

Complaint against BP in respect of violations of the OECD Guidelines

Complainant:



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NCP:

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ClientEarth is an environmental law charity that has staff in London, Brussels, Warsaw, Madrid, Beijing, Berlin and Luxembourg, and works to enforce laws for the protection of the environment around the world.

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Abbreviations and Units

boe/d	Barrels of oil equivalent per day
bcf/d	Billion cubic feet per day
CapEx	Capital Expenditure
GHG	Greenhouse gas
GWh	Gigawatt hour. A Gigawatt is equal to 1,000 megawatts
IEA	International Energy Agency
IPCC	Intergovernmental Panel on Climate Change
LNG	Liquefied natural gas
mtoe	Thousand tonnes of oil equivalent per day
mboe/d	Thousand barrels of oil equivalent per day
mmboe/d	Million barrels of oil equivalent per day
MW	Megawatt

INTRODUCTION AND BACKGROUND

1 Executive summary

1. In this Complaint, ClientEarth alleges that BP's current advertising misleads the public in the way that it presents BP's low-carbon energy activities, including their relative scale to its fossil fuel extraction activities, the role of gas, as well as the global energy system and climate change.
2. This Complaint is concerned with the way in which BP communicates with the public and whether this corresponds to the reality of its business and products. Nonetheless, the backdrop to this Complaint is that BP's plans to continue to grow its fossil fuel extraction business which has the potential to worsen the climate crisis and jeopardise the prospects of society making the required global energy transition and dramatically reducing greenhouse gas ("GHG") emissions, in order to meet the goals of the Paris Agreement.
3. The Organisation for Economic Co-operation and Development ("OECD") Guidelines for Multinational Enterprises¹ require clear, honest, accurate and informative communication between enterprises and the public. Communications addressing the environmental impacts of an enterprise's operations are critical to furthering the OECD Guidelines' purpose of promoting sustainable development. As the OECD Guidelines recognise, members of the public require accurate and clear information to make informed decisions about the sustainability and climate impact of both their consumption habits and the activities of businesses operating in their society.
4. In January this year, BP launched a major advertising campaign under the titles "Keep Advancing"² and "Possibilities Everywhere"³ across a range of different media including television and billboards in a number of countries, such as the UK, the US and Germany, as well online on its website and social media accounts.
5. The BP campaign presents what it suggests is the company's strategy for navigating the energy transition to sustainable energy supply and addressing what it identifies as a "dual challenge" of rising global demand for energy and a simultaneous need for lower GHG emissions to mitigate climate change. The campaign is accompanied by the slogan

¹ Available here: <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

² See, e.g., <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing.html>.

³ See, e.g., <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere.html>.

“#NotBusinessAsUsual”⁴ and related content such as the “Energy Illustrated” series of videos.⁵ Duncan Blake, BP’s Director of Brand, stated in an interview at the time of the campaign’s launch that “the measure of success will be for people to play back that they see that BP are doing lots of things to contribute to this dual challenge.”⁶

6. However, contrary to the OECD Guidelines, for the reasons given in this Complaint, ClientEarth contends that BP’s adverts and communications with consumers are misleading in the following key respects:

6.1. They give a false impression of the relative scale of renewable and low-carbon energy in BP’s business, suggesting that this is already extensive and growing, as well as making misleading claims about specific renewables projects. In reality, BP invests over 96% of its capital expenditure in fossil fuels such as oil and gas and less than 4% on low-carbon technologies. An approximate comparison of the energy supplied by BP suggests that less than 1% of it is from low-carbon sources, with the vast majority being from fossil fuels. BP has selectively highlighted relatively tiny investments in low-carbon technologies that are dwarfed by its fossil fuel business, *which is still expanding*.

6.2. They misleadingly omit full lifecycle emissions for gas and claim a higher emissions saving against coal combustion than put forward by bodies such as the International Energy Agency (“IEA”). The advertising also includes the following misleading claims regarding gas:

- a. that gas (and / or BP’s gas in particular) is “cleaner burning”, without clarifying in what context, against which competing sources of energy and to what extent this is the case (for example whether the claim applies in respect of cooking and spatial heating);
- b. that gas only performs a back-up function to variable renewables in electricity generation, when in fact gas is regularly used to generate electricity that could otherwise be provided by variable renewables, i.e., including when such renewables are operating at normal or high levels; and

⁴ See, e.g., <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing/not-business-as-usual.html>.

⁵ <https://www.bp.com/en/global/corporate/energy-economics/spencer-dale-group-chief-economist/energy-illustrated.html>.

⁶ <https://www.campaignlive.co.uk/article/bp-launches-biggest-global-campaign-decade/1523391>.

- c. that gas is a “perfect”, “ideal” or “smart” partner to renewables, when in fact it has significant negative environmental impacts and its use must be reduced to avoid worsening the effects of climate change.
- 6.3. They assert that increases in global primary energy demand are both desirable and inevitable for human progress and development, when a significant body of leading scientific and expert opinion indicates otherwise, while also misleadingly omitting information about the predicted severe negative impacts of climate change caused by the continued, let alone increased, use of fossil fuel energy.
7. ClientEarth alleges that these misleading claims place BP’s 2019 campaign in conflict with the following sections of the OECD Guidelines:
 - 7.1. Consumer Interests (Chapter VIII, paras 2, 4 and 5 and paras 85 and 88 of the Commentary); and
 - 7.2. Environment (Chapter VI, paras 2(a) and 6(c)).
8. In bringing this Complaint, ClientEarth seeks to ensure that information provided by BP to the public and consumers is clear, true and accurate and consistent with the relevant requirements of the OECD Guidelines. This is a major advertising and public information campaign by one of the world’s largest and best-known oil and gas companies. Adherence to the relevant parts of the OECD Guidelines is in the public interest and is critical to:
 - (i) informing the public about the true role of large oil and gas companies such as BP in creating and contributing to the current climate crisis, (ii) educating the public about the consequences of the ongoing use of fossil fuel energy, and (iii) telling the public the truth about the need to dramatically reduce oil and gas production in order to avoid catastrophic climate change and meet the temperature goals of the Paris Agreement of 2015.⁷
9. ClientEarth hopes that the NCP will assist the parties to resolve the issues raised in this Complaint and that BP will engage with the NCP process in good faith, displaying the type of environmental leadership that it wishes to be known for.

ClientEarth’s request to BP:

10. ClientEarth requests that BP take steps to correct the misleading information in its public communications. Specifically, ClientEarth requests that BP:

⁷ U.N. Framework Convention on Climate Change Conference of Parties, Twenty-First Session, Adoption of the Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015).

- 10.1. Withdraw and cease publication of the identified advertisements and public communications until revised to conform with the OECD Guidelines, including by not misleading with respect to climate and other environment-related issues.
- 10.2. Make a public statement explaining the withdrawal and / or correction of its advertisements. All advertisements must clearly state how much of the company's investment is in oil and gas and how much in what it calls 'low carbon businesses'. In the case of BP, this means that it should disclose clearly in all advertising the proportion of its annual investment that is in fossil fuels and the proportion that is in low-carbon sources of energy.
- 10.3. Ensure that all future advertising and public communications include a comment in the form of a warning or a disclaimer that the use of the company's oil and gas products creates GHG emissions that contribute to global climate change. All advertising must include the following text:

“The Intergovernmental Panel on Climate Change (IPCC) has found that emissions from fossil fuels are the dominant cause of global warming.

The IPCC warns that fossil fuel emissions must be halved within 11 years if global warming is to be limited to 1.5°C. Warming above 1.5°C risks further sea level rise, extreme weather, biodiversity loss and species extinction, as well as food scarcity, worsening health and poverty for millions of people worldwide.”
- 10.4. Make a public commitment to ensure that its future communications on climate and environment-related issues and on the environmental impacts of its products and services are consistent with the purposes of the OECD Guidelines and introduce a clear internal policy to this effect to the extent that no such policy already exists.
11. We hope that mediation of this Complaint will prove productive. If it is not possible to resolve the Complaint promptly in this way, ClientEarth requests that the NCP expedite its examination, and conclude that BP's current advertising breaches the OECD Guidelines in the ways described in this document. Publication of the NCP's conclusions under that process will ensure that there are clear findings that BP's current advertising breaches the OECD Guidelines, specific recommendations to the company to ensure that its conduct is brought into line with the OECD Guidelines and opportunities for ongoing follow up and scrutiny of the company under this process.

2 The Parties

2.1 The Complainant

12. ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE.
13. ClientEarth's charitable objectives are:
 - 13.1. to promote and encourage the enhancement, restoration, conservation and protection of the environment, including the protection of human health, for the public benefit;
 - 13.2. to advance the education of the public in all matters relating to the law, practice and administration of justice in connection with the environment;
 - 13.3. to relieve poverty through the provision of legal services to those who cannot otherwise afford them; and
 - 13.4. to promote, assist, undertake and commission research into the law, practice and administration of justice in connection with the environment and matters
14. ClientEarth employs around 120 legal staff and around 165 total staff globally in London, Brussels, Warsaw, Madrid, Beijing, Berlin and Luxembourg. Most of ClientEarth's work focuses on developing, improving and enforcing laws, policies and legal systems as part of its charitable mission, and includes litigation, when appropriate.
15. In the UK, ClientEarth is likely best known for its work on clean air, including its three successful judicial reviews of the UK's Air Quality Plans.⁸ ClientEarth is also known in the UK for its work on access to justice, namely as one of the Communicants challenging the UK's non-compliance with Article 9(4) of the Aarhus Convention⁹ and the judicial review it brought (with other environmental charities) challenging the changes introduced by the government in 2017 to the CPR environmental costs regime.¹⁰

⁸ *R (on the application of ClientEarth) (Appellant) v Secretary of State for the Environment, Food and Rural Affairs (Respondent)*, [2015] UKSC 28; *ClientEarth (No.2) v Secretary of State for the Environment, Food and Rural Affairs* [2016] EWHC 2740 (Admin) (2 November 2016); *ClientEarth No.3, R (on the application of) v Secretary of State for Environment, Food and Rural Affairs & Ors* [2018] EWHC 315 (Admin) (21 February 2018).

⁹ ACCC/C/2008/33

¹⁰ *RSPB, Friends of the Earth & Client Earth v. Secretary of State for Justice* [2017] EWHC 2309 (Admin).

16. Notably, in *R (on the application of ClientEarth) No. 3 v Secretary of State for Environment, Food and Rural Affairs & Ors* [2018] EWHC 398 (Admin) (21 February 2018), Mr Justice Garnham issued a first ever, and “wholly exceptional” form of relief in judicial review proceedings: a continuing liberty for ClientEarth to bring the matter before the Court should the Government not comply with its order. In so ordering, Mr Justice Garnham described ClientEarth as “an expert claimant, which to date has advanced only what are properly arguable claims, and which has demonstrated both high level expertise, legal and technical, and a responsible attitude towards making a claim”.¹¹

2.2 The Company

17. BP is a company incorporated in the UK and is the parent company of the large BP Group of companies that operate worldwide.¹²
18. BP has referred to itself, “not just as an oil and gas business, but as a global energy business.” It has operations in 78 countries, including a network of 18,700 retail sites. BP’s latest Annual Report (2018) notes that “[w]e produce refined petroleum products at our refineries and supply distinctive fuels and convenience retail services to consumers”.¹³ With over 73,000 employees, BP reports hydrocarbon production of the equivalent of 3.7 million barrels of oil per day and identifies that it has the equivalent of 19,945 million barrels of oil in proved hydrocarbon reserves.¹⁴
19. The 2019 advertising campaign that is the subject of this Complaint is featured on BP’s website and is accessible internationally.¹⁵ The company also advertises on television and billboard and other media in various countries across the world, as part of this campaign.¹⁶
20. In the circumstances, BP is a multinational enterprise for the purposes of the OECD Guidelines.¹⁷

¹¹ Unreported, available at: <https://www.documents.clientearth.org/wp-content/uploads/library/2018-02-21-high-court-ruling-on-remedies-clientearth-no3-vs-ssefra-liberty-to-apply-and-air-pollution-plans-ext-en.pdf>.

¹² Subsidiaries and related undertakings are identified in BP, (2019), *Annual Report 2018*, pp 200 and 251-271.

¹³ BP, (2019), *Annual Report 2018*, p. 5. Also see the “BP in 2018” video, a summary of which (including links to each of BP’s projects listed in the video) has been included in **Annex C, Exhibit 7**.

¹⁴ BP, *Annual Report and Form 20-F 2018* pp 2-3, 7.

¹⁵ BP, https://www.bp.com/en_gb/united-kingdom/home.html.

¹⁶ <https://www.campaignlive.com/article/bp-launches-biggest-global-campaign-decade/1523391>; see also <https://www.desmogblog.com/2019/01/29/bp-first-global-advertising-campaign-deepwater-horizon-accused-greenwashing-deceptive>.

¹⁷ OECD Guidelines, Chapter 1, para 4.

2.3 The UK NCP

21. The UK National Contact Point (“NCP”) is the correct national contact point for this Complaint. BP has been incorporated in England and Wales since 1909 and its registered office and worldwide headquarters is in London.¹⁸ Its board is responsible for the overall conduct of the BP Group’s business, including direction of long-term strategy relevant to the issues arising in this Complaint. ClientEarth’s headquarters is also located in the UK. The advertisements and related materials that are the subject of this Complaint are aired prominently in the UK and internationally.

3 Requirements of the OECD Guidelines

3.1 The OECD Guidelines

22. The OECD Guidelines provide a range of requirements relevant to the environmental communications of enterprises. In particular:
 - 22.1. Chapter VI, Paragraph 2(a) requires that information provided to the public on the potential environmental impacts of the activities of the enterprise should be adequate, measurable, verifiable and timely.
 - 22.2. Chapter VI, paragraph 6(c) requires that enterprises should provide accurate information on their products when promoting awareness among customers of the environmental implications of using their products and services.
 - 22.3. Chapter VIII, paragraph 2 requires that enterprises should provide accurate, verifiable and clear information sufficient to enable consumers to make informed decisions on the environmental attributes of products and services.
 - 22.4. Chapter VIII, paragraph 4 provides that companies should not make representations or omissions, nor engage in any other practices, that are deceptive or misleading.
 - 22.5. Under Chapter VIII paragraph 5, in an enterprise’s efforts to support consumer education in areas relating to their business activities, the aims should include to: improve the ability of consumers to make informed decisions involving complex

¹⁸ BP, (2019), *Annual Report 2018*, pp 70 and 325.

goods, services and markets; to better understand the economic, environmental and social impact of their decisions; and, to support sustainable consumption.

23. For convenience, relevant sections of the OECD Guidelines are reproduced in **Box 1** (emphasis added).

Box 1 – Excerpts from the OECD Guidelines

Chapter II, General Policies:

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.¹⁹ [...]

The Commentary notes, “There should not be any contradiction between the activity of multinational enterprises and sustainable development, and the Guidelines are meant to foster complementarities in this regard.”

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. [...]

Chapter VI. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should: [...]

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; [...]

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as: [...]

¹⁹ The OECD Guidelines note that one of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environmental and Development (the Brundtland Commission): “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Chapter 1, Commentary para 3, fn 4.

c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues);

Chapter VIII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.

2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products. [...]

The Commentary notes: "Paragraph 2 concerns information disclosure. It calls for enterprises to provide information which is sufficient for consumers to make informed decisions. [...] It should be noted that what is considered to be "sufficient" can change over time and enterprises should be responsive to these changes. Any product and environmental claims that enterprises make should be based on adequate evidence and, as applicable, proper tests. Given consumers' growing interest in environmental issues and sustainable consumption, information should be provided, as appropriate, on the environmental attributes of products. This could include information on the energy efficiency and the degree of recyclability of products and, in the case of food products, information on agricultural practices."²⁰

4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

The Commentary notes: "Paragraph 4 concerns deceptive, misleading, fraudulent and other unfair commercial practices. Such practices can distort markets, at the expense of both consumers and responsible enterprises and should be avoided."²¹

5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, inter alia, improving the ability of consumers to: i) make informed decisions involving complex goods, services and markets, ii) better understand the economic, environmental and social impact of their decisions and iii) support sustainable consumption.

The Commentary notes: "The chapter recognises that consumer satisfaction and related interests constitute a fundamental basis for the successful operation of enterprises. [...] many consumers are increasingly interested in knowing the position and activities of enterprises on a

²⁰ OECD Guidelines, Chapter VIII, Commentary, para 85.

²¹ OECD Guidelines, Chapter VIII, Commentary, para 88.

broad range of economic, social and environmental issues, and in taking these into account when choosing goods and services.”²²

Box 1

3.2 Understanding deceptive or misleading practices

24. This section provides an explanation of the assessment of deceptive²³ or misleading²⁴ representations, omissions and practices (Chapter VIII, para 2), and the requirement to provide accurate, verifiable and clear information sufficient to enable consumers to make informed decisions (Chapter VIII, para 4), for the purposes of consumer protection under the Guidelines.
25. A number of additional sources inform the standards applicable to this Complaint. Chapter VIII of the Guidelines requires that enterprises should act in accordance with, “fair business, marketing and advertising practices.”²⁵ The standards identified in this paragraph fall within that category and each is relevant to the analysis of whether BP’s conduct is consistent with the Guidelines. Accordingly the NCP may take the content and application of these standards into account.
- 25.1. Chapter VIII of the Guidelines draws, from among other sources, on the work of the International Chamber of Commerce (“ICC”).²⁶ The ICC’s central publication on advertising is the ICC Advertising and Marketing Communications Code (“ICC Marketing Code”).²⁷ The ICC describe it as “the backbone of the global advertising and marketing industry” and it is referred to by the International Council for Ad Self-Regulation as the ‘gold standard’ of advertising self-regulation.²⁸ The OECD has confirmed that the ICC Marketing Code is a useful reference instrument, which, from

²² OECD Guidelines, Chapter VIII, Commentary, para 85.

²³ The Oxford English Dictionary, Third Edition, defines ‘deceptive’ as, “apt or tending to deceive, having the character of deceiving.” It defines the verb deceive as “to cause to believe what is false; to mislead as to a matter of fact, lead into error, impose upon, delude, ‘take in’” and “to use deceit, act deceitfully.”

²⁴ The relevant entry for ‘mislead’ in the Oxford English Dictionary, Third Edition, is, “originally: to lead astray in action or conduct, to lead into error (now rare). In later use (now the usual sense): to deceive by giving incorrect information or a false impression (of a situation, etc.); to delude or misinform.”

²⁵ OECD Guidelines, Chapter VIII, Introduction.

²⁶ OECD Guidelines, Chapter VIII, Commentary, para 81.

²⁷ International Chamber of Commerce, (2018) *Advertising and Marketing Communications Code* (ICC), currently in its 10th Edition, available at <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/>.

²⁸ <https://icas.global/advertising-self-regulation/icc-marketing-code/>.

the perspective of adhering governments, is relevant to the Guidelines and their implementation.²⁹ The ICC Marketing Code refers³⁰ to additional guidance in the ICC Framework for Responsible Environmental Marketing Communications (“ICC Environmental Communications Framework”). As noted by the ICC, that framework supplements the Code and its environmental chapter.³¹

25.2. In the UK, whether a company is acting in accordance with marketing and advertising practices is informed by the terms of the Consumer Protection from Unfair Trading Regulations 2008 (“UK Regulations”), which provide a framework for consumer protection. The UK Regulations implement the Unfair Commercial Practices Directive (2005/29/EC) (“EU Directive”) in the UK, a law that seeks to harmonise unfair trading laws protecting consumers in EU Member States. The Directive and the UK Regulations prohibit commercial practices that are deemed to be misleading, either on their face or by omission.

25.3. Marketing and advertising practices in the UK are largely self-regulated³² by an industry body, the Committee on Advertising Practice, and enforced by the Advertising Standards Authority (“ASA”) under a framework that includes the UK Code of Broadcast Advertising (“BCAP Code”) and the UK Code of Non-Broadcast Advertising (“CAP Code”).³³ Relevant decisions of the ASA are discussed at section 3.3 below. The UK Department for Environment Food & Rural Affairs (“DEFRA”) has also issued guidance for industry on making environmental claims.³⁴

25.4. Finally, the ISO issues a standard on green marketing claims, ISO 14021:2016(E) ‘Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling)’ (“ISO”). The objectives of the ISO are to harmonize the use of self-declared environmental claims, to promote accurate and

²⁹ OECD Guidelines, p. 52.

³⁰ ICC Marketing Code, Chapter D.

³¹ International Chamber of Commerce, (2019), *ICC Framework for Responsible Environmental Marketing Communications*, ICC available at <https://iccwbo.org/publication/icc-framework-for-responsible-environmental-marketing-communications-2019/>.

³² And partly co-regulated through arrangements between the ASA and Ofcom relating to broadcast advertising.

³³ *UK Code of Broadcast Advertising* (2010), available at https://www.asa.org.uk/type/broadcast/code_section/09.html (“BCAP Code”); *UK Code of Non-broadcast Advertising and Direct & Promotional Marketing*, (2014) (12th Edition), available at https://www.asa.org.uk/type/non_broadcast/code_section/11.html (“CAP Code”).

³⁴ Department for Environment Food & Rural Affairs (DEFRA), (2010), *Green Claims Guidance*, available at http://www.ukcpi.org/_Assets/custom-docs/publications/pb13453-green-claims-guidance.pdf.

verifiable environmental claims that are not misleading; to increase the potential for market forces to stimulate environmental improvements in production, processes and products, to prevent or minimize unwarranted claims, to reduce marketplace confusion, to facilitate international trade and to increase opportunities for purchasers, potential purchasers and users of the product to make more informed choices.

26. Each of the standards referred to above (except for ISO 140021:2016) is contained in **Annex B (Materials)** with relevant sections extracted in the table provided at **Exhibit 1.A**. Each of these standards provides guidance on the manner in which a company's advertising or marketing may be deceptive or misleading to consumers. The relevant standards are summarised and synthesised under topic headings below:

27. Approach to analysis of marketing:

27.1. The impression created by marketing communications as well as the specific claims made are relevant to whether a marketing communication is misleading.³⁵

27.2. Article 6 of the EU Directive provides that commercial practices must be judged in factual context, taking account of all features and circumstances and defines a misleading action as:

“[a] commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct...”³⁶

27.3. Advertising claims making explicit or implicit reference to environmental or ecological aspects of products must be evaluated in their entirety to assess how the reasonable consumer will interpret the advertising message.³⁷

27.4. Environmental claims should be evaluated on the basis of the net impression of the advertising to assure that it is not deceptive or misleading the intended target audience.³⁸

³⁵ CAP Code, Background, p. 16.

³⁶ See also Regulation 5(2)(a) of the Consumer Protection from Unfair Trading Regulations 2008 (UK).

³⁷ ICC Environmental Communications Framework, p. 3.

³⁸ ICC Environmental Communications Framework, Appendix 1, p. 6.

27.5. Marketing communications should be judged by their likely impact on the reasonable consumer, having regard to the characteristics of the targeted group and the medium used.³⁹

28. Range of issues:

28.1. Marketing communication should not contain any statement or audio or visual treatment that, directly or by implication, omission, ambiguity or exaggeration is likely to mislead the consumer.⁴⁰

28.2. Consumers may be misled by statements or visual treatment about environmental aspects or advantages of products, or about actions being taken by the marketer in favour of the environment.⁴¹

29. Clarity, data, evidence:

29.1. Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.⁴²

29.2. The basis of environmental claims must be substantiated,⁴³ clear⁴⁴ and the meaning of all terms used in marketing communications must be clear to consumers.⁴⁵

29.3. Environmental claims must have a sound scientific basis. They should be conveyed consistently with the nature and scope of the evidence that supports both the express and implied messages that the reasonable consumer is likely to take away from the statement.⁴⁶

29.4. Claims relating to renewable energy shall be qualified, unless 100% of the energy supply is renewable. Where a proportion of the energy supply is from renewable sources, the percentage shall be clearly stated.⁴⁷

³⁹ ICC Environmental Communications Framework (2019), p. 5.

⁴⁰ ICC Environmental Communications Framework (2019), Appendix 2, pp 11-12.

⁴¹ ICC Marketing Code (2018), Article D1.

⁴² CAP Code, Rule 3.9.

⁴³ ISO 14021:2016(E) *Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling)* (“ISO”), Article 5.7, CAP Code 3.7, BCAP Code 9.4, DEFRA Green Claims Guidance (2010).

⁴⁴ CAP Code, Rule 11.1.

⁴⁵ CAP Code, Rule 11.2.

⁴⁶ ICC Environmental Communications Framework (2019), Appendix 2, p. 10.

⁴⁷ ISO Article 7.15.2. This Article contains a note: “*NOTE Particular care is needed when making a claim for a product or process relating to use of electrical energy from the grid, when that electrical energy is claimed to contain a percentage of renewable energy.*”

- 29.5. Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.⁴⁸
- 29.6. Vague or non-specific claims of environmental benefit, which may convey a range of meanings to consumers, should only be made if they are valid without qualification in all reasonably foreseeable circumstances. If that is not the case, general environmental claims should either be qualified or avoided.⁴⁹
- 29.7. A company's action may not be honest and truthful if it is framed in such a manner that it abuses consumers' concern for the environment or exploits their possible lack of environmental knowledge.⁵⁰

30. Misleading omissions:

- 30.1. Unqualified claims could mislead if they omit significant information.⁵¹
- 30.2. Marketing communications must state significant limitations and qualifications. Qualifications be presented clearly and may clarify but must not contradict the claims that they qualify.⁵²
- 30.3. Marketing communications may mislead the consumer by omitting material information, by hiding material information or by presenting it in an unclear, unintelligible, ambiguous or untimely manner.⁵³
- 30.4. A claim about making explicit or implicit reference to environmental or ecological aspects of products that is scientifically accurate may be deceptive if it misleads consumers because of what it implies or omits.⁵⁴
- 30.5. Misleading omissions should be judged in the context of: (a) all of the features and circumstances of the commercial practice; (b) the limitations of the medium used

⁴⁸ CAP Code, Rules 3.9-3.10, 11.5. BCAP Code Rule 9.6.

⁴⁹ ICC Marketing Code (2018), Article D1. That Article adds: "In particular, claims such as "environmentally friendly," "ecologically safe," "green," "sustainable," "carbon friendly" or any other claim implying that a product or an activity has no impact—or only a positive impact—on the environment, should not be used without qualification unless a very high standard of proof is available." See also ISO 14021:2016(E) *Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)*, Article 5.3, which states that an environmental claim that is vague or non-specific or which broadly implies that a product is environmentally beneficial or environmentally benign shall not be used.

⁵⁰ ICC Marketing Code, Article D1.

⁵¹ CAP Code, Rule 11.1; BCAP Code 9.2; ISO Article 5.7(k).

⁵² CAP Code, Rules 3.9-3.10.

⁵³ CAP Code, Rule 3.3; Regulation 6(1) of the Consumer Protection from Unfair Trading Regulations 2008 (UK); Unfair Commercial Practices Directive (2005/29/EC) Article 7(2).

⁵⁴ ICC Environmental Communications Framework, p. 5.

to communicate the commercial practice (including limitations of space or time); and (c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.⁵⁵

31. Life cycle:

31.1. Marketers must ensure that claims that are based on only part of the advertised product's life cycle do not mislead consumers about the product's total environmental impact.⁵⁶

31.2. "Environmental claims should not be presented in such a way as to imply that they relate to more stages of a product's life-cycle, or to more of its properties, than is justified by the evidence; it should always be clear to which stage or which property a claim refers. A life-cycle benefits claim should be substantiated by a life cycle analysis. When a claim refers to the reduction of components or elements having an environmental impact, it should be clear what has been reduced. Such claims are justified only if they relate to alternative processes, components or elements which result in a significant environmental improvement."⁵⁷

32. Exaggeration:

32.1. Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.⁵⁸

32.2. A claim that is literally true may nonetheless be misleading if, for example, it could be misinterpreted to convey a broader benefit or if it exaggerates the environmental benefit or features.⁵⁹

32.3. It is misleading in marketing communications that refer to specific products or activities to imply, without appropriate substantiation, that they extend to the whole performance of the company, group or industry.⁶⁰

⁵⁵ Regulation 6(2) of the Consumer Protection from Unfair Trading Regulations 2008 (UK); Unfair Commercial Practices Directive (2005/29/EC) Article 7(3); BCAP Code Rule 3.2.

⁵⁶ CAP Code, Rule 11.4, BCAP Code Rule 9.5; ISO Article 5.7(h).

⁵⁷ ICC Marketing Code (2018), Article D4.

⁵⁸ CAP Code Rules 3.11 and 3.13. ISO Article 5.7(j).

⁵⁹ ICC Environmental Communications Framework (2019), Appendix 1, p.8.

⁶⁰ ICC Marketing Code (2018), Article D1. See, ICC Environmental Communications Framework, Appendix 2, p. 10, which notes that the ICC Marketing Code is not intended to affect corporate communications intended to convey broad organisational goals or aspirations about the environment as they are typically not intended as an advertising claim. The example provided is the report of a

32.4. It is misleading to overstate environmental attributes.⁶¹ Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.⁶² A general claim of environmental benefit linked to a single attribute is likely to be misleading unless the relationship is specific and clear.⁶³

32.5. A green claim should not “imply more than it actually covers, if the claim is only about limited aspects of a product or its production, or does not deal with a significant issue for that type of product.”⁶⁴

3.3 Application of the OECD Guidelines and other relevant standards

33. This section includes summaries of relevant decisions made by other National Contact Points, as well as the UK’s Advertising Standards Authority (“ASA”). Although the ASA’s decisions are non-binding in this forum, they illustrate the application of the principles of the UK Advertising Codes, which contain similar requirements to the OECD Guidelines.

34. First, the Initial Assessment of the Norwegian NCP in a 2011 complaint brought against Statoil ASA⁶⁵ (**Annex B, Document 2.F**) may be instructive in clarifying the appropriate treatment of the OECD Guidelines in the current case.

34.1. The substance of that complaint, brought by the Norwegian Climate Network and Concerned Scientists Norway, is readily distinguished since it was “directed more towards the policy of Canada to allow the development of oil sands rather than at the manner in which Statoil acts within the framework of this policy.”⁶⁶ Accordingly the complaint was rejected because, as the Norwegian NCP reminded the complainant,

corporate environmental or sustainability program provided in a context that will assure that there is no confusion with advertising campaigns. See also, footnote 1 of the ICC Environmental Communications Framework, which outlines that the ICC Marketing code does not apply to every type of corporate communication (for example, public affairs messages, annual reports etc., and statements on matters of public policy).

⁶¹ ICC Marketing Code (2018), Article D1.

⁶² CAP Code, Background, p. 16.

⁶³ ICC Environmental Communications Framework (2019), Appendix 1, p. 7.

⁶⁴ DEFRA, (2010).

⁶⁵ Norwegian National Contact Point, (26 July 2019), *Initial Statement: Norwegian Climate Network and Concerned Scientists Norway versus Statoil ASA*, available at https://complaints.oecdwatch.org/cases/Case_248/1012/at_download/file.

⁶⁶ Norwegian National Contact Point, (26 July 2019), p. 1.

“[t]he complaint would need to focus on a particular breach of the OECD Guidelines linked to the specific company in order to fall within the mandate of the OECD NCP.”⁶⁷

34.2. In its Initial Assessment, the Norwegian NCP nonetheless noted that “[t]he challenge of climate change is daunting, and the risks of major emissions and cumulative environmental consequences from the oil sands industry are significant”.⁶⁸

The NCP’s description of the purpose of the OECD Guidelines is noteworthy, namely:

“to strengthen the basis of mutual confidence between enterprises and the societies in which they operate ... and to enhance the contribution to sustainable development made by multinational enterprises.”⁶⁹

34.3. The present Complaint does not directly relate to the company’s impacts on the environment, matters which are directly regulated by national governments. Rather, it concerns the global activities of BP, specifically its misleading advertising practices that threaten to undermine the basis of mutual confidence between it and the societies in which it operates. It is, therefore, appropriate for this Complaint to be accepted and registered by the UK NCP.

35. Two recent notifications concerning alleged breaches of the environmental elements of the OECD Guidelines – accepted by the Dutch and Polish National Contact Points respectively – also relate to the proper disclosure of environmental information to shareholders and the public.

36. In May 2017, a complaint was filed against ING Bank in the Netherlands concerning the alleged non-observance of Chapters III (Disclosure), VI (Environment) and VIII (Consumer Interests) of the OECD Guidelines (**Annex B, Document 2.D**). The process concluded in April 2019.⁷⁰

36.1. The NCP concluded in its Initial Assessment that the complaint “merited further consideration”⁷¹ and so facilitated a process aimed at addressing the three issues in

⁶⁷ Norwegian National Contact Point, (26 July 2019), p. 4. Further: “it is the responsibility of governments to fulfil their commitments under the Kyoto Protocol and ensure that companies within their territories contribute to this end.” (p. 4) “the compliance mechanism for the [Kyoto] Protocol would be the correct entity to address Canada’s obligations under the Kyoto Protocol...” (p. 5).

⁶⁸ Norwegian National Contact Point, (26 July 2019), p. 6.

⁶⁹ Norwegian National Contact Point, (26 July 2019), p. 5 (emphasis added).

