Submission to the Competition Bureau's Public Consultation on the Competition Act's New Greenwashing Provisions.

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Energy NL was founded in 1977 to represent the supply and service sector of the energy industry. Today Energy NL represents over 500 member organizations worldwide which are involved in, or benefit from, the energy industry of Newfoundland and Labrador. Energy NL members are a diverse representation of businesses involved in a range of activities related to both renewable and non-renewable energy development, construction, and operations. This includes, but is not limited to, areas such as direct offshore and onshore supply, health and safety equipment and training, engineering solutions and fabricators, law firms, and human resource agencies.

Energy NL would like to take this opportunity to provide feedback to the Competition Bureau on changes to the Competition Act by Bill C-59. While Energy NL understands that the Bureau cannot alter the text of the Bill, we are pleased to hear that it is committed to offering enforcement guidance in consultation with Canadians to ensure transparency and predictability. We hope that this consultation will assist the Bureau in developing clearly defined guidelines that mitigate the lack of clarity introduced by the Bill. The submission from Energy NL will focus on Bill C-59's impact to the Canadian energy sector, specifically the limitations of, and complications imposed by, the greenwashing law.

Introduction

Since it's recent passing, the so-called greenwashing law enacted as part of Bill C-59, has been met with concern for its vague language and the uncertainty it creates for complying companies.

The law, relating to representations made about environmental benefits of businesses and business activities, changes the deceptive marketing practices provisions of the Competition Act, and reads as follows:

> *74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,*
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> *(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation;*

Largely met with confusion by organizations in the energy sector, many companies began to completely remove any mention of their environmental and sustainability efforts such as decarbonization from their digital platforms and communications to ensure that they were not unknowingly breaking the law. The prompt reaction was notable due to the uncertainty surrounding what is categorized as "adequate and proper substantiation" and "internationally recognized methodology."

Unfortunately, the swift removal of digital content, particularly by oil and gas companies, was interpreted by supporters of the law that such immediate compliance was evidence of deceptive marketing practices in the first place. However, there is currently no definition from the Competition Bureau for "internationally recognized methodology," nor is there any indication of which approved international governing bodies Canadian businesses may turn towards to adequately and properly substantiate their environmental stewardship.

Energy NL believes it was imprudent to introduce an unclearly defined law, which could result in significant penalties for violation, that suddenly shifts the burden of proof from the Competition Bureau to Canadian companies, provides little direction, and creates enormous uncertainty for any organization trying to promote their environmental and sustainability actions. The uncertainty and potential significant consequences have been missteps by the Parliament of Canada and must be corrected through clarification by the Competition Bureau.

Limiting environmental, social, and governance (ESG) reporting

The issue of misrepresenting environmental efforts to gain public favour is a serious concern for participants in the energy industry, especially those who are undertaking significant efforts to reduce and mitigate emissions and develop new technologies for cleaner energy. However, in an attempt to regulate the few, a blanket solution such as the new greenwashing law will only complicate the matter for the majority and may also stifle necessary investment and research and development in new technology.

Environmental, social, and governance (ESG) reporting is not only valuable to businesses, but also to consumers and consumer groups, along with the public. For companies, ESG practice and standards encourages them to carry out environmental initiatives, bettering their organizations along with the communities they operate in. For consumers, transparent ESG reporting helps them to make informed purchasing and investing decisions that align with their personal values. This, in turn, encourages further innovation and effort from companies trying to meaningfully engage with their stakeholders. The introduction of this greenwashing law puts a core tenet of ESG reporting at risk.

We must consider the ease and accessibility of "adequate and proper substantiation in accordance with internationally recognized methodology" for all Canadian companies impacted by this law. Until this methodology is more clearly defined by the Competition Bureau, companies are left speculating on how best to report and substantiate their environmental efforts; worse, they may decide to stop completing these efforts altogether for fear of violating the Act.

The road to net zero relies on a varied energy mix, which is only possible through innovation; stifling the ability to report, promote, and meaningfully discuss new avenues towards environmental stewardship is going to overwhelmingly hurt all industries, but especially organizations in the energy sector.

Consequently, consumers' ability to make informed decisions about the ESG efforts of competing businesses is compromised. Consumers care about the environment (particularly about where their money is going and the environmental practices of companies providing products and services) and what causes they are directly or indirectly supporting. If companies are discouraged from disclosing their ESG initiatives, it leaves stakeholders unable to differentiate between organizations with very different ESG practices and standards.

