

## Decision of the ADVERTISING REGULATORY BOARD

Advertiser	TotalEnergies Marketing South Africa (Pty) Ltd
Consumer/Competitor	Consumer
File reference	3291 – TotalEnergies
Outcome	Upheld
Date	14 August 2024

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged against advertising for TotalEnergies.

### Description of the advertising

A page of the Advertiser's website appears as follows:



[Home](#) > TotalEnergies Partners with Sanparks to #FuelYourExperience

Summer is here at last! And what better way to spend it than in the bush?

Share your favourite summer moments at a [SA national park](#) with us and you could win R250 wicode vouchers and a spectacular weekend getaway for your family with SANParks!

How to enter:

- Upload a photo of yourself at a SANParks park
- Tag TotalEnergies and @SANParks
- Use #FuelYourExperience

Make sure you're following TotalEnergies and SANParks on social media. (Ts and Cs apply).

Our #FuelYourExperience campaign is just another way in which we're partnering with SANParks to encourage people to visit South Africa's magnificent national parks.

We're committed to sustainable development and environmental protection. That's why we have partnered with Sanparks for over 60 years, so that South Africans can appreciate our country's natural heritage and pass on a love for the environment to their children.

TotalEnergies operates 21 service stations in national parks and also sponsors several environmental projects. These include the annual SANParks Keep the Kruger Clean campaign and the SANParks Walk and Learn on The Wild Side project, for rural school children to learn more about conservation.

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## Complaint

The Complainant stated: “The ad claims that TotalEnergies is ‘committed to sustainable development and environmental protection’. This is a completely false and misleading claim, which we believe constitutes greenwashing. TotalEnergies is lying to the public about the nature of their business.”

The Complainant then provided a list of citations, under the headline, “The facts about TotalEnergies’ environmental and sustainability impacts”.

These included:

- *“As the world's 19th biggest greenhouse gas emitter, TotalEnergies is a leading contributor to dangerous climate change.”*
- *“According to the Intergovernmental Panel on Climate Change (IPCC), climate change disrupts marine, terrestrial, and freshwater ecosystems, leading to extinctions, increased disease, and mass mortality events. The fossil fuel-based nature of TotalEnergies directly contradicts environmental protection efforts by causing irreparable climate damage to ecosystems and biodiversity.”*
- *“Total’s response to the 2015 Paris Climate Treaty has been not to cut, but to continue to expand its emissions, by another 14 million tonnes, to 400 million tonnes of carbon dioxide by 2022, causing \$76 billion dollars worth of climate damage in just that year.”*
- *“The company continues to explore for new oil and gas reserves across Africa. For example, they have recently been granted a licence to conduct exploratory drilling between Cape Agulhas and Cape Town. This will negatively impact marine species, disrupt ecosystems, and pose risks to coastal communities and fishing livelihoods.”*
- *“TotalEnergies has a 62% stake in the East African Crude Oil Pipeline project which contradicts its purported commitment to environmental protection. If built, the pipeline will generate more than 34 million tonnes of CO2 emissions every single year, displace tens of thousands of people from their land, open up critical ecosystems for oil development, and will be built through some of the world’s most important elephant, lion and chimpanzee nature reserves.”*
- *“The most commonly accepted definition of ‘sustainable development’ is ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’. Yet, according to Human Rights*

*Watch: ‘TotalEnergies’ planned oil pipeline in East Africa has devastated thousands of people’s livelihoods in Uganda and will contribute to the global climate crisis. The project will displace more than 100,000 people, has caused food insecurity and household debt, caused children to leave school, and is likely to have devastating environmental effects.’”*

## Response

The Advertiser responded, *inter alia*:

- **The challenged content is not an advertisement**

The content under review does not promote or advertise the sale, leasing or use of goods or services. It is a corporate communication about an aspect of the corporate social responsibility programs of TotalEnergies Marketing South Africa. It informs stakeholders about the company’s partnership with SANParks to encourage people to visit South Africa’s national parks. . . Accordingly, the challenged content disseminates information about this sustainability initiative by TotalEnergies Marketing South Africa, but does not promote any product or service. . . Given that the challenged communication is not an advertisement, it is our view that it should not be subjected to the ARB’s review.