⁷⁰ Netherlands National Contact Point, (19 April 2019), *Final Statement: Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) versus ING*, available at https://complaints.oecdwatch.org/cases/Case_476/1793/at_download/file

⁷¹ Netherlands National Contact Point, (19 April 2019), p. 1.

question: (a) ING’s willingness to measure and publish its total carbon footprint, i.e., its direct and indirect GHG emissions; (b) ING’s willingness to publish specific and measurable goals; and (c) ING’s willingness to reduce its indirect GHG emissions and align with the goals of the Paris Agreement.⁷²

36.2. In its conclusion, the Netherlands NCP affirmed that the climate change issues in question were “an extremely serious and urgent matter that affects the whole world.”⁷³ With regard to measuring GHG emissions, the NCP stressed that “the absence of a methodology or international accepted standard will not dismiss companies, including financial institutions, [from the need] to seek measurement and disclosure of environmental impact ‘in areas where reporting standards are still evolving ... This is particularly the case with greenhouse gas emissions.’”⁷⁴ The NCP’s Final Statement welcomed commitments made by ING – to steer its portfolio towards the temperature goals of the Paris Agreement, to set and publish intermediary emissions targets, to refrain from funding new coal-fired power stations, and to call upon the Dutch Government to request the International Energy Agency to develop scenarios consistent with 1.5 C of global warming – that allowed agreement between the parties to be reached.⁷⁵

37. Partly on the basis of the ING complaint,⁷⁶ the Polish NCP in April 2018 accepted a notification concerning alleged non-observance by Group PZU S.A. (“PZU”) (**Annex B, Document 2.E**), a financial sector company, of Chapters III, VI and VIII, plus of Chapter II, A.1. – that enterprises should “contribute to economic, environmental and social progress with a view to achieving sustainable development”. In accepting the case, “the OECD NCP expressed its commitment to strengthen responsible business conduct standards” on such matters.⁷⁷

37.1. The complainant alleged that information provided by PZU on the environmental impacts of its activities and services (and on respecting human rights) was, though legal, not sufficient to satisfy the OECD Guidelines.⁷⁸ In particular, the

⁷² Netherlands National Contact Point, (19 April 2019), p. 3.

⁷³ Netherlands National Contact Point, (19 April 2019), p. 6.

⁷⁴ Netherlands National Contact Point, (19 April 2019), p. 5.

⁷⁵ Netherlands National Contact Point, (19 April 2019), p. 6.

⁷⁶ Poland National Contact Point, (26 July 2019), *Final Statement: Development YES – Open-Pit Mines NO versus Group PZU S.A.*, available at <https://www.gov.pl/attachment/87f5815f-d3b6-4937-ad1d-22470c47d21e> p. 6.

⁷⁷ Poland National Contact Point, (26 July 2019), p. 7.

⁷⁸ Poland National Contact Point, (26 July 2019), p. 3.

complainant claimed that, based on the PZU's non-financial statement for 2017, information was lacking on PZU's CO2 emissions and on its role in insuring the coal mining sector in Poland. It argued that "the majority of consumers could not gain a full picture of the nature and scope of the Company's activities ..." due to "the omission of information about the scale of the Company's investment in the carbon-intensive sector and about the stake in the market for corporate insurance for the carbon-intensive sector".⁷⁹

37.2. Following meetings between the complainant and the company and, respectively, with the NCP, PZU committed to disclosing "the major part" of the requested information in its non-financial statement for 2018.⁸⁰ The Polish NCP noted in its conclusions that PZU had improved its approach to paragraph 6(b) of the Chapter VI (Environment) of the OECD Guidelines, which states that, *inter alia*, "enterprises should continually seek to improve corporate environmental performance ... by encouraging such activities as ... development of and provision of products that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions".⁸¹

38. In the UK, the ASA rules on whether the CAP Code has been complied with. The CAP Code is "concerned primarily with the content of marketing communications"⁸² and deals with, *inter alia*, misleading advertising (Rule 3) and environmental claims (Rule 11).⁸³ The treatment of complaints made to the ASA may therefore be instructive as to the appropriate treatment and interpretation of the OECD Guidelines.

38.1. In September 2019, the Norwegian energy giant, Equinor, came to an agreement with the ASA not to repeat an implied claim on a poster advertisement that gas (along with wind) was a "low-carbon energy" source.⁸⁴ The poster was "one advertisement, part of an already concluded broader [global] campaign."⁸⁵

⁷⁹ Poland National Contact Point, (26 July 2019), pp 3-4.

⁸⁰ Poland National Contact Point, (26 July 2019), p. 7.

⁸¹ Poland National Contact Point, (26 July 2019), p. 8.

⁸² https://www.asa.org.uk/type/non_broadcast/code_folder/preface.html.

⁸³ <https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html>.

⁸⁴ <https://www.asa.org.uk/codes-and-rulings/rulings.html?q=equinor#informally-resolved>;
<https://www.ft.com/content/788005cc-d3e9-11e9-8367-807ebd53ab77>.

⁸⁵ Dempsey, H, (15 September 2019), 'Gas is 'not a low-carbon fuel', UK watchdog rules', Financial Times available at <https://www.ft.com/content/788005cc-d3e9-11e9-8367-807ebd53ab77>.



Figure 1 – Poster at Westminster tube station that prompted complaint (from the Financial Times⁸⁶)

38.2. The article in the Financial Times reporting the agreement⁸⁷ (details were not released elsewhere) reported that Equinor had intended that its advertisement referred only to wind power as being low carbon; that they had not intended to suggest that gas could be painted in the same terms. The article noted that “[c]arbon dioxide emissions from natural gas are about 40 per cent lower than coal and about 20 per cent less than oil, according to the International Energy Agency, but the fuel still releases about 40 times more CO₂ than nuclear or wind power.” Equinor “agreed not to use the ad again”.

38.3. The Financial Times reported that the resolution “delivers a blow to attempts by fossil fuel companies to portray gas to politicians and the public as environmentally friendly and part of the solution to climate change.” It further noted: “[t]his is not the first time that ASA has dealt with fossil fuel companies promoting the environmental credentials of gas”, making reference to claims as far apart as 2008 and 2018, made against ExxonMobil and INEOS respectively.⁸⁸

38.4. The 2008 claim against ExxonMobil concerned a TV advertisement “suggesting that liquefied natural gas was ‘one of the world’s cleanest fuels’”.⁸⁹ The advertisement

⁸⁶ Dempsey (15 September 2019).

⁸⁷ Dempsey (15 September 2019).

⁸⁸ Dempsey, (15 September 2019).

⁸⁹ Plunkett, J, (3 September 2008), ‘ExxonMobil to contest ban on ad for liquefied natural gas’, The Guardian, available at <https://www.theguardian.com/media/2008/sep/03/asa.advertising>.

was part of a television campaign that ended with the message: “Exxon Mobil ... Taking on the world’s toughest energy challenges.”⁹⁰

38.5. A spokesperson for ExxonMobil subsidiary Esso was quoted in the Guardian as saying “[o]ur advertisement accurately stated that natural gas is one of the world’s cleanest fuels, that liquefied natural gas will play an important role in delivering new energy supplies, and that all forms of energy will be needed to meet growing demand.” The ruling is no longer available on the ASA website. The article reports the ASA’s ruling that “viewers would not see the claim about liquefied natural gas as a comparison with other fossil fuels, but with all the energy sources listed in the advertisement, including wind and solar power.” The ASA “upheld four complaints” that the advertisement was misleading and ruled that it “should not be shown again in its current form.”⁹¹

38.6. ASA’s March 2018 ruling in respect of INEOS Upstream Limited (“INEOS”)⁹² (**Annex B, Document 2.A**) concluded that INEOS had misled consumers in respect of a claim made in a regional press advertisement promoting fracking. The advertisement stated: “[a]s recognised by the [International Panel on Climate Change (IPCC)], gas has about half the emissions as coal and around 10% less than imported gas, so we have an environmental duty to use gas rather than coal for energy during this period.”⁹³ The ASA found that the comparison between imported and domestic gas was not in fact “recognised in full” by the IPCC: that figure came from a different report.⁹⁴

38.7. INEOS argued that the word “about” suggested to readers that the 50% reduction in emissions of gas relative to coal was an estimate. The ASA found that, even though the word “about” did have that effect, the advertisement failed to make clear that such emissions reductions could be achieved only under certain specific circumstances: the study being relied upon found that the “amount of emissions was dependant on ‘natural gas upstream emissions’ and factors such as whether low emission practices were mandated and how they were implemented, and that ... ‘more modest emissions

⁹⁰ Plunkett, (3 September 2008).

⁹¹ Plunkett, (3 September 2008).

⁹² ASA Ruling on INEOS Upstream Limited, (7 March 2018), available at <https://www.asa.org.uk/rulings/ineos-upstream-limited-a17-1.html> accessed.

⁹³ ASA Ruling on INEOS Upstream Limited, (7 March 2018).

⁹⁴ ASA Ruling on INEOS Upstream Limited, (7 March 2018).

reductions result when shifting from current average coal plants to the best available coal technology or less-advanced gas power plants”⁹⁵

38.8. In failing to make clear that the claim was not true in all circumstances, INEOS was found to have breached the CAP Code by “materially misleading” or being likely to do so.⁹⁶

38.9. Relatedly, in September 2014, the ASA upheld a range of complaints made against Breitling Energy Corporation (“Breitling”) (**Annex B, Document 2.B**) concerning an advertisement in a national newspaper expressing support for the extraction and use of shale gas in the UK.⁹⁷

38.10. One part of the complaint concerned the claim that the presence of shale gas reserves would mean “[r]educing greenhouse gas emissions by replacing coal with natural gas for energy...”. The complainant challenged whether this was misleading and could be substantiated since they understood there were “no reliable estimates for the carbon footprint of shale gas extraction, that extraction carried the risk of methane emissions, which if unburnt was more harmful as a greenhouse gas than carbon dioxide, and that there was no certainty that gas *would* be used instead of, rather than in addition to, coal.”⁹⁸

38.11. The ASA found that “most readers would understand [from the advertisement that] both the reduction in GHG emissions and the switch from coal to gas to be natural consequences of the UK adopting large-scale shale gas extraction, rather than only possible outcomes.” However, the ASA found that the replacement of coal by shale gas was “only one of several scenarios”. Furthermore, the ASA noted that it was not “universally accepted” that “UK shale gas extraction would deliver a net reduction in GHG emissions over coal”, and understood that this would be dependent on the set-up of the extraction sites and measures to mitigate fugitive emissions. Because the claim “was phrased in definitive terms, but the reduction in emissions was conditional on a number of factors, it was likely to mislead.”⁹⁹ Breitling was found to have breached

⁹⁵ ASA Ruling on INEOS Upstream Limited, (7 March 2018).

⁹⁶ Wording taken from CAP Code (Edition 12), rule 3.1 (Misleading advertising). INEOS was also found to have breached Rule 3.7 (Substantiation).

⁹⁷ ASA Adjudication on Breitling Energy Corporation, (3 September 2014), available at <https://www.asa.org.uk/rulings/breitling-energy-corporation-a14-262157.html>.

⁹⁸ ASA Adjudication on Breitling Energy Corporation, (3 September 2014), (emphasis added).

⁹⁹ ASA Adjudication on Breitling Energy Corporation, (3 September 2014).

rules of the CAP Code relating to: misleading advertising, substantiation and exaggeration.¹⁰⁰

38.12. In conclusion, the ASA told Breitling “to ensure that they held robust documentary evidence in support of claims likely to be regarded as objective and that were capable of objective substantiation, that matters of opinion were not presented as objective claims, and that their future ads did not suggest that their claims were universally accepted if a significant division of informed or scientific opinion existed.”¹⁰¹

38.13. In January 2019, the ASA also upheld a complaint against Good Energy Limited (**Annex B, Document 2.C**).¹⁰² The ASA found that Good Energy’s use of biofuels prevented them from claiming that its electricity contained no CO₂. Notwithstanding that a report from the department for Business, Energy and Industrial Strategy treated biomass fuels as producing 0g CO₂ per kWh, and notwithstanding that Good Energy argued that its approach was “consistent with the recommendations of the World Resources Institute, ... the leading international authority on carbon accounting and reporting”, the ASA found Good Energy’s claim to be misleading. It found that “consumers would consider the CO₂ produced across the full life cycle of their entire fuel mix” and, even though Good Energy purchased biomass – i.e., it did not produce it – Good Energy “had not substantiated that all of the energy they supplied was from sources which did not produce any net CO₂ over their full life cycle.”

4 BP’s advertising campaign

39. This section introduces how BP’s public advertising on issues relevant to this Complaint reaches the public through a number of channels, including newspaper, broadcast, billboard and several online platforms. Later sections provide further detail about this advertising and explain why this Complaint alleges that BP’s advertising breaches the OECD Guidelines.

¹⁰⁰ Rules 3.1, 3.3, 3.7 3.11 and 3.13.

¹⁰¹ ASA Adjudication on Breitling Energy Corporation, (3 September 2014).

¹⁰² ASA Ruling on Good Energy, (2 January 2019), available at <https://www.asa.org.uk/rulings/good-energy-ltd-a17-1.html>. The advertisement was found to have breached rules 3.1 (Misleading advertising), 3.7 (Substantiation), 11.1 and 11.4 (Environmental claims) of the CAP Code (Edition 12).

40. Where possible, the advertisements are available to review in .pdf format in an electronic file provided with this Complaint.

4.1.1 Newspapers

41. In order to understand BP's newspaper advertising, ClientEarth arranged a review of microfiche copies of the Financial Times between January and August 2019. For ease of reference, copies of a selection of advertisements representing each type of advertisement are provided (see Advert Code in Table 1, below) in **Annex C (Exhibits 5.A.1 to 5.K)**.

42. The full list of advertisements published in the Financial Times is as follows:

<i>Publication Date</i>	<i>Advertisement Title</i>	<i>Advertisement Format</i>	<i>Advertisement Code</i>	<i>Publication Page</i>
January				
22	Can the world have both? (v1)	>>	A.1	8-9
23	Sun, wind and cleaner natural gas	>>	B	SR 4-5
25	Ultra-fast EV charging, advanced fuels	>>	C	6-7
29	Can the world have both?	>>	A	6-7
February				
2/3	Sun, wind and cleaner natural gas	>>	B	M 18-19
9/10	Ultra-fast EV charging, advanced fuels	>>	C	M 18-19
12	Ultra-fast EV charging, advanced fuels	>>	C	6-7
15	BP Energy Outlook	>	D	3
16	BP Energy Outlook	>	D	5
23/24	Can the world have both? (v1)	>>	A.1	M 20-21
March				
April				
12	Advancing low carbon	>	E	3
13/14	Advancing low carbon	>	E	7
15	Advancing low carbon	>	E	3
May				
7	Ultra-fast EV charging, advanced fuels	>>	C	6-7
11/12	Sun, wind and cleaner natural gas	>>	B	M 18-19
25/26	Can the world have both? (v2)	>>	A.2	M 22-23
28	Can the world have both? (v2)	>>	A.2	6-7
June				
8/9	Turning banana peel into jet fuel	>>	F	M 20-21
12	BP Statistical Review of World Energy	>	G	3
15/16	Bright ideas like solar farms that float	>>	H	M 20-21
July				
23	Our bioenergy is growing	>	I	3
24	Our bioenergy is growing	>	I	3
25	Our bioenergy is growing	>	I	3
27/28	Our bioenergy is growing	>	I	3
August				

2	Leading the electric charge (EVs)	>	J	3
3/4	Leading the electric charge (EVs)	>	J	3
5	Leading the electric charge (EVs)	>	J	3
6	Leading the electric charge (EVs)	>	J	3
15	Powering Britain's Future (EVs)	>	K	3
16	Powering Britain's Future (EVs)	>	K	3
17/18	Powering Britain's Future (EVs)	>	K	3
19	Powering Britain's Future (EVs)	>	K	3

Table 1 - Summary of Advertisements in the Financial Times (January - August 2019).

SR = Special Report, M = FT Magazine,

> = single page portrait design

>> = double-page landscape chevron design.

43. This review of newspaper advertisements was confined to the Financial Times, although it is understood that BP published advertisements across a number of newspapers, publications that have not been reviewed throughout the period. ClientEarth invites BP during this process to identify where they have published these and related advertisements.

4.1.2 Broadcast

44. As part of BP's "Possibilities Everywhere" / "Keep Advancing" advertising campaign, BP published a number of video advertisements, namely:

44.1. the "Dual Challenge" / "Embracing the dual challenge of more energy and fewer emissions" video (published online on 16 January 2019);¹⁰³

44.2. the "Family" / "Better Fuels to Power your Busy Life" video (published online on 22 January 2019);¹⁰⁴

44.3. the "Journey" / "Rubbish Takes Off" video (published online on 22 January 2019);¹⁰⁵

¹⁰³ BP (2019), "Embracing the dual challenge of more energy and fewer emissions". Available at: <https://www.youtube.com/watch?v=aQyMyMf3nRw&t=1s>

¹⁰⁴ BP (2019), "Family". Available at: <https://www.youtube.com/watch?v=SrIL8gIgmng>

¹⁰⁵ BP, (2019), "Journey". Available at: https://www.youtube.com/watch?v=QWeZbQN_c74 (Accessed 03 December 2019)

- 44.4. the “Fowler” / “Blade Runners” video (published online on 22 January 2019);¹⁰⁶
- 44.5. the “QEII Reservoir”/ “Solar and Gas” video (published online on 22 January 2019);¹⁰⁷
- 44.6. the “Ancient Road” video (published online on 02 October 2019);¹⁰⁸ and
- 44.7. the “What is Gas” / “Natural gas and the transition to net zero” video (published online on 11 November 2019).¹⁰⁹
45. For each of the above videos, transcript summaries with screenshots at regular intervals are provided in **Annex C (Exhibits 1.A to 1.G)**. ClientEarth understands that the videos were widely broadcast and invites BP to clarify the details concerning their video campaign.

4.1.3 YouTube

46. BP maintains a large YouTube channel. The home page is branded with a banner with chevrons stating “>>> We see possibilities everywhere. >>> keep advancing.”
47. YouTube enables the collation of videos into playlists, enabling consecutive display of videos. BP has arranged its playlists so that the videos listed above at paragraph 44.1-44.6 play together.¹¹⁰
48. BP’s YouTube channel is structured to focus the viewer’s attention on the “Possibilities Everywhere” campaign. BP’s “Family” video plays automatically on the home page. Below the video, seven playlists are listed. The first is the “Possibilities Everywhere” playlist. The second is the “Advancing the Energy Transition” playlist, which showcases videos such as “Our fresh commitment to low carbon”, “BP’s Low Carbon accreditation programme” and various other videos concerning BP’s work and the energy transition.

¹⁰⁶ BP, (2019), “Fowler”. Available at: <https://www.youtube.com/watch?v=C5Jj2wD3GjE>

¹⁰⁷ BP, (2019), “QE11 Reservoir”. Available at: <https://www.youtube.com/watch?v=4ZcPi087OCY>

¹⁰⁸ BP, (2019), “Ancient road”. Available at: <https://www.youtube.com/watch?v=yWxS7ZVigg0>

¹⁰⁹ BP, (2019), “Natural gas and the transition to net zero”. Available at: <https://www.youtube.com/watch?v=64mHjgVGMPE&t=6s>

¹¹⁰ The BP “Possibilities Everywhere” playlist is available at: https://www.youtube.com/playlist?list=PLaxBnE1Fli009nYscTKupr_7bJWYmzjV3

4.1.4 Websites

49. BP has added several webpages to the “Keep Advancing” and “Who we are” sections of its website. Copies of the following webpages have been included in **Annex C (Exhibits 3.A - 3.J)**.

- 49.1. The “Keep Advancing” webpage (incorporating the “Duel Challenge” video);¹¹¹
- 49.2. the “#NotBusinessAsUsual” webpage;¹¹²
- 49.3. the “Natural gas and the transition to net zero” webpage (incorporating the “What is Gas?” video);¹¹³
- 49.4. the “Wind and natural gas” webpage (incorporating the “Fowler” video);¹¹⁴
- 49.5. the “Solar and natural gas” webpage (incorporating the “QEII Reservoir” video);¹¹⁵
- 49.6. the “Energy for busy lives” webpage (incorporating the “Family” video);¹¹⁶
- 49.7. the “Electric vehicles and fuels” webpage (incorporating the “Ancient Road” video);¹¹⁷
- 49.8. the “Waste to fuel” webpage (incorporating the “Journey” video);¹¹⁸ and
- 49.9. the “More possibilities” webpage.¹¹⁹

4.1.5 Billboards

50. BP published billboard advertisements around the UK in 2019. BP has purchased billboard advertising alongside major roads and junctions in London, the London Underground, major rail stations and Heathrow Airport. Photos of a selection of such

¹¹¹ Available at: <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing.html>

¹¹² <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing/not-business-as-usual.html>

¹¹³ Available at: <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing/natural-gas.html>

¹¹⁴ Available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/wind-and-natural-gas.html>

¹¹⁵ Available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/solar-and-natural-gas.html>

¹¹⁶ Available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/energy-for-busy-lives.html>

¹¹⁷ Available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/electric-vehicles-and-fuels.html>

¹¹⁸ Available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/waste-to-fuel.html>

¹¹⁹ Available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/more-possibilities.html>

billboard advertisements have been included in **Annex C (Exhibit 2.A)**. Advertisements similar to those in **Annex C (Exhibit 2.A)** appear to have been widely commissioned across the UK. However, BP is invited to clarify the extent of this billboard advertising.

4.1.6 Twitter

51. BP has actively and consistently been promoting the “Possibilities Everywhere” / “Keep Advancing” campaign on Twitter since February 2019. **Annex C (Exhibit 4)**, includes a selection of 39 Twitter posts in within each of which BP has included a link to its “Keep Advancing” and “Possibilities Everywhere” webpages. This selection of Twitter posts focuses on posts where BP has used its #PossibilitiesEverywhere and #NotBusinessAsUsual hashtags, see **Annex C (Exhibits 4.1 - 4.3)**.

4.1.7 Email mailing lists

52. “Possibilities Everywhere” advertisements have also appeared in email mailing lists from POLITICO and the Financial Times. A selection of emails and the BP webpages that these are linked to are included in **Annex C (Exhibits 6.A – 6.D)**.

5 Breaches of the OECD Guidelines: overview

53. The OECD Guidelines express a commitment to the promotion of environmental progress and the achievement of sustainable development.¹²⁰ As explained in more detail below, BP’s conduct and practices are in conflict with these general purposes and place BP in breach of a number of specific provisions concerning: (1) misleading information, (2) the promotion of environmental awareness, and (3) consumer education.

54. BP’s advertisements mislead the public and BP’s customers in a number of distinct ways, both in terms of the overall impression created by particular advertisements and through specific instances of inaccurate and misleading language and imagery being used. BP’s advertisements therefore breach the OECD Guidelines.

55. The sections that follow identify apparent breaches of the OECD Guidelines in the following chapters:

¹²⁰ See OECD Guidelines, Chapter II, Section A, para 1 and Chapter IV, Introduction.

<u>Section</u>		<u>Chapter</u>
Renewables		
6	Misleading impression of the role of renewables in BP's business	VI(2(a) and 6(c)), VIII (2, 4 and 5)
7	Misleading claim about BP's wind business	VI(2(a) and 6(c)), VIII (2, 4 and 5)
8	Misleading statements regarding BP's facilities at the Queen Elizabeth II Reservoir Solar Farm	VI(2(a) and 6(c)), VIII (2, 4 and 5)
Gas		
9	Omission of lifecycle emissions information for gas	VI(2(a) and 6(c)), VIII (2, 4 and 5)
10	Misleading claims that BP's gas is "cleaner burning"	VI(2(a) and 6(c)), VIII (2, 4 and 5)
11	Misleading claims that BP's gas only performs a back-up function in electricity generation and regarding the nature of its renewables projects	VI(2(a) and 6(c)), VIII (2, 4 and 5)
12	Misleading statements that gas is a "perfect", "ideal" or "smart" partner to renewables	VI(2(a) and 6(c)), VIII (2, 4 and 5)
Energy demand and omission of risks and costs of climate change		
13	Misleading claim that growing global energy demand is inevitable and necessary.	VI(2(a) and 6(c)), VIII (2, 4 and 5)
13	Omission of information about the impacts of climate change on people, the natural environment, and the global economy.	VI(2(a) and 6(c)), VIII (2, 4 and 5)

Table 2 - Summary table of breaches

BREACHES OF THE OECD GUIDELINES: RENEWABLES

6 Misleading impression of the role of renewables in BP's business

6.1 Background and summary

56. A number of BP's advertisements mislead the public about the importance of renewable forms of energy like wind and solar in its business, as the company continues to develop its core business of oil and gas production and marketing.

57. This section is split into several parts:

57.1. In order to provide context for the advertisements considered in this section, it was necessary to investigate the nature and relative scale of BP's operations and expenditure on hydrocarbon and renewables. The results are summarised in **Annex A** ("Understanding BP's Fossil Fuel and Renewable Operations") introduced below in section 6.2.

57.2. Section 6.3 identifies a number of broadcast, billboard, print and media advertisements that feature BP's renewables operations.

57.3. Section 6.4 describes why the differences between the reality of BP's operations and the advertisements mean that the company is misleading the public and consumers and acting inconsistently with OECD Guidelines.

57.4. The final section 6.5 itemises why BP has acted contrary to the OECD Guidelines in respect of these advertisements.

58. For the reasons given in this document, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

6.2 Understanding BP's fossil fuel and renewables operations

59. The relative scale of BP's operations and expenditure on hydrocarbons and renewables is set out in **Annex A**. This analysis is organised under two main conclusions, which are that BP's actual and planned fossil fuel business vastly exceeds its renewables and alternative fuels operations, first in scale and second in expenditure.

60. The information and analysis in **Annex A** shows why BP’s advertisements mislead the public and consumers about the nature of its overall operations and products through reference to its renewables and alternative energy operations.
61. In particular, as set out in **Annex A**, the scale of BP’s hydrocarbon assets and expenditure is vast and dwarfs its assets and investments in renewables and alternative energy. To give one example, the scale of BP’s hydrocarbon operations are such that calculations suggest that BP’s heavily advertised waste-to-fuel, solar, biofuel and wind investments each produce between around 0.02% to around 0.2% of the energy provided by BP’s hydrocarbon production.¹²¹ These calculations are based on limited data,¹²² but even if these levels of production were increased by an order of magnitude, BP’s advertising would still be misleading.

6.3 The advertisements

62. Against that background, this section now identifies a number of BP’s advertisements and the impression they give of the role of renewables in BP’s business. The advertisements include BP’s “Possibilities Everywhere” broadcast, billboard and web advertisements.

6.3.1 The “Dual Challenge” video advertisement

63. BP’s advertisement “The Dual Challenge” is the longest of the “Possibilities Everywhere” / “Keep Advancing” broadcast videos. The voiceover for that advertisement is summarized in **Annex C (Exhibit 1.A)**.
64. At around two and a half minutes long, the advertisement is characterised by rapidly changing imagery that tells a story about BP’s plans to deal with the “Dual Challenge”. Without the context of the imagery and music that accompanies the advertisement, it is difficult to appreciate its full meaning. To assist with analysis of the advertisement, its language, imagery and score are summarised in **Box 2**.

¹²¹ See Table A3, as reproduced from **Annex A**, below at paragraph 88.

¹²² The NCP’s attention is drawn to ClientEarth’s proposal in section 4 of **Annex A** for BP to publish simple further data to clarify these issues.

Box 2: BP's "The Dual Challenge" advertisement

Part 1:

After BP's chevrons scroll across the screen, the advertisement opens with images illustrating the "desire to improve ourselves", showing human progress in aviation, medicine, science, art and athletics. Around 25 video clips are shown in what appears to be chronological order, starting from historical film of a penny farthing cyclist to recent footage of the athlete Richard Whitehead winning a Paralympic gold medal.

Part 2:

After 46 seconds, BP is introduced. The narrator says, "...and here at BP we're proud to have helped fuelled progress for more than a century." Images show BP's technicians fuelling Bluebird, a land-speed record-breaking car of the 1960s. Bluebird in motion is then cut with film of a later speed car in the same colour – that may be electric – racing forwards.

At the word, "century" an indistinct large metal structure is shown. A large barge with a structure on top is then towed across the sea against a sunset. A large (presumably hydrocarbon) platform then weathers heavy waves. Towards the end of that video clip, the narrator begins: "Now we need to look to the future with fresh eyes." During that sentence, a drone is shown taking off from and leaving a white metal structure, and the video then cuts to a receding aerial shot of a hydrocarbon platform at sea. Part 2 lasts around 11 seconds.

Part 3:

Approaching half-way through the advert, the narrator now identifies that the reason for the need to look to the future with fresh eyes is that "over the coming years," billions of people will lift themselves out of poverty, making the "demand for energy and the demands on our planet greater than ever." At that point in the advert, frightening images of lightening, storms and then desiccated land are shown; the images are accompanied by the sound of thunder-claps and whistling wind. This imagery evokes climate change, although BP does not explain this.

This, BP explains, is "the dual challenge". It states, "(t)he world needs more energy, yes. But energy that's kinder to our planet." Those two sentences are accompanied by imagery of solar energy, electric car technology and (implicitly) hydroelectricity (the background video clips are of solar panels above a city, what appears to be an electric car being charged, an indistinct futuristic car and then water plunging off a dam).

As the image cuts from the dam, the narrator explains that the 'kinder' energy is needed, "not just tomorrow, today, now." This phrase is over a video clip of a dazzling sun over a green field, followed by a clip of two men working in a sun-lit field. They look at a screen and wear BP sun-hats with long neck coverings and sunglasses.

The narrative continues, saying, "we need to learn from the past", showing a harvesting machine and two tractors operating in a field. It then says, that we need to "work harder than ever to create cleaner, greener, smarter energy safely." From "work" to the beginning of "smarter" the video shows several images of wind turbines (it first shows two engineers working at height on top of a large wind turbine, with a further turbine in the background, it then cuts to a panning shot showing over 30 large and fast-spinning wind turbines, and then shows a zooming shot towards a single large wind turbine rotating above green countryside).

At “smarter energy”, a brief clip of a blue flame on a gas hob burner turns into an indistinct and rippling series of rapidly pulsing blue and purple circles, through which the camera seems to pass.

Part 4:

The advertisement continues “...and we know we can’t do it alone. We all need to play our part. Businesses. Governments. You. Me. Everyone.” The imagery here is two-fold: first there are clips of power reduction (lights turning off in skyscrapers, a child turning off light switches, fingers lowering two thermostats), and there are images of those that need to ‘play their part’ (crowds, cranes moving shipping containers, Capitol Hill in Washington DC, the UK Parliament, a city cyclist.)

The narrator says, “It won’t be easy. True progress seldom is.” The background video first shows a worker in a white boiler suit and helmet shouldering a coiled green flexible tube while walking along a green-floored open-sided corridor high above water with hills in the background. It then shows a worker approaching a plane with a flexible pipe on their shoulder. On their jacket is BP’s logo and the words, “air bp, BP Biojet”. There is then a clip of a seated worker reaching for a control panel next to a joy stick.

The narrator continues, “(b)ut with our scale and know how...”. That phrase is accompanied first by video of industrial docks (including warehousing, a container ship, tug boats and a crane barge mounting a large structure), and then by video of docks (warehousing, cranes and one of three large ships drawn by tug). The phrase “...our partnerships and new investments...” is then illustrated by a man in a white hard hat and then a technician’s gloved hands manipulating laboratory equipment containing clear liquid. As the narrator says “we’ll search for energy the world needs to progress”, the video cuts between a submersible filming a fish and a man viewing a human skeleton with virtual reality (VR) goggles. At, “...seeking new possibilities in everything”, Renault’s SYMBIOZ demonstration electric car is shown in motion, driver again wearing VR goggles. At, “everywhere” an astronaut and robot are shown in a red, implicitly Martian, landscape.

The advertisement closes with a smiling baby looking through glass towards bright light, as the narrator says, “so we can keep powering dreams and ambitions.” He explains, “Because we don’t just produce energy. We advance it.” Beneath those sentences, the world at night rapidly rotates. There is a green tinge to the atmosphere and BP’s chevrons accelerate across the screen.

The Score:

The orchestral theme is the well-known chorus to Duran Duran’s melancholy global hit ‘Ordinary World’. For a significant number of the audience, the lyrics to this chorus will be called to mind by the advert: “And I don’t cry for yesterday, there’s an ordinary world/ Somehow I have to find/ And, as I try to make my way to the ordinary world/ I will learn to survive.”

Box 2

65. This sophisticated advertisement would evoke a number of impressions in the viewer, summarised later at paragraph 77.

6.3.2 Other “Possibilities Everywhere” / “Keep Advancing” broadcast advertisements

66. BP’s other “Possibilities Everywhere” / “Keep Advancing” broadcast advertisements in 2019 are, in summary, as follows:

66.1. “Family” / “Energy for busy lives” identifies that, “we all want more energy but with less carbon footprint.” “That’s why at BP we are working to make energy that’s cleaner and better. We’re producing cleaner burning natural gas, and solar and wind power.” It later refers to “developing advanced fuels for a better commute and introducing ultrafast charging points for EVs.”

66.2. “Wind and natural gas” / “Fowler” introduces BP’s three wind farms in Fowler Indiana, “(o)ne of the windiest places in America.” It says that “in the off chance the wind ever stops blowing,” power is available via BP’s natural gas, which is “always ready when needed, or not”.

66.3. “Waste to fuel” / “journey” identifies that BP is partnering with Fulcrum BioEnergy “to turn garbage into jet fuel,” by creating “energy from household trash,” which is said to “save about 80% in carbon emissions”.

66.4. “Solar and natural gas” / “QEII Reservoir” reports that BP is partnering with Lightsource, “Europe’s largest solar company” and that its natural gas will “step in” should the sun not shine.

66.5. “Ancient road” describes BP’s introduction of fast charging points for electric vehicles, “(a)nd for cars that are not electric, we’re developing advanced fuels to help them run more efficiently.”

67. In respect of the impression created by these advertisements, a reasonable viewer would understand that: at BP, there is a significant emphasis on the provision of non-hydrocarbon energy; BP’s wind and solar operations comprise a significant part of its business; BP’s waste to fuel is (or will be) a material part of its overall production; BP’s services to electrical cars are on a par with its gasoline offering.

6.3.3 “Keep Advancing” billboards

68. On at least 17 November 2019, drivers and pedestrians on the Cromwell Road in London would have seen the following advertisements, displayed on rotation on a large electronic billboard:

a.



b.



c.



d.



Figure 2 BP “Keep advancing” advertisements on Cromwell Road, London, 17 November 2019 a. ‘We see possibilities everywhere’, b. ‘We see possibilities in turning rubbish into jet fuel’, c. ‘We see possibilities in the power of the wind, d. ‘We see possibilities in motor oil made with plants.’

