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## UK's Competition Authority Launches Investigation into Green Heating and Insulation Sector

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**By Duncan Grieve**  
Special Counsel | White Collar Defense and Investigations



**By Sharon Takhar**  
Associate | White Collar Defense and Investigations

On October 17, 2023, the Competition and Markets Authority (CMA) **announced** that it had opened an investigation into a distributor of heating and insulation products, following allegations that it had made misleading claims about the use of hydrogen in boilers. The investigation concerning the so-called 'hydrogen-blend ready' boilers will ascertain whether the company, Bosch Thermotechnology Limited (which trades as Worcester Bosch) misled consumers regarding the environmental characteristics of its product.

The marketing practices subject to the CMA's investigation involve the use of:

- labels or text stating that the company's boilers can run on a blend of 20% hydrogen and natural gas. The CMA states that this may have suggested that this is a special feature when this has been a legal requirement in the UK since the mid-1990s.
- information and messaging on the use of hydrogen for home heating in the UK. However, this technology is not yet available, its introduction being years away and subject to future government policy decisions.
- descriptions and information about the environmental benefits of 'hydrogen-blend ready' boilers, which may falsely suggest that the boilers will reduce a household's carbon footprint.

The CMA's investigation into Worcester Bosch forms part of the regulator's **broader deep dive into the sector**, which included a call for information on consumer protection in green heating and insulation. The CMA looked at three key areas: people's experience of buying green heating and insulation products; business practices; and the landscape of standards bodies

that provide quality assurance and consumer protection standards for member businesses. The investigation focused on the marketing and sale of specific products for the home, including heat pumps, home solar, insulation, biomass boilers, and hydrogen-ready boilers.

The CMA's findings from the call for information were set out in a report following concerns identified in the feedback received. The concerns prompted the CMA to **publish a consumer guide** setting out key rights and protections afforded to consumers, along with a set of **good practice principles** for standards bodies to enhance the level of protection provided in the sector.

The CMA has written to twelve other companies selling 'hydrogen-blend ready' products, warning them that they could also be breaching consumer protection laws, reminding them of their legal obligations, and encouraging them to review their marketing to consumers. The CMA stated its intention to continue its work in the sector to identify further misleading and greenwashing claims that may have been made by businesses. As of yet, the regulator had not reached any conclusions as to whether consumer protection laws may have been broken.

**Taking the Temperature: The CMA's focus on anti-greenwashing consumer protection action is a continuing trend in activity for the regulator. Earlier this year, the CMA announced a wide-ranging investigation into the accuracy of green claims made about household essentials, such as food, drinks and toiletries, to prevent consumers from being misled. The CMA also produced the Green Claims Code to help companies understand how to communicate their green credentials and avoid greenwashing. In the UK more broadly, a number of regulatory authorities have published guidance and increased enforcement activity in the greenwashing space, including the Financial Conduct Authority, which also announced on November 28 that after a period of consultation, and some delay, it will implement Sustainability Disclosure Requirements (SDR) and an investment labels regime. We will report on this in detail in an upcoming edition, but the SDR will include an anti-greenwashing rule, rules around product labels and naming and marketing requirements to help investors make more informed choices when it comes to sustainable investment. And, the Advertising Standards Authority released updated guidance for advertisers making environmental sustainability-related claims to consumers, including the use of the terms "carbon neutral" and "net zero."**

Outside of the UK, regulatory authorities are active on this issue in the EU, U.S., and Australia. The European Union has an ongoing legislative campaign, the **Green Claims Directive**, to address misleading sustainability claims in advertising. In the U.S., the Federal Trade Commission announced that it is **seeking public comment** on potential revisions to its Green Guides for the Use of Environmental Marketing Claims, in particular to address carbon offsets and climate change-related marketing claims. The Securities and Exchange Commission adopted amendments to the Investment Company Act 1940 to include the **"Names Rule,"** which regulates appropriate naming of funds to ensure that they do not mislead investors regarding the fund's risks and investment characteristics. The Names Rule is consistent with the SEC's overall focus on ESG issues, including, **as we have noted previously**, the formation of the ESG Task Force within the Division of Enforcement "to develop initiatives to proactively identify ESG-related misconduct consistent with increased investor reliance on climate and ESG-related disclosure and investment." Likewise, in July 2023, the **Australian Competition**

**and Consumer Commission** released **draft guidance** for businesses making environmental and sustainability claims (the Draft Greenwashing Guidance). The Draft Greenwashing Guidance establishes best practices under the Australian Consumer Law, setting out how businesses operating in Australian jurisdictions can avoid greenwashing.