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Investigation into Potential Greenwashing by 20 Airlines – A Growing Trend?

Introduction

On 30 April, the European Commission announced that it and the Consumer Protection Cooperation Network (the **"CPC Network"**) had sent letters to 20 airlines concerning a variety of ["potentially misleading green claims and inviting them to bring their practices in line with EU consumer law within 30 days"](#)¹ (the **"Announcement"**). The investigation was prompted by the European Consumer Organisation (**"BEUC"**), the EU's consumer rights body, which, back in 2023, lodged a complaint against 17 airlines over deceptive and misleading environmental claims.

This latest action over claims of 'greenwashing' within the aviation industry serves as a useful reminder of the types of risks associated with making public voluntary environmental claims for any business. It also demonstrates the EU's willingness to take coordinated industry-specific action, which could be replicated elsewhere, especially in light of the coming into force on 26 March 2024 of Directive (EU) 2024/825 (the **"Empowering Consumers Directive"**) which, once implemented at the national level², will supplement and strengthen the protection already offered to consumers by the Unfair Commercial Practices Directive 2005/29/EC, with a specific focus on anti-greenwashing protections.

SH has covered greenwashing extensively:

- For a brief '101' on the concept of greenwashing, please see: ["Greenwashing: What it is and how to avoid it"](#) and
- For analysis focused on greenwashing within the context of the aviation industry, please see this recent article prepared by our Aviation Litigation and Regulation team from April: ["Greenwashing in](#)

[Aviation: The latest rules and regulations on environmental campaigns"](#) as well as an accompanying podcast from the team (available [here](#)).

While this article provides a summary of the European Commission and CPC Network's rationale for launching this latest spate of investigations, readers are encouraged to refer to the above SH sources for a deeper dive into the latest trends in anti-greenwashing (both UK and EU).

The Investigation

The Announcement's summary of the types of misleading practices under investigation is as follows:

1. Creating the incorrect impression that paying an additional fee to finance climate projects with less environmental impact or to support the use of alternative aviation fuels can reduce or fully counterbalance the CO2 emissions;
2. Using the term "sustainable aviation fuels" (SAF) without clearly justifying the environmental impact of such fuels;
3. Using the terms "green", "sustainable" or "responsible" in an absolute way or use other implicit green claims;
4. Claiming that the airline is moving towards net-zero greenhouse gas emissions (GHG) or any future environmental performance, without clear and verifiable commitments, targets and an independent monitoring system;
5. Presenting consumers with a "calculator" for the CO2 emissions of a specific flight, without providing sufficient scientific proof on whether such

¹ European Commission, Press Release dd 30 April 2024: ["Commission and national consumer protection authorities starts action against 20 airlines for misleading greenwashing practices"](#).

² As a directive rather than a regulation, member states are required to implement the Empowering Consumers Directive through national legislation within 18 months.

calculation is reliable and without the information on the elements used for such calculation; and

6. presenting consumers with a comparison of flights regarding their CO₂ emissions, without providing sufficient and accurate information on the elements the comparison is based on.

Decarbonisation poses a particular challenge to airlines, and the various campaigns, investigations and legal proceedings brought against airlines in recent years serve as a cautionary tale to any business which plans to make any claims regarding its green credentials.

The themes raised by the Announcement, which are relevant to all businesses when considering the risk of greenwashing, include:

- **Internal measures: the use of sustainable fuels**

- As relevant to road, rail and maritime transportation as it is to aviation is the manner in which a company presents the internal measures it is taking to reduce its own direct (or 'Scope 1') emissions, including the development and use of sustainable fuels.
- For aviation, the transition away from traditional jet fuel to SAF is a complex and expensive process. Concerns have been raised over the environmental credentials of SAF and the ability to scale-up SAF production, as demonstrated by the Announcement's second example of a misleading practice.
- Claims associated with the use of sustainable fuels need to be based on a strong foundation of scientific research and must not imply 'magic bullet' solutions of such fuels having no environmental impact whatsoever.