69. These billboard advertisements give the reasonable viewer the impression that BP’s emphasis is on the provision of non-hydrocarbon energy and / or that BP’s rubbish to jetfuel and wind businesses are a significant part of its business.

6.3.4 Newspaper advertisements

70. The advertisements in the Financial Times published on the dates identified in section 4 can be summarised in the following graphs:

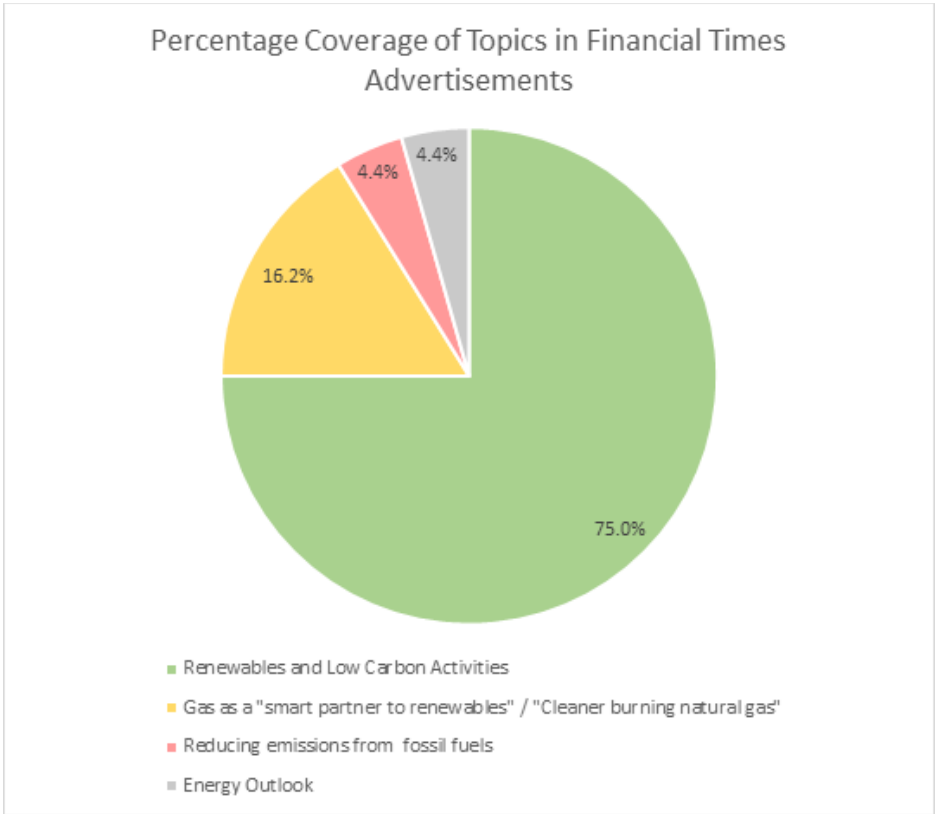


Figure 3 - Percentage coverage of topics in the Financial Times advertisements

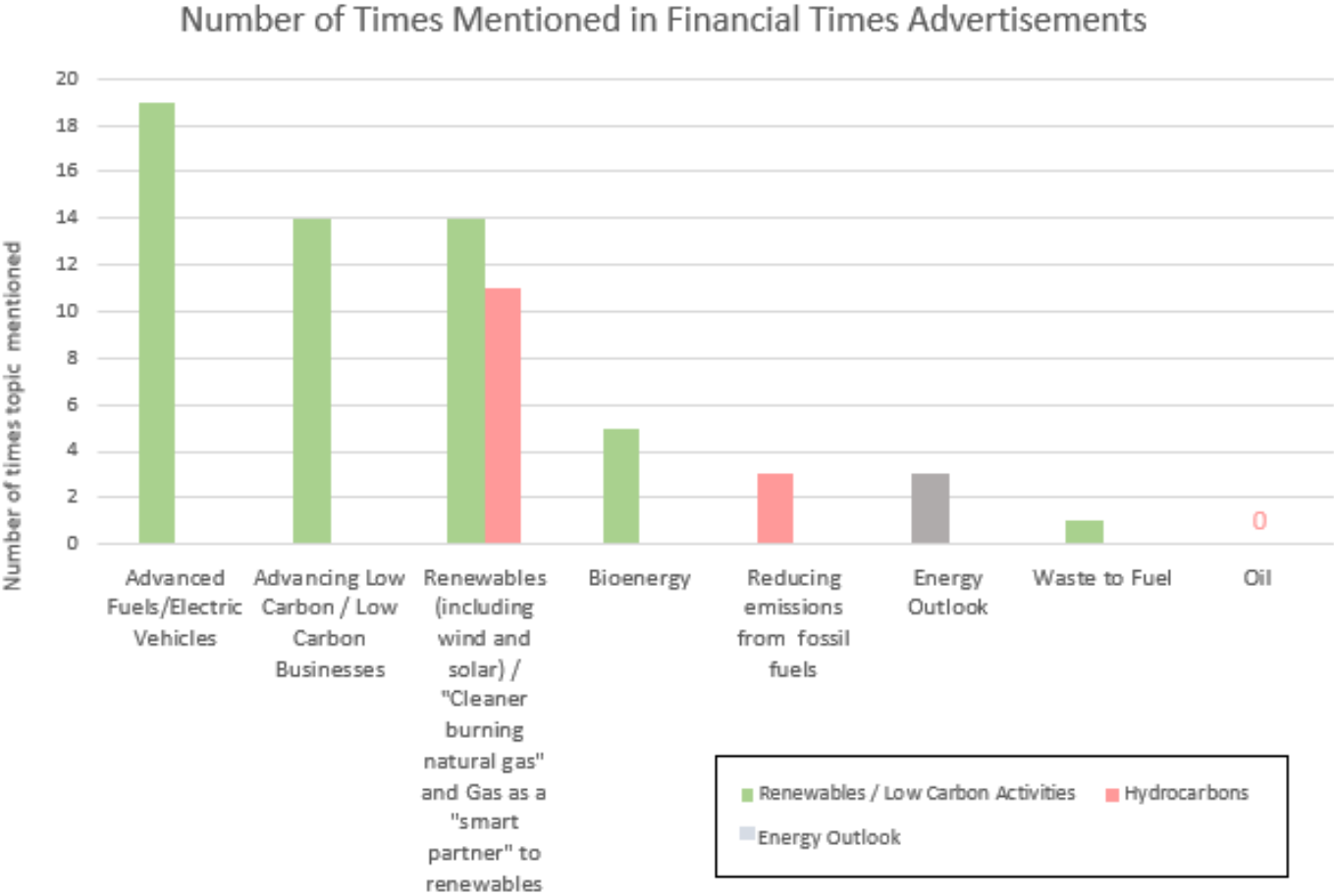


Figure 4 - Number of times topics were mentioned in the Financial Times advertisements

71. As mentioned in section 4.1.1, a review of BP’s advertising in the Financial Times between January and August 2019 indicates that 31 advertisements from the “Possibilities Everywhere” / “Keep Advancing” campaign were featured. There were seven key topics covered across all advertisements: renewables; “cleaner burning” gas or gas as a “smart partner to renewables”; bioenergy; waste to fuel; advanced fuels and electric vehicles; advancing low carbon; and BP’s 2019 Energy Outlook. Figure 3 shows the proportion that each topic was mentioned across all advertisements. Figure 4 shows the number of times topics were mentioned in the Financial Times advertisements. All topic areas, with the exception of natural gas and BP’s Energy Outlook, concern BP’s alternative energy and low carbon businesses. There was not a single mention of oil in any of the advertisements over this time period. In these advertisements, gas is only mentioned in the context of renewables,¹²³ becoming “cleaner” or as a partner to renewable energy.

6.3.5 The “Keep Advancing” web page and “#NotBusinessAsUsual”

72. Should viewers of BP’s print and billboard advertisements search the internet for the terms “BP” and “Keep Advancing” that are prominently displayed, they are directed to BP’s “Keep Advancing” web page. The web page is at **Annex C (Exhibit 3.H)**. That page is one place where BP displays the “Dual Challenge” TV advertisement. It contains text covering similar themes, including:

72.1. Hundreds of millions will lift themselves from poverty, making the demand for energy greater than ever.

72.2. The greatest issue of our time is the dual challenge, which is how to deliver more of the energy the world needs, while at the same time “dramatically reducing greenhouse gas emissions” (“Dual Challenge” terms this, “energy that’s kinder to our planet”).

72.3. This energy is needed not just tomorrow, but today.

72.4. The solutions require a collective response, from individuals to governments.

72.5. BP is dedicated to being part of the solution. That is why it is “teaming up with talented companies to test ideas that just might revolutionize the way we source, use

¹²³ For instance, in the advertisements relating to BP’s Energy Outlook.

and track energy. From new renewable energy partnerships and electric vehicle charging networks to clever technologies that turn our household waste into jet fuel.”

- 72.6. BP is not stopping there. Its employees are finding ways to reduce emissions within its businesses, and BP has introduced an advancing lower carbon accreditation program to highlight successes (this aspect is not referred to in the “Dual Challenge” video).
73. The website encourages the viewer to watch the “Dual Challenge” video (which occupies most of the screen after the opening paragraph). The reasonable viewer is therefore likely to form the same or similar impressions described in section 6.4 below. Unlike the video, there is specific language warning of the need to “dramatically reduce greenhouse gas emissions”; and, as with the video in its treatment of BP’s future operations, there is no explicit reference to BP’s hydrocarbon operations in the main text of the web page and the examples given of future solutions include renewable energy partnerships, electrical vehicle charging networks and waste-to-jet fuel technologies but no reference to expansion of hydrocarbon operations.
74. On another of BP’s web pages (**Annex C, Exhibit 3.J**), a statement introducing BP’s “Possibilities Everywhere” videos states that “our experience tells us that a race to renewables will not be enough”, suggesting that BP is already racing in terms of its overall investment in renewables.¹²⁴ This reinforces the impression formed by the “Possibilities Everywhere” advertisements that the company is prioritising renewable energy development over fossil fuel production.
75. This impression is confirmed for the reasonable viewer by the use of the “#NotBusinessAsUsual” hashtag, which is displayed prominently on a separate page on BP’s website (**Annex C, Exhibit 3.A**) and is used frequently in its social media advertising (**Annex C, Exhibit 4**). The clear implication of the hashtag and the accompanying text on the website and in the social media advertisements is that BP has changed core aspects of its business, including by reducing its traditional focus on fossil fuel extraction activities. This implication is misleading for the reasons discussed below at section 6.4. The reference to “business as usual” is particularly evocative for those with any knowledge of climate change policy, because the term “business as usual” has been used for the past 30

¹²⁴ <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere.html> [<https://perma.cc/X27A-NS6G>]. See also **Annex C, Exhibit 2.B.1**.

years¹²⁵ to describe future emissions pathways in which little to no action to reduce greenhouse gas emissions is taken.¹²⁶

6.4 Analysis of these advertisements touching on the role of renewables at BP

76. This section analyses the accuracy of the impressions given by the above advertisements. The analysis informs the explanation at section 6.5 that summarises how these advertisements are contrary to the OECD Guidelines.

6.4.1 The “Dual Challenge” video

77. BP’s “Dual Challenge” video advertisement (as described at **Box 2** above), is a significant item of public information, education, advocacy and advertising by BP concerning its role in society. It is an environmental claim that communicates the environmental attributes of BP as an organisation.¹²⁷

78. The reasonable viewer of the “Dual Challenge” advertisement would form the following impressions:

78.1. First, BP’s overall engagement in hydrocarbon extraction is an historical part of its business and does not dominate its current or planned business operations.¹²⁸

¹²⁵ The IPCC Special Report on Emissions Scenarios noted that the S192a scenario from 1992 IPCC report was being used as the reference case or “business-as-usual” scenario in climate change modelling and impact scenarios. See Nakicenovic et al, (2000), *IPCC Special Report on Emissions Scenarios*, p. 66 (available at https://www.ipcc.ch/site/assets/uploads/2018/03/emissions_scenarios-1.pdf)

¹²⁶ Grantham Institute on Climate Change and the Environment, (12 September 2017), ‘What does business-as-usual mean today’ (available at <https://granthaminstitute.com/2017/09/12/what-does-business-as-usual-mean-today/>).

¹²⁷ See Department for Environment, Food and Rural Affairs (DEFRA) (2011), *Green Claims Guidance* (available at: http://www.ukcpi.org/_Assets/custom-docs/publications/pb13453-green-claims-guidance.pdf), ‘What is an environmental claim’.

¹²⁸ Across the advertisement, BP’s hydrocarbon operations are de-emphasised. Part 1 is historical with no explicit reference to BP’s hydrocarbon operations (though there is imagery of progress achieved via fossil fuels). Part 2 shows, in c. 11 seconds only, BP’s operatives fuelling a race-car, some hydrocarbon platforms and indistinct metal structures. The last significant reference to hydrocarbon production in the advertisement, the platform in Part 2, is shown as the voice over states “we need to look to the future with fresh eyes” and a drone takes off and leaves that platform. The tense changes. From Part 3, which introduces climate change, the only reference to hydrocarbon production is a short and unclear visual reference to gas; by contrast a number of sources of renewable energy, futuristic energy and BP workers in green environments are featured. Partnerships, investments and “the search for energy” are illustrated by images suggestive of new and innovative forms of energy, such as electric cars and astronauts.

- 78.2. Second, BP is a company that – relative to its overall scale – has very extensive current engagement in, and that is pivoting yet more towards, the provision of energy that is “kinder” to the planet, in particular renewable energy.¹²⁹
- 78.3. Third, for example, wind power plays a significant role in BP’s provision of energy.¹³⁰
- 78.4. Fourth, BP takes a leading role in actions to counter climate change.¹³¹
- 78.5. Fifth, consistent with the above points, nothing in the advertisement suggests that BP is expanding or plans to expand its hydrocarbon operations, or that BP’s current and planned hydrocarbon operations and expenditure dwarf in scale its renewables production capacity and planned investment.
79. Those impressions contribute to misleading members of the public viewing the advertisement and give rise to breaches of the OECD Guidelines. It is relevant here to reiterate that the impression created by marketing communications, as well as the specific claims made, are relevant to whether a claim is misleading.¹³² This is particularly relevant in this instance where the narrative is both spoken and visual.
80. First, contrary to the impression given by the advertisement, BP’s overall engagement in hydrocarbon extraction is in no way an historical part of its business and it instead dominates its current and planned operations.

¹²⁹ As above, the thrust is of historical progress from hydrocarbons to “kinder” energy. After climate change imagery is introduced, the overriding impression is that BP is actively working to provide the planet with energy through “kinder” means. The viewer learns how BP provides such “kinder” energy through imagery of solar energy, electric cars, hydroelectricity and wind farms in Part 3. The implication that BP’s business is already doing this “now” is reinforced by images of BP workers in the field at a solar installation and then high on top of a wind turbine. The shift away from previous sources of energy is reinforced by: (i) the use of comparatives such as “kinder”, “cleaner”, “greener” and “smarter” to describe the newer forms of energy sought; (ii) Parts 3 and 4 not including meaningful or clear imagery of BP’s significant hydrocarbon production; and (iii) by the change of tense and other signifiers of departure from hydrocarbon production at the end of Part 2.

¹³⁰ For example, a viewer would form the impression that wind power plays a significant role in BP’s provision of energy relative to its other operations. BP’s wind power is linked to the call for “cleaner, greener, smarter” energy, with three separate video clips shown in Part 3 (engineers working on the turbines, a large wind farm and a very big turbine). By contrast, there are no meaningful references to hydrocarbon operations from Part 3 onwards, suggesting that such operations are part of BP’s past.

¹³¹ The advertisement alludes to climate change (without being explicit), before shifting towards solving the problem. BP tells the viewer that it is “working harder than ever”, “we can’t do it alone” and “we’ll search for the energy the world needs to progress”, phrases that reassure that it is acting already and will continue to do so to counter the risk. BP even positions itself as a leader, trying to enlist governments and others. Images of children and the well known chorus “I will learn to survive” reinforce the sense of risk and protection.

¹³² CAP Code, Background, p. 16; BCAP Code, Background, p. 15.

81. Short examples suffice here to illustrate the scale and planned expansion of hydrocarbon production at BP, which is reflected across a range of factors: a pattern of aggressive hydrocarbon acquisition (over US\$8.5 billion spent in 2018 alone); significant expansion of hydrocarbon production since 2014 (such production dominated by liquids over gas); a strategic plan to increase significantly their production (on track to increase production by 900 mboe/d by 2021 against 2016 levels of 3268 mboe/d); a pattern of exploiting and replacing vast reserves (19,945,000 mboe in 2018, of which the majority was crude oil).¹³³
82. Second, it is very dramatically overstating BP’s renewables and alternative energy operations to suggest that BP is a company with – relative to its overall scale – very extensive current engagement in, and that is pivoting yet more towards, the provision of energy that is “kinder” to the planet, in particular renewable energy.
83. The primary reason again relates to the reality of BP’s very large and expanding hydrocarbon operations.
84. For example, as illustrated in **Annex A**, BP’s investment in renewables and other low-carbon activities is very small compared to its hydrocarbon spend (see **Annex A, Section 2**, ‘Investment in ‘low carbon activities’’). That section compares BP’s overall CapEx with investment in its “low carbon activities” program (which would appear to include its renewables investments, such as Lightsource BP, and its windfarms, among other categories unconnected to renewables production).¹³⁴ The result is, as indicated by Table 3, that BP’s investment on its range of low carbon activities appears very small (circa 1 to 2%) compared to its total CapEx (although BP has indicated that it plans to spend around 2.9 – 5% of its total CapEx on low carbon activities in 2019).¹³⁵

¹³³ See **Annex A**, paragraphs A11 – A13, A40.2, A28 and figure A4, A45 for related analysis and sources.

¹³⁴ Such as those that relate to the efficiency of BP’s ships or to emissions reductions in some upstream and downstream hydrocarbon extraction and refinery operations. BP’s website provides further information on the range of activities here: <https://www.bp.com/en/global/corporate/sustainability/climate-change/low-carbon-accreditation-programme.html>.

¹³⁵ See **Annex A**, paragraphs A16 – A17.

	2016	2017	2018
	US\$ million		
Total CapEx	17,452	17,840	25,088
Total Organic CapEx	16,675	16,501	15,140
Total Inorganic CapEx	777	1,339	9,948
Total Stated Investment in "Low Carbon Activities" ¹³⁶	200	200	500
Investments in "Low Carbon Activities" - Percentage of Total CapEx	1.1%	1.1%	2.0%

Table 3 - BP's CapEx versus BP's stated level of investments in "low carbon activities" (Annex A, Table A1)

85. As an example of how BP's investments in renewables compare to the overall scale of its business, BP's announced investment of US\$200 million in LightSource (a solar power business) over three years is dwarfed by other recent payments. By way of contrast to that sum, BP's Annual Reports show:

85.1. BP's dividend payments to shareholders in 2018 were US\$8.1 billion (representing almost 12,000 times the annualised value of the three-year investment in solar).

85.2. BP holds shares in Russia's largest oil company, Rosneft. Its share of Rosneft's dividends, net of withholding taxes, was US\$620 million in 2018 alone.¹³⁷

85.3. BP reports that Bob Dudley, group chief executive, has been paid some US\$118 million since he took that position in October 2010.¹³⁸

85.4. BP pays its auditors over US\$40 million annually and around US\$240 million since 2014.¹³⁹

86. These expenditure figures demonstrate the extent to which viewers of the "Dual Challenge" are misled and misinformed by that advertisement and the impression it gives about BP's current engagement with and movement towards renewable energy and away from hydrocarbons.¹⁴⁰

¹³⁶ The 2018 figure is the total investment commitment for "low carbon activities" (including for acquisitions) set out by BP in its 2018 Annual Report. The figure for 2016 and 2017 are approximate values based on a statement contained on page 49 of a BP Strategic Update, dated February 2017.

¹³⁷ BP (2019), Annual Report 2018, p.34.

¹³⁸ BP (2019), Annual Report 2018, p.96.

¹³⁹ See Annual Report 2018 p.79, Annual Report 2017 p.183, Annual Report 2016 p.179.

¹⁴⁰ The relevant impression is as summarised in paragraph 78.2 and its footnote.

87. A similar pattern to that observed above in relation to expenditure also emerges from the following discussion about production figures.
88. **Annex A (Section 3)**, analyses the data on BP’s production. BP publishes comparable figures each year for hydrocarbon production,¹⁴¹ but as that section shows, figures for renewables vary widely as to whether and in what units they are reported. As summarised there, various data suggest that BP’s actual and planned fossil fuel business vastly exceeds its renewables operations in terms of production. A few examples of the analyses in **Annex A (Section 3)** are set out in the table below.

	Thousand barrels of oil per day (equivalent)	Percentage of energy output (compared to hydrocarbon)
Hydrocarbon production	3683.00	100%
Wind production (daily average for 2014)	7.44	0.202%
Biopower	1.44	0.039%
Solar (gross managed capacity)	5.08	0.138%
Biofuels net ethanol equivalent per annum	7.65	0.208%

Table 4 – BP hydrocarbon and alternative energy production (mboe/d) (Annex A, Table A3)

89. As Table 4 shows, the advertised sources of renewable energy appear to account for a startlingly small proportion of BP’s energy production.
90. Missing from the above table is Fulcrum Bioenergy, a waste-to-biofuels joint venture that is a significant focus of a number of BP’s advertisements. Based on BP’s figures, its planned first facility will – when it opens – produce in the region of 0.717 mboe/d, the equivalent of only 0.019% of the energy output of BP’s hydrocarbon operations.¹⁴² Again, this anticipated scale of production is marginal at best, relative to BP’s hydrocarbon operations.
91. In the circumstances, it is misleading that the advertisement, as described above, suggests to the public that BP is pivoting from fossil fuel extraction to “kinder energy” and renewables provision. This is a lengthy advertisement in which the images change every few seconds. It purports to identify BP’s intentions in addressing climate change. It is

¹⁴¹ See, for example, the data presented in **Annex A**, figure A4.

¹⁴² See Annex A for the basis of and limitations of this calculation. Another company, Butamax, has yet to commercially produce its advertised “advanced biofuels”.

wide ranging and identifies a significant number of renewable or alternative energy operations that it connects to its work to meet the challenge. Despite the length of the advertisement and the breadth of the actions proposed in response to climate change in Parts 3 and Parts 4, the advertisement strikingly fails to inform the public about BP's central intentions for its business, in relation to fossil fuels.

92. It is also misleading that the advertisement contains no meaningful qualification or clarification to explain its significant limitations as a description of BP's response to climate change, such as by reference to any negative effects of its expanding hydrocarbon operations (which omission is also contrary to the expectations of the CAP and BCAP Codes).¹⁴³ It misinforms and misleads the public when it underplays entirely the role fossil fuels have and will have in its business, when in fact that aspect of its operations is overwhelmingly larger and expanding. This omission misleads the audience by suggesting that BP is focused on provision of "kinder" and "cleaner, greener, smarter" energy, in particular through renewables provision. Such omissions mislead consumers in their decisions relating to BP's products and services.¹⁴⁴ It does so directly in the context of implying that the company plays a leadership role in identifying addressing the challenge of climate change.¹⁴⁵ These claims therefore abuse consumers' concern for the environment and exploit their possible lack of environmental knowledge regarding the climate impacts of BP's proposed response, thereby failing to meet the express requirements of the ICC Marketing Code.¹⁴⁶
93. Third, the use of vague comparative terms such as "kinder", "cleaner", "greener" and "smarter" is also misleading in this context. For example, the confusing reference to gas in Part 3 of the video¹⁴⁷ does not amount to a clear suggestion by BP in the video that gas is a significant part of its solution. Moreover, the use of "kinder", "cleaner", "greener" and "smarter" is itself highly confusing to the viewer (in the advertisement, the first words three precede the image of the burner, which then appears on the word "smarter"). As identified

¹⁴³ See CAP Code Rule 3.9; BCAP Code Rule 3.10.

¹⁴⁴ See CAP Code Rule 3.3; BCAP Code Rule 3.2. That this conduct is misleading is self-evident. The terms of the ICC Marketing Code provide that marketing communications must not contain audio and visual treatment that (as is the case here) is likely to mislead the consumer with regard to the environmental impact of its products, by implication, omission or ambiguity.

¹⁴⁵ As to the basis for the impression of this leadership role see footnote 131.

¹⁴⁶ ICC Marketing Code, Article D1.

¹⁴⁷ At c.1:35. A gas hob is shown for around one second, but it then changes into a pulsating electronic blue ring, through which the camera passes to a city scene. This is confusing and ambiguous. The use of the word "smarter" may suggest that the gas (which is seen transforming into the electronic ring) may need to be replaced.

by ISO 14021 at Article 5.3, vague or non-specific claims should not be used in self-declared environmental claims. The ICC Marketing Code, Article 11, also provides that marketing communications containing comparisons should be designed so that the comparison is not likely to mislead. These comparative claims are misleading as there is simply no basis on which a consumer can assess whether the gas sold is “kinder”, “cleaner”, “greener” or “smarter” relative to an unspecified alternative. The words also imply that the gas depicted is relatively environmentally benign (and associates gas with the renewable energy depicted in the opening of the sentence). However, any such impression in respect of gas is apt to mislead even when the comparator is clarified with very specific language (as explained below in section 10).¹⁴⁸

94. Fourth, the advertisement also gives a misleading impression to viewers in relation to wind energy, which is depicted as an important component of BP’s ongoing and planned provision of “kinder, cleaner, greener, smarter energy” in lieu of hydrocarbon production.¹⁴⁹ The relative scale of BP’s wind operations is set out above (and in **Annex A, Section 2**), with wind comprising an extremely small and decreasing component of BP’s energy production.
95. In light of this discrepancy between BP’s investment in fossil fuels and in renewables, the framing in BP’s advertising campaigns leads the public to believe that BP is more committed to renewables than it is. In doing so, it encourages consumption of energy and creates a false perception of levels of corporate investment in renewables. By misinforming the public in these ways, BP limits the public’s ability to make informed decisions both in terms of their own consumption and about how companies such as BP should be regulated in respect of their climate impacts. It is also the case that investors and savers consider BP’s environmental impact and overall sustainability when choosing whether or not to buy or hold shares in the company.¹⁵⁰

6.4.2 Other renewables advertisements

96. The other advertisements described at section 6.3.2 – 6.3.4 above also give viewers an erroneous impression of BP’s operations, products and services.

¹⁴⁹ See footnote 130.

¹⁵⁰ See, e.g., ClientEarth, (2019), *ClientEarth’s Climate Snapshot 2019* (available at: <https://www.documents.clientearth.org/library/download-info/clientearths-climate-snapshot-2019/>), p. 17.

97. The context in which these advertisements are misleading has been set out in the above discussion including in respect of the vast relative size of BP’s hydrocarbon operations compared to its alternative energy / renewables / lower carbon businesses. The broad spread of expenditure and production between BP’s “alternative energy” / “low carbon activities” versus hydrocarbon operations is illustrated in Figure A1 below from **Annex A**.

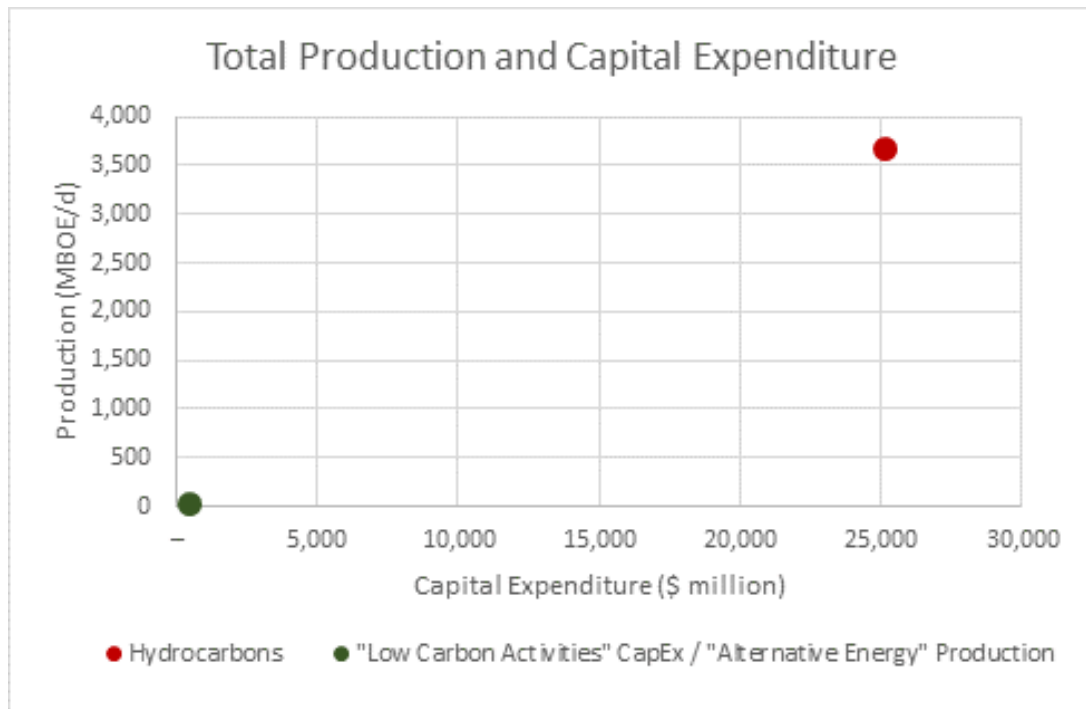


Figure 5 – Illustrative comparison of BP Production and expenditure (Annex A, Figure A1)¹⁵¹

98. The analysis above sets out why the centrepiece of the campaign, the “Dual Challenge” video materially misinforms and miseducation the public. Taken together, the other identified advertisements, the websites and use of the hashtag “#NotBusinessAsUsual” further contribute to that problem. Overall, the impression created by these advertisements downplays the reality of its hydrocarbon operations to such an extent that members of the public are likely to form misleading impressions about the fundamental nature of BP’s business and the extent to which it is focused on renewables.

99. For example, the Financial Times advertisements considered at sections 4.1.1 and 6.3.4 and **Annex B (Exhibits 5.A-5K)** provide an opportunity to analyse a discrete set of advertisements. As is illustrated by the graphs at Figure 3 and Figure 4 at para 70, the emphasis in these advertisements on renewables and low carbon activities is overwhelming. To the extent that BP’s gas operations are referred to, they are only

¹⁵¹ See **Annex A** for further details on data sources and methodology.

mentioned in the context of renewables, as being “cleaner burning” or as a partner to renewable energy. The fundamental nature of BP’s fossil fuel operations is therefore materially absent.

100. A similar pattern is observable in other “Possibilities Everywhere” / “Keep Advancing” broadcast advertisements described at section 6.3.2, where the advertisements broadly concern renewable energy such as solar, charging points for electric vehicles, waste-to-trash and “advanced fuels”, with gas always linked in a supporting function to renewables. As described in that section, the impression is given that: at BP, there is a significant emphasis on the provision of non-hydrocarbon energy; BP’s wind and solar offerings comprise a significant part of its business; BP’s waste-to-fuel offering is material; BP’s services to electrical cars is on a par with its gasoline offering.

101. The impression given by the billboard advertisements at section 67 is again to suggest that BP’s emphasis is on the provision of non-hydrocarbon energy and that BP’s rubbish to jetfuel and wind businesses are a significant part of how it meets its stated mission to “Keep Advancing”. As with the “Dual Challenge” video, these advertisements are a means by which BP informs the public about its operations, services and products and taken together they instead serve to obscure the reality of BP’s business and the centrality of its hydrocarbon operations.

6.5 Application of the Guidelines

102. The specifics of the breach of the OECD Guidelines arising from the above claims about the role of renewables in BP’s business and strategy are as follows.

102.1. Contrary to Chapter VIII, paragraph 2, and Chapter VI, paragraph 2(a), BP failed to provide accurate, verifiable and / or clear information that is sufficient to enable the public and / or consumers to make informed decisions regarding the potential environmental impacts of the enterprise and/or the environmental attributes of BP’s goods and services:

102.2. In respect of the “Dual Challenge” video:

102.2.1. BP causes consumers to be misinformed about the current and future environmental impact of its goods and services by causing viewers to inaccurately understand its current and planned response to climate change, including by

dramatically underplaying the role that hydrocarbons play in its current and planned operations.

102.3. In respect of the other identified advertisements:

102.3.1. Their presentation obscures the reality of BP's business and the centrality of its hydrocarbon operations.

102.4. Contrary to Chapter VIII, paragraph 4, the advertisements make representations and/or omissions that are misleading and deceptive:

102.5. In respect of the "Dual Challenge" video:

102.5.1. For the reasons given and as identified in paragraphs 80 to 81 above, the advertisement is misleading in relation to BP's overall engagements in hydrocarbon extraction, which contrary to the impression given is in no way an historical part of its business and which instead dominates its current and planned operations.

102.5.2. For the reasons given and as identified at paragraphs 82 to 86 and 88, above, contrary to the reality of the situation, including in relation to BP's current and planned hydrocarbons operations, the advertisement is misleading where:

102.5.2.1. it overstates the role of BP's renewables and alternative energy operations;

102.5.2.2. it suggests that BP is a company with – relative to its overall scale – very extensive current engagement in the provision of energy that is "kinder" to the planet, in particular renewable energy; and/or

102.5.2.3. it suggests that the company is pivoting yet more towards such energy.

102.5.3. For the reasons given and as identified at paragraph 98 above, the advertisement is misleading in its use of the terms "kinder", "cleaner", "greener" and "smarter".

102.5.4. For the reasons and as identified at paragraph 93 above, the advertisement is misleading in respect of its presentation of BP's wind operations.

102.5.5. In so doing, it misleads consumers about the nature of its core operations, products and services.

102.6. In respect of the other advertisements:

102.6.1. For the reasons and as identified at paragraphs 96-100, the advertisements give a misleading impression about the role of renewables in BP's business, products and services.