Holding industry to the same standards

Publicly available analysis has pointed out that the recent changes to the Act will disproportionately affect certain industries over others. These changes have broadened who can apply directly to the Competition Tribunal; previously, for the most part, only businesses whose entire operations were directly and significantly impacted by the alleged anti-competitive conduct were permitted to apply directly to the Tribunal. This has since changed, and commencing June 20, 2025, private parties will be able to obtain leave to bring actions for deceptive advertising before the Tribunal if they can demonstrate that it is in the "public interest" to do so.

Canadian companies whose activities are sustainability-related are now positioned to defend themselves from repeated complaints related to any environmental-related statement. It is likely that companies in the petroleum sector will be unfairly targeted by such complaints.

Energy NL requests that the Competition Bureau makes clear, and carefully enforces the fact that, all organizations, including climate advocacy groups, will be held to the same standards and burdens of proof and that frivolous, vexations, and/or repeated actions are not brought to the Bureau.

Canada's role in the international energy sector

While reasonable federal policies can take inspiration from international best practices, they should also reflect the uniqueness of our nation's industries, opportunities, and natural resources. It is likely that organizations in the Canadian energy sector will be disproportionately impacted by the greenwashing law, particularly petroleum producers and suppliers. The Competition Bureau must also recognize existing reporting requirements from Canadian federal and provincial regulators for the energy sector, which are based on methodologies that are technically feasible, safe, and largely based on regional operations. Such reporting often already aligns with standard international practice and with local operational contexts. Therefore, relying entirely on internationally recognized methodology to govern Canadian industry is shortsighted, and could result in creating significant gaps and obstacles. Canadian industry calls for Canadian solutions. Canada is a natural resource country, with significant economic and social contributions made from the various sectors. We must not make shortsighted decisions which gravely impact the fabric upon which our nation's economy, and so many communities, have been based.

At 30% below the global average for greenhouse gas emissions at extraction, Newfoundland and Labrador's offshore oil and gas industry delivers lower carbon-emitting and more safely produced oil and gas. Proponents of these offshore projects have a right to inform investors of these differentiating attributes, as federal and provincial leaders such as Premier Dr. Andrew Furey and former federal minister Seamus O'Regan have done.

On June 6 of this year, then Minister O'Regan shared with the Standing Senate Committee on Energy, the Environment and Natural Resources when commenting on Bill C-50, *the Canadian Sustainable Jobs Act* that, "There are unbelievable opportunities in hydrogen and oil and gas, in wind, and I say oil and gas, because we've managed to find significant ways to lower emissions and find sources of some of the lowest emitting oil in the world." Further, Premier Dr. Andrew Furey has stated that Newfoundland and Labrador is "all in" on offshore oil and gas because of its lower carbon product. Under the changes to the Act, these statements need to be adequately and properly substantiated using internationally recognized methodology which is not currently defined.

Additionally, the Competition Bureau can simultaneously model Canadian industry practices after the international community, while also not discouraging offshore energy production, as Canada's counterparts do. Doing so will give producers confidence that the greenwashing law is not intended to skew the conversation around sustainable practices at the expense of the energy sector and was indeed developed in good faith. For example, Norway's Consumer Authority offers guidance on sustainability claims used for marketing purposes, and still recognizes that petroleum will continue to play an important role in the energy mix for decades to come, as reflected in that nation's ongoing investments in the sector.

It is critical that producers, suppliers, and developers, specifically in the petroleum industry, have confidence in the Act and in the Competition Bureau to fairly enforce this law. The Bureau must commit to providing clear direction, while still driving innovation and fueling economic growth rather than stifling it.

Conclusion

The recent changes to the Competition Act have unfortunately complicated the ability for companies to report on their ESG efforts. Introducing uncertainty into their reporting, and creating high-cost, low-public awareness stakes may also limit the sharing of information and technology that can benefit other industries attempting to improve their environmental sustainability practices.

Additionally, there is clearly public interest in supporting green initiatives, and in supporting the companies that prioritize these initiatives. If businesses do not feel empowered to tell their stories, or to share their ESG efforts, the public runs the risk of not knowing who they are dealing with and making uninformed consumer spending decisions.

If Canada wishes to reach net zero by 2050, working with the energy sector is key.

The Competition Bureau must ensure the “internationally recognized methodology” referenced by this law is clearly defined and reasonable, to facilitate ESG reporting, instead of stifling it.

The Competition Bureau must also make every effort to hold all industries and actions to the Bureau to the same standards; doing so may mean shifting the burden of proof onto the reporters to help avoid repeated and frivolous complaints for specific industries.

This law has added yet another layer of uncertainty to the Canadian oil and gas industry. Energy NL’s members need clarity as soon as possible. We are therefore requesting that the Bureau take into account all consultation from the energy sector and provide clear and fair guidance for this law to ensure transparency and predictability, so that industry can move forward with its investments and environmental sustainability efforts.