particular standards and is endorsed or independently certified as doing so.</p>	<p>In respect of paragraph 3.40 we are of the view that a more definitive position would be clearer. In particular it would be beneficial to understand what is meant by the words 'raise concerns' and whether self-declared marks or symbols are unlawful.</p>
<p>3.58 Businesses should consider whether the information provided is:</p> <ul style="list-style-type: none"> <li>• relevant to the claim being made;</li> <li>• presented in a clear way that the average consumer is likely to understand.</li> </ul> <p>If not, the claim could give a false impression about the environmental impact of the relevant product, service, brand or business. The information provided should always support the claims being made.</p>	<p>In respect of the consideration requirement set out at paragraph 3.58, we would suggest that further clarity is added to set out what is required of the business after such consideration has been made.</p>
<p>3.60 These sorts of omissions can occur where claims focus on saying one thing but not another, or where they say nothing at all. It is vital that businesses pay close attention to the information on environmental impacts that consumers need to make decisions and reflect that in the claims they make</p> <p>3.61 Consumers are likely to take into account a range of important factors in making decisions about products, brands and businesses. In many cases, those are likely to include the impact on the environment. In a transition to a low-carbon economy, these considerations are likely to become even more important.</p>	<p>It is not clear to us what the CMA consider to be important factors. Further to this it is not clear whether a business can therefore market a product without mentioning the environmental impact. We would assume that businesses should be able to determine the aspects of the product that it chooses to market but would appreciate clarity on the position.</p>
<p>3.66 It will be important for businesses to think about the claim they are making and the</p>	<p>Paragraph 3.66 implies that the only obligation on businesses is to 'think' about such claims. It</p>

<p>whole life cycle of the relevant product. Where they are promoting a brand or business, they should consider the impact of all its activities. They will also need to think about what consumers are likely to understand about the product, service, brand or business and about the claims that are made.</p>	<p>is unclear as to what the business is required to demonstrate in terms of such provision.</p>
<p>3.74 Developments in scientific and environmental evidence and understanding are also likely to affect how claims are kept up to date. Businesses should consider whether any new evidence about the environmental impact of products should be reflected in the claims that they are making or planning to make to avoid consumers being misled.</p>	<p>In respect of the consideration requirement set out at paragraph 3.74, we would suggest that further clarity is added to set out what is required of the business after such consideration has been made.</p>
<p>3.80 Businesses should think about the aspects of their products, brands or activities that have an impact on the environment, from the sourcing and manufacture of products, for example, right through to their disposal. A good rule of thumb would be to assume that consumers are likely to want to know about the overall environmental impact, including how easily a product, and its packaging, can be disposed of or recycled. Claims that include information enabling consumers to make informed decisions about that impact are less likely to involve misleading omissions.</p>	<p>The position under paragraph 3.80 is ambiguous and is potentially conflicting with existing law, which gives scope for confusion on behalf of businesses. Under existing consumer protection law, we understand that the sourcing and manufacturing of the goods do not need to be set out provided this is made clear as part of the claim.</p>
<p>3.98 In considering whether a claim could be misleading, the full life cycle of the product or service, and the whole of a business's activities, may be relevant.</p> <p>3.100 When considering making environmental claims, businesses should always consider the effect of the total life cycle of a product or service, or of their overall activities, on the accuracy of their claims.</p>	<p>As noted in our response to Question 4, we consider that the requirement in paragraphs 3.98-3.100 to consider the whole of a business' activities goes beyond existing law, and therefore is likely to cause confusion.</p>
<p>3.102 Claims may be based on a specific part of an advertised product's life cycle, or part of a business's activities. It should be clear which aspect they refer to. They should not mislead</p>	<p>Please could clarity be provided as to the circumstances in which it would be required to set out the entire life cycle of the product? For example, would it be permissible to make an</p>

<p>consumers about the total environmental impact. A claim could itself be true, but misleading, if it suggests a product is greener than it is by ignoring some other aspect of its life cycle.</p> <p>3.105 When assessing an environmental claim, the product's environmental impact over its whole life cycle may be relevant. Claims that reflect the whole cycle, or the most significant elements of the product's environmental impact, are less likely to be misleading. Claims can mislead where they reflect only part of the life cycle. If they only relate to part of the life cycle, claims should make clear which part. For example, if the claim specifically relates to manufacture, transportation, use or disposal of a product. There is a risk, though, that the overall effect could be misleading and businesses must ensure this is not the case (see below).</p>	<p>environmental claim regarding the performance of a product, without mentioning the production of the same?</p>
<p>3.108 Whether the full life cycle of a product is information the average consumer needs to make an informed choice will depend upon the product in question. It is likely that, in the coming years, consumers will demand more and clearer information about the provenance, processing and disposal of products and services as public awareness of environmental issues grows. Claims that include information about the full life cycle of a product, or reflect that whole cycle, are less likely to mislead people and more likely to help them make informed choices that are better for the environment.</p>	<p>Please can the CMA provide greater clarity over how a business may determine whether its products are such that do require information on the full life cycle to be disclosed?</p>