102.7. Contrary to Chapter VIII, paragraph 5, and Chapter VI, paragraph 6(c), BP advanced the above information to the public in relation to its business activities that, by reason of being incomplete / misleading, was directly contrary to the requirement under the Guidelines that enterprises should support efforts to promote consumer education that would improve the ability of consumers to make informed decisions involving complex goods, services and markets, to better understand the economic, environmental and social impact of their decisions and to support sustainable consumption.

103. In view of the above breaches of the Guidelines, ClientEarth has proposed measures involving withdrawal of advertisements, a public statement, the use of disclaimers and a public and policy commitment in respect of future communications on environmental and climate issues.¹⁵²

7 Misleading claim about BP's wind business

7.1.1 Introduction and summary

104. In addition to the previously mentioned general claims, BP misleadingly advertises that its windfarms are producing more megawatts than ever before, when their wind power production has in fact decreased. As explained in this document, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

7.1.2 The advertisement

105. On BP's United States Website, the "Wind and natural gas" page of its "Possibilities Everywhere" section states: "Wind turbines are flying high. With sleeker blades and improved technology, our wind farms are producing more megawatts at a more competitive cost than ever before." It goes on to state that its wind farms are "capable of a gross production of over 1,679 megawatts a year."¹⁵³

¹⁵² See 'Request to BP', below.

¹⁵³ https://www.bp.com/en_us/united-states/home/who-we-are/possibilities-everywhere/wind-and-natural-gas.html.

106. It is very unlikely that a member of the public would understand the term “our wind farms are producing more megawatts” in this context to mean anything other than BP’s wind farms are producing more overall power to the grid. It is submitted that this is the only reasonable interpretation.¹⁵⁴

7.1.3 Analysis

107. Further to **Annex A** (with specific focus on paragraphs A36 – A40), it is false and misleading for BP to state that “our wind farms are producing more megawatts”. The data suggests that BP’s gross wind capacity is at its lowest since 2011 and, at 1,679 megawatts, only 64% of BP’s peak wind capacity between 2012 – 2016. The misleading nature of the claim is compounded by the fact that BP has recently divested from a number of wind farms, a fact omitted from the relevant web advertisement, and that the units provided (megawatts a year) appear to refer to erroneously refer to installed capacity rather than production.

7.1.4 Application of the Guidelines

108. Contrary to Chapter VIII, paragraph 4, the advertisements make representations and/or omissions that are misleading and deceptive. For the reasons given above, it is false and misleading to state that “our wind farms are producing more megawatts” and to state that its wind farms are “capable of a gross production of over 1,679 megawatts a year”.

109. The above false and misleading information also contributes to the breaches of the paragraphs 2(a) and 6(c) of Chapter VI of the Guidelines and paragraphs 2, 4 and 5 of Chapter VIII identified above at paragraphs 102.3, 102.6 and 102.7.

110. In respect of the above breach of Chapter VIII, paragraph 4, ClientEarth requests correction of BP’s website accompanied by a public statement regarding the clarification. In respect of the other breaches, ClientEarth refers the NCP to paragraph 102.7 above.

¹⁵⁴ The use of the term “farms” excludes any interpretation that BP’s reference to “more power” is to the productivity of individual turbines. Further, as “farms” is plural and as gross production is identified, it is unambiguous that the advertisement is referring to BP’s overall production, rather than the production of individual farms.

8 Misleading statements regarding BP’s facilities at the Queen Elizabeth II Reservoir Solar Farm

8.1.1 Introduction and summary

111.A BP television advertisement suggests to the viewer that a BP partnered solar farm supplies energy to power lights and other power needs in London. Contrary to this, it provides energy only to a local water treatment works. As explained in this document, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

8.1.2 The advertisement

112.Since around 22 January 2019, BP has aired on television¹⁵⁵ an advertisement variously titled “QEII Reservoir” and “Solar and natural gas”. The advertisement also appears on BP’s YouTube page (as part of the “Possibilities Everywhere” playlist), Lightsource BP’s YouTube page and BP’s website. The imagery and narrative of the video are summarised below in **Box 3**.

Box 3: BP’s “QEII Reservoir” / “Solar and natural gas” advertisement

The video opens with a cyclist stopping on a small shopping street, raising her hand to rain. The narrator observes, that “(a)round here, the only predictable thing about the weather, is it’s unpredictable.” The cyclist works in a clothes shop on the street, which she enters and opens. The sun shines through the window as the narrator says “so we make the most of it when the sun shines.” The video changes to sun streaming through clouds, as the narrator explains “(t)hat’s why we’re partnering with LightSource, Europe’s largest solar company.” The video pans across a solar array on a reservoir, captioned, “Lightsource BP Solar Farm, Queen Elizabeth II Reservoir”.

It starts to rain again and the cyclist is seen on a street raising an umbrella, which she offers to a man in a suit. The narrator says “(a)nd should the weather change, yet again, our natural gas can step in to keep the power flowing and the light shining, no matter the forecast.” When the narrator says “lights shining”, there are over ten bulbs illuminated in the shot, two of which turn on during that phrase. In the image, the pair stand at a crowded bus stop. Lights are on at the door to a pub, in a residential property and in a commercial premises. During the end of the phrase, “light shining, no matter the forecast”, the R70 bus passes over Richmond Bridge as four streetlamps progressively come to light. As the advertisement closes, the cyclist and the man in the suit are seen smiling, together on the bus. The video then shows aerial footage of central London, illuminated by thousands of lights as BP’s ‘keep advancing’ logo and chevrons pass across the screen.

¹⁵⁵ Lightsource BP, “Lightsource BP Featured in Biggest BP Campaign in 10 Years”, available at: <https://www.lightsourcebp.com/uk/2019/01/lightsource-bp-featured-biggest-bp-campaign-10-years/>.

113. It is submitted that a reasonable person would form the following related impressions based on this advertisement:

113.1. First, that BP's solar farm at the QE II Reservoir is connected to the public electricity network and is involved in meeting general grid demand. A viewer would consider that the reservoir supplies that power, based on the overall impression of the advertisement, which shows the solar farm and links it to local energy provision. The title, "QE II Reservoir", also suggests that the solar power described is from that solar farm.

113.2. Second, a reasonable viewer would consider that such solar energy supplies power, including to local shops, other premises and street lighting. This impression is formed by the use of the term, "round here", and the prolonged shot of the solar farm on the reservoir in the context of provision of energy to the cyclist's shop, the buildings along the street and to street lamps. The impression is confirmed by the statement that if the weather changes, BP's gas would "step in" to ensure that power would "keep on" flowing and the lights would "keep shining". If BP's solar farm was not supplying that energy, there would be no need to "step in".

113.3. Third, areas some distance away from the reservoir are also powered by BP's solar energy. This impression is formed by the imagery of a London bus in transit and the fact that lights switch on to illuminate the bridge as the narrator promises to "keep the lights shining, no matter the forecast." Some will even recognise Richmond Bridge and know that it is several miles from the Reservoir. Some viewers may even consider that the final panning shot of London suggests a role for power from the QEII Reservoir across the city.

114. BP's website contains a caveat to the advertisement, that the QEII Reservoir in fact supplies power to a nearby water treatment centre.¹⁵⁶ That caveat does not appear on the advertisement as broadcast or on BP's YouTube page.

8.1.3 Analysis:

115. Contrary to the impression created by this advertisement, Lightsource BP's QEII Reservoir does not appear to supply any or any significant energy to the public electricity network, local shops or street lamps. Instead, that solar farm is connected directly to Thames

¹⁵⁶BP, "Solar and Natural Gas", available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/solar-and-natural-gas.html>.

Water's private electricity network, which pays for the energy produced under a Power Purchase Agreement (PPA).¹⁵⁷ The electricity produced by the solar farm accounts for around 20% of the plant's energy needs.¹⁵⁸ The CEO of Lightsource BP confirms that 100% of the electricity produced there is being used by Thames Water, on the basis of a fixed price for electricity over 25 years.¹⁵⁹ A senior energy consultant of Thames Water confirms that the energy is fed directly into the water treatment works with no grid losses.¹⁶⁰

116. It is therefore misleading that BP's presentation of the context to this solar farm suggests that it is connected to the public electricity network and involved in meeting general grid demand. The effect of this presentation is to misleadingly situate BP as a supplier of solar energy to at least part of the capital city through the QEII Reservoir.

117. Further, in this advertisement, a clear connection is made between the QEII Reservoir solar farm and gas "stepping in" to fill gaps in supply from solar power connected to the public grid. As discussed separately below (at section 11), this impression is misleading.

8.1.4 Application of the Guidelines

118. Contrary to Chapter VIII, paragraph 4, the advertisements make representations and/or omissions that are misleading and deceptive:

118.1. For the reasons given, the advertisement misleadingly suggests that the LightSource BP solar farm at the QEII Reservoir is connected to the public electricity network and is involved in meeting general grid demand and/or that it supplies power to local shops, other premises and street lighting. The advertisement also misleadingly suggests that areas some distance away from the reservoir are also powered by BP's solar energy. The qualification that BP's QEII Reservoir solar capacity in fact only supplies power to a waste treatment plant is misleadingly omitted from the advertisement.¹⁶¹

¹⁵⁷ Lightsource BP, "Reservoir Floating Solar", available at:

<https://www.lightsourcebp.com/uk/stories/qe2/>.

¹⁵⁸ <https://www.lightsourcebp.com/uk/stories/qe2/>.

¹⁵⁹ 'Floating Solar – QEII Reservoir', Lightsource BP, at 0m20s.

<https://www.youtube.com/watch?v=IMraQUjdX-Y>

¹⁶⁰ 'Floating Solar – QEII Reservoir', Lightsource BP, at 0m50s.

<https://www.youtube.com/watch?v=IMraQUjdX-Y>

¹⁶¹ Omission of qualifications is also contrary to the expectations of the CAP and BCAP Codes. See CAP Code Rule 3.9; BCAP Code Rule 3.10.

119. The above false and misleading information also breaches the paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII identified above at paragraphs 102.3, 102.6 and 102.7.

120. In respect of the above breach of Chapter VIII, paragraph 4, ClientEarth requests correction of BP's advertisement to clearly record that the QEII Reservoir supplies power only to the water treatment works, accompanied by a public statement regarding the clarification. In respect of the other breaches, ClientEarth refers the NCP to paragraph 102.7 above.

BREACHES OF THE OECD GUIDELINES: GAS

9 Omission of lifecycle emissions information for gas

9.1 Introduction and summary

121. BP's advertisements mislead the public by omitting material information about the climate impact of gas. The advertisements state that gas is "50 percent cleaner than coal" or even that gas has "less than half coal's carbon footprint". However, these statements overstate the relative environmental benefits of gas by failing to reflect gas's lifecycle emissions and its full climate impact. For the reasons given in this Complaint, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

9.2 The advertisements

122. BP frequently makes the claim that gas is "50 percent cleaner than coal" or, more strongly, that it has "less than half coal's carbon footprint", although it uses a variety of different formulations and qualifications in connection with these claims. For example:

122.1. In a footnote on the "Solar and natural gas" page of its website, BP states that "natural gas is 50% cleaner than coal during production".¹⁶²

¹⁶² BP, "Solar and natural gas", available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/solar-and-natural-gas.html>.

122.2. In its “Wind and natural gas” page of its website, BP states that “natural gas can keep the lights on with an energy that generates power more cleanly than coal – with around half the CO₂ emissions.”¹⁶³

122.3. In its “Energy for busy lives” video, BP states (in small print) that “natural gas burns 50% cleaner than coal in power generation”.¹⁶⁴

122.4. In its “Energy Illustrated – The Dual Challenge” video, BP states that “gas produces only around half of the emissions of coal when used in the power sector”.¹⁶⁵

122.5. In its “What is gas?” video, BP goes further, claiming that gas has “less than half coal’s carbon footprint when used in power generation” (emphasis added).¹⁶⁶

9.3 Analysis

123. While gas typically emits less carbon dioxide than coal at the point of combustion – or “in power generation” as BP sometimes says in its advertisements¹⁶⁷ – it is also known to leak methane and carbon dioxide during extraction and transportation.¹⁶⁸ It is a fossil fuel that emits GHGs to the atmosphere during both extraction and transportation (methane and carbon dioxide) and at the point of combustion (carbon dioxide). Gas is used as an energy source in the generation of electricity, in industrial applications, for transport and in domestic and commercial contexts for cooking and spatial heating.¹⁶⁹

124. Gas is predominantly made up of methane, a gas that has a much higher global warming potential than carbon dioxide. In other words, methane traps more heat in the atmosphere, accelerating global warming at a faster rate. The climate impact of methane emissions depends on the timeframe one considers: on a 100-year time frame, methane emissions are 34 times worse for the climate than carbon dioxide emissions; over 20 years, methane

¹⁶³ BP, “Wind and natural gas”, available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/wind-and-natural-gas.html>.

¹⁶⁴ BP, “Energy for busy lives”, available at: <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/energy-for-busy-lives.html>.

¹⁶⁵ BP, “Energy Illustrated: The Dual Challenge”, available at: <https://www.bp.com/en/global/corporate/energy-economics/spencer-dale-group-chief-economist/energy-illustrated.html>.

¹⁶⁶ <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing/natural-gas.html>.

¹⁶⁷ https://www.bp.com/en_gb/united-kingdom/home/who-we-are/possibilities-everywhere/solar-and-natural-gas.html.

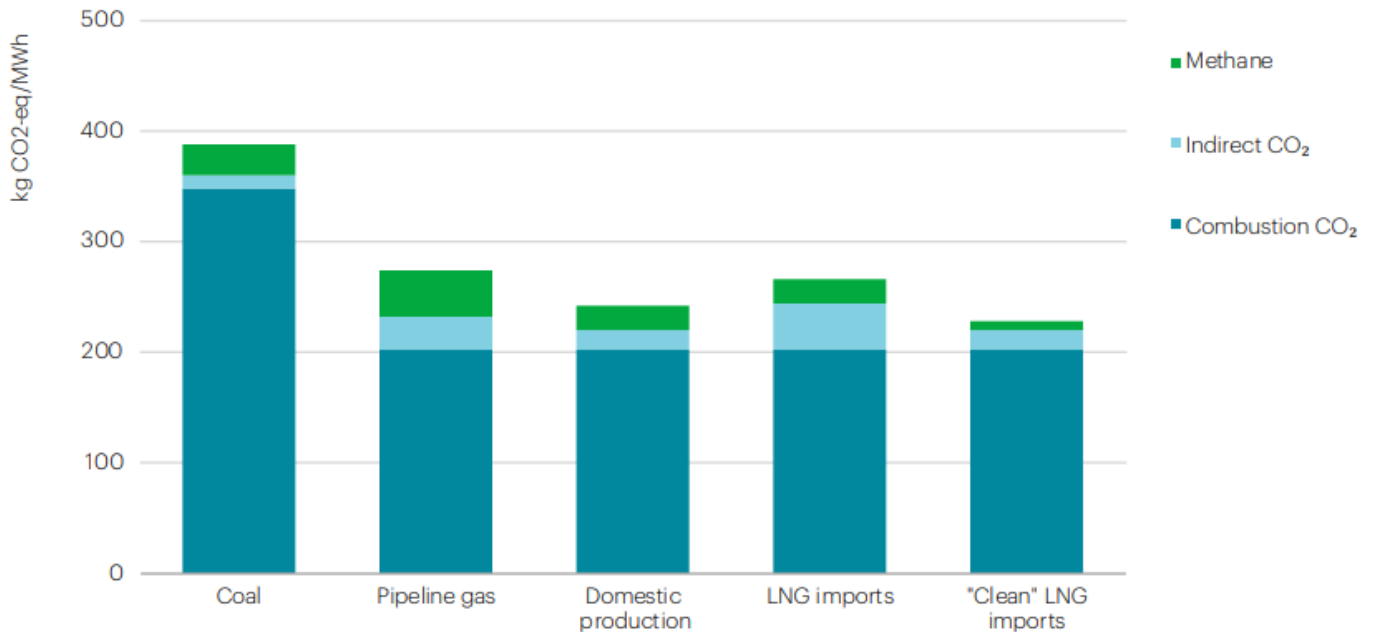
¹⁶⁸ See, e.g., IEA, (2019), *The Role of Gas in Today’s Energy Transitions* (available at: <https://webstore.iea.org/the-role-of-gas-in-todays-energy-transitions>), p. 39.

¹⁶⁹ See, e.g., in the US context: <https://www.ucsusa.org/resources/uses-natural-gas>.

emissions are 86 times worse.¹⁷⁰ Research suggests that in some circumstances gas’s total lifecycle emissions may be *as bad* as coal’s equivalent emissions.¹⁷¹

125. Depending on the source of the gas, fuel production and infrastructure emissions can account for a substantial share of its lifecycle GHG emissions. The IEA has recently produced the below chart – in a report cited on BP’s website¹⁷² – comparing the lifecycle emissions of coal and different sources of gas in China in 2025.¹⁷³

Average lifecycle GHG emissions for coal and sources of natural gas for China in 2025



Note: Indirect emissions are any CO₂ emissions that occur during the production, processing, and transport of the coal or gas. Methane includes both upstream and downstream emissions; one tonne of methane is assumed to be equal to 30 tonnes of CO₂-equivalent (the 100-year global warming potential). Clean LNG assumes that methane emissions from upstream operations and transmission are eliminated and that the LNG liquefaction process is powered by zero-carbon electricity.

Figure 6 - Average lifecycle GHG emissions for coal and different sources of gas in China in 2025

¹⁷⁰ IPCC, (2013), *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Table 8.7, p. 714, available at https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter08_FINAL.pdf.

¹⁷¹ See IEA, (2019), *The Role of Gas in Today’s Energy Transitions*, p. 41; Oil Change International, (2019), *Burning the Gas ‘Bridge Fuel’ Myth: Why Gas is not Clean, Cheap or Necessary* (available at: <http://priceofoil.org/2019/05/30/gas-is-not-a-bridge-fuel/>), p. 4; Ramon Alvarez et al., (2012), ‘Greater focus needed on methane leakage from natural gas infrastructure’, 109(17) PNAS 6435, 6437 (available at: <https://www.pnas.org/content/pnas/109/17/6435.full.pdf>). The latter research suggests that for gas to have net climate benefits compared to coal in electricity generation over a 20-year period, methane leakage rates associated with the gas supplied must be kept below a threshold of around 4%.

¹⁷² <https://www.bp.com/en/global/corporate/who-we-are/keep-advancing/natural-gas.html>.

¹⁷³ IEA, (2019), *The Role of Gas in Today’s Energy Transitions*, p. 44.

126. This shows that gas will in many cases have an emissions saving against coal that is significantly smaller than 50%. Indeed, directly contradicting BP's 50% combustion emissions saving figure, the IEA states that "the combustion of natural gas results in emissions savings of some 40% relative to coal for each unit of energy output".¹⁷⁴ The amount of emissions savings at the point of combustion will also often be significantly lower when Open Cycle Gas Turbine (OCGT) technology rather than Combined Cycle Gas Turbine (CCGT) technology is used (i.e., for 'peaking', flexible gas-fired generation), due to OCGT's lower efficiency.¹⁷⁵

127. Overall, the IEA notes that "the lifecycle emissions intensity of gas and coal is subject to a high degree of uncertainty."¹⁷⁶ The wide range of emissions intensity is illustrated by the below graph from the research of Professor Robert Howarth of Cornell University.¹⁷⁷

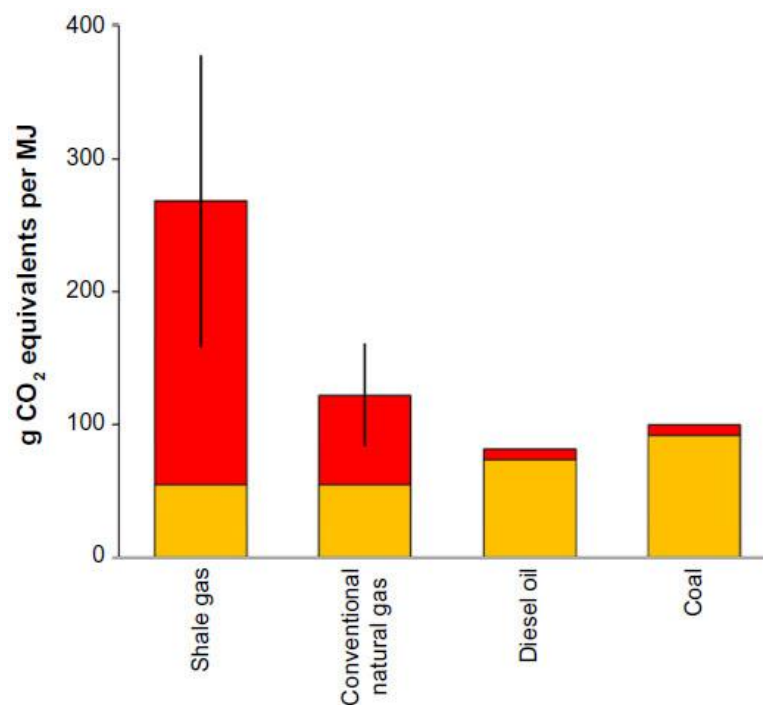


Figure 7 – GHG footprints of shale gas, conventional gas, oil, and coal (yellow indicates direct and indirect emissions of carbon dioxide; red indicates methane emissions expressed as CO₂ equivalent using a 100-year global warming potential of 86; vertical lines for shale gas and conventional natural gas indicate the range of likely methane emissions.)

¹⁷⁴ IEA, (2019), *The Role of Gas in Today's Energy Transitions*, p. 35.

¹⁷⁵ See, e.g., <https://www.iea.org/etp/tracking2017/naturalgas-firedpower/>.

¹⁷⁶ See IEA, (2019), *The Role of Gas in Today's Energy Transitions*, p. 41.

¹⁷⁷ Howarth, R, (2015), *Methane emissions and climatic warming risk from hydraulic fracturing and shale gas development: implications for policy* (available at: <https://www.dovepress.com/methane-emissions-and-climatic-warming-risk-from-hydraulic-fracturing--peer-reviewed-fulltext-article-EECT>).

128. BP's choice to focus exclusively on combustion emissions is a choice to present only one part of the picture. By concealing important information about fuel production and infrastructure emissions, BP omits a critical aspect of the debate around gas that the public should be made aware of. When considering a fuel's contribution to climate change, the emissions from just one part of the supply chain are not the point: it is the total emissions over the full lifecycle that contribute to climate change.
129. Vague qualifications such as "in power generation" or "when used in the power sector" appear to allude (to the expert reader or viewer) to the fact that the "50 percent cleaner" claims only consider combustion emissions. But the average member of the public is not likely to understand the apparently intended implication of these qualifications – namely, that BP's claim does not apply across the life cycle of gas. Indeed, BP's use of the qualification "during production" on the "Solar and natural gas" page of its website is false given that it refers to the production of gas (i.e., extraction and transportation) and not to combustion alone ("natural gas is 50% cleaner than coal during production").¹⁷⁸
130. By contrast, when discussing its Brazilian biofuel project, BP emphasizes that biofuel has 70 percent fewer *life cycle* emissions.¹⁷⁹
131. The public cannot be expected to have the specialist knowledge necessary to infer that gas may not be as clean overall as BP's advertisements make it appear, not least when BP uses lifecycle emissions information elsewhere in its communications. BP's language and framing deliberately but subtly obscure gas's environmental impact, by focusing on just one part of it.

9.4 Application of the OECD Guidelines

132. BP's claim that gas is 50% cleaner than coal breaches the following provisions of the OECD Guidelines, for the reasons provided below:

- 132.1. Contrary to Chapter VIII, paragraph 4, the statements in the relevant advertisements were deceptive and / or misleading:

¹⁷⁸ <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/solar-and-natural-gas.html>.

¹⁷⁹ BP, (2019), *Annual Report 2018* (available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2018.pdf>), p. 38 ("We produce ethanol from sugar cane in Brazil, which has life-cycle greenhouse gas emissions around 70% lower than conventional transport fuels.").

132.1.1. The statements overstate the environmental benefits of gas. As mentioned above, the ICC Marketing Code and The UK Code of Non-broadcast Advertising confirm that it is misleading to overstate environmental attributes in this way.¹⁸⁰ The ICC Marketing Code also states that marketing communications should not contain comparisons that are likely to mislead.¹⁸¹ These claims therefore abuse consumers' concern for the environment and exploit their possible lack of environmental knowledge regarding the climate impacts of gas, thereby failing to meet express requirements of the ICC Marketing Code.¹⁸² The specific issue of overstating the emissions savings of gas versus coal was at issue in the UK ASA's decisions in respect of INEOS and Breitling cited above at paragraphs 38.1 - 38.12, in which the ASA found that both INEOS and Breitling's respective claims were misleading. These claims were that "gas has about half the emissions as coal" and that "replacing coal with natural gas for energy" would lead to reduced GHG emissions.

132.1.2. The ICC and UK Codes both emphasise the need for companies to make clear which parts of a product's lifecycle a claim relates to and to make sure that such claims do not mislead as to the overall environmental impact.¹⁸³ The ICC Framework for Responsible Environmental Marketing Communications also confirms that specialist or scientific terminology should only be used in a way that can be readily understood by those to whom the message is directed. The need for explicit qualifications in this context was highlighted by the UK ASA's recent decision in respect of Good Energy Limited cited above at paragraph 38.13. Here, the references (in some advertisements) to "in power generation" or "when used in the power sector" do not make clear to the reasonable consumer that only part of the gas's lifecycle emissions is being compared, or alternatively, they do not make clear which stages of the lifecycle is being omitted and how significant the corresponding emissions are. Moreover, BP's use of the qualification "during production" in the "Solar and natural gas" page of its website is false as it refers to the production of gas and not just to its combustion in electricity generation.

¹⁸⁰ ICC Marketing Code, Article D1; UK Code of Non-broadcast Advertising and Direct & Promotional Marketing, Background, p. 16.

¹⁸¹ ICC Marketing Code, Article 11.

¹⁸² ICC Marketing Code, Article D1.

¹⁸³ ICC Marketing Code, Article D4; UK Code of Non-broadcast Advertising and Direct & Promotional Marketing, Background, Rule 11.4.

132.2. Contrary to Chapter VIII, paragraph 2, and Chapter VI, paragraph 2(a), BP failed to provide accurate, verifiable and / or clear information that is sufficient to enable consumers to make informed decisions regarding the environmental attributes of BP's goods and services:

132.2.1. It presented information regarding the environmental attributes of gas that was false or misleading and that undermined consumers' understanding of such attributes.

132.3. Contrary to Chapter VIII, paragraph 5 and Chapter VI, paragraph 6(c), BP advanced the above information to the public in relation to its business activities that, by reason of being false and/or misleading, was directly contrary to the OECD Guidelines' requirement that enterprises should support efforts to promote consumer education that would improve the ability of consumers to make informed decisions involving complex goods, services and markets, to better understand the economic and social impact of their decisions and to support sustainable consumption.

133. In view of the above breaches of the OECD Guidelines, ClientEarth requests that BP remove its use of this claim and issue a public clarification that makes clear the full lifecycle emissions footprint of gas.

10 Misleading claims that BP's gas is "cleaner burning"

10.1 Introduction and summary

134. BP's advertising presents its gas as "cleaner burning". Irrespective of the uncertainties around the comparative life cycle emissions impact of gas versus coal (as discussed above), BP's claim is misleading.

135. BP suggests that its gas is either (i) cleaner than other sources of gas, or (ii) cleaner than all competing energy sources in contexts outside of electricity generation. However, neither of these propositions is true. In respect of the first, all forms of gas produce the equivalent amounts of carbon dioxide at the point of combustion and some forms of gas have significantly lower lifecycle emissions. In respect of the second, gas is not a cleaner source of energy than other sources of energy available for use in the domestic settings featured in the advertising (i.e., for spatial heating and cooking). For the reasons given in this Complaint, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

10.2 The advertisements

136. BP refers throughout its advertising campaign to the benefits of its “cleaner-burning natural gas”. For example, it includes this claim in:

- 136.1. its “Energy for busy lives” video and the accompanying page of its website;¹⁸⁴
- 136.2. the “Solar and natural gas” page of its website;¹⁸⁵
- 136.3. the “We see possibilities everywhere” page of its website;¹⁸⁶
- 136.4. the “Wind and natural gas” page of its website;¹⁸⁷
- 136.5. a podcast advertisement;¹⁸⁸ and
- 136.6. the series of print advertisements published in the Financial Times.¹⁸⁹

10.3 Analysis

137. As outlined above, one possible suggestion created by BP’s use of this phrase is that BP’s gas is in some way less polluting when it is burnt than other types of fossil gas or other types of gas more generally. However, this is not the case, with the fossil gas supplied by BP having no materially beneficial difference in terms of its environmental impact to the gas supplied by other companies. Indeed, it may be significantly worse on a lifecycle basis if the competing gas is biogas, biomethane (a purer form of biogas) or hydrogen.¹⁹⁰ Equally, countries such as Germany and France have also begun the blending hydrogen with fossil gas to lower the emissions footprint of their gas networks.¹⁹¹ While BP itself

¹⁸⁴ https://www.bp.com/en_gb/united-kingdom/home/who-we-are/possibilities-everywhere/energy-for-busy-lives.html (“We’re producing cleaner-burning natural gas and solar and wind power.” [...] “We’re boosting supplies of cleaner-burning natural gas.”).

¹⁸⁵ https://www.bp.com/en_gb/united-kingdom/home/who-we-are/possibilities-everywhere/solar-and-natural-gas.html (“And, whatever the weather, our cleaner-burning natural gas provides the perfect partner to renewables for those days when the wind drops and the sun fails to shine.”).

¹⁸⁶ https://www.bp.com/en_gb/united-kingdom/home/who-we-are/possibilities-everywhere.html (“From renewable energy and cleaner-burning natural gas to new lower carbon businesses and advanced fuels, we are working to make all forms of energy cleaner and better.”).

¹⁸⁷ https://www.bp.com/en_gb/united-kingdom/home/who-we-are/possibilities-everywhere/wind-and-natural-gas.html (“Wind turbines are flying high. With sleeker blades and improved technology, our wind farms are producing more megawatts at a more competitive cost than ever before. But how do you keep the lights on when the wind stops blowing? At BP, we see a simple answer: we see cleaner-burning natural gas. [...]”).

¹⁸⁸ **Annex C, Exhibit 2.B**

¹⁸⁹ **Annex C, Exhibits 5.A.1, 5.A.2, 5.B and 5.C.**

¹⁹⁰ See, e.g., IEA, (2019), *The Role of Gas in Today’s Energy Transitions*, pp 2, 42, 71 and 77.

¹⁹¹ See, e.g. <https://www.eon.com/en/about-us/media/press-release/2019/hydrogen-levels-in-german-gas-distribution-system-to-be-raised-to-20-percent-for-the-first-time.html>;

supplies products such as biogas,¹⁹² its “cleaner-burning” claim is used here in the context of its “natural” (fossil) gas.

138. Another possible suggestion of the advertising is that gas is cleaner burning than other competing energy sources. While this may often be the case in respect of coal for power generation (as is discussed in more detail above), this is not the case in a number of other contexts, including the setting featured in BP’s “Energy for busy lives” video. In this video, the phrase is used in the context of the home and most directly in the context of cooking.



Figure 8 - Frame from BP’s “Energy for busy lives” video

139. However, as the UK’s Committee on Climate Change make clear in its report of February 2019, homes need to stop using gas for heating and cooking to reduce their climate impact.¹⁹³ To the extent that it makes sense to refer to gas as “cleaner burning” in this context, it is not apparent how using gas for cooking is less polluting than using an induction hob powered by increasingly low-carbon electricity. Equally, as already

<https://www.euractiv.com/section/energy/news/french-gas-networks-could-mix-in-green-hydrogen-in-future-say-operators/>.

¹⁹² BP, (2019), *Annual Report 2018*, p. 27.

¹⁹³ Committee on Climate Change (CCC), (2019), *UK housing: Fit for the future?* (available at: <https://www.theccc.org.uk/publication/uk-housing-fit-for-the-future/>); see also <https://www.bbc.co.uk/news/uk-47320673>.

mentioned, biomethane, hydrogen or hydrogen-blended gas could also provide a lower carbon energy source for spatial heating on a lifecycle basis.

140. The misleading presentation of the issue is compounded by the text appearing in small print alongside the image of a family cooking on a gas stove explaining that “natural gas burns 50% cleaner than coal in power generation” (see the frame above). To the viewer that is able to read this text while digesting the rest of the video’s content, which may be very few viewers, it is not clear whether this information is intended to:

140.1. guard against creating a suggestion that BP’s gas (or gas in general) is cleaner than other domestic energy sources for cooking and heating or than other types of gas; or

140.2. supplement the visual and audio presentation with additional claimed benefits, i.e., in the context of power generation.

141. The overall (il)legibility of this text also infringes the typical advertising guidelines regarding the size and duration of such disclaimers. In particular, the guidelines on the use of superimposed text in television advertising issued by the UK Broadcast Committee of Advertising Practice state that:¹⁹⁴

“4.2. TV advertising is inherently limited by time and space. Viewers can only reasonably be expected to absorb information, if it is conveyed clearly. The use of superimposed text should therefore be kept to a minimum.

...

4.4. ... Where a qualification is particularly significant – because it is very important to viewers’ understanding of a claim in the main creative – other measures should be taken to place emphasis on it. For instance, by: amending the main claim to make it easier to understand; including the relevant qualifier in the main ad creative; using the voice-over to further draw viewers’ attention to it; and/or using a longer recognition period when calculating the duration of hold.

...

