

## Response to Misleading Environmental Claim Consultation

Professor Iain Black, University of Stirling Management School. [✂] [REDACTED]  
[REDACTED]

Individual response.

I would like to commend the draft guidance as the comprehensive nature of the principles and rigour of explanation, if retained and adequately enforced, will act a strong driver for improved environmental performance of products and services sold in the UK. There is a general concern that the newfound environmental focus of UK businesses, stated at a corporate level (achieve net zero, become sustainable) is not yet reflected in the actual environmental performance of their goods and products. The Misleading Environmental claims guidance will reduce the scope for companies to just 'talk a good game' as enforcement, or fear of it, should mean they have robust data behind claims they make. This will drive business innovation focused on the market advantages from environmental action. Lesser or weakened regulation via removal of any of the principles will allow greenwashing to proliferate as more companies take green positions.

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#### 3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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

The guidance covers important consumer protection law issues but there are two major underlying assumptions that should be questioned. The first is regarding the overall harm reduction approach taken and the second questions the notion of informed choice. Whilst the first is included here for wider consideration, the second has important implication for what is included in the guidance and the interpretation of the excellent principles set out.

*2.16. Where a business does not follow the principles, it is more likely to attract the CMA's attention....*

This speaks the heart of how seriously the harms caused by misleading environmental claims and related products are viewed. The enforcement position highlighted in 2.16 suggest the harms experienced are lesser than other sources of individual physical and psychological damage. Yet it is clear that the harms from environmental damage are significant, growing and experienced by individuals as well as society. The perspective taken by the CMA should be that as the production use and disposal of products and services directly and indirectly, causes significant individual and social and environmental harm. Proof of safety should therefore have to be established before access to the market is granted. The compliance regime should be modelled on those used for Medicines, Therapeutic goods or other products or services making human or veterinary health.

*2.20: Consumer protection law ensures that consumers can make informed choices about the products and services they buy...*

The basis for consumer protection law stated in this section is in need of updating to keep pace with modern marketing techniques and goals. In B2C markets, making *informed choices* does not reflect the decision processes used by consumers in many market interactions, nor is facilitating this the goal of modern marketing practices. In many markets, particularly lower involvement, lower value products, consumers are now understood to *respond* to marketing and sales activities, often by having habits stimulated or evoking an emotional basis, for example, excitement, hope, surprise or fear, as the basis for their response. Both of these approaches set out to actively avoid consumers being able to undertake cognitive considerations. The informed choice model does still dominate in B2B markets.

Therefore, the principles of which environmental claims must adhere (2.21 a...f) are relevant to B2B markets but for B2C, additional guidance and case studies around the use of colours, sounds and symbols beyond specific wording and label are required. Environmental claims focussed on emotional responses and habit triggering can be generated via associations to certain colours and sounds and messages are likely to be multisensory, this must be covered by the guidance. In particular, advice around sound should be added. For example, it is clear that tobacco marketers now seek to embed the sound of tobacco burning into TV and films where explicit or implicit brand promotion is banned. They are attempting to use the strong associations between the sound of air being drawn through burning tobacco with the 'hit' of nicotine experienced immediately after to create a desire for the product. This Pavlovian, classical conditioning based response can also be developed using natural sounds within advertisements and other promotional activities and needs to be controlled. Otherwise, the business may be complying with the principles on what it writes but benefit from unsubstantiated environmental claims in how the communication sounds.

The above then leads to questions around sections 3.10 and 3.11. Guidance is needed on how businesses can represent caveats visually if the claim is visual, the same applies for other multisensory based 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?**

The guidance is equally relevant to B2C and B2B and I urge the commission to ensure compliance in both sectors. To comply with the principles, B2C companies will require data from their suppliers, and this brings with it risk that suppliers may make misleading environmental claims and/or that they do not have data to support these. Applying this guidance to B2B companies will act as an incentive to comply and therefore that each link in the supply chain is secure.

**Ensuring compliance over long, complex international supply chains**

Globalised supply chains are long and complex, and the associated transport and production/pollution regulations represent key sources of environmental damage. The Misleading Environmental Claims guidance should therefore not be limited to tier 1 or tier 2 only or only internally to the UK. Considering that ALL extraction

production and manufacturing ultimately satisfies demands of consumers or citizen's demands of governments, the guidance should be a general principle of all supply relationships. As 'all road lead to Rome,' the scope of the guidance must reflect this as consumer harm can start many stages away from the final market interaction.

The Scope should be extended to imports to the UK. If a UK supplier makes a claim based on an imported good (finished or otherwise) it must be able evidence this with this coming from its non-UK suppliers. The onus is on the importer to insist on this information as part of its terms and conditions.

