

Response to the CMA's Draft Consumer Protection Guidance for Green Claims

Ukie is the trade body for the UK's games and interactive entertainment industry. A not-for-profit, it represents more than 500 games businesses of all sizes from start-ups to multinational developers, publishers, platform holders and service companies, working across online, mobile, console, PC, esports, virtual reality and augmented reality.

Ukie and our members welcome the guidance provided by the CMA on Green Claims. Sustainability is an increasingly important area for the games sector and having more clarity on how we communicate to consumers and other business partners is important.

The guidance itself and the principles seem generally well thought through and clearly stated and as such we do not have any significant feedback to give. We do however have a few areas where we wanted to provide some additional comments and seek more clarity.

Proving green claims

We very much welcome the guidance that businesses should think carefully about whether they have appropriate evidence when thinking about making, or making, a green claim. And, given the varied and innovative use of propriety software and technology used by the games sector, we also particularly welcome the recognition that what is required will depend on the circumstances and may vary depending on the nature of the product and the claim being made – giving industry the flexibility to produce evidence that is 'robust, credible and up to date' and specifically relevant to the business making the claims and the wider games sector.

We did however, want to request that more clarity be provided on how trade secrets or the protection of intellectual property need to be considered when having to prove green claims made by games console manufacturers.

In the eventuality that a console manufacturer has to prove the accuracy of a green claim for one of its devices (e.g. a green claim related to the energy consumption/efficiency of a key component of the console, such as the motherboard), it may be required to use proprietary software or blueprints to perform the necessary review tests. Such blueprints or software cannot be made public as they would otherwise allow third parties actors to circumvent technological protection measures that are put in place to preserve the device against hacking and piracy of the video games played on the console.

Therefore, we would like to seek clarity from the CMA that trade secrets or the protection of intellectual property would be considered when having to prove green claims.

Keeping claims up to date

Again, we welcome the guidance that '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.'

The games sector will always endeavour to keep abreast of the latest scientific developments. However, it is a fast-evolving sector and given the pace of scientific development and technological change there are limits to what our members can reasonably be expected to be aware of at any

given time. We are concerned that the current wording of the guidance would give rise to an obligation on traders to have full knowledge of all potentially material facts, which is impossible to ensure. We would therefore like the guidance to reflect this and to limit the obligation to update to evidence “of which traders are reasonably aware”.

The games sector will make every effort to keep consumers updated on all latest claims. However, we would also like more clarity on the length of time permitted for businesses to update messaging on physical packaging of games products.

The games sector continuously evolves at a fast pace and this could lead to frequent improvements and changes in the energy usage of devices. Given this, updating the claims frequently would be difficult for a trader from a logistical and administrative point of view, particularly for stock already distributed to retail.

Ukie believes that, especially in the case of claims being displayed on physical packaging, a reasonable delay should be given to traders to update the claim once new circumstances affecting its accuracy or its relevance have been identified and would like more clarity on what a reasonable timeline could be for traders to make the required changes. For example, would it be sufficient for traders to be required to update its next artwork printing run to take place within a specific reasonable timeframe?

Offsetting schemes

Finally, we agree that where businesses make claims about their carbon neutrality, they should provide information about any offsetting scheme that they use. We note that the guidance suggests this information should be based on recognised standards and measurements, capable of objective verification.

Whilst we agree that any business using an offsetting scheme should investigate it fully before committing to it we would like a little more clarity on the accepted level of due diligence that could be required by businesses on offsetting schemes and which recognised standards and measurements would be considered as appropriate when assessing the claims of offsetting schemes.

For example, we are aware of the PAS 2050 standard, which is a specification for the assessment of the life cycle greenhouse gas emissions of goods and services. Would the use of schemes which are accredited, or which conform to relevant standards require less due diligence from traders for example? Further guidance on this aspect would be appreciated.

In summary, Ukie welcomes both the draft guidance issued by the CMA and the chance to respond to the principles. We believe that the guidance will offer clarity to the games sector in this important area and look forward to seeing if clarity can be provided on the points provided above.