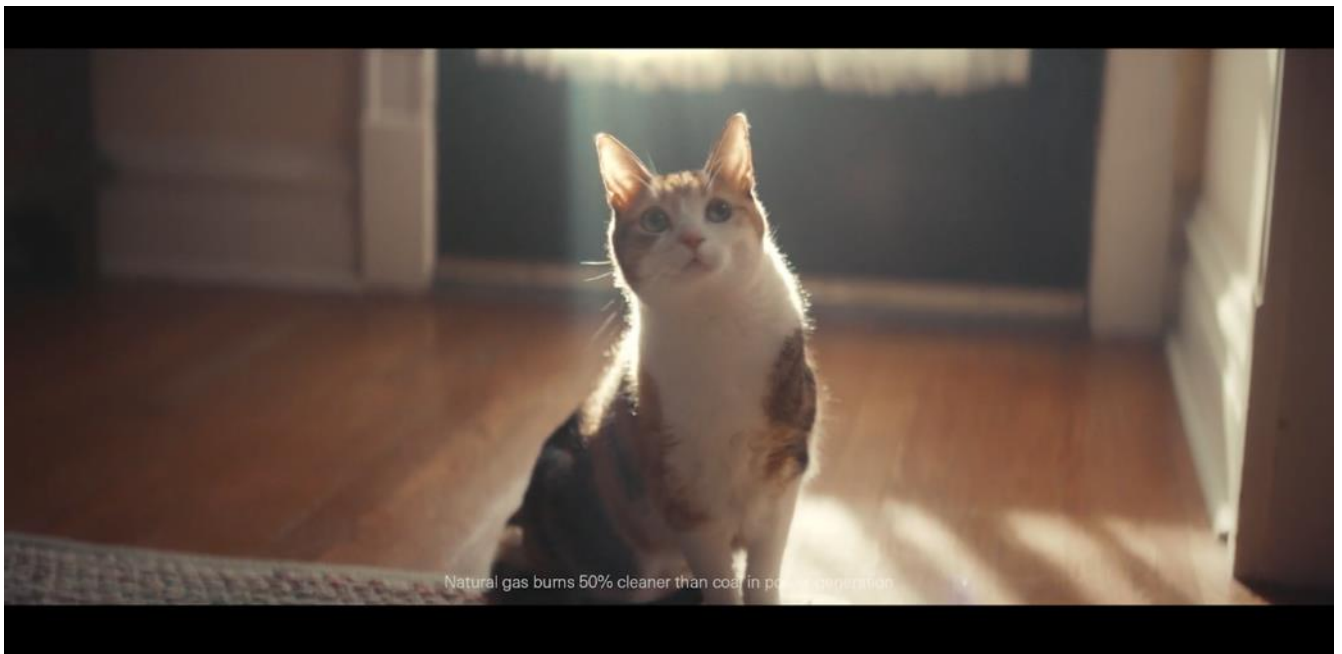
¹⁹⁴ Available at: <https://www.asa.org.uk/uploads/assets/uploaded/065503b6-9f75-40cc-83e4d520595c5850.pdf>.

5.1. ... Superimposed text should be of sufficient size to be legible to viewers.

...

6.4. ... The contrast between supers and the background, whether in terms of colour contrast or relative brightness, must be sufficient to permit the text to be clearly legible. ... As a general rule of thumb, 'light-on-light' combinations (e.g. whites and greys) are unlikely to be acceptable."

142. Leaving aside the problems with the "50% cleaner" claim itself (as discussed above), the significance of such a qualification requires that it is communicated as clearly as the claim itself, including by inclusion in the voice over. Moreover, the white text should not have been put against a white / light background, as this made it illegible for a large proportion of the time that is shown (being a "light-on-light combination"). The below frames are representative of roughly two seconds of the five seconds in which the text appears. BCAP guidance recommends that superimposed text of 10 words in length should be shown for at least five seconds.¹⁹⁵



¹⁹⁵ BCAP, *Guidance on the use of superimposed text in television advertising*, p. 20.



Figure 9 - Frames from BP's "Energy for busy lives" video

143. In any event, and irrespective of the legibility of this qualification, the viewer is clearly not well informed by BP's advertising as to the environmental impacts of gas and / or BP's gas specifically.

10.4 Application of the OECD Guidelines

144. BP's claim that its gas is "cleaner burning" breaches the following provisions of the OECD Guidelines, for the reasons provided below:

144.1. Contrary to Chapter VIII, paragraph 4, the statements in the relevant advertisements were deceptive and / or misleading:

144.1.1. The statements incorrectly suggest to consumers either that BP's fossil (or "natural") gas is lower carbon than other forms of gas or that fossil gas generally is cleaner than other forms of competing energy in the domestic setting, such as for spatial heating or cooking. These claims are misleading and abuse consumers' concern for the environment, exploiting their possible lack of environmental knowledge regarding the climate impacts of gas, as well conveying a range of possible meanings to the reasonable consumer, thereby failing to meet express requirements of the ICC Marketing Code.¹⁹⁶ The ICC Marketing Code

¹⁹⁶ ICC Marketing Code, Article D1.

also states that marketing communications should not contain comparisons that are likely to mislead,¹⁹⁷ while the ISO confirms that companies shall not make claims that broadly imply that a product is environmentally beneficial or benign.¹⁹⁸

144.2. Contrary to Chapter VIII, paragraph 2, and Chapter VI, paragraph 2(a), BP failed to provide accurate, verifiable and / or clear information that is sufficient to enable consumers to make informed decisions regarding the environmental attributes of BP's goods and services:

144.2.1. It presented information regarding the environmental attributes of gas that was misleading and that undermined consumers' understanding of such attributes.

144.3. Contrary to Chapter VIII, paragraph 5, and Chapter VI, paragraph 6(c), BP advanced the above information to the public in relation to its business activities that, by reason of being misleading, was directly contrary to the OECD Guidelines' requirement that enterprises should support efforts to promote consumer education that would improve the ability of consumers to make informed decisions involving complex goods, services and markets, to better understand the economic and social impact of their decisions and to support sustainable consumption.

145. In view of the above breaches of the OECD Guidelines, ClientEarth requests that BP remove its use of this claim and issue a public clarification that makes clear the specific circumstances in which gas can be considered cleaner than competing fuels and the extent of its negative climate impact notwithstanding any such relative benefit.

11 Misleading claims that BP's gas only performs a back-up function in electricity generation

11.1 Introduction and summary

146. BP's advertising presents gas as a purely residual or back-up fuel in electricity generation. However, this is not the case with gas making up a significant proportion of regular generation in many countries, providing electricity that could otherwise be provided by

¹⁹⁷ ICC Marketing Code, Article 11.

¹⁹⁸ ISO 14021, Article 5.3.

renewables. For the reasons given in this document, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

11.2 The advertisements

147. There are two advertisements where this claim is made most prominently: “Wind and natural gas” and “Solar and natural gas”.

148. On the “Wind and natural gas” page of its website, BP states “on those rare still days, that’s where natural gas comes in.” Gas is described as being used only when “the wind stops blowing”, and for “those days when the wind drops and the sun fails to shine”. It claims that “whatever the weather, our cleaner-burning natural gas can play a supporting role to still keep your kettle ready for action”.¹⁹⁹

149. This claim is also made in the “Wind and natural gas” video, in which gas is described as ready to power “one of the windiest places in America”, “on the off chance the wind ever stops blowing”.²⁰⁰



¹⁹⁹ <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/solar-and-natural-gas.html>.

²⁰⁰ <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/wind-and-natural-gas.html>.

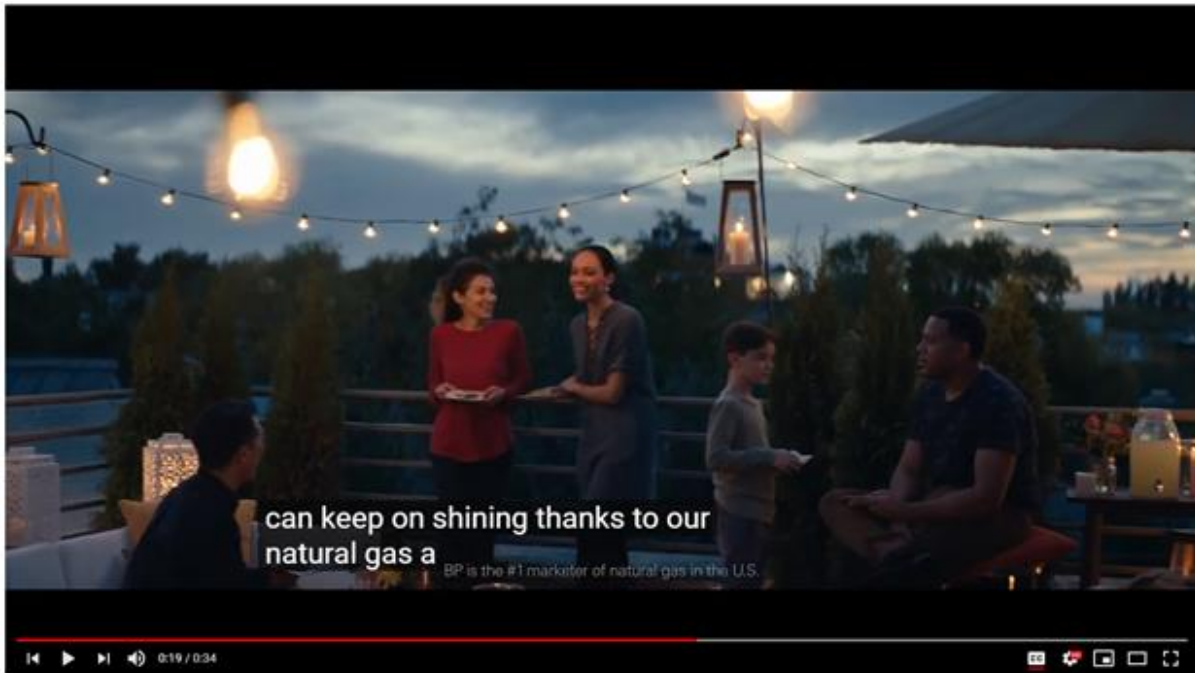


Figure 10 - Frames from BP's "Wind and natural gas" video

150. In its "Solar and natural gas" video advertisement, BP features a floating solar farm on the Queen Elizabeth II Reservoir (as depicted in the below frame of the advertisement).



Figure 11 - Frame from BP's "Solar and natural gas" video

151. As with "wind and natural gas", this advertisement incorrectly suggests that gas has only a residual or back-up function in electricity generation. In particular, as depicted in the

below frame from the video, street lights are shown coming on in overcast weather, with the clear implication being that rain and fading daylight conditions have prevented solar energy from being generated, with gas filling the gap – “to keep the power flowing and the lights shining, no matter the forecast”. This is a general implication regarding the use of gas in electricity generation but also suggests specific relevance to the UK given the setting of the advertisement.

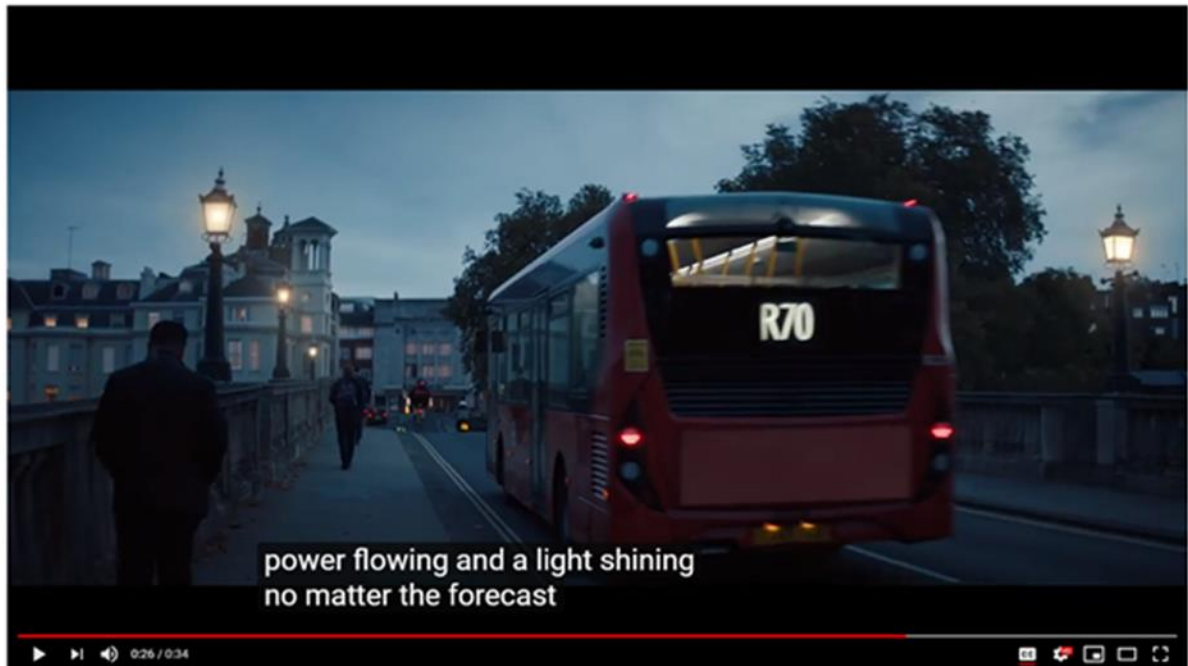


Figure 12 - Frame from BP's "Solar and natural gas" video

11.3 Analysis

152. As just set out, these advertisements suggest to consumers that BP's gas – and gas more generally – functions merely as a back-up source of electricity generation, providing power only when there are drops in variable renewable generation such as wind and solar.

153. However, this is not the case. BP's gas, and gas generally, are currently used to provide regular power generation around the world, not just peak additions – including in the specific places mentioned in its videos. For example, according to the US government's Energy Information Administration CCGT power plants – the most common type of gas-fired plant in the US²⁰¹ – operated at average load factors of between 46% and 73% in the

²⁰¹ <https://www.eia.gov/todayinenergy/detail.php?id=34172> (“Natural gas-fired combined-cycle units accounted for 53% of the 449 gigawatts (GW) of total U.S. natural gas-powered generator capacity in 2016. Combined-cycle generators have been a popular technology choice since the 1990s and made up a large share of the capacity added between 2000 and 2005. Under current natural gas and coal market

first half of 2019, meaning that these plants were generating electricity for a large part of the day, and sometimes the majority of the day.²⁰² As in the US context, UK government statistics show that CCGT generation currently operates for a large part of the day on average (at an annual average of 43-50% in 2016-2018).²⁰³

154. The fact that gas is currently used for power generation on the British grid irrespective of weather conditions is illustrated clearly by the below graphs, which show the different fuel sources supplying the British grid over a year-long period (to 9 October 2019) and on a day with high levels of wind generation (5 September 2019), with gas represented by the second band shaded purple and solar and wind immediately below it, shaded in yellow and blue respectively.²⁰⁴

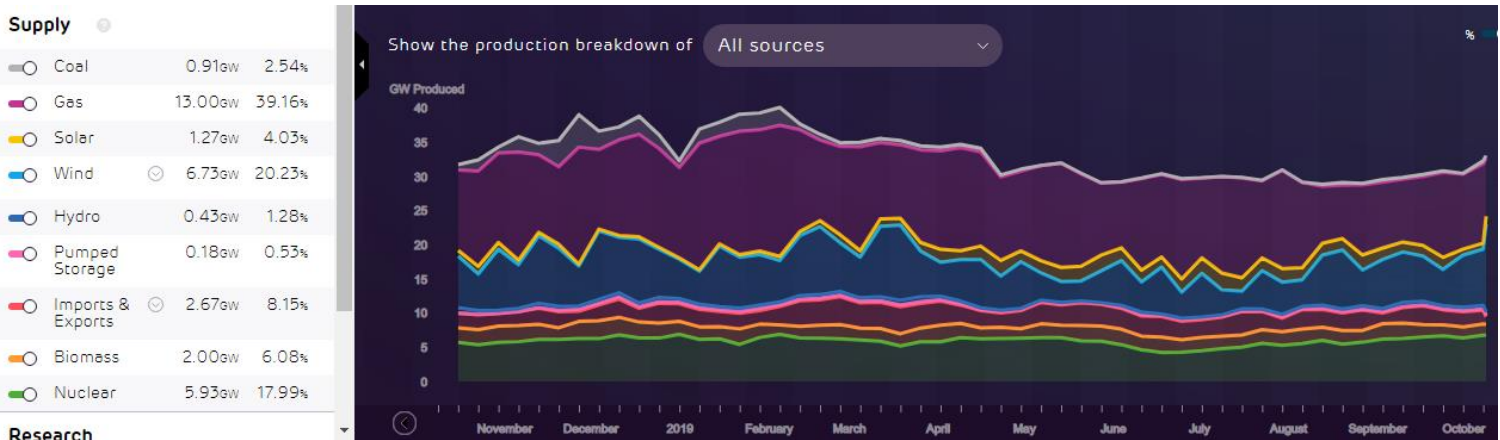


Figure 13 - Production breakdown of electricity on the British grid (year-long period)

conditions in many regions of the country, combined-cycle generating units are often used as baseload generation, which operate throughout the day.”)

²⁰² https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_6_07_a.

²⁰³ Department for Business, Energy & Industrial Strategy, (July 2019), ‘Plant loads, demand and efficiency’ (available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826560/DUKES_5.10.xls).

²⁰⁴ Generated using data at https://electricinsights.co.uk/#/dashboard?_k=wk3sgq.

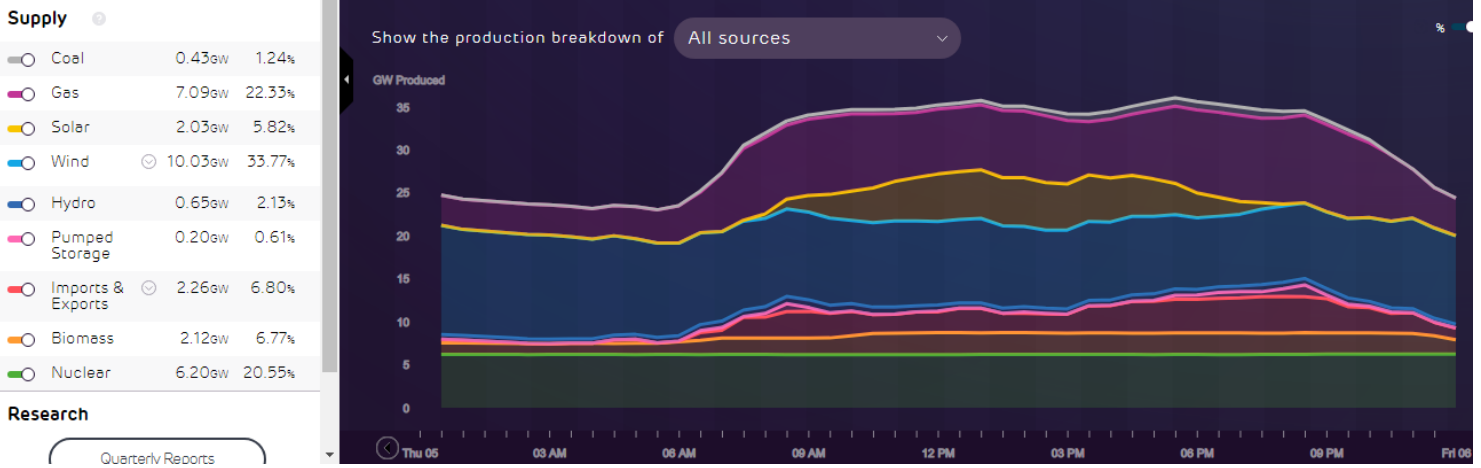


Figure 14 – Production breakdown of electricity on the British grid (5 September 2019)

155. Rarely – if ever – does gas not supply power to the British grid in the current mix of energy generation. Gas maintains a significant share of the UK’s electricity generation irrespective of the level of solar and wind generation. It is therefore not the case that gas is only used in power generation when there is a low supply from renewable energy sources, as BP’s advertising suggests.

156. At a global level, BP itself acknowledges that gas is not merely a residual or back up fuel in electricity generation in its most recent Statistical Review of World Energy 2019 as illustrated by the below graph split by world regions:

Regional electricity generation by fuel 2018

Percentage

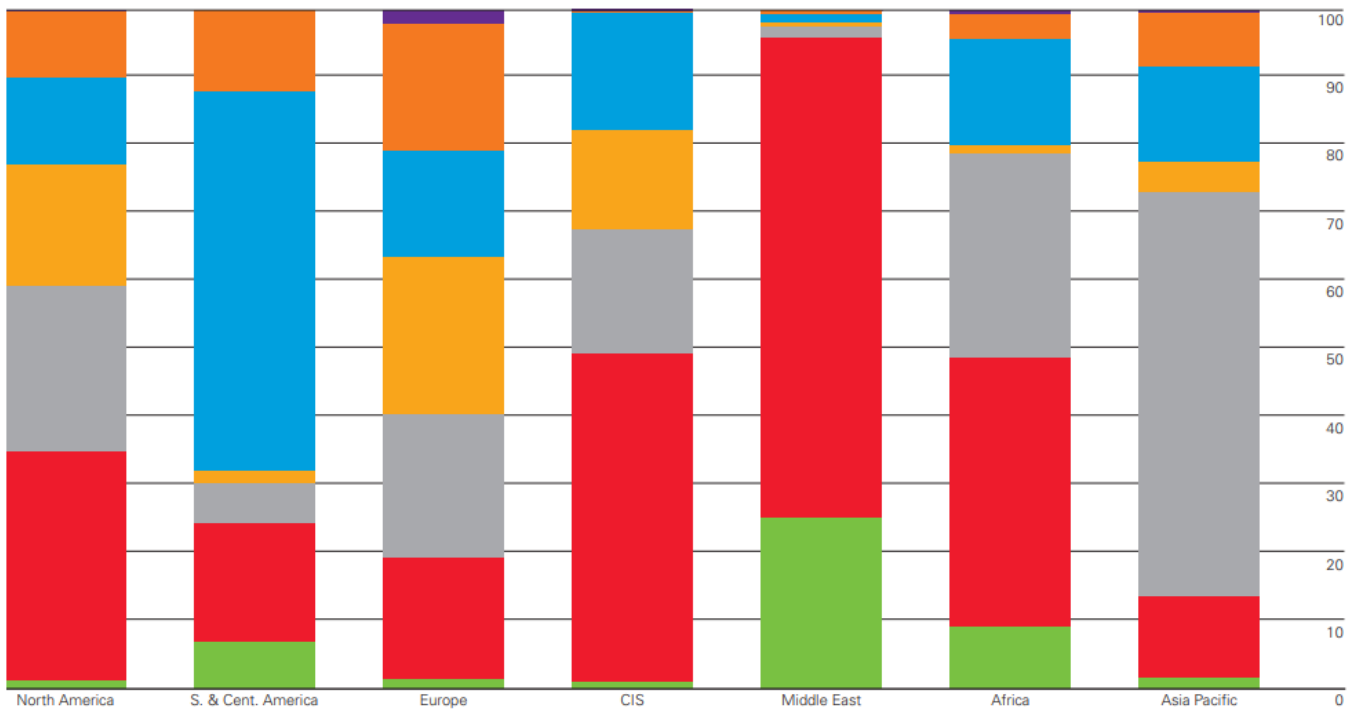
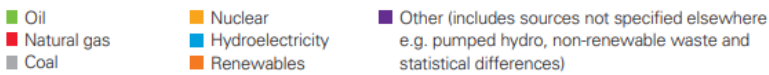


Figure 15 - Regional electricity generation by fuel in 2018

157. The text accompanying this graph states that: “Natural gas is the dominant fuel for power generation in North America followed by coal ... In CIS and the Middle East, natural gas is by far the most important fuel for power generation.”²⁰⁵ As described above, BP does not appear to be seeking to change this dominance of gas and plans to grow its gas business.

11.4 Application of the OECD Guidelines

158. BP’s claim that gas only serves as a back-up to renewables breaches the following provisions of the OECD Guidelines, for the reasons provided below:

158.1. Contrary to Chapter VIII, paragraph 4, the statements in the relevant advertisements are deceptive and / or misleading:

158.1.1. The statements suggest to consumers that gas is only being used to support the use of renewables when in fact gas commonly generates electricity that could otherwise be generated by renewables, thereby increasing the emissions

²⁰⁵ BP, (2019), *BP Statistical Review of World Energy* (available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-full-report.pdf>), p. 55.

intensity of overall electricity supply. As mentioned above, the ICC Marketing Code and the UK Code of Non-broadcast Advertising confirm that it is misleading to overstate environmental attributes in this way.²⁰⁶ These claims also abuse consumers' concern for the environment and exploit their possible lack of environmental knowledge regarding the functioning of the electricity system and of the climate impacts of gas, thereby breaching express requirements of the ICC Marketing Code.²⁰⁷

158.2. Contrary to Chapter VIII, paragraph 2, and Chapter VI, paragraph 2(a), BP failed to provide accurate, verifiable and / or clear information that is sufficient to enable consumers to make informed decisions regarding the environmental attributes of BP's goods and services:

158.2.1. It presented false and misleading information regarding the way in which gas is typically used to generate electricity that undermined consumers' understanding of the company's business extracting and marketing gas for power generation.

158.3. Contrary to Chapter VIII, paragraph 5, and Chapter VI, paragraph 6(c), BP advanced the above information to the public in relation to its business activities that, by reason of being false and/or misleading, was directly contrary to the requirement under the OECD Guidelines that enterprises should support efforts to promote consumer education that would improve the ability of consumers to make informed decisions involving complex goods, services and markets, to better understand the economic and social impact of their decisions and to support sustainable consumption.

159. In view of the above breaches of the OECD Guidelines, ClientEarth requests that BP remove any suggestions that its gas only serves as a back-up to renewables and issue a public clarification that makes clear that the current use of gas is key contributor to the climate crisis.

²⁰⁶ ICC Marketing Code, Article D1; UK Code of Non-broadcast Advertising and Direct & Promotional Marketing, Background, p. 16.

²⁰⁷ ICC Marketing Code, Article D1.

12 Misleading statements that gas is a “perfect”, “ideal” or “smart” partner to renewables

12.1 Introduction and summary

160. In addition to misrepresenting the current role of gas in electricity generation, BP misleadingly suggests that gas is a “perfect”, “ideal” or “smart” partner to renewables when gas has significant adverse environmental impacts when used in this context. For the reasons given in this Complaint, this is contrary to paragraphs 2(a) and 6(c) of Chapter VI of the OECD Guidelines and paragraphs 2, 4 and 5 of Chapter VIII.

12.2 The advertisements

161. In a number of different advertisements in its current campaign, BP makes the claim that gas is:

161.1. “a smart partner to renewables”;²⁰⁸

161.2. “an ideal complement to renewables”;²⁰⁹ and

161.3. “a perfect partner to renewables”.²¹⁰

12.3 Analysis

162. The use of the word “perfect”, “ideal” or “smart” in this context suggests that gas does not have significant negative environmental impacts when it is used in electricity generation.

²⁰⁸ <https://www.bp.com/en/global/corporate/who-we-are/possibilities-everywhere/more-possibilities.html> (“At BP, we see possibilities in natural gas, the smart partner to renewables that is 50% lower carbon than coal when used in power generation. ... And, it’s a smart partner to renewables, providing a cost-effective back-up when the wind doesn’t blow and the sun doesn’t shine.”); https://twitter.com/bp_plc/status/1089457584694685696?lang=en (“Our natural gas is a smart partner to renewable energy: <http://on.bp.com/possibilitieseverywhere...#PossibilitiesEverywhere#NatGas>”); “Sun, wind and cleaner natural gas” print advertisement in the Financial Times (**Annex C, Exhibit 5.B**).

²⁰⁹ <https://www.bp.com/en/global/corporate/energy-economics/spencer-dale-group-chief-economist/energy-illustrated.html> (“Natural gas provides an ideal complement to the rapid growth in renewable energy”). See also <https://www.bp.com/en/global/corporate/news-and-insights/speeches/lubricating-the-future-of-energy-through-trade.html> (“To help achieve this we also need to focus on growing gas – the ideal partner for renewables which are intermittent by nature.”).

²¹⁰ <https://www.bp.com/en/global/bp-global-energy-trading/who-we-are/possibilities-everywhere/wind-and-natural-gas.html> [<https://perma.cc/DHV7-KAPW>] (“At BP, we see a simple answer: we see cleaner-burning natural gas. It’s a perfect partner to renewables to help the world keep advancing”); <https://www.bp.com/en/global/bp-global-energy-trading/who-we-are/possibilities-everywhere/more-possibilities.html> (“Using gas to provide electricity instead of coal can cut carbon emissions in half. It’s also a perfect partner to renewable power.”).

However, this is clearly not the case, given that gas generation has a significant climate impact and that its use therefore needs to be reduced.

163. While gas has (in some circumstances and on some measures) a lower GHG footprint when compared to coal or oil, it is nonetheless a problematic source of GHGs when burned for electricity generation. For this reason alone, it cannot be “perfect” or “smart”. On any view, to avoid misleading, this description would need to be accompanied by a clear clarification of the sense and context in which gas can be considered “perfect”, “ideal” or “smart”.

164. The following problems further undermine gas as a “perfect”, “ideal” or “smart” partner:

164.1. methane leakage and indirect CO₂ emissions in the extraction and transport of gas upstream (as discussed above);²¹¹

164.2. that significant reductions in unabated gas use are needed in most Paris-compliant pathways;²¹²

164.3. the need for CCS for gas to become sustainable;²¹³

164.4. the need for elevated carbon prices for gas CCS to be cost effective and thus implemented (there is no gas-fired electricity generation currently operating worldwide with CCS at commercial scale);²¹⁴ and

164.5. even with CCS, gas is likely to have significant residual emissions, both from methane leakage throughout the supply chain and as CCS units commonly capture only 90% or less of emitted carbon dioxide.²¹⁵ The use of CCS can also result in *increased*

²¹¹ IEA, (2019), *The Role of Gas in Today’s Energy Transitions*, pp 2, 16, 24, 39, 41, 44 and 71.

²¹² IPCC, (2018), *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (available at: <https://www.ipcc.ch/sr15/>), pp 14 and 132. See also SEI, IISD, ODI, Climate Analytics, CICERO, and UNEP, (2019), *The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (available at: <http://productiongap.org/wp-content/uploads/2019/11/Production-Gap-Report-2019.pdf>), p. 4.

²¹³ IPCC, (2018), *Global Warming of 1.5°C*, p. 136.

²¹⁴ IPCC, (2018), *Global Warming of 1.5°C*, pp 326-327. On the economic challenges that have faced CCS to date, see also Oil Change International, (2016), *The Sky’s Limit – Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production* (available at: http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf), Appendix 3.

²¹⁵ IPCC, (2018), *Global Warming of 1.5°C*, p. 135. See also Rogelj et al, (2018), *Scenarios towards limiting global mean temperature increase below 1.5°C* (available at: <https://www.nature.com/articles/s41558-018-0091-3>).

upstream methane and CO₂ emissions given the increased amount of gas used to power the capture, compression and transport plant.²¹⁶

165. “Perfect” or “smart” is also overstated where there are alternative solutions to addressing the intermittency of renewables with far lower GHG implications, such as grid interconnection, battery storage, demand-side management and improvements in system operation.²¹⁷ Indeed, BP acknowledges that similar measures are needed in its own Energy Outlook projections.²¹⁸ For example, the cost-effective role that battery storage can play in supporting renewables is supported by a number of studies, including the below analysis from Bloomberg of the unsubsidised cost of electricity generation technologies in the UK in 2019.²¹⁹

²¹⁶ See, e.g., Anders Thorbjörnsson et al., (2015), *Carbon capture and coal consumption: Implications of energy penalties and large scale deployment* (available at:

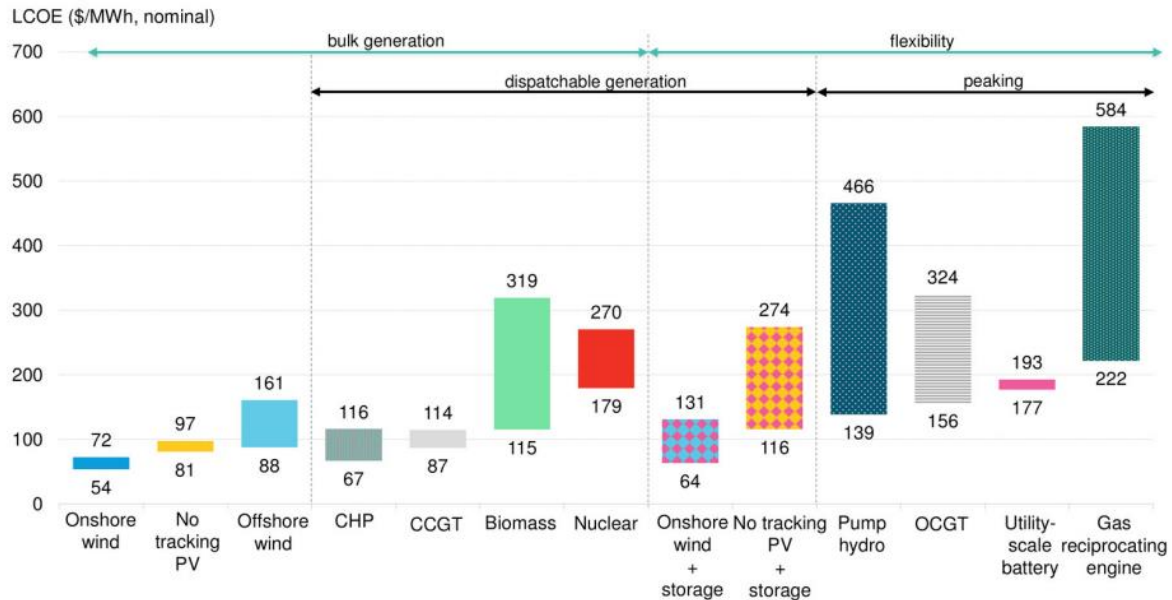
<https://www.sciencedirect.com/science/article/pii/S2211467X14000716?via%3Dihub>), abstract (“Coal consumption using CCS can be up to 31% higher compared to equal non-CCS cases, leading to several scenarios exceeding projected coal production in resource constrained studies.”). See also <https://www.bgs.ac.uk/discoveringGeology/climateChange/CCS/TheCostofCSS.html>.