- **The challenged content is not false nor misleading**

The complaint holds that the statement made by TotalEnergies that it is “committed to sustainable development and environmental protection” is a false and misleading claim, which would constitute greenwashing and raises concerns about a number of issues in relation with the activities of TotalEnergies Marketing South Africa and the broader activities of the TotalEnergies group (the “Company”) in South Africa, in Africa generally and on a worldwide scale. However, as shown below, the stated commitment to sustainable development and environmental protection is not false nor misleading as, on the contrary, it is grounded in the Company’s general strategy and policies, as proven by concrete actions and results displayed publicly for stakeholders.

### ***TotalEnergies’ approach to sustainable development and climate***

Limiting the consequences of global warming and providing energy is a global emergency around which TotalEnergies has defined its strategy. In this context, TotalEnergies affirms its ambition to be a major player in the energy transition and to achieve carbon neutrality by 2050, together with society. By 2050, TotalEnergies would produce:

- About 50% of the company's energy in the form of low-carbon electricity, including the corresponding storage capacity, totalling around 500 TWh/year, on the premise that TotalEnergies would develop about 400 GW of gross renewable capacity.
- About 25% of our energy, equivalent to 50 Mt/year of low-carbon energy molecules in the form of biogas, hydrogen, or synthetic liquid fuels from the circular reaction  $H_2 + CO_2 \rightarrow \text{e-fuels}$ .
- About 1 Mboe/day of Oil & Gas (about a quarter of the production in 2030, consistent with the decline envisaged by the IEA's Net Zero scenario), primarily liquified natural gas (roughly 0.7 Mboe/day, or 25-30 Mt/year) with very low-cost oil accounting for the rest. Most of that oil would be used in the petrochemicals industry to produce about 10 Mt/year of polymers, of which two thirds would come from the circular economy. That oil and gas would represent:
  - About 10 MT CO<sub>2</sub> e/year of Scope 1 residual emissions, with methane emissions aiming towards zero (below 0.1 Mt CO<sub>2</sub> e/year); those emissions would be offset in full by projects using nature-based solutions (natural carbon sinks);
  - Scope 3(1) emissions totalling about 100 Mt CO<sub>2</sub> e/year. To get to net zero together with society, TotalEnergies would contribute to "eliminate" the equivalent of 100 Mt/year of CO<sub>2</sub> generated by our customers by developing carbon utilisation (CCU) and carbon capture and storage (CCS) solutions, of approximately 100 Mt CO<sub>2</sub> e/year.

In 2050, the company's trading portfolio would be aligned with its productions and sales portfolio. To do so, the Company has committed to profoundly transforming its production and sales mix while continuing to meet the energy needs of a growing population. It is investing even more than in previous years in renewable solar and wind energy, as well as in transitional energy sources such as natural gas, which provides a flexible complement to intermittent renewables while avoiding the emissions associated with coal power generation. At the same time, TotalEnergies continues to invest in maintaining oil production, which the planet will not be able to replace immediately for uses such as transportation.

For the purposes of transparency and comprehension of this strategy, the Company publishes annually a Sustainability & Climate Progress Report (with its latest revision published in March 2024). We invite the ARB and the complainant to read the detailed information and perspective provided in that report, which aims to provide an account on

achieving the Company's ambition and its tangible yearly progress in implementing actions to support the energy transition. This notably includes the achievements the Company can demonstrate such as the reduction of emissions in line with its objectives for 2030 and on the path to its 2050 Net Zero ambition. This report is submitted annually to the Company's shareholders' meeting, and this year received a favorable consultative opinion with 80% of the votes cast.