Transparency and collective working across multiple supply chain levels and suppliers to assure the provenance of ingredients, materials and components is a characteristic of businesses at the forefront of tackling climate change and benefiting from this in the marketplace. Ensuring this guidance applies across B2C and B2B and all levels in supply chains will support wide adoption of these practices and is required to ensure that the B2C data upon which B2C claims are made, is robust.

#### *2.6- Environmental claims may concern the impact on the environment in general or on specific environmental aspects such as the air, water or soil*

The guidance needs to highlight to business that the minimum standards regarding environmental performance will change over time in order to deliver the increasingly stringent UK (and devolved government) carbon reduction (and other pro-environmental) targets. At a basic level what is seen as better for the environment today will over a relatively brief period of time be overtaken by the market and legislative requirements.

#### **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?**

The environmental impact of the Service sector, particular tourism and hospitality and finance are difficult to calculate. For tourism and hospitality, the impact of guest travel can outweigh the low impact nature of a particular activity or venue. Where claims are made regarding services providers offerings that integrally require guest travel, the provider should be required to recognise this in their claim (covered generally by guidance on truthful accurate claims) and provide mechanisms by which consumers address their contribution to environmental damage. This may include local offsetting schemes, though this whole area requires attention and strong legislation.

Regarding the financial sector, there are already many providers marketing ethical or sustainable investment opportunities ranging from direct investment into low carbon startups to ETF and Pension alternatives. Clear guidance to what investments can be labelled as such is required and either provide here or signposted. For example, whereas it is easy to say that coal cannot be an environmentally friendly investment, this should mean that where any coal assets are held, that holding company or bank cannot be marketed as sustainable, ethical etc. I would include oil and gas, oil and gas refining and those that use these as feed stocks but what about manufacturers and suppliers of required machinery? It can become a long (and contentious) list but one that is required. It should be easy for

the active divestment campaigners to approach pensions providers, public bodies etc. that they are investing in companies undertaking environmentally damaging activities (and hence are on this list described above) so that these organisations can make decisions as to their course of action. This is not currently the case.

The word 'sustainable' can be used in Finance to mean economic sustainability and should be a protected word covering environmental, social and economic aspects with associated evidence.

## 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,

The principles in themselves are appropriate and comprehensive, in particular the stipulations that the full lifecycle must be considered and claim's substantiated are critical and most welcome. Using the sins of greenwashing as their basis is a sensible approach.

There are some issues around what is meant by evidence that need to be addressed and I do so in section 3.9.

## 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.

*Electric cars:* Additional guidance on electric cars is required as their environmental impact goes well beyond the carbon free nature of their use phase. There is significant marketing activity ongoing around hybrid, plug in hybrid and electric vehicles but this, along with the guidance focusses on the *use* phase. The general principles cover the wider lifecycle issues but clearer guidance to the automobile industry is required so it understands that it cannot claim to be sustainable or part of a sustainable lifestyle if the only evidence it has it that it can be net zero during use. It must, for example, reflect the manufacturing and end of life phases. It would also be powerful for the guidance to show that the CMA understands that the predominance given to cars (however powered) in urban planning and transport reduces the space required for sustainable alternatives of movement and living more widely. In short, electric cars are not a sustainable solution to personable flexible transport requirements and should not be marketed in this way.

*Petrol, Oil and gas:* We have started to see spurious claims of carbon free petrol being made by, for example, Shell. It should be made clear that environmental claims

are not acceptable from inherently damaging products such as oil and gas, even via offsetting.

Sustainable Fashion: Considering the attention that fast fashion has been under, and the market responses seen, specific guidance for fashion and clothing business as to what constitutes sustainable fashion would be helpful. This could contain guidance highlighting that changing *part* of your operation from a highly damaging business model does not constitute good practice. We do not congratulate people when they stop hitting someone less, we should not allow business to congratulate themselves when they stop polluting less.

Offsetting: The general approach still being used by governments is that life can continue as normal, and science and offsetting will make carbon pollution go away. With so many businesses seeking to position themselves as sustainable and part of the 'race to zero', an enticing path to make quick progress is via carbon offsetting. Offsetting without certified *additionally* and consideration of unintended consequences provides a false solution to environmental damage via carbon pollution. An example would be claims by Easyjet that they offset all the emissions from the fuels they use. This can give passengers moral license to continue to fly as they could be reassured that their activity is not contributing to climate change. In addition to falling foul of omitting and hiding relevant information, the offsetting projects need careful scrutiny that the investment by Easyjet leads to additional carbon extraction, not simply buying a share of what was already planned or enacted.