²¹⁷ CCC, (2019), *Net Zero – Technical Report* (available at: <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-Technical-report-CCC.pdf>), p. 33.

²¹⁸ BP, (2019), *Energy Outlook – 2019*, (available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/energy-outlook/bp-energy-outlook-2019.pdf>), p. 121.

²¹⁹ Bloomberg New Energy Finance, (19 November 2019), *Levelized Cost of Electricity (LCOE) Update*, p. 64. See also Oil Change International, Platform, Friends of the Earth Scotland, (2019), *Sea Change – Climate Emergency, Jobs and Managing the Phase-Out of UK Oil and Gas Extraction* (available at: <http://priceofoil.org/content/uploads/2019/05/SeaChange-final-r3.pdf>), p. 38.

Levelized cost of electricity



Source: BloombergNEF. Note: The LCOE range represents a range of costs and capacity factors. Battery storage systems (co-located and stand-alone) presented here have four-hour storage. In the case of solar- and wind-plus-battery systems, the range is a combination of capacity factors and size of the battery relative to the power generating asset (25% to 100% of total installed capacity). All LCOE calculations are unsubsidized. Categorization of technologies is based on their primary use case.

Figure 16 – Levelised cost of different electricity generation in the UK in 2019

12.4 Application of the OECD Guidelines

166. The claim that gas is the “perfect”, “ideal” or “smart” partner or complement to renewables breaches the following provisions of the OECD Guidelines, for the reasons provided below:

166.1. Contrary to Chapter VIII, paragraph 4, the statements in the relevant advertisements were deceptive and / or misleading:

166.1.1. The statements suggest to consumers that gas is an environmentally sustainable fuel source when used in electricity generation, when the best that can be said of gas is that it is less carbon-intensive (in some circumstances) when compared to coal. As mentioned above, the ICC Marketing Code and The UK Code of Non-broadcast Advertising confirm that it is misleading to overstate

environmental attributes in this way.²²⁰ The ISO also confirms that companies shall not make claims that broadly imply that a product is environmentally beneficial or benign.²²¹ These claims therefore abuse consumers' concern for the environment and exploit their possible lack of environmental knowledge regarding the climate impacts of gas, thereby failing to meet express requirements of the ICC Marketing Code.²²²

166.2. Contrary to Chapter VIII, paragraph 2, and Chapter VI, paragraph 2(a), BP failed to provide accurate, verifiable and/or clear information that is sufficient to enable consumers to make informed decisions regarding the environmental attributes of BP's goods and services:

166.2.1. It presented information regarding the environmental attributes of gas that was false and that undermined consumers' understanding of such attributes.

166.3. Contrary to Chapter VIII, paragraph 5, and Chapter VI, paragraph 6(c), BP advanced the above information to the public in relation to its business activities that, by reason of being false and/or misleading, is directly contrary to the OECD Guidelines' requirement that enterprises should support efforts to promote consumer education that would improve the ability of consumers to make informed decisions involving complex goods, services and markets, to better understand the economic and social impact of their decisions and to support sustainable consumption.

167. In view of the above breaches of the OECD Guidelines, ClientEarth requests that BP remove its use of the words "perfect", "ideal" or "smart" and issue a public clarification that makes clear that the use of gas needs to be reduced as far and as fast as possible to address the climate crisis.

²²⁰ ICC Marketing Code, Article D1; UK Code of Non-broadcast Advertising and Direct & Promotional Marketing, Background, p. 16.

²²¹ ISO 14021, Article 5.3.

²²² ICC Marketing Code, Article D1.

BREACHES OF THE OECD GUIDELINES: ENERGY DEMAND AND CLIMATE

CHANGE

13 Suggestion that an increase in global energy demand is inevitable and necessary for human progress and development and the related omission of information about the predicted negative impacts of climate change on human progress and development

13.1 Introduction and summary

168. The alleged breach discussed in this section relates to (i) the suggestion in BP's advertisements that an increase in global energy demand is inevitable and necessary for human progress and development, and (ii) the related omission of information about the predicted negative impacts of climate change on the global economy as well as human progress and development. Several of the "Keep Advancing" / "Possibilities Everywhere" advertisements breach Chapters VI (paragraphs 2(a) and 2(c)) and VIII (paragraphs 2, 4 and 5) of the OECD Guidelines because:

168.1. it is misleading to claim that growing global energy demand is inevitable or necessary, given the uncertainty around future energy pathways and divergence of scientific, industry and expert opinion (*the energy demand claim*); and

168.2. it is misleading to omit information about the future impacts of climate change caused by the continued or increased use of fossil fuels that are predicted to be so severe as to cause a substantial regression in human development and progress (*omission of risks and costs of climate change*).

13.2 The advertisements

169. BP asserts throughout the "Keep Advancing" / "Possibilities Everywhere" campaign that its activities are solving the "dual challenge" of providing more energy for a growing world population while reducing emissions. This is shown in **Annex C (Exhibits 5.5.A.1, 5.5.A.2, 1.1.A, 3.3.H)**.

170. BP's video advertisement titled "Embracing the dual challenge of more energy and fewer emissions", referred to above as the "Dual Challenge" video (analysed in detail at paragraphs 6.3.5 - and 80 - 81, above, and included in **Annex C (Exhibit 1.1.A)**) explains that: "(t)he world needs more energy, yes. But energy that's kinder to our planet." The advertisement then appears to suggest that increased global energy is necessary to lift

people out of poverty and to enable future human progress, showing images from 0:58-1:05 that invite the viewer to consider rising living standards by showing the following images set apparently in low-income countries: a muddy well, a family on a scooter, children gathered around a computer in a classroom and a mother and child on a train. The clear implication of the voice over and this series of images is that human development needs in developing countries are predicated on increased future global energy supply.

171. While this video shows images of a dried desert and a storm, it does not include any direct reference to or explanation of the risks of climate change. References to the specific risks and impacts of climate change are otherwise absent from BP's campaign (see **Annex C - Exhibits**). Such risks include for example: more frequent and severe extreme weather events, sea level rise, biodiversity loss, ocean acidification, food scarcity, desertification, yield reduction and consequent projected negative effects on human health, wellbeing and development.

172. Nor is any reference made to the scientific consensus that the impacts of climate change will be felt disproportionately by the world's poorest communities. And the viewer is given no information about the well-known predicted costs of these physical impacts to the global economy, nor the negative effect of climate change on economic growth in developing countries.

173. Further discussion of the inevitability and desirability of increased global energy demand in BP's advertising includes:

173.1. BP's webpage "Keep Advancing" (**Annex C, Exhibit 3.H**) states:

"Over the coming years, hundreds of millions of people around the world will lift themselves out of poverty, making the demand for energy and the demands on our planet greater than ever. At BP, we're committed to providing the energy that fuels growth and improves lives but in new ways, with fewer emissions. Discover our approach to helping solve this dual challenge.

What's the dual challenge? Glad you asked.

It's the way we describe one of the biggest issues of our time – how to deliver more of the energy our growing world needs, while at the same time dramatically reducing greenhouse gas emissions.

It's no exaggeration that energy transforms lives. It heats our homes and cooks our food, helps us to build hospitals and schools and takes us on life-changing journeys.

But, we also need energy that is cleaner and better. Not just tomorrow, but today. Now.

At BP, we not only recognize this challenge, we embrace it, so that everyone – including the two billion more people who will share our planet in the next two decades – has the energy they need to thrive...”

173.2. Its webpage “Possibilities Everywhere” (**Annex C, Exhibit 3.3.J**) states:

“...The world is looking for us to continue providing energy to fuel economic growth and improve lives – but in new ways, with fewer emissions.

At BP, we call this the dual challenge.

Under the theme of ‘possibilities everywhere’, the following advertisements show our commitment to delivering the energy the world needs, while advancing a low carbon future.

Our experience tells us that a race to renewables will not be enough. To deliver lower emissions, the world must make all forms of energy cleaner and better...”

174. In other advertisements, such as the ‘What is Gas video’ (**Annex C, Exhibit 1.B**), BP suggests that gas demand and use will increase and that gas will play a role in reducing emissions. Specifically, the company claims:

“How can we meet the demand for more energy but with fewer emissions? With a new invention yet to be designed or introduced, with an undiscovered resource? Or can it be – at least in part – with something we already have, an energy source that puts food on the table, moves us and keeps our families safe and warm? ... Natural gas is laying the foundation for a cleaner, lower-carbon future, right now ... Gas is plentiful and easy to access and it's already a vital part of the energy mix ... The world's demand for gas is growing...”

“We’ve also learned how to take the carbon out of hydrocarbon, by capturing and storing some of these emissions so that they don’t reach the atmosphere, which will help bring emission levels down even further in the future.”

175. These statements give the clear impression that BP views gas as a growing and sustainable part of future energy supply. This is portrayed as being the case irrespective of the use of CCS, which is described as only a potential technology of the future.

176. In BP’s “Energy Illustrated” series, BP’s Chief Economist, Spencer Dale, sets out the company’s energy outlook and view of the future.²²³ In “Episode 1 – The Outlook for energy”, Mr Dale refers to growth in global energy demand of between 25% and 35% by 2040, and says “the world needs more energy to continue to grow and prosper”. In “Episode 3 – Natural Gas”, Mr Dale states: “Natural gas provides almost a quarter of the world’s energy today and its share is set to increase in the future as the world transitions to a low carbon energy system.”

177. The key messages of the above advertisements are:

177.1. growing global primary energy demand²²⁴ is inevitable and necessary because it is essential for human progress and development; and

177.2. increasing fossil fuel energy use will benefit human development in the future irrespective of the increased climate impacts associated with such increased demand.

13.3 Analysis

13.3.1 Global energy demand and the Paris Agreement

178. Climate change is a term used to describe changes in the Earth’s natural climatic systems since pre-industrial times caused by the accumulation of anthropogenic GHGs²²⁵ in the

²²³BP, “Energy Illustrated”, available at: <https://www.bp.com/en/global/corporate/energy-economics/spencer-dale-group-chief-economist/energy-illustrated.html>.

²²⁴ This is defined as the amount of energy harvested from natural sources or raw fuels (both renewable and non-renewable fossil fuels) and other forms of energy received as input into a system. Energy services (e.g., from electricity) can increase, without increasing primary energy demand, through increased use of renewables and by implementing efficiency measures.

²²⁵ The six greenhouse gases that primarily cause global warming and climate change and that are regulated by the Kyoto Protocol include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆). See Kyoto Protocol (1998), Annex A.

atmosphere, and land use changes (such as deforestation).²²⁶ The accumulation of GHGs in the atmosphere traps heat from the sun causing an increase in global mean surface temperatures (among other measures of global temperature), a phenomenon commonly referred to as global warming.²²⁷ To date, anthropogenic GHG emissions have caused the Earth's global mean surface temperatures to rise by approximately 1 degree above pre-industrial²²⁸ levels,²²⁹ causing significant changes to the Earth's climatic zones and weather patterns, increasing extreme weather, causing sea level rise and affecting all natural systems.²³⁰ In addition to causing the ocean to warm,²³¹ increased carbon dioxide in the Earth's atmosphere is absorbed by the ocean, increasing ocean acidification.²³² The biggest sources of GHG in the atmosphere are the power, land use (e.g., agriculture), industrial, transport and building sectors.²³³

179. Scientists have known about the warming effect of increasing carbon dioxide concentrations in the atmosphere since the nineteenth century, with James Hansen's 1988 testimony to the US Congress perhaps marking the first definitive warning from the modern scientific community to policymakers that human GHG emissions cause global warming.²³⁴ The Intergovernmental Panel on Climate Change (IPCC) is an

²²⁶ Climate change is defined in Art.1(2) of the 1992 United Nations Framework Convention on Climate Change (UNFCCC) to mean: "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."

²²⁷ IPCC, (2018), *Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, pp 6-8 and 26.

²²⁸ The term "pre-industrial" is defined by the IPCC as "[t]he multi-century period prior to the onset of large-scale industrial activity around 1750", with "[t]he reference period 1850–1900 ... used to approximate pre-industrial [global mean surface temperatures]." See IPCC, SR15, Summary for Policymakers, p. 26.

²²⁹ IPCC, (2018), A.1, p 4.

²³⁰ IPCC, (2018), B.1-B.5, pp 7-11.

²³¹ See IPCC, (2018), Chapter 3, p. 223 ("ocean waters have increased in sea surface temperature (SST) by approximately 0.9°C ... since 1870–1899").

²³² See IPCC, (2018), p. 178 ("The ocean has absorbed about 30% of the anthropogenic carbon dioxide, resulting in ocean acidification and changes to carbonate chemistry that are unprecedented for at least the last 65 million years (high confidence). Risks have been identified for the survival, calcification, growth, development and abundance of a broad range of marine taxonomic groups, ranging from algae to fish, with substantial evidence of predictable trait-based sensitivities (high confidence). There are multiple lines of evidence that ocean warming and acidification corresponding to 1.5°C of global warming would impact a wide range of marine organisms and ecosystems, as well as sectors such as aquaculture and fisheries (high confidence).").

²³³ IPCC, (2014), WG3.

²³⁴ UNFCCC, 'UNFCCC – 25 Years of Effort and Achievement' available at <https://unfccc.int/timeline/>.

inter-governmental body that publishes synthesis reports of the current state of scientific research and understanding in the field of climate change and its impacts and was established in 1988. In 1992, the world's governments agreed the global treaty on the regulation and prevention of climate change, the United Nations Framework Convention on Climate Change ("UNFCCC"). The objective of the UNFCCC is expressed in Article 2:

“[t]he ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”
(Emphasis added)

180. In 2015, representatives of the world's governments met in Paris at the 25th Conference of the Parties to the UNFCCC. The Paris Agreement entered into force on 3 November 2016. Article 2(1)(a) contains the overarching temperature goal which is to:

“Hold[...] the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”

181. Article 4(1) provides that:

“In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.”

182. The Paris Agreement commits countries to the submission and implementation of nationally determined emissions reduction targets (known as Nationally Determined Contributions or NDCs), in order to achieve the overall objective of limiting temperature rise to “well below” 2°C below pre-industrial levels while seeking to limit the increase to 1.5°C. Although the 2°C temperature target is a relative measure below which negative impacts will occur (and are occurring), the IPCC warns that increases of global mean surface temperatures above 2°C will drive more severe and potentially irreversible impacts on natural and human systems.²³⁵
183. The achievement of the Paris Agreement temperature goal will require a significant shift in global energy systems, away from fossil fuel based energy to renewable sources. Many states still need to take additional action to meet their NDC commitments, but 65 jurisdictions, including the UK, New Zealand and the European Union, have set or are actively considering long-term net-zero emission targets.²³⁶
184. In 2018, the IPCC published a special report on the emissions pathways that would limit warming to 1.5°C (“SR15”). The SR15 reported that many risks and impacts of climate change would be significantly reduced if warming is limited to 1.5°C, especially the impacts on the world’s poorest people.²³⁷ First, it is important to understand that in all pathways considered by the SR15, energy systems are almost completely decarbonised to net zero GHG emissions by 2050.²³⁸ However, relevantly, one of the four illustrative pathways highlighted in SR15 for limiting global warming to 1.5°C (Pathway P1) features significant reductions in global energy demand, with another featuring essentially flat levels of future demand (Pathway P2).²³⁹ Pathway P1 is described as “[a] scenario in which social, business and technological innovations result in lower energy demand up to 2050 while living standards rise, especially in the global South.” This scenario anticipates demand falling 15 percent under 2010 levels by 2030 and 32 percent by 2050.²⁴⁰

²³⁵ IPCC, (2014), *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (AR5)*, pp 14 and 18.

²³⁶ IEA, *Commentary: Understanding the World Energy Outlook Scenarios*, available at <https://www.iea.org/newsroom/news/2019/october/understanding-the-world-energy-outlook-scenarios.html>.

²³⁷ IPCC (2018), pp. 11-12.

²³⁸ IPCC, (2018) p. 136.

²³⁹ IPCC, (2018), figure SPM.3b, p. 14, Figure 2.4, Chapter 2, p. 111.

²⁴⁰ IPCC, (2018), scenario P1 in figure SPM.3b, p. 14.

185. The IPCC notes that projections of primary energy demand depend heavily on assumptions about socio-economic futures, and the nature of energy demand, stating that “[t]here is deep uncertainty about the ways humankind will use energy and land in the 21st century”, noting that population and economic growth projections can vary significantly across integrated scenarios. For example, population projections vary between 8.5 and 10 billion people by 2050 and between 6.9 and 12.6 billion by 2100.²⁴¹ Further, low emission scenarios rely on strong energy demand reduction:

“[t]he combined evidence suggests that aggressive policies addressing energy efficiency are central in keeping 1.5°C within reach and lowering energy system and mitigation costs (high confidence) ... Demand-side policies that increase energy efficiency or limit energy demand at a higher rate than historically observed are critical enabling factors for reducing mitigation costs in stringent mitigation pathways across the board.”²⁴²

186. Indeed, in its latest Energy Outlook, BP uses the P1 scenario as a comparison data source in respect of its own ‘Rapid Transition’ scenario.²⁴³ However, in contrast to P1, BP’s scenario envisages an increase in energy demand of approximately 21% by 2040.²⁴⁴ The “reference scenario” in BP’s Energy Outlook – the ‘Evolving Transition’ scenario – envisages even greater global energy consumption increases of approximately 32% by 2040.²⁴⁵ However, BP itself acknowledges that this reference scenario is no more likely than any other scenarios considered in the Outlook:

“The Outlook considers a number of different scenarios. These scenarios are not predictions of what is likely to happen or what BP would like to happen. Rather, they explore the possible implications of different judgements and assumptions by considering a series of “what if” experiments. The scenarios consider only a tiny sub-set of the uncertainty surrounding energy markets out to 2040; they do not provide a comprehensive description of all possible future outcomes. For ease of explanation, much of the Outlook is described with reference to the ‘Evolving transition’ scenario. But that does not imply

²⁴¹ IPCC, (2018), p. 109.

²⁴² IPCC, (2018), p. 149.

²⁴³ BP, (2019), *Energy Outlook: 2019 edition*, p. 139.

²⁴⁴ BP, (2019), *Energy Outlook: 2019 edition*, p. 137.

²⁴⁵ BP, (2019), *Energy Outlook: 2019 edition*, p. 135.

that the probability of this scenario is higher than the others.²⁴⁶ (Emphasis added)

187. BP's 2019 Energy Outlook also acknowledges a key potential driver for reduced future global energy demand in the 'More Energy' scenario. Namely, it assumes "that countries in which energy consumption is much greater than 100 GJ/per head do not economize on their energy use."²⁴⁷ BP then goes on to observe that: "if all those countries reduced average consumption levels to the EU average in 2040 (around 120 GJ/per head), this would provide almost the entire energy required."²⁴⁸

188. Other organisations prepare competing future energy scenarios with different assumptions and come to different results. For example, McKinsey, the global management consultancy, recently produced a scenario in which global energy demand plateaus in 2030, driven by an increase in renewables. McKinsey sees a doubling of global GDP to 2050 while global primary energy demand grows by only 14%, the first period in history that energy demand and economic growth are 'de-coupled', due to the growth of highly efficient renewable energy.²⁴⁹ This also demonstrates that reduction in primary energy demand does not have to reduce the energy services provided to end users, or reduce standards of living.

189. Analysis from leading climate and energy analysts Carbon Brief demonstrates that assumptions made by BP in its Energy Outlook often underestimate the rapid uptake in renewables, a significant driver of reductions in primary energy demand.²⁵⁰ The below chart from Carbon Brief illustrates the different assumptions in a number of scenarios regarding future trajectories of global primary energy demand, and shows that a fall or stabilisation in primary demand is required to meet the IEA's 2°C pathway.

²⁴⁶ BP, (2019), *Energy Outlook: 2019 edition*, p. 3.

²⁴⁷ BP, (2019), *Energy Outlook: 2019 edition*, p. 23.

²⁴⁸ BP, (2019), *Energy Outlook: 2019 edition*, p. 23.

²⁴⁹ McKinsey, (2019), 'Global Energy Perspective 2019: Reference Case: Summary' available at <https://www.mckinsey.com/~media/McKinsey/Industries/Oil%20and%20Gas/Our%20Insights/Global%20Energy%20Perspective%202019/McKinsey-Energy-Insights-Global-Energy-Perspective-2019-Reference-Case-Summary.ashx>.

²⁵⁰ Evans, S, (15 February 2019), 'Analysis: BP's outlook for fossil fuels could be undermined by slowing energy demand', Carbon Brief, available at: <https://www.carbonbrief.org/analysis-bps-outlook-for-fossil-fuels-could-be-undermined-by-slowing-energy-demand>.

BP and others expect global energy demand to keep on rising

McKinsey's 2019 reference case is an exception and comes closer to a 2C path

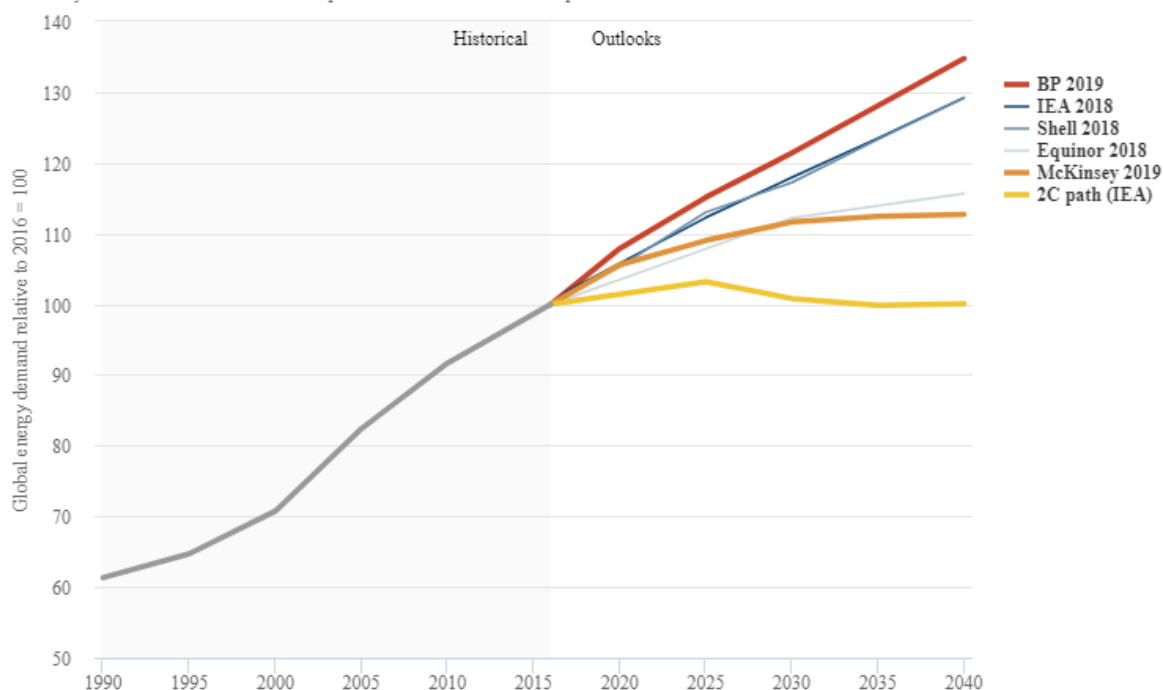


Figure 17 – Graph of scenarios regarding future trajectories of global primary energy demand (Source: Carbon Brief)

Source: Carbon Brief

190. According to the IPCC, energy demand reductions have “the most pronounced synergies and the lowest number of trade-offs with respect to sustainable development and the Sustainable Development Goals.”²⁵¹ According to the International Institute for Applied Systems Analysis (IIASA), Global Energy Assessment (GEA),²⁵² energy efficiency is the most significant and beneficial way to reduce emissions across energy systems. The GEA concludes that:

“[e]fficiency improvement is proving to be the most cost-effective, near-term option with multiple benefits, such as reducing adverse environmental and health impacts, alleviating poverty, enhancing energy security and flexibility in selecting energy supply options, and creating employment and economic opportunities. Research shows that required improvements in energy efficiency particularly in end-use can be achieved quickly.”²⁵³

²⁵¹ IPCC, (2018), D.4.2, p. 21.

²⁵² GEA, (2012), *Global Energy Assessment - Toward a Sustainable Future*, available at <https://www.iiasa.ac.at/web/home/research/Flagship-Projects/Global-Energy-Assessment/About/Home-GEA1.en.html>, pp 20-23.

²⁵³ GEA, (2012), p. xvi.

191. Indeed, as the IEA finds in its World Energy Model, economic growth does not simply imply increased primary energy demand, rather:

“[t]he way that economic growth plays through into energy demand depends heavily on the structure of any given economy, the balance between different types of industry and services, and on policies in areas such as pricing and energy efficiency.”²⁵⁴

192. Contrary to BP’s claim that “the world demands more energy” to “fuel growth and improves lives”, it is far from inevitable that increased human development in the 21st century will require increased future primary global energy demand, even where there is growing demand for energy services in the developing world. This is in part because of the rapid growth in highly efficient renewables, as recognised by McKinsey. Further, a development pathway involving a reduction in global primary energy demand is likely to be more advantageous to developing and developed countries than one where primary energy demand rises, as the risk and impacts of climate change will be reduced, as discussed below.

193. Framing primary energy demand as inevitable and necessary suits BP, because if primary demand is desirable and has no drawbacks, the public is incentivised to keep consuming at its current unsustainable levels.²⁵⁵ The public is then primed to accept BP’s strategy of expanding its fossil fuel production as part of an “all of the above” approach to meeting this posited increase in primary energy demand, and to accept BP’s suggestion that it is necessary to human development. This misinforms the public and leads consumers away from sustainable consumption choices, a potentially key factor in limiting global warming below targeted levels.²⁵⁶ This is contrary to the recommendation of the OECD Guidelines in Chapter VI, paras 2(a) and 6(c), and Chapter VIII para 5, which urges companies to promote consumer education in areas that relate to their business activities in order to support sustainable consumption.

194. Further, the energy demand claim is misleading as it does not explain to consumers that growth in primary energy demand is highly uncertain, particularly in the context of the Paris Agreement and the commitments that all States have made to keep global warming

²⁵⁴ IEA, ‘World Energy Model’ available at <https://www.iea.org/weo/weomodel/drivers/>.

²⁵⁵ See generally: IPCC, (2018), A.1, p. 6.

²⁵⁶ See IPCC, (2018), figure SPM.3b, p. 15 (presenting major pathways to limiting global warming to 1.5°C).

well below 2 degrees, and the consequent impacts on BP's products.²⁵⁷ BP's advertisements therefore mislead consumers by presenting growth in primary energy demand as both inevitable and necessary and by neglecting to factor in the implications of the Paris Agreement on global energy systems and the company's core business.²⁵⁸

13.3.2 Omission of negative impacts of climate change on human progress and development

195. Perhaps most strikingly, BP's assumption of increased future energy demand does not adequately take into account the increased negative impacts of climate change in such a scenario. While promoting the benefits of energy consumption, BP dramatically understates the drawbacks. The link connecting climate change to fossil fuel energy is never explicitly drawn, instead left to inference. The world needs "kinder ... cleaner, greener, smarter" energy, but BP does not say why or explain the risks posed by the physical impacts of climate change. The "demands on our planet" are referenced, but not discussed. Particularly, BP's advertisements omit any information about the impact of climate change on the world's poor, which is deeply misleading to the average consumer who will have limited knowledge about the scale of predicted climate impacts.

196. By presenting a linear vision of economic growth arising from the use of fossil fuels, BP's advertisements further mislead the public into thinking that fossil fuel consumption (mainly gas, see **Annex C, Exhibit 1.B**) is a net positive for the developing world, without presenting its serious and potentially catastrophic risks. Assumptions that greater fossil fuel energy consumption will drive improved standards of living are fundamentally flawed if they do not account for the human and economic costs of worsening climate impacts

²⁵⁷ The CEO of the Principles for Responsible Investment (PRI) recently said that business as usual energy scenarios are:

"highly improbable leading financial markets to misprice climate transition risk and exposing global economies to systemic risks and financial losses. Business as usual will not continue for long as the realities of climate change catch up, social pressure mounts, and low carbon solutions get cheaper. So it's highly improbable that governments will be allowed to let the world glide to 2.7C without being compelled into forceful action sooner."

[Reynolds, F \(21 November 2019\) 'Financial Markets are mispricing climate risk' PRI, available at https://www.unpri.org/pri-blog/financial-markets-are-mispricing-climate-risk/5135.article](https://www.unpri.org/pri-blog/financial-markets-are-mispricing-climate-risk/5135.article)

²⁵⁸ Mark Carney, Governor of the Bank of England has suggested that firms that do not address the risk of climate regulatory risk causing stranded assets will 'go bankrupt'. See Carrington, D, (13 October 2019) 'Firms ignoring climate crisis will go bankrupt, says Mark Carney' Guardian, available at <https://www.theguardian.com/environment/2019/oct/13/firms-ignoring-climate-crisis-bankrupt-mark-carney-bank-england-governor>.

associated with such increased demand.²⁵⁹ This information is critical to inform consumers about BP's business plans and its products.

197. Evidence from the IPCC and others shows that the costs and risks of climate change will increase dramatically over the 21st century and that these risks become so severe above 2 degrees of warming as to have overall negative impacts on human development. In a high emission or 'business as usual' scenario, akin to BP's Evolving Transition scenario (the reference case in BP's 2019 Energy Outlook), the world's mean surface temperature could increase by more than 2 degrees by 2040.²⁶⁰

198. This increase in global mean surface temperatures would be catastrophic for the planet and its people. The IPCC's Fifth Assessment Report (AR5) summarises the predicted impacts of high emission pathways in 2100, highlighting the risks for the poor and vulnerable in particular:

“Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally (high confidence);”²⁶¹

“Rising rates and magnitudes of warming and other changes in the climate system, accompanied by ocean acidification, increase the risk of severe, pervasive and in some cases irreversible detrimental impacts;”²⁶²

“A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors (high confidence). Most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change in most landscapes; most small mammals and freshwater molluscs will not be able to keep up at the rates projected under RCP4.5 and above in flat landscapes in this century (high confidence);”²⁶³

²⁵⁹ DeFries et al, (September 2019), 'The missing economic risks in assessments of climate change impacts' London School of Economics, available at <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/09/The-missing-economic-risks-in-assessments-of-climate-change-impacts-2.pdf>.

²⁶⁰ BP, (2019), *Energy Outlook 2019*, p. 113; IPCC, (2014), p. 18; IPCC, (2018), p. 105.

²⁶¹ IPCC, (2014), p. 17.

²⁶² IPCC, (2014), p. 13.

²⁶³ IPCC, (2014), p. 13.

“Climate change is projected to undermine food security (Figure SPM.9). Due to projected climate change by the mid-21st century and beyond, global marine species redistribution and marine biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services (high confidence). For wheat, rice and maize in tropical and temperate regions, climate change without adaptation is projected to negatively impact production for local temperature increases of 2°C or more above late 20th century levels ... Global temperature increases of ~4°C or more above late 20th century levels, combined with increasing food demand, would pose large risks to food security globally (high confidence);”²⁶⁴

“The risks associated with temperatures at or above 4°C include substantial species extinction, global and regional food insecurity, consequential constraints on common human activities and limited potential for adaptation in some cases (high confidence). Some risks of climate change, such as risks to unique and threatened systems and risks associated with extreme weather events, are moderate to high at temperatures 1°C to 2°C above pre-industrial levels;”²⁶⁵

“From a poverty perspective, climate change impacts are projected to slow down economic growth, make poverty reduction more difficult, further erode food security and prolong existing and create new poverty traps, the latter particularly in urban areas and emerging hotspots of hunger (medium confidence)...;

“Climate change is projected to increase displacement of people (medium evidence, high agreement). Populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income. Climate change can indirectly increase risks of violent conflicts by amplifying well-documented drivers of these conflicts such as poverty and economic shocks (medium confidence);”²⁶⁶

²⁶⁴ IPCC, (2014), p. 13.

²⁶⁵ IPCC, (2014), p. 19.

²⁶⁶ IPCC, (2014), p. 16.

“Populations at disproportionately higher risk of adverse consequences with global warming of 1.5°C and beyond include disadvantaged and vulnerable populations, some indigenous peoples, and local communities dependent on agricultural or coastal livelihoods (high confidence). Regions at disproportionately higher risk include Arctic ecosystems, dryland regions, small island developing states, and Least Developed Countries (high confidence). Poverty and disadvantage are expected to increase in some populations as global warming increases; limiting global warming to 1.5°C, compared with 2°C, could reduce the number of people both exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050 (medium confidence);”²⁶⁷

“Any increase in global warming is projected to affect human health, with primarily negative consequences (high confidence)... Risks from some vector-borne diseases, such as malaria and dengue fever, are projected to increase with warming from 1.5°C to 2°C, including potential shifts in their geographic range (high confidence).”²⁶⁸

199. Further, the Earth’s systems are known to contain tipping points²⁶⁹ beyond which rapid changes become inevitable. Perhaps the most concerning of these is the risk of melting of the Greenland ice sheet, predicted to occur at between two and four degrees of warming, leading to a sea level rise of up to 7 metres.²⁷⁰ This would have significant impacts all coastal peoples and ecosystems around the world and would require adaptation measures at huge scale.²⁷¹ The IPCC notes that:

“projected sea level rise for 1.5°C of global warming has an indicative range of 0.26 – 0.77m, relative to 1986–2005, (medium confidence). A smaller sea level rise could mean that up to 10.4 million fewer people (based on the 2010 global population and assuming no adaptation) would be exposed to the impacts of sea level rise globally in 2100 at 1.5°C compared to at 2°C.”

²⁶⁷ IPCC, (2018), p. 9.

²⁶⁸ IPCC, (2018), p. 9.