- **External measures: the use of offsets / carbon credits**

- A distinction can be made between how companies use carbon credits for their own internal purposes and how they use them as add-ons to the services they offer consumers. Each presents its own greenwashing risks.
- As demonstrated by the Announcement's first example of a misleading practice, much has been made of how airlines have attempted to incorporate carbon credits into packages offered to customers, for example allowing them to pay a premium to purchase such credits to offset the

CO₂ emissions of their flights. A variety of institutions and regulatory bodies have warned that such practices risk misleading customers by in effect promising 'guilt-free' travel.

- Companies' own use of carbon credits is also a hot topic, with a recent announcement from the Science Based Targets initiative ("**SBTi**") on the use of such instruments in the context of 'Scope 3' reporting causing a stir³ and new guidance from the SBTi is due later in the year. For an analysis of this topic, please see last week's article [here](#).

- **Terminology and Targets: backing up claims**

- As demonstrated by the Announcement's third and fourth examples of misleading practices, companies need to consider what statements they use and what evidence they can adduce to back up any statements on their environmental commitments. For example, the UK advertising watchdog, the Advertising Standards Authority ("**ASA**"), has banned adverts from a variety of companies, including airlines like Air France, Lufthansa and Etihad for making statements about their "**environmental advocacy**"⁴ or their offering to customers to "**fly more sustainably**"⁵ without fully explaining or substantiating such assertions.
- Given the Announcement's focus on the importance of substantiation, arguably the safest way to make an environmental claim about a company's commitment to sustainability or the environment is with reference to a commitment or target which has been certified by an independent third party. For example, the SBTi has emerged as the leading certifier of science-based targets for companies transitioning to net-zero. However, this is not a rubber-stamping process. Obtaining and maintaining such certifications is a significant undertaking and in recent years a number of high-profile companies have been removed from the SBTi's list of companies with certified targets for either failing, or electing not, to submit new targets.
- Third-party certification is an important feature of the Empowering Consumers Directive, which, for example, prohibits companies' use of sustainability labels which have not been based

³ SBTi, [Statement from the SBTi Board of Trustees on use of environmental attribute certificates, including but not limited to voluntary carbon markets, for abatement purposes limited to scope 3](#), dd 9 April 2024, updated 12 April 2024.

⁴ [ASA Ruling on Etihad Airways](#) dd 6 December 2023

⁵ [ASA Ruling on Deutsche Lufthansa AG t/a Lufthansa](#) dd 6 December 2023

on established labels developed/approved by certification schemes or public bodies.

Conclusion

The investigation into the 20 airlines represents a coordinated shot across the bows from multiple regulators to the whole aviation industry, and a warning to other industries that they could be next in line. There has been a clear trend in the last few years for more intervention over environmental and sustainability claims in advertising by both regulators and private actors. The introduction of new laws like the Empowering Consumers Directive will only accelerate this trend further.

It is notable that in the context of this investigation, the 20 airlines have not been identified, with the initial focus being on remedial action and private consultation, rather than naming and shaming. The Announcement states that after the airlines have submitted their proposed solutions, meetings will be organised with each airline by the European Commission and CPC Network, with the implementation of the agreed-upon solutions then to be monitored. Failure to comply with this process could result in enforcement action at the national level from the authorities forming part of the CPC Network.

In a well-known scene from the television show *West Wing*, Martin Sheen's President Bartlet, inspired by the moon landing, is talked down from making a 'moonshot' public commitment to cure cancer within a decade without a clear pathway for achieving such an ambitious goal. Business would be advised to follow his cue, as the key message from the Announcement for avoiding allegations of greenwashing is to make sure you can substantiate before you communicate.

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Contact us

We hope that you find this update both useful and interesting. If you have any comments or would like to learn more about this topic, please get in touch with either your usual SH contact or any member of our commodities team by clicking [here](#).