In 2022, more than 27,000 TotalEnergies employees took part in workshops to develop ten objectives and indicators aligned with the UN **Sustainable Development Goals** (SDGs). In 2023, every TotalEnergies site, business unit and affiliate worldwide has adopted an action plan with targets to be met by 2025. These plans form the Company's 'Sustainab'ALL Program' in which it sets out its material contribution to society.

The strategy and programs described above are deployed across the Company's business segments and subsidiaries worldwide.

Given the TotalEnergies Company's business strategy, its objectives and tangible actions implemented and the achieved outcomes on the path to its 2050 net zero ambition, the statement that TotalEnergies Marketing South Africa is committed to sustainable development is therefore neither false nor misleading.

In South Africa, TotalEnergies has been present since 1954 and is committed to contributing to the energy supply and the evolution of its energy mix. TotalEnergies in South Africa markets a wide range of energies from fuels, LPG, green gases, and electricity from renewable energies. We are developing a 700MW gross capacity renewable project portfolio including the Prieska solar plant (86MW) which has been operational since 2016 in the Northern Cape and supplying electricity to over 70,000 homes.

In 2023, TotalEnergies Renewables South Africa accelerated its growth with the signature of a 260MW CPPA with Sasol and Air Liquide and the launch of the construction of a 216MW solar plant with 500MWh battery storage. In December 2023, TotalEnergies and its partners launched the construction of a major hybrid renewables project in South Africa, comprising a 216MW solar plant and a 500MWh battery energy storage system (BESS), a part of the Renewable Energy Risk Mitigation IPP programme, to reduce the impact of loadshedding to the South African economy. Located in the Northern Cape province, the site will generate over 400GWh of renewable electricity per year for the South African national grid for twenty years.

TotalEnergies, along with Chariot Transitional Power is developing a 42MW solar Pv plant for Tharisa Mine in Buffelspoort, North of Johannesburg.

TotalEnergies Renewables Distributed Generation was established in South Africa in 2022. This division complements our large-scale solar offerings with smaller scale onsite B2B solar solutions that are developed on rooftops, carports or ground mounts at our customer sites.

In the natural gas sector, TotalEnergies has a Joint Development Agreement in place with Gigajoule to develop a Liquefied Natural Gas (LNG) import terminal in Maputo, Mozambique. This project aims to supply South Africa with natural gas by pipeline and truck starting in 2026.

The Company is resolutely pursuing its ambition, completely changing its production and sales mix, even as it continues to meet the energy needs of growing populations.

TotalEnergies' ambition is to place environmental performance at the heart of its projects and operations. While not a regulatory requirement, we conduct an Environmental baseline survey (EBS) before we start any operations to have a clear indication of the environmental conditions in the area where we operate. We undertake an in-depth Environmental Impact Assessment for all our activities. Surveys has been launched to map the marine species, including, marine mammals, to model the potential impact of production activities such as noise, drill cuttings in order to define any measures to be taken. We support local initiatives that promote data that contributes to the knowledge of our marine environment and protecting and promoting biodiversity through strategic partnerships with like-minded institutions like SanParks, Department of Forestry, Fisheries & Environment, and Universities.

Given its key player role in developing South African's energy mix, and the actions undertaken to assess and minimize any biodiversity impacts of its projects in South Africa, including in particular regarding marine species, TotalEnergies' statement that it is committed to sustainable development and environmental protection is neither false nor misleading.

### ***TotalEnergies' EACOP project***

To meet the growing demand for energy worldwide, TotalEnergies is developing the EACOP (East African Crude Oil Pipeline) in Uganda and Tanzania. It consists of the

construction of a 1,443 km buried pipeline between the city of Kabaale in Uganda and the port of Tanga in Tanzania, as well as a storage terminal and a loading jetty in Tanga. Because Uganda is a landlocked country with no direct access to the sea, the oil needs to be transported to a Tanzanian port via a pipeline.