#### 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.

Guidance on additional circular economy and sustainable consumption terms beyond recycle and recycled is needed. It would be helpful to provide guidance on how terms such as Circular Economy, Remanufacture, Reuse, Repair can be used appropriately and where their use can be misleading. As awareness of the circular economy grows and with it the limitation of recycling as the least impactful sustainable consumption behaviour, it is likely companies will make claims around other CE terms. Perhaps this could be provided via the addition of a detailed glossary of terms, containing definitions and examples of acceptable/unacceptable use.

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

Overall, the draft guidance is extremely helpful and detailed. There are some issues around the advice for product feature-based claims, primarily *recyclable* and others that can easily be the basis for *over-claiming* but where it is useful that these features

are labelled on the product as it may help stimulate positive market response to the environmental crisis. This is explained below.

Additional guidance around the use of Recyclable

3.7. ... *For example, 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.*

What can be recycled is not simply determined by the material or combination of materials. As currently stipulated, businesses can make claims about their product focused on this highly popular but highly contentious activity, without making reference to available recycling capacity both in terms of the uniform accessibility across the countries in the UK or to the volume of capacity required by their activities. It is clearly misleading to label a product *recyclable* when all consumers who can buy it do not have this option nor where there is volume capacity to do so.

What can be recycled varies across council regions and the countries in the UK. For products available across the UK or in specific location only, the expression *recyclable* should be restricted to only those materials that can be recycled in all local authority area or in that specific local.

Further to this, large companies such as Proctor and Gamble, Coca Cola, Unilever use business models that are reliant on plastic packaging and therefore produced vast amounts annually. For example Unilever alone using 200,000 tonnes of virgin plastic each year. Much of this (over 70% by industry estimates) ends up as litter, a fact highlighted in the research by Greenpeace and Surfers Against Sewage for example. For these businesses to adhere to the core principles of misleading environmental claims, they must only make recyclable claims where they have evidence that sufficient UK capacity exists to manage ALL of the waste they knowingly produce. Focussing on these major polluters is a reasonable place to start considering their contribution to the problems and their size allow them access to capital to address it.

However, it is clearly important that business continue to label products with the materials they contain and it is appropriate to use recycling symbols. Where the conditions above are not met, these should be placed in a secondary, non prominent position on labels or packaging or via embossing.

This links to the clarity of the guidance around comparators (greener, more sustainable etc.), which is very strong but there remains some ambiguity around claims based on product feature such as *recycled fibres, locally sourced, compostable* etc. These can provide market advantage and so must be covered by this guidance regarding over claiming. There is a need for balance however as these product features can indicate that business is on a journey towards providing sustainable goods and services and are useful information to the consumer. The key here seems to be around *over-claiming*, a dress is not sustainable just because it uses recycled fibres and must be stopped from making this claim. It should be allowed to signal in a factual manner with appropriate caveats that such features exist as it may lead to the type of green innovation across product iterations hoped for, again in a secondary position. It strikes me that the current advice around caveats does not clearly address this situation.

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

As highlighted by the need for this guidance, businesses have much still to learn about doing business in an era of action on climate change. The Guidance does not, nor cannot provide sufficient information for business to understand the detailed consequences of these obligations in terms of sustainable and measurement. Therefore, to reduce both intentional and unintentional breaches, I would recommend that greater signposting is made to the need for training and education around climate change and sustainability more widely. This could be in the form of general expression as well as highlighting specific ideas and topics that companies should be sure of their knowledge, process and practices. This might be as broad as topics climate change its causes and effects but also on mitigation and adaptation activities that companies may take part in. It should also include specific skills such Lifecycle Assessment and footprinting

This signposting should frame this training need as ongoing in the same way that employees may have annual health and safety at work training. Action on environmental damage, and in particular CO<sub>2</sub>e reductions must be viewed as an ongoing, changing, ever intensifying activity, therefore the knowledge and skills required to do business under the conditions this imposes, must be constantly updated and improved too.

Section 1.31 of the accompanying consultation document sets out required engagement with stakeholder: Engagement is also required with Departments of Education, (across stages but including Higher and Further) to ensure business education, training and support develops learners with the knowledge to implement these guidelines and environmental protection solutions more widely.

LCA standards.

The foundation of this guidance is the need to evidence claims and this inherently means footprinting, life cycle assessment and input output analysis. Whilst these are developing fields there is recognised best practice and relevant ISO standards (for example, ISO 14067:2018). It would be particularly helpful to businesses wanting to do the right thing to be sign posted to relevant resources.