²⁶⁹ See Steffen, W., Rockström, J., Richardson, K., Lenton, T.M., Folke, C., Liverman, D., Summerhayes, C.P., Barnosky, A.D, Cornell, S.E., Crucifix, M., Donges, J.F., Fetzer, I., Lade, S.J., Scheffer, M., Winkelmann, R., and Schellnhuber, H.J. (2018) *Trajectories of the Earth System in the Anthropocene. Proceedings of the National Academy of Sciences (USA)*, available at: <https://www.pnas.org/content/pnas/115/33/8252.full.pdf>.

²⁷⁰ IPCC, (2014), p. 16.

²⁷¹ IPCC, (2019), Summary for Policymakers.

200. The Lancet medical journal releases an annual assessment of the impact of climate change on health. It tracks the links between climate change and health across a number of indicators and recently concluded that:

“[a] business as usual trajectory will result in a fundamentally altered world ... The life of every child born today will be profoundly affected by climate change.... Left unabated, climate change will define the health profile of current and future generations, will challenge already overwhelmed health systems, and undermine progress towards the UN Sustainable Development Goals (SDGs) and universal health coverage (UHC).”²⁷²

201. It reports on the following health related indicators:

“[d]ownward trends in global yield potential for all major crops tracked since 1960 threaten food production and food security, with infants often the worst affected by the potentially permanent effects of undernutrition (indicator 1.5.1);”

“[t]rends in climate suitability for disease transmission are particularly concerning, with nine of the ten most suitable years for the transmission of dengue fever on record occurring since 2000 (indicator 1.4.1). Similarly, since an early 1980s baseline, the number of days suitable for *Vibrio* (a pathogen responsible for part of the burden of diarrhoeal disease) has doubled, and global suitability for coastal *Vibrio cholerae* has increased by 9.9% (indicator 1.4.1).”

“Globally, 77% of countries experienced an increase in daily population exposure to wildfires from 2001–14 to 2015–18 (indicator 1.2.1).”

“Temperature rise and heatwaves are increasingly limiting the labour capacity of various populations. In 2018, 133.6 billion potential work hours were lost globally, 45 billion more than the 2000 baseline, and southern areas of the USA lost 15–20% of potential daylight work hours during the hottest month of 2018 (indicator 1.1.4).”

²⁷² Watts, N et al, (2019), ‘The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate’ *Lancet* 2019; 394: 1836–78, available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32596-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32596-6/fulltext)

“In 2018, [over 65] ... populations experienced 220 million heatwave exposures globally, breaking the previous record of 209 million set in 2015 (indicator 1.1.3).”²⁷³

202. A range of studies underpin the findings above, such as a report of the Asian Development Bank, concluding that unabated warming could significantly undo previous achievements of economic development and improvements of living standards across the Asia-Pacific region.²⁷⁴ The UN Secretary General Antonio Guterres told the General Assembly on 28 March 2019 that “[c]limate change threatens decades of development progress and plans for inclusive sustainable development.”²⁷⁵

203. Finally, climate change poses significant risks to the global economy and is likely to interrupt global economic growth, particularly in the kind of high-emissions trajectory envisaged by BP’s scenarios such as its ‘Evolving Transition’ scenario. Lord Nicholas Stern, ex-head of the UK Government Economic Service, was commissioned by Tony Blair to report on the economic risks and impacts of climate change and of moving to a lower carbon economy. His final report, the Stern Review, concluded that unabated climate change on a business-as-usual trajectory posed significant risks to the global economy, with estimated costs of between 5-20% of global GDP each year,²⁷⁶ a figure that Lord Stern more recently said underestimates the costs.²⁷⁷

204. Since that seminal report, the evidence on the economic impacts of climate change has mounted, such that it is accepted by central banks including the Bank of England that climate change poses significant risks to the global economy and economic growth.²⁷⁸ The Fourth National Climate Assessment of the U.S. Global Change Research Program concluded that the economic effect of climate change on the US economy could reach

²⁷³ Watts, N et al, (2019), pp 1836-1837.

²⁷⁴ Asian Development Bank, (2017), ‘A Region at Risk: the Human Dimensions of Climate Change in Asia and the Pacific’, available at <https://www.adb.org/sites/default/files/publication/325251/region-risk-climate-change.pdf>.

²⁷⁵ United Nations, (28 March 2019), ‘Only 11 Years Left to Prevent Irreversible Damage from Climate Change, Speakers Warn during General Assembly High-Level Meeting’, available at <https://www.un.org/press/en/2019/ga12131.doc.htm>.

²⁷⁶ Stern, N. H., (2007), *The economics of climate change: the Stern review*, available at http://unionsforenergydemocracy.org/wp-content/uploads/2015/08/sternreview_report_complete.pdf

²⁷⁷ <https://www.theguardian.com/environment/2016/nov/06/nicholas-stern-climate-change-review-10-years-on-interview-decisive-years-humanity>.

²⁷⁸ Bank of England, (2018) ‘Climate change and the macro-economy: a critical review’ Staff Working Paper No 706, available at <https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2018/climate-change-and-the-macro-economy-a-critical-review.pdf?la=en&hash=D1A56DF33C50074F5D3383587A272BFD611CBA04>.

hundreds of billions of dollars per year by the end of this century.²⁷⁹ UNEP estimates the cost of adaptation to climate impacts for developing countries to be between \$280-\$500 billion per year by 2050, even if the world succeeds in limiting warming to 2°C above pre-industrial levels, with these costs increasing significantly in a more than 2°C scenario.²⁸⁰ More recent studies from Oxford Economics find that climate change could shave up to 7.5% off global GDP, with Africa and Asia the worst hit regions. If temperature rises by 4°C, the study predicts a hit of up to 30% to global GDP.²⁸¹ A recent study from the Grantham Research Institute on Climate Change and the Environment at the London School of Economics, The Earth Institute at Columbia University and the Potsdam Institute of Climate Impact finds that the impact of climate change on the global macro-economy is systematically undervalued in economic models.²⁸²

205. The above demonstrates that the effects of climate change will be significant and severe and will have large and unprecedented impacts on both human development and economic growth before and after 2050, with such impacts being substantially worse in a business-as-usual high emissions scenario. BP's failure to acknowledge these impacts in its advertising means that its discussion of its self-styled "dual challenge of more energy with fewer emissions" is misleading. In particular, it risks creating the impression that *all* increases in energy demand – *irrespective of emissions reductions* – will lead to increases in human development, when in fact many types of increases in energy demand will lead to potentially catastrophic impacts on poor and vulnerable populations, thereby undermining any increases in development that BP says would otherwise be expected.

206. The omission of information about the catastrophic risks and impacts of climate change is unjustifiable, particularly given the growth of interest in this issue among the general public, who rank climate change as among one of their most important concerns.²⁸³ In this context, it is critically important to provide the public with the facts about the climate crisis

²⁷⁹ U.S. Global Change Research Program (USGCRP), (2018), *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*, available at: https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf.

²⁸⁰ UNEP, (2015), *The Adaptation Finance Gap Update*, available at http://web.unep.org/sites/default/files/gapreport/UNEP_Adaptation_Finance_Gap_Update.pdf.

²⁸¹ Takeo, Y, (13 November 2019), Bloomberg, available at <https://www.bloomberg.com/news/articles/2019-11-13/climate-change-might-hit-economy-harder-and-faster-than-thought>.

²⁸² Dr Fries et al, (Sept 2019), 'The missing economic risks in assessments of climate change impacts', available at <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/09/The-missing-economic-risks-in-assessments-of-climate-change-impacts-2.pdf>.

²⁸³ ClientEarth, (2019), *ClientEarth's Climate Snapshot 2019*, available at <https://www.documents.clientearth.org/library/download-info/clientearths-climate-snapshot-2019/>.

and the role of BP's products in exacerbating that crisis. By presenting a one-sided view of the benefits of fossil fuel energy use without a frank presentation of the disruptive risks of climate change that many consumers will experience within their lifetimes, BP is failing to promote consumer education to support consumers to better understand the economic, environmental and social impact of their decisions and to make informed decisions involving complex goods, services and markets.

13.4 Application of the OECD Guidelines

207. BP's advertising, in the specific instances described in section 13.2, and generally when taken as a whole, contravenes paragraphs 1, 2, 4 and 5 of Chapter VIII of the OECD Guidelines relating to Consumer Interests, and paragraphs 2(a) and 6(c) of Chapter VI in the following ways:

207.1. it is misleading to claim that growing global primary energy demand is inevitable or necessary, given the breadth of scientific and expert opinion (*the energy demand claim*); and

207.2. it is misleading to omit information about the future impacts of climate change caused by the continued or increased use of fossil fuels that are predicted to be so severe as to cause a substantial regression in human development and progress (*omission of risks and costs of climate change*).

208. Contrary to Chapter VIII, paragraph 2, and Chapter VI, paragraphs 2(a) and 6(c), BP's advertisements do not provide accurate, verifiable and clear information to consumers to allow them to make informed decisions about the environmental attributes of BP's goods and services. Firstly, the energy demand claim does not reflect the uncertainty and diversity of scientific and expert opinion on likely energy futures, as described above. Secondly, the omission of risks and costs of climate change violates the OECD Guidelines because it does not provide consumers with adequate information regarding the environmental risks associated with high energy-demand scenarios based on continued and increased use of BP's products.

209. Contrary to Chapter VIII, paragraph 4, BP's advertisements make representations that are misleading and deceptive, both on their face and through omission. According to Article 5 of the ICC Marketing Code, advertising can be misleading by way of omission, in particular with regard to the environmental impact of a product. The EU Directive and Regulation 6 of the UK Regulations also provide that commercial practices may be found

to be misleading by omission. The UK CAP and BCAP Codes also note that advertising may mislead by omission. ISO Article 5.7 provides that environmental claims “shall not be made if, despite the claim being literally true, it is likely to be misinterpreted by purchasers or is misleading through the omission of relevant facts.”

210. In this case, the omission of information about the projected catastrophic effects of climate change in the 21st century, particularly on the world’s poorest populations, gives the viewer a misleading impression of the risks associated with the company’s products. As these impacts are likely to be severe and to interfere with human development and progress, it is misleading to present only the benefits of energy use without explaining the negative impacts of growing use of the company’s fossil fuel products.

211. Contrary to Chapter VIII, paragraph 5, and Chapter VI, paragraphs 2(a) and 6(c), BP’s advertisements do not adequately educate consumers about areas that relate to its business activities and do not assist consumers to make informed choices about complex markets and to better understand the economic, environmental and social impact of their decisions in order to support sustainable consumption. The company should demonstrate leadership in this area and provide more fulsome and truthful information to the public about the scientific consensus on climate change, and the serious and severe effects on people all around the world if the goals of the Paris Agreement are not met.

212. Contrary to Chapter VIII, and Chapter VI, paragraphs 2(a) and 6(c), BP’s advertisements do not provide consumers with an adequate warning of the risks associated with the use of its fossil fuel products. Given the severe risks and impacts of climate change, and the catastrophic effects of continuing use of BP’s products on people globally, all of BP’s advertising should come with a warning to the following effect:

“The Intergovernmental Panel on Climate Change (IPCC) has found that emissions from fossil fuels are the dominant cause of global warming.

The IPCC warns that fossil fuel emissions must be halved within 11 years if global warming is to be limited to 1.5°C. Warming above 1.5°C risks further sea level rise, extreme weather, biodiversity loss and species extinction, as well as food scarcity, worsening health and poverty for millions of people worldwide.”

213. This warning would go some way to correcting the misleading impression created by BP’s advertising and would help to inform the public about the dangers of climate change and

the need to ensure the world meets the temperature goals of the Paris Agreement in order to ensure prosperity and development for all. It would be consistent with the spirit of Article 17 of the ICC Marketing Code, which encourages the use of health and safety warnings in marketing communications whenever necessary. The above analysis of the widespread health impacts of climate change demonstrates that a consumer health warning is justified.

CONCLUSION

14 Conclusion

214. In summary, BP's 2019 advertising campaign and related public communications mislead the public and accordingly conflict with the OECD Guidelines. Its two themes, "Keep Advancing" and "Possibilities Everywhere", contain messages that create false perceptions about BP's business and strategy, energy and climate issues, and sustainable consumption choices. BP has therefore failed to provide accurate, clear and comprehensive environmental communications as required by the OECD Guidelines, as well as by international standards such as the ICC Marketing Code, the relevant ISO and the UK CAP and BCAP Codes. BP's misleading claims also do the opposite of promoting environmental awareness, with its advertisements instead undermining the public's ability to make informed decisions and to understand the true scope and scale of the climate crisis and the role played by the energy system.

14.1 Request to BP

215. To remedy these violations, ClientEarth requests that BP take the following steps:

215.1. Withdraw and cease publication of the identified advertisements and public communications until revised to conform with the OECD Guidelines, including by not misleading with respect to climate and other environment-related issues.

215.2. Make a public statement explaining the withdrawal and / or correction of its advertisements. All advertisements must clearly state how much of the company's investment is in oil and gas and how much in what it calls 'low carbon businesses'. In the case of BP, this means that it should disclose clearly in all advertising the proportion of its annual investment that is in fossil fuels and the proportion that is in low-carbon sources of energy.

215.3. Ensure that all future advertising and public communications include a comment in the form of a warning or a disclaimer that the use of the company's oil and gas products creates GHG emissions that contribute to global climate change. All advertising must include the following text:

“The Intergovernmental Panel on Climate Change (IPCC) has found that emissions from fossil fuels are the dominant cause of global warming.

The IPCC warns that fossil fuel emissions must be halved within 11 years if global warming is to be limited to 1.5°C. Warming above 1.5°C risks further sea level rise, extreme weather, biodiversity loss and species extinction, as well as food scarcity, worsening health and poverty for millions of people worldwide.”

215.4. Make a public commitment to ensure that its future communications on climate and environment-related issues and on the environmental impacts of its products and services are consistent with the purposes of the OECD Guidelines and introduce a clear internal policy to this effect to the extent that no such policy already exists.

216. ClientEarth hopes that mediation of this Complaint will prove productive. If it is not possible to resolve the Complaint promptly in this way, ClientEarth requests that the NCP expedite its examination, and conclude that BP's current advertising breaches the OECD Guidelines in the ways described in this Complaint. Publication of the NCP's conclusions under that process will ensure that there are clear findings that BP's current advertising breaches the OECD Guidelines, specific recommendations to the company to ensure that its conduct is brought into line with the Guidelines and opportunities for ongoing follow up and scrutiny of the company under this process.

14.2 Request to the NCP

217. ClientEarth is aware that at this stage the NCP is considering whether to accept this Complaint and, while this document identifies the salient issues and evidence that ClientEarth considers relevant to a complaint, the Complaint summarises ClientEarth's full views and the evidence. ClientEarth offers to provide the NCP with further information, materials and analyses as necessary.

London, 3 December 2019

ANNEX A

UNDERSTANDING BP'S FOSSIL FUEL AND RENEWABLE OPERATIONS

1 Introduction

- A1. This Annex provides background information relevant to BP's operations, with a focus on materials that illustrate the relative scale of BP's hydrocarbon and renewables production and investment.
- A2. Two central propositions emerge robustly from the following sections. They are that BP's actual and planned fossil fuel business vastly exceeds its renewables operations in both (i) expenditure and (ii) scale.
- A3. This can be illustrated with the following graph, which contrasts BP's expenditure and production based on estimates produced in this Annex.

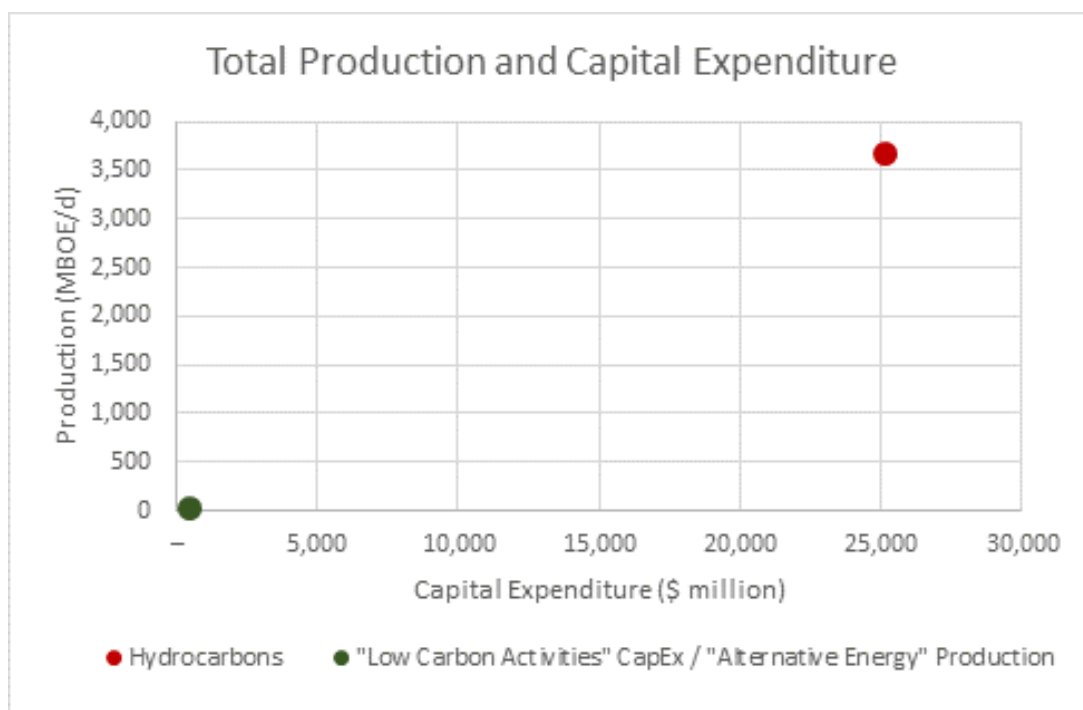


Figure A1 - Illustrative comparison of BP production and expenditure¹

¹ Values for (i) total capital expenditure (US\$25,088 million) and production (3,683 MBOE/d) for hydrocarbons are from the 2014-2018 FOI report. US\$500 million has been selected as an approximate guide for expenditure on renewables. In 2018, the "upper limit" (see sections A19 - A25) on "alternative energy" organic capital expenditure was US\$332 million (inorganic CapEx not reported), while BP's total spending on "low carbon activities" was US\$500 million. The "low carbon activities" value was therefore used in this graph, as it is the higher value and reflects an upper estimate for BP's total expenditure on renewables in 2018. Production values for "alternative energy" reflect calculated values for wind, biopower, solar and biofuels have been set out in Annex 2, Table A3 (please see this section for further details on data sources and methodology).

- A4. This graph – albeit based on estimates, as detailed later in the document² – illustrates the very large gap in BP’s expenditure and production between its (i) “low carbon” activities / “alternative energy” business and (ii) its hydrocarbon operations.
- A5. Despite limited data,³ it has been possible to find ways to understand BP’s expenditure and production. For example, in one analysis the various energy, volume, power and capacity units used have been converted so that the scale of BP’s hydrocarbon production might be compared with its other sources of power generation, such as wind and solar. Ways of understanding and demonstrating the relative scale of BP’s expenditure across these parts of its business have also been identified. These analyses are presented in the following two sections.
- A6. A final section invites BP to publish updated data to the public and NCP.

2 BP’s actual and planned fossil fuel business vastly exceeds its renewables operations: investment

- A7. In this section, information relevant to BP’s hydrocarbon investment is provided to illustrate the relative size of its spend on renewables.
- A8. While it is relatively straightforward to identify information on BP’s expenditure on fossil fuel production, it is difficult to identify readily comparable data published by BP for renewables. In the following paragraphs, illustrative figures in respect of the following are set out:
- 8.1. certain investment commitments for “low carbon activities”;
 - 8.2. a proxy for the upper limit of expenditure on “alternative energy”; and,
 - 8.3. information regarding BP’s specific investments in oil and gas investments such as the Petrohawk Energy Corporation, the Clair oil field in the North Sea and payments associated with a 25-year extension to an oil-related production-sharing agreement in Azerbaijan.
- A9. As explored below, BP’s investments in renewables are only a tiny fraction of the company’s total investments. For example, BP has stated that it is investing US\$200 million over three years in solar energy and at least US\$500 million annually in supporting low carbon activities, of which US\$200 million is being used to develop options for new

² See in particular Annex 2, Table A3. See section 2 of this Annex for an analysis of BP’s spending on “alternative energy” (incorporating BP’s wind, biofuel, biopower and solar businesses) and “low carbon activities” (which includes other business activities, some of which may relate to BP’s hydrocarbon business). In this graph, production values only relate to BP’s “alternative energy” business, and do not represent total production for “low carbon activities”.

³ As noted in this Annex, comparisons between BP’s hydrocarbon and renewables operations and investment are difficult due to variations in reporting about these parts of BP’s business. The publically available information in relation to renewables would appear to be piecemeal and difficult to compare. Conversion factors and other information have been included in order that the basis of calculations are apparent and reviewable.

lower carbon businesses.⁴ As identified below, this expenditure is very small relative to its expenditure on its hydrocarbon operations and their expansion.

Hydrocarbon Investment

A10. In its most recent Annual Report, BP sets out the following priorities in respect of its hydrocarbons business:

- 10.1. growing its business by continuing to expand both oil and gas production. This includes investing in new oil and gas exploration and development;
- 10.2. commencing six major projects that BP says will make a significant contribution to its target of increasing production to 900,000 barrels per day of expected new production from major project start-ups between 2016 and 2021;⁵
- 10.3. continuing to increase overall oil and gas production in 2019;⁶
- 10.4. increasing upstream capital investment, including through BP's increased presence in onshore US oil and gas production;⁷ and
- 10.5. gaining access to new oil and gas exploration acreage covering around 63,000km² in 10 countries – Australia, Azerbaijan, Brazil, Canada, Egypt, Madagascar, Mexico, São Tomé and Príncipe, the UK North Sea and the US Gulf of Mexico.⁸

A11. BP makes clear in its 2018 Annual Report that it will continue to rely primarily on and plans to grow both oil and gas production (whilst strategic investment in low carbon activities is part of a strategy that provides, “optionality whatever path the transition takes”).⁹ Alongside a significant amount of oil, gas represents a growing part of BP's portfolio, with nine potential gas projects coming online in the next few years, on top of six launched in 2017 and four launched in 2018.¹⁰ In its last three Annual Reports, BP has confirmed that it has not halted or altered its commitment to proceed with any material project to which proved undeveloped reserves have been attributed.¹¹ In each of those years, BP replaced those reserves at the same as or more than the level of production.¹² In 2018, BP's net proved reserves amounted to 19,945 million barrels of oil equivalent, of which the majority was crude oil (10,711 million barrels).¹³

⁴ BP, (2019), *Annual Report 2018*, pp 40 and 47. BP; “Low carbon ventures and start-ups”, available at: <https://www.bp.com/en/global/corporate/sustainability/climate-change/low-carbon-ventures-and-start-ups.html>. This website explains that the US\$200 million for the development of options in new lower carbon businesses is directed towards five areas: “advanced mobility”, “bio and low carbon products”, “carbon management”, “digital transformation”, “power and storage”.

⁵ BP, (2019), *Annual Report 2018*, pp 10, 17, 22 and 23.

⁶ BP, (2019), *Annual Report 2018*, p. 25.

⁷ BP, (2019), *Annual Report 2018*, p.26.

⁸ BP, (2019), *Annual Report 2018*, p. 26.

⁹ BP, (2019), *Annual Report 2018*, see pp 10 and 22-23.

¹⁰ BP, (2018), *Annual Report 2017*, pp 14-17; BP, (2019), *Annual Report 2018*, pp 14-15 and 27.

¹¹ BP, (2019), *Annual Report 2018*, p.285; 2017, p.259; 2016, p.251.

¹² BP, (2019), *Annual Report 2018*, p.287.

¹³ BP, (2019), *Annual Report 2018*, p.287.

- A12. To illustrate the expenditure involved, CapEx in 2018 alone on BP’s hydrocarbon operations included the following:
- 12.1. on 31 October 2018, BP acquired from BHP Billiton Petroleum (North America) Inc. 100% of the issued share capital of Petrohawk Energy Corporation, which holds a portfolio of unconventional onshore US oil and gas assets (as at 31 December 2018, US\$6,788 million of the consideration had been paid);
 - 12.2. in 2018, BP also spent US\$1,739 million relating to the purchase of an additional 16.5% interest in the Clair oil field in the North Sea;
 - 12.3. BP also made inorganic payments associated with a 25-year extension to an oil-related production-sharing agreement in Azerbaijan.
- A13. These investments represent a total of at least US\$8,527 million invested in major fossil fuel related acquisitions in 2018.

Investment in “low carbon activities”

- A14. A second way of contextualising BP’s spend on renewables is by comparing its investment in a broad scheme of “low carbon activities” against its overall CapEx.
- A15. A strategic update published by BP in 2017 and its 2018 Annual Report provides investment commitments for “low carbon activities”. This appears to relate to a program of reducing operational emissions, product improvements and creating low carbon businesses. BP would appear to include its renewables investments, such as Lightsource BP and its windfarms as part of its low carbon accreditation program; other categories in the program are diverse and are unconnected to renewables production, such as those that relate to the efficiency of BP’s ships or to emissions reductions in some upstream and downstream hydrocarbon extraction and refinery operations.¹⁴
- A16. The indicated investments in low carbon activities can be compared with BP’s reported CapEx, as follows:

	2016	2017	2018
	US\$ million		
Total CapEx	17,452	17,840	25,088
<i>Total Organic CapEx</i>	<i>16,675</i>	<i>16,501</i>	<i>15,140</i>
<i>Total Inorganic CapEx</i>	<i>777</i>	<i>1,339</i>	<i>9,948</i>

¹⁴ BP’s website provides further information on the range of activities here: <https://www.bp.com/en/global/corporate/sustainability/climate-change/low-carbon-accreditation-programme.html>

Total Stated Investment in "Low Carbon" Activities ¹⁵	200	200	500
Investments in "Low Carbon" Activities - Percentage of Total CapEx	1.1%	1.1%	2.0%

Table A1 - BP's CapEx versus BP's stated level of investments in "low carbon activities".

A17. Thus, as indicated by Table A1, BP's investment on its range of low carbon activities is very small (circa 1 to 2%) compared to its Total CapEx. In BP's 2018 Strategy Update and 2Q 2019 results, BP stated that ">\$500 million" in spending on "low carbon" is planned for 2019.¹⁶ In July 2019, BP announced that they were looking to spend "in the region of" \$750 million on "low carbon businesses".¹⁷ This gives an approximate range of \$500 - \$750 million in planned capital expenditure on low carbon activities over 2019. As total capex is projected to be \$15-17 billion, BP would appear to be intending to spend between 2.9% - 5% of their total capital expenditure on low carbon activities in 2019.

A18. Note that not all of the "low carbon" investment goes into clean energy. For example, "low carbon activities" includes CCS, autonomous vehicles and digital technologies. However, the numbers are not disaggregated, so it is not possible to estimate what share of this value is being applied to clean energy.¹⁸

'Upper limit' spending on alternative energy

A19. As previously stated, BP does not publish readily comparable data to enable comparison of expenditure on its renewables business with its other businesses. One way of illustrating that comparison is by using a proxy for the 'upper limit' of BP's spending on "alternative energy".

A20. In its Annual Reports,¹⁹ BP refers to its biofuels, biopower, wind and solar investments as components of its "alternative energy" business, which is accounted for within its "other businesses and corporate" financial reporting segment. Expenditure on the "alternative energy" business is not specified, as a single value is provided for the whole "other

¹⁵ The 2018 figure is the total investment commitment for "low carbon activities" (including for acquisitions) set out by BP in its 2018 Annual Report. The figure for 2016 and 2017 are approximate values based on a statement contained on page 49 of a BP Strategic Update, dated February 2017.

¹⁶ BP 2018 Strategy Update, available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-fourth-quarter-2018-results-presentation-slides-and-script.pdf>; BP 2Q 2019 Results, available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-second-quarter-2019-results-presentation-slides-and-script.pdf>

¹⁷ BP, "How business is advancing the energy transition", available at: <https://www.bp.com/en/global/corporate/news-and-insights/speeches/how-business-is-advancing-the-energy-transition-brian-gilvary-2019.html>

¹⁸ BP, "Low carbon ventures", available at: <https://www.bp.com/en/global/corporate/sustainability/climate-change/low-carbon-ventures.html>; BP, "2017 Strategy Update", available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-strategy-update-2018-lamar-mckay-presentation.pdf>

¹⁹ Annual Reports from 2009-2018 were reviewed for this analysis.

businesses and corporate” segment.²⁰ The total expenditure reported for “other businesses and corporate” can therefore be considered as the *upper limit* on “alternative energy” expenditure, as expenditure on other significant business areas is also accounted for in this segment.²¹ Ultimately, this means that BP’s actual capital expenditure on its “alternative energy” business is lower than the upper limit values set out below in Figure A2 and Figure A3. To illustrate, there have been a number of third-party analyses that provide lower estimations for BP’s capital expenditure in this area. For instance, in CDP’s report *Beyond the Cycle*, it is estimated that BP has only spent 2.3% of its capital expenditure on renewable power since 2010.²²

A21. A graph for the years 2009 to 2015 can be produced based on this data:

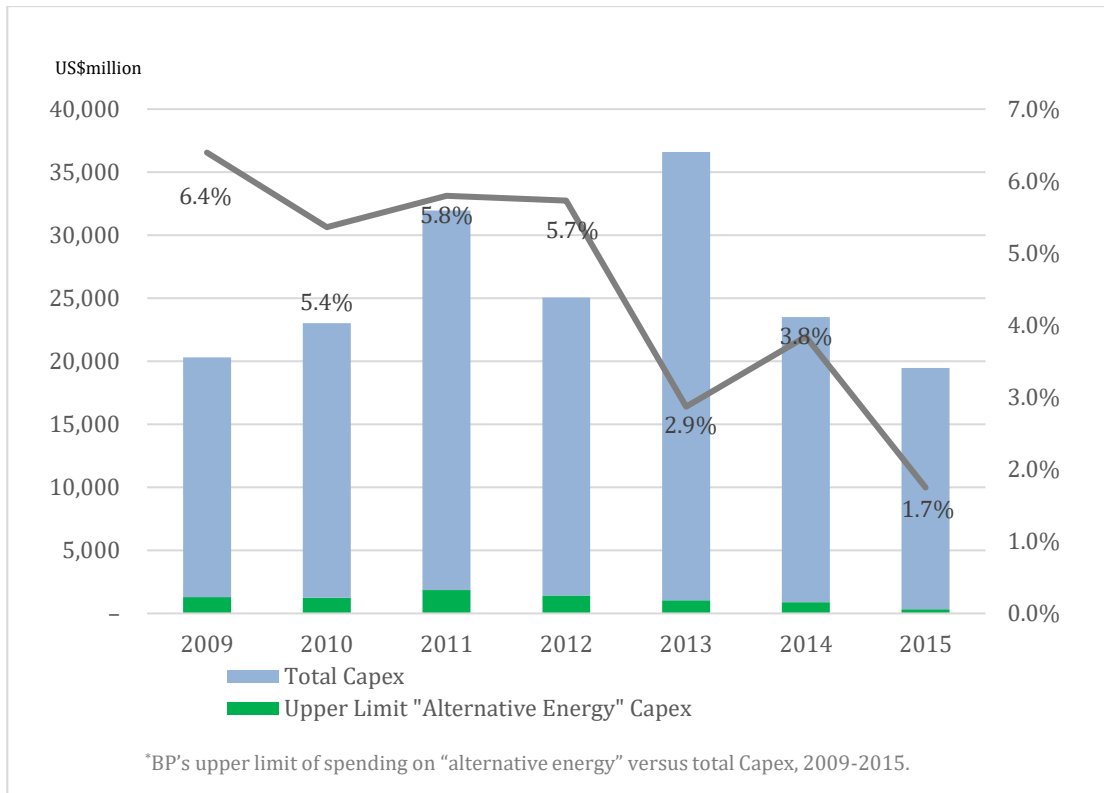


Figure A2 – BP’s spending on “Alternative Energy”, upper limit²³

²⁰ In the Annual Reports and Financial and Operating Information.

²¹ Not all expenditure within this category has been spent on alternative energy (it also includes items such as shipping, treasury, corporate activities and other centralised functions). See BP, (2010), *Annual Report and Accounts: 2009*, pp 42-43; 2010, p. 61; 2011, pp 101 and 102; 2012, pp 59, 82 and 83; 2013, p. 37; 2014, p. 35; 2015, p. 40; 2016, pp 37 and 38; 2017, pp 41 and 42; 2018, pp 37, 38 and 39. These documents can be provided on request.

²² Reuters, “Big Oil spent 1 percent on green energy in 2018”, available at:

<https://www.reuters.com/article/us-oil-renewables/big-oil-spent-1-percent-on-green-energy-in-2018-idUSKCN1NH004>; Fletcher et al., “Beyond the Cycle” Executive Summary (CDP, 2018).

<https://www.cdp.net/en/investor/sector-research/oil-and-gas-report>

²³ For the source data for this graph, see: 2009, BP FOI Report 2009-2013; 2010, BP FOI Report 2010-2014; 2011, BP FOI Report 2011-2015; 2012, BP FOI Report 2012-2016; 2013, BP FOI Report 2013-2017; 2014-2018, BP FOI Report 2014-2018.

A22. Figure A2 compares BP’s annual expenditure on “Other businesses and corporate”, of which “alternative energy” is a part, against its overall CapEx between 2009 and 2015. While it is not straightforward to directly compare the proportion of BP’s expenditure on “Other businesses and corporate” between years, as the categorisation of what constitutes BP’s “alternative energy” business has varied over time²⁴, a clear pattern nonetheless emerges. The upper limit of expenditure on its “alternative energy” business is very small relative to its overall CapEx.

A23. Accounting changes prevent direct comparison between CapEx between 2009 – 2015 and 2016 – 2018.²⁵ Other changes to BP’s reporting since 2016 also make it harder to understand its “other businesses and corporate” spending, in particular BP stopped reporting its inorganic expenditure on its “other businesses and corporate” segment.²⁶ The following graph illustrates the difference between BP’s reported organic CapEx on “other business and corporate” (i.e. BP’s upper limit organic spending on its “alternative energy business”) and BP’s total inorganic and organic CapEx.