Since the EACOP project is situated in a sensitive social and environmental context, ESIA's have been carried out in compliance with the stringent standards of the International Finance Corporation (IFC - World Bank Group). Third-party reviews have also been conducted to ensure that the projects are compliant with the best social and environmental practices. Plus, in the interests of transparency, TotalEnergies discloses key progress indicators for the EACOP project regarding land acquisition, biodiversity, local content and operations.

- *Local communities:*

The EACOP project does not involve displacing hundreds of thousands of people. A total of 775 households, approximately 5,000 people, will be rehoused in the vicinity and in better living conditions, on acquired land of 5,600 hectares. The figure of 100,000 people refers to all people who own an asset (i.e., farmland or animal grazing land, on the pipeline route, either because they are located on permanent right-of-way or for the duration of the construction works). As of 31 May 2024, 99% of compensation agreements have been signed by affected households with 98% of households compensated.

In addition to the compensation policy, families are offered entry into the Livelihood restoration programme. They also receive additional compensation in the form of transitional food assistance for up to six months.

Additionally, the projects will benefit the local economy by creating nearly 80,000 direct and indirect jobs (with over 14,000 direct jobs created only in the construction phase).

- *Climate:*

TotalEnergies strives to reduce the greenhouse gas emissions generated by its activities, and this applies to the EACOP project, whose scope 1 and 2 emissions are far lower on average than those of other Company-operated projects of comparable scale (13kgCO<sub>2</sub>e/boe compared to 18kgCO<sub>2</sub>e/boe). To do so, TotalEnergies has implemented concrete solutions such as solarization of facilities, zero flaring and recovery of the gas produced.

More generally, TotalEnergies has set intermediary 2025-2030 objectives for scope 1 and 2 emissions and methane emissions on operated activities as well as indirect emissions. As an example shown at page 28 of the Sustainability & Climate 2024 Progress Report, TotalEnergies achieved in 2023 a -24 % reduction in scope 1 and 2 emissions against 2015, on the way to its 2030 objective of -40% net emissions.

- *Biodiversity.*

The potential impacts, including biodiversity impact, associated with the pipeline corridor were assessed and resulted in regulatory approved ESIA.

In parallel, an International Finance Corporation (IFC) Performance Standard (PS) 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources) compliant Critical Habitat Assessment (CHA) was conducted. To achieve PS6 compliance, the CHA was conducted in both the marine and terrestrial environments to determine the presence, distribution and extent of Natural Habitat and Critical Habitat. To further avoid and minimize biodiversity impacts and to provide guidance for the offsetting scenarios the following PS6 associated plans were developed: the Biodiversity Action Plan, the Biodiversity Offset Management Plan, and Biodiversity Monitoring & Evaluation Plan.

Biodiversity Action Plans are implemented in partnership with local communities, conservation organizations and mandated institutions and are a long-term commitment (25 years). These activities are overseen by an independent panel of experts (the Independent Biodiversity and Livelihoods Advisory Committee, IBLAC, comprising international and national specialists) who provide advice and support for implementation of environment and social activities in line with the IFC Performance Standards.

Furthermore, the EACOP pipeline route was finalized based on a rigorous review of environmental, biodiversity and social constraints. It does not cross any Ramsar or International Union for Conservation of Nature (IUCN) sites and is mainly located on agricultural land or unused or even uninhabited land. Careful attention was paid to watercourses, and horizontal drilling will be used for the most sensitive case.

Acting responsibly and transparently on social and environmental issues, TotalEnergies publishes the independent reviews that have been conducted by third parties in order to ensure that the EACOP project is carried out in compliance with the best social and environmental practices. These reviews are available at



<https://totalenergies.com/projects/oil/tilenga-and-eacop-projects-acting-transparently/tilenga-eacop-two-projects-rigorously-researched-and-assessed>.

Given the actions undertaken by TotalEnergies to prevent and mitigate impacts on local communities, the climate and biodiversity through the EACOP project, and transparently account for the environmental and social assessments conducted, the stated commitment to sustainable development and environmental protection is therefore neither false nor misleading.