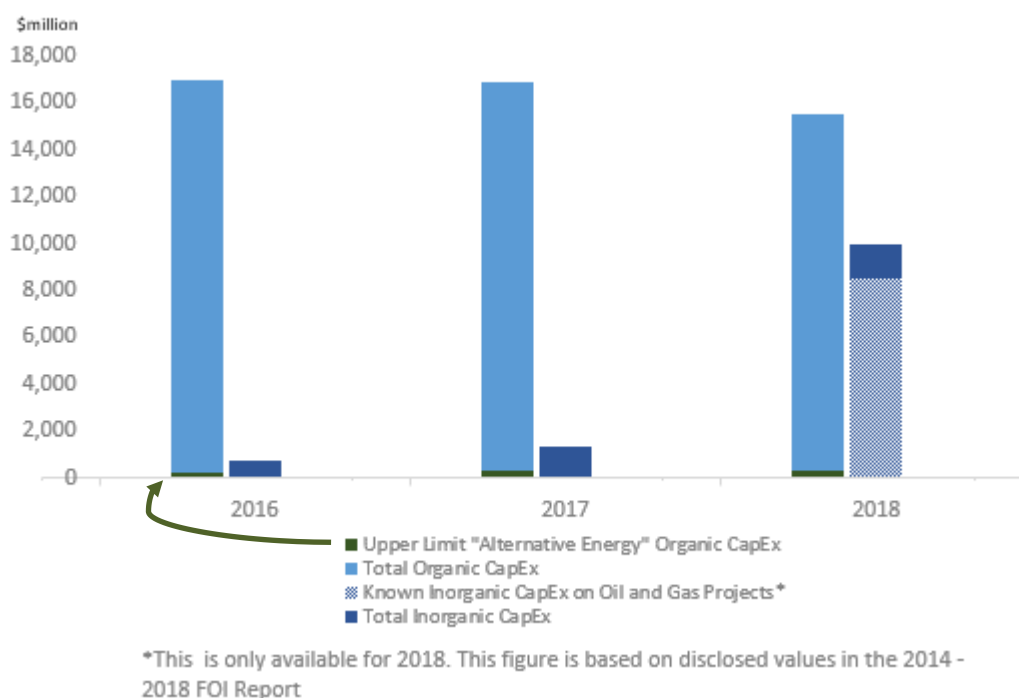


Figure A3 – BP’s “alternative energy” organic CapEx (upper limit) versus total organic and inorganic CapEx.

A24. The pattern shown by Figure A3 is that the upper limit of organic CapEx in “alternative energy”²⁷ (marked by an arrow above) is an extremely small fraction of organic CapEx

²⁴ As above, a fuller overview of which business areas have historically been included under “alternative energy” is available to the NCP on request.

²⁵ In 2016 there was a change in BP’s accounting basis.

²⁶ Since 2016, BP have only reported organic CapEx for “other businesses and corporate” (i.e., unlike previous years, no breakdown is provided for inorganic CapEx, which includes acquisitions and asset exchanges).

²⁷ As represented by the “other businesses and corporate” organic figures.

overall. Considering that no major acquisitions relating to renewable energy have been listed in the FOI Report covering 2016-2018, the omitted values for inorganic expenditure for “other businesses and corporate”²⁸ appear unlikely to significantly alter this pattern.²⁹ Total inorganic CapEx was relatively small in 2016 and 2017 compared with total CapEx and the increase in 2018 was in large part as a result of heavy investment of around US\$8,500 million in BP’s fossil fuel assets. That investment, as shaded on the graph, represented at least 86% of inorganic expenditure in 2018.³⁰

A25. Thus, the *upper limit* of BP’s spending on “alternative energy” between 2009 and 2018 indicates that alternative energy spending comprised a very small fraction of its overall CapEx.

Example of investments in renewables

A26. As an example of how BP’s investments in renewables compare to the overall scale of its business, BP’s announced investment of US\$200 million in Lightsource (a solar power business) over three years is dwarfed by other recent payments. That fact is already shown in the CapEx data presented earlier in this section, in particular. By way of further context, BP’s Annual Reports show:

26.1. BP’s dividend payments to shareholders in 2018 were US\$8.1 billion (representing almost 12,000 times the annualised value of the three-year investment in solar).

26.2. BP holds shares in Russia’s largest oil company, Rosneft. Its share of Rosneft’s dividends, net of withholding taxes, was \$620 million in 2018 alone.³¹

26.3. BP reports that Bob Dudley, group chief executive, has been paid some US\$118 million since he took that position in October 2010.³²

26.4. BP pays its auditors over US\$40 million annually and almost US\$240 million since 2014.³³

²⁸ As explained above, inorganic expenditure in “other business and corporate” has not been specified since 2016.

²⁹ According to BP’s Annual Reports from 2017 and 2018, in 2017 BP agreed to acquire a 43% stake in Lightsource for US\$200 million, to be invested over three years. However, a breakdown of these payments has not been provided. This equates to roughly US\$67 million a year in inorganic capital expenditure, which would not significantly alter the pattern of very low proportionate spending on BP’s “alternative energy” business.

³⁰ The unusually high value of BP’s total inorganic capex in 2018 is primarily due to investments in fossil fuel assets (see paragraph A12 above). It should be noted that the 2014-2018 FOI Report does not appear to mention any significant renewables acquisitions.

³¹ BP, (2019), *Annual Report 2018*, p. 34.

³² BP, (2019), *Annual Report 2018*, p. 96.

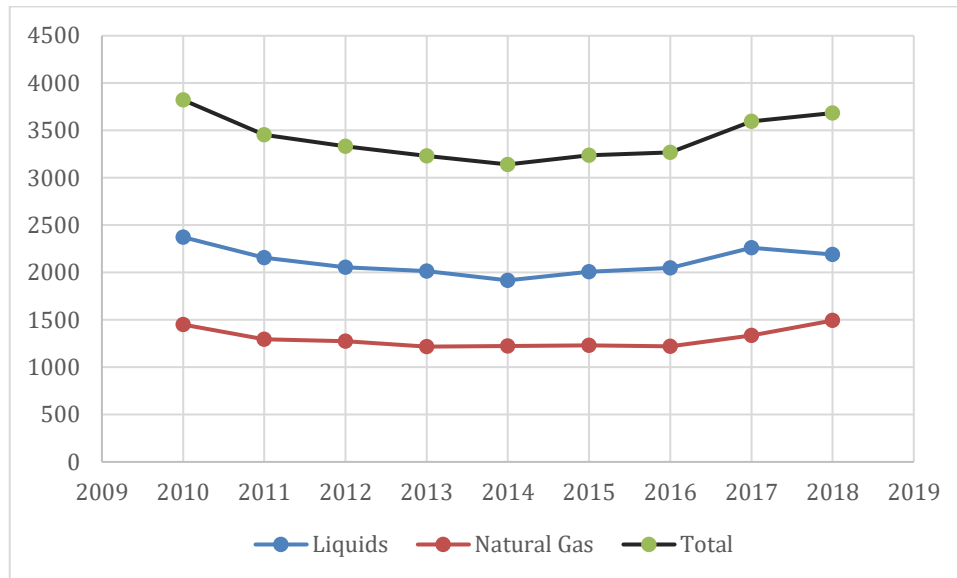
³³ See BP, (2019), *Annual Report 2018*, p. 79; BP, (2018), *Annual Report 2017*, p. 183; BP, (2017), *Annual Report 2016*, p. 179.

3 **BP's actual and planned fossil fuel business vastly exceeds its renewables operations: scale**

A27. The data in this part illustrate how BP's actual and planned fossil fuel business vastly exceed its renewable operations in terms of scale of production.

Hydrocarbon production

A28. BP's Annual Reports and Financial Operating Information provide data for liquids and 'natural gas' production, as shown in the following chart.



*Figure A4 – BP Production
mboe/d (net of royalties), including subsidiaries and equity accounted entities³⁴*

A29. Overall, these data make clear that BP produces very significant volumes of fossil fuels. By contrast, as set out later in this document, BP's renewables and biofuels operations together appear to produce less than 1% of this amount of energy.

A30. The pattern in Figure A4 is that BP's hydrocarbon production (both liquids and 'natural gas') fell somewhat between 2010 and 2013/2014 and have since broadly recovered. The main reason for the decline between 2010 and 2014 was that a large proportion of BP's cash was being used in paying out compensation for its *Deepwater Horizon* spill in the Gulf of Mexico in 2010, leaving less available for investment in expanding production.³⁵

³⁴ The sources are BP's Financial and Operating Information datasheets covering the period 2010 - 2018. Production is given for total subsidiaries and equity-accounted entities. There were minor differences between reports; where there was such discrepancy, this chart uses the latest data reported. The units in this chart are in Thousands of Barrels of Oil Equivalent / day (mboe/d). To compare natural gas with liquids production, BP's ratio of 5.8 billion cubic feet = 1 million barrels has been applied.

³⁵ Payments associated with the Gulf of Mexico oil spill have been addressed in detail in dedicated sections of BP's FOI Reports covering the period 2010 to 2018. See Guardian, "BP to cut production

The largest single increase year-on-year during the period was for liquids production in 2017 (around 212 mboe/d extra compared to 2016), followed by the increase in natural gas production in 2018 (around 158 mboe/d extra compared to 2017).³⁶

A31. Measured in barrels of oil equivalent, BP’s liquids business forms the larger part of its fossil fuel production. The proportion of overall energy provided by gas ranged from around 37% to 41%. At its lowest, gas supplied 37.14% of the total production measured in boe in 2017; at its highest, gas accounted for 40.54% in 2018.³⁷

Renewables production

A32. In its 2018 Annual Report, BP identifies that its focus for generating renewable energy is on biofuels, biopower, wind energy and solar energy. In the ‘alternative energy’ section, BP also refers to a number of alternative energy sources: solar energy, biofuels, renewable products (Butamax), Biopower, and wind.³⁸

A33. BP does not routinely provide – to ClientEarth’s knowledge – directly comparable figures for its production of renewable electricity versus its production of fossil fuels. This makes it hard to compare and understand the relative scale of those parts of its business. However, it has been possible to identify the following data from the 2018 Annual Report and other sources:

Energy Type	Production	Unit
Hydrocarbon production ³⁹	3,683	mboe/d
Wind production (maximum year, 2014) ⁴⁰	4,617	GWh/year
Biopower ⁴¹	892	GWh/year
Solar energy ⁴²	2	GW under management
Butamax ⁴³		N/A
Biofuels net ethanol equivalent per annum ⁴⁴	765	Million litres/year
Biofuels crush capacity ⁴⁵	10	Million tonnes/year

amid impact of Deepwater Horizon spill”, available at:

<https://www.theguardian.com/business/2011/jan/30/bp-production-targets-deepwater-horizon-spill>.

³⁶ Liquids production was 2048 mboe/d in 2016 and 2260 mboe/d in 2017. Natural gas production was the equivalent of 1,335 mboe/d in 2017 rising to 1,493 mboe/d in 2018.

³⁷ Production in mboe/d in 2017 was 2260 (liquids) and 1335 (gas); in 2018 it was 2191 (liquids) and 1493 (natural gas).

³⁸ BP, (2019), *Annual Report 2018*, pp 5 and 38-39.

³⁹ BP, (2019), *Annual Report 2018*, pp 17 and 21. Further production figures for fossil fuels are published at pp 288-289.

⁴⁰ See paragraph A37 onwards below. 2014 has been selected here as BP reported its highest wind capacity and production that year. BP does not appear to have provided comparable wind production data for 2018.

⁴¹ BP, (2019), *Annual Report 2018*, p. 39.

⁴² Lightsources BP identify that they have 2 GW of solar under management:

<https://www.lightsourcesbp.com/uk/about/>.

⁴³ As explained further below, Butamax has not produced any commercial biofuels.

⁴⁴ BP, (2019), *Annual Report 2018*, p. 38. See further discussion below about BP’s recent biofuels investment.

⁴⁵ BP has defined ‘crush capacity’ as the maximum capacity of the plant to process biofuels feedstock.

Table A2 – BP data on hydrocarbon and alternative energy production

A34. Given that the above figures mix capacity and generation, and as the units vary widely, it is very hard for readers of the data to understand what they mean in terms of the scale of BP’s operations. In order to assist that comparison, Table A3 processes these data to produce an approximate comparison of the scale of these parts of BP’s business, measured by the production of energy in thousands of barrels of oil equivalent per day, a standard industry unit. In making these calculations, calculations that would tend to increase, rather than decrease, the estimated productivity of BP’s renewables and alternative energy assets have been used. For example, wind production from BP’s most productive year. Even with these generous assumptions, the difference is significant.⁴⁶

	Thousand barrels of oil per day (equivalent)	Percentage of energy output (compared to hydrocarbon)
Hydrocarbon production	3683	100%
Wind production (daily average for 2014) ⁴⁷	7.44	0.202%
Biopower ⁴⁸	1.44	0.039%
Solar (gross managed capacity) ⁴⁹	5.08	0.138%

⁴⁶ BP publishes its production using different units. In the table, production is in thousand barrels of oil equivalent per day. The conversions rely on conversion factors provided by: the International Energy Agency’s Unit Converter (<https://www.iea.org/statistics/resources/unitconverter/>); BP’s published approximate conversion factors (<https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-approximate-conversion-factors.pdf>); Fuel Ethanol Trade Measurements and Conversions published by the Renewable Fuels Association (https://ethanolrfa.org/wp-content/uploads/2015/12/Fuel-Ethanol-Trade-Measurements-and-Conversions_RFA.pdf); and the Department for Business, Energy & Industrial Strategy’s publication *Digest of United Kingdom Energy Statistics, 2018* (available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736148/DUKES_2018.pdf), at p. 229. Figures for Butamax are not provided for this analysis as production is nil. The table reports energy production; as figures for actual production of biofuels are provided, the ‘crush capacity’ of biofuels plant is not relevant to this table.

⁴⁷ Conversion factor applied: 1 GWh = 0.588 mboe (based on 1 tonne of oil equivalent = 11,630 kWh and 6.842 barrels of oil equivalent).

⁴⁸ Conversion factor applied: 1 GWh = 0.588 mboe.

⁴⁹ Conversion factor applied: 1 MW Solar capacity = 8760 MWh (at 100% capacity) and 1576.8 MWh at 18% capacity. (It is difficult to derive an estimate in respect of BP’s solar capacity as not all solar farms share the same capacity. The International Renewable Energy Agency reports a global average capacity factor of 18% for utility scale PV systems installed in 2018 (IRENA, (2019), *Renewable Power Generation Costs in 2018, International Renewable Energy Agency*, at p. 47). Lower load factors are reported for the United Kingdom, where most of Lightsource BP’s current reported capacity would appear to be based (circa 10-12% according to data on Statista.com, available at: <https://www.statista.com/statistics/555697/solar-electricity-load-factor-uk/>). It therefore appears unlikely that using an 18% capacity factor would underreport BP’s production.)

Biofuels net ethanol equivalent per annum ⁵⁰	7.65	0.208%
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Table A3 – BP hydrocarbon and alternative energy production, mboe/d

A35. In short, these data illustrate that BP’s energy production from the above sources of alternative/renewable energy is an extremely small fraction of that produced by its hydrocarbon operations. Collectively, on the basis of the above data and approximate estimates, the energy produced by BP’s wind farms, solar farms, biopower and biofuels operations, is around six tenths of one percent of the energy produced by BP’s hydrocarbon operations.

A36. With that data in mind, further indications of the relative scale of BP’s renewable businesses are analysed below, focusing first on the examples of its wind and solar operations.

Wind Capacity

A37. Contrary to the trend of increasing hydrocarbon production, BP’s published wind capacity has declined since 2015.⁵¹ That data is summarised in Table A4. BP’s net wind capacity peaked in 2012 to 2015. It then fell annually and by around 35% by the end of 2018. It may have since fallen again.⁵²

	Net wind capacity (MW)			Gross (MW)
	Non-US	US	Total	
2006	32	11	43	43
2007	72	100	172	373
2008	110	322	432	785
2009	32	679	711	1,237
2010	32	742	774	1,362
2011	32	1,016	1048	1,763
2012	32	1,558	1,590	2,617 ⁵³
2013	32	1,558	1,590	2,617
2014	32	1,556	1,588	2,617
2015	32	1,556	1,588	2,617
2016	22	1,452	1,474	2,302
2017	0	1,432	1,432	2,259
2018	0	1,001	1,001	1,829

⁵⁰ Conversion factor applied: 1 litre ethanol = 0.00364809 barrels of oil equivalent (based on 1 litre = 0.00628981077 barrels and 1 barrel of ethanol = 0.58 boe).

⁵¹ The sources are BP’s Financial and Operation datasheets covering the period 2006 - 2018.

⁵² On its United States web page, BP reports that its United States wind energy business is capable of gross production of over 1,679 MW a year (https://www.bp.com/en_us/united-states/home/who-we-are/possibilities-everywhere/wind-and-natural-gas.html). As this is lower than the gross figure for 2018, it would appear that the net figure has decreased again since BP’s 2018 Annual Report.

⁵³ The financial and operation information provided by BP for 2010-2014 report this figure as 2,619 MW in 2012, 2013 and 2014.

Table A4 – BP Data on wind power capacity

A38. 2014 would appear to represent BP’s highest recorded wind production.⁵⁴ At the height of its wind holdings, BP reported that its net share of wind generation was 4,617GWh in 2014 and 4,424GWh in 2015.⁵⁵

A39. This trend of declining wind production applies both in the United States, where BP has its primary wind operations, and elsewhere. Inside the United States, BP’s net wind generation capacity peaked at around 1,556 megawatts in 2012 – 2015, falling to 1,001 megawatts by 2018. In 2018, BP actually shrank its wind energy operations, divesting itself of three large facilities in Texas.⁵⁶ Net wind capacity outside the United States was at most 110 megawatts in 2009, but this fell to 32 megawatts between 2009 to 2015. It was zero megawatts in 2017 to 2018. The pattern is shown in Figure A5.

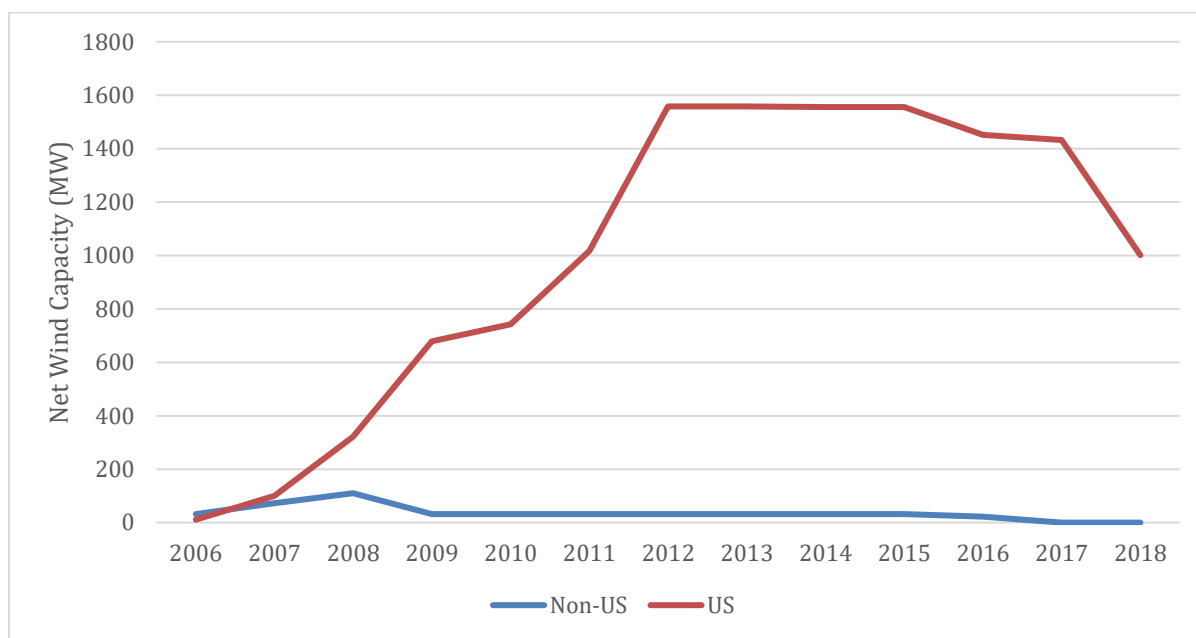


Figure A5 – BP’s net wind capacity⁵⁷

A40. Against the backdrop of BP’s declining wind capacity, it is notable that, even taking its former maximum rate, BP’s wind production is tiny relative to its hydrocarbon production. The approximate comparison in Table A4 identifies that BP’s wind energy, in its most productive year, amounted to the energy equivalent of around 8 mboe/d. That falls to be compared with BP’s expanding fossil fuel production and with its extensive reserves:

⁵⁴ The Annual Report for 2013 recorded that BP’s net share of wind generation was 3,587 GWh in 2012 and 4,203GWh in 2013. The Annual Report for 2016 reported that BP’s net share of US wind generation that year had fallen to 4,389GWh. In the Annual Reports for 2017 and 2018 BP no longer published the GWh value for its wind production, but overall capacity decreased over that period.

⁵⁵ BP, (2016), *Annual Report 2015*.

⁵⁶ BP, “Renewable Energy”, available at:

<https://www.bp.com/en/global/corporate/sustainability/climate-change/renewable-energy.html>.

⁵⁷ BP define net wind generation capacity as the sum of the rated capacities of the assets/turbines that have entered into commercial operation, including BP's share of equity-accounted entities.

- 40.1. Wind energy production is dwarfed by BP's hydrocarbon operations. It amounts to only around 0.2% of BP's daily hydrocarbon production⁵⁸ and 0.7% of the daily production of BP's share of the Russian company Rosneft alone.⁵⁹
- 40.2. BP's target *growth* alone in hydrocarbons exceeds its maximum wind production by around 11,000%.⁶⁰
- 40.3. By 2018 BP produced significantly more hydrocarbons every *day* than its *annual* maximum wind production; every 6 days BP's *increased* hydrocarbon production alone was greater than BP's *annual* maximum wind production.⁶¹
- 40.4. BP's estimated net proved reserves amount to almost 37,000 times the energy equivalent of BP's maximum annual wind generation.⁶²
- A41. Nor, given the context of BP's overall size, does its wind power generation represent a particularly significant part of the global market for wind power. By way of illustration, its global net wind capacity in 2018 represents around 1% of the currently installed wind capacity in the United States,⁶³ and less than 1% of renewable energy production in the United Kingdom.⁶⁴ Ørsted, the market leader in offshore wind, reports gross installed capacity offshore sector is 3,092 MW in the UK alone (total 5,602) and its decided capacity (which adds parks under construction) is 9,858 MW.⁶⁵

Solar Capacity

- A42. The following information about the scale of Lightsource BP's current operations can be found in its Annual Report 2018.⁶⁶ In the eight-month period prior to 31 December 2018 Lightsource BP Renewable Energy Investments Limited owned, constructed or managed solar assets as follows:

⁵⁸ See Table A3.

⁵⁹ BP, (2019), *Annual Report 2018*, p. 34.

⁶⁰ Since 2016, BP has targeted growth of 900 mboe/d by 2021 and reports that it is on track to deliver that objective. BP, (2019), *Annual Report 2018*, p. 23

⁶¹ The 2018 Annual Report shows that production increased annually between 2014 to 2018 from 3,141 to 3,683 mboe/d. This is an increase of 542 mboe/d by 2018.

⁶² BP's estimated net proved reserves on an oil equivalent basis on 31 December 2018 was 19,945,000 thousand barrels of oil equivalent. BP, (2019), *Annual Report 2018*, p. 287.

⁶³ U.S. Wind Industry, Quarterly Market Report, Third Quarter 2019 reports that as of the third quarter of 2019, there was 100,125MW of installed wind capacity in the United States, available at <https://www.awea.org/Awea/media/Resources/Publications%20and%20Reports/Market%20Reports/3Q-2019-AWEA-Market-Report-Public-Version.pdf>

⁶⁴ In 2018 in the UK, renewable energy production was 111,100 GWh of a total electricity generation of 333,900GWh. Onshore wind accounted for 30,400 GWh and offshore wind was 26,700 GWh (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791297/Press_Note_March_2019.pdf).

⁶⁵ Orsted, "Offshore FactSheet Q3 2019", available at: <https://orsted.com/en/Investors/IR-material/Financial-reports-and-presentations#A1>.

⁶⁶ Lightsource BP Renewable Energy Investments Limited, (2019), *Annual Report for the eight-month period ended 31 December 2018*.

- 42.1. it had 249 MW of fully owned operational assets generating £29.6m of revenue (in the prior ten month period 217MW of revenue generated £41.2m);
- 42.2. it had 6,025MW under development (2,861 in the prior period);
- 42.3. it constructed no new solar power plants in the UK;
- 42.4. it managed 1.7GW of solar power plants (of which 249MW were its own) and added a further 33MW of third party operating and maintenance contracts to its business.
- A43. Lightsource BP states that it has 2GW of capacity under management. BP owns 43% of the Lightsource BP.⁶⁷
- A44. It is possible to illustrate the relative scale of Lightsource BP in the solar market, using the above figures. In 2018, Lightsource BP's total *managed* assets were in the region of 0.4% of global solar PV capacity, or 0.08% of total renewable electricity capacity, on the basis of IEA reported figures for stated policies.⁶⁸ Lightsource BP's total *owned* assets represented around 1/8 of that amount.⁶⁹ Each year since 2017, around fifty times Lightsource BP's total managed capacity and 400 times its total owned capacity has, on the basis of figures provided by the IEA, been *newly* installed worldwide. Between 2017 and 2019, *new* installations alone added in the region of 310GW, far greater than Lightsource BP's 2GW of managed assets and over 1200 times greater than its fully owned operation assets.⁷⁰ Of course, as BP are a minority shareholder in the company, only a fraction of the above solar energy production is likely to be attributable to it.

Other Production

- A45. BP began its biofuels operations in 2008, and has since acquired Tropical Bioenergia (a Brazilian biofuel company) and two additional ethanol production sites in Brazil.⁷¹ Between 2009 and 2018, BP increased its yearly production of biofuels from 70 to 765 million ethanol-equivalent litres.⁷² Despite a large percentage increase in annual production, biofuels and biopower still represent a very small proportion of BP's total energy production, as illustrated in Table A3⁷³ and in the following table, in which its

⁶⁷ Lightsource BP, "We are Lightsource BP", available at: <https://www.lightsourcebp.com/uk/about/> (accessed 02 December 2019).

⁶⁸ See, International Energy Agency, (2019), "World Energy Outlook 2019", IEA, Paris, Table A.3: Electricity and CO₂ Emissions, World. Under the Stated Policies Scenario, solar PV capacity in 2018 was 495 GW and renewable capacity was 2,517 GW.

⁶⁹ 249MW / 2GW = around 1/8.

⁷⁰ See, International Energy Agency, (2019), World Energy Outlook 2019, IEA, Paris, Box 1.1. The IEA report that in 2017 and 2018, new global solar PV deployment was close to 100 GW a year. In 2019, it is anticipated over 110 GW will be added.

⁷¹ BP, "Biofuels", available at: https://www.bp.com/en_br/brazil/home/who-we-are/what-we-do/biofuels.html. It is not clear whether biofuels and biopower represent a sustainable alternative to fossil fuel derived energy.

⁷² BP FOI reports covering 2009 – 2018.

⁷³ BP publishes its production using various units. In BP's FOI, hydrocarbon production is in thousands of barrels of oil per day. Conversions for this calculation were performed using the International Energy Agency's Unit Converter (available at:

annual biofuel production (converted to barrels of oil equivalent), is compared to its hydrocarbon production:

Year	Liquids	Natural Gas	Total Hydrocarbon Production	Biofuels	Biofuel (Proportion of Total Hydrocarbon Production)
2018	2191	1493	3683	7.65	0.21%
2017	2260	1335	3595	7.76	0.22%
2016	2048	1220	3268	7.33	0.22%
2015	2007	1232	3239	7.95	0.25%
2014	1917	1224	3141	6.53	0.21%
2013	2013	1217	3230	5.21	0.16%
2012	2055	1275	3331	4.04	0.12%
2011	2156	1296	3454	3.14	0.09%
2010	2373	1448	3822	1.05	0.03%

Table A5 – Annual production of biofuels compared to production of hydrocarbons

A46. In July 2018, BP announced that it would be forming a 50:50 joint venture with Bunge, a US agricultural company, in order to expand its bioenergy business.⁷⁴ In 2018, the two companies had a joint annual production of around 2.2 billion litres of ethanol equivalent.⁷⁵ It should be noted that the entirety of the new joint venture’s production roughly equates, measured in terms of thousands of barrels of oil equivalent per day, to just 0.6% of BP’s total hydrocarbon production in 2018 (BP’s net share of that production is not known, but might assumed to be 0.3%); this gross production of the new joint venture is equivalent to 21.99 mboe/d. This contrasts with BP’s plans to achieve 900 mboe/d of *additional* hydrocarbon production by 2021. Bunge Bioenergia’s 2018 production is just 2.44% of this value. Considering that BP will own 50% of the joint venture, this reduces biofuel production attributable to BP to approximately 11 mboe/d, or 1.22% of its 2021 hydrocarbon *growth* target; thus hydrocarbon expansion is far more rapid than this growth in biofuel production.

A47. In 2016, BP made an equity investment of US\$30 million in Fulcrum BioEnergy (“Fulcrum”), a firm specialising in converting waste into biofuels.⁷⁶ Fulcrum and Air BP

<https://www.iea.org/statistics/resources/unitconverter/>) and BP’s published approximate conversion factors (available at: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-approximate-conversion-factors.pdf>).

⁷⁴ Note that as of 29 November 2019, this is still subject to regulatory clearance.

⁷⁵ BP, (22 July 2019), “BP announces major expansion in renewable energy, combining biofuels and biopower with Bunge in Brazil to create a world-class bioenergy company”, available at: <https://www.bp.com/en/global/corporate/news-and-insights/press-releases/bp-announces-major-expansion-in-renewable-energy-with-bunge-in-brazil.html>.

⁷⁶ Fulcrum Bioenergy, “Partners: BP”, available at: <http://fulcrum-bioenergy.com/partners/partnersbp/>.

also entered into a 500 million gallons per year offtake agreement for jet fuel.⁷⁷ However, it should be noted that the first Fulcrum facility is yet to be constructed and begin operations.⁷⁸ As such, the first supply of biojet is not expected to take place until 2022.⁷⁹ Despite this, BP has heavily publicised “waste to fuel” biofuels in its “Possibilities Everywhere” campaign.⁸⁰ It should also be noted that on BP’s “Possibilities Everywhere” “Waste to fuel” webpage, BP states: “the fuel made at the plant produces 80% fewer carbon emissions than that of conventional petroleum fuel” (emphasis added). This is in direct contrast to Fulcrum’s website, which includes the following qualification, “[d]epending on the type of fuel produced, many studies have shown that the cost of the feedstock can be as much as 80 percent of the total cost of the fuel” (emphasis added). BP also publicises that its proposed Fulcrum facility will produce 11 million gallons of fuel every year. This value would amount to around 0.717 mboe/d, or 0.019% of BP’s hydrocarbon production.⁸¹

A48. Butamax Advanced Biofuels LLC (“Butamax”) is a 50:50 joint venture between BP and DuPont, specialising in research and development of bio-isobutanol (an “advanced biofuel”). While Butamax acquired an ethanol facility in Kansas in 2017, which is planned to be re-engineered to add bio-isobutanol capacity, the company is yet to commercially produce any biofuels.⁸²

⁷⁷ Fulcrum Bioenergy, “Partners: BP”, available at: <http://fulcrum-bioenergy.com/partners/partnersbp/>.

⁷⁸ BP, “Fulcrum BioEnergy”, available at: <https://www.bp.com/en/global/corporate/sustainability/climate-change/low-carbon-accréditation-programme/case-study-fulcrum.html>.

⁷⁹ BP, “Sustainable aviation fuel”, available at: <https://www.bp.com/en/global/air-bp/low-carbon/sustainable-aviation-fuel.html>.

⁸⁰ See **Annex C (Exhibits 1.D.2, 2.A.5, 2.A.6, 2.A.17, 3.G, 4 and 5.F)** for examples.

⁸¹ Conversion factor: it has not been possible to identify the equivalence between this synthetic fuel and oil. This calculation assumes parity between 1 barrel of Fulcrum’s synthetic crude and 1 barrel of oil. 1 gallon is 0.0238 barrels.

⁸² Butamax, “BP and DuPont Joint Venture, Butamax®, Announces Next Step in Commercialization of Bio-Isobutanol with Acquisition of Ethanol Facility in Kansas”, available at: https://www.butamax.com/wp-content/uploads/2017_04_03_ib_butamax_announce-FINAL.pdf

4 Updating the data

A49. In order that the NCP and the public may have a clearer understanding of the relative scale of BP's hydrocarbon and renewables production and its evolution since its 2018 Annual Report, ClientEarth invites BP to update the data produced earlier in this Annex (at Table A3) by completing and publishing this table:

	Production (Net of royalties)			Production (net of royalties) (mboe/d)		Organic Capital Expenditure	Inorganic Capital Expenditure
	2018	2019 (YTD)	Unit	2018	2019 (YTD)		
Total Production							
Hydrocarbon			mboe/d				
Wind			GWh/year				
Biopower			GWh/year				
Solar			GWh/year				
Butamax			mboe/d				
Biofuels			Million litres/year net ethanol equivalent				
(Other)							

A50. This table is intended to capture data that will enable the comparison of BP's various hydrocarbon and renewables projects. A column in relation to 2019 is included in order to give the company the opportunity to demonstrate production occurring this year, in case there has been significant change since its last Annual Report for the year ending 2018. In the event that such data is not yet available, BP is invited to provide an interim version and to publish the remaining information in due course.