Note: TotalEnergies shared citations for their statements, with links to their reports, which then cite external sources.

## Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Clause 2 of Section II (Honesty)
- Clause 4.2.1 of Section II (Misleading Claims)

## Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

### Jurisdiction

#### Non-member

The Advertiser submitted that it is not a member of the ARB, nor does it submit to its jurisdiction.

For the purpose of clarity, the Directorate notes that Clause 3.3 of the Memorandum of Incorporation of the ARB states:

“3.3 *The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its*

*members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.*

This position has been confirmed by the Supreme Court of Appeal, in a judgement against which leave to appeal to the Constitutional Court was refused.

### Advertising

The Advertiser raised a further point relating to the jurisdiction of the ARB in relation to this specific Complaint. The Advertiser put forward that *“the challenged content is not an advertisement”*.

The definition of “Advertising” in the Code of Advertising Practice is as follows: *“Advertisement’ means any visual or aural communication, representation, reference or notification of any kind – which is intended to promote the sale, leasing or use of any goods or services; or which appeals for or promotes the support of any cause.”*

The function of a website is to promote the sale or use of a business’s goods or services. The claims under review are promoting the Advertiser’s products and business and as such are advertising claims.

The ARB will therefore proceed to consider this matter for the guidance of its members.

### Merits

Clause 2 of Section II of the Code of Advertising Practice, which deals with Honesty, states that: *“Advertisements should not be so framed as to abuse the trust of the consumer or exploit their lack of experience, knowledge or credulity.”*

Similarly, Clause 4.2.1 of Section II, which deals with Misleading claims, states: *“Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.”*

The Complainant stated: *“The ad claims that TotalEnergies is ‘committed to sustainable development and environmental protection’. This is a completely false and misleading claim, which we believe constitutes greenwashing. TotalEnergies is lying to the public about the nature of their business.”*

The Complainant went on to provide a number of examples to support their assertion that TotalEnergies is misleading the public about the nature of their business by stating it is *“committed to sustainable development and environmental protection”*.

The Directorate appreciates that the Complainant and Advertiser are speaking from differing viewpoints and with differing motivations, and that there is documentation to support the arguments from both sides. However, for the purposes of this ruling, the Directorate must confine itself to the claims made in the specific piece of advertising, and not examine the broader business practices of the Advertiser as a whole, as environmental compliance evaluation is certainly beyond the ARB’s mandate.

The Advertisement under review is a web page that details the #FuelYourExperience competition. Underpinning it is the explanation that the competition is one of the ways in which TotalEnergies has partnered with Sanparks (South Africa National Parks) to encourage people to visit these parks.

The problematic statement in this webpage, as the Complainant asserts is: *“We’re committed to sustainable development and environmental protection. That’s why we’ve partnered with Sanparks for over 60 years, so that South Africans can appreciate our country’s natural heritage and pass on a love for the environment to their children.”*

The claim therefore comes down to two aspects:

- Sustainable development
- Environmental protection

The Directorate believes that the public will read both claims in the context of the corporate social investment page on which it appears, and understand that the corporate social investment activities are the activities to which the Advertiser is referring. The claims are linked to the rest of the sentence, which refers to the Sanparks partnership, and must therefore be read in this context. Further, it is likely that the public will understand that the claims are aspirational in nature. Finally, the consumer will understand that these claims are made in the context of a fuel company, which it must be accepted has certain inherent environmentally unfriendly aspects to its business.

The question therefore breaks down as follows:

- Is the Advertiser’s partnership with Sanparks indicative of a commitment to environmental protection?

- Is the Advertiser's partnership with Sanparks indicative of a commitment to sustainable development?

The Directorate accepts that supporting an organisation for more than 60 years certainly constitutes a commitment by the Advertiser to that organisation, and that through the Advertiser's support, positive work in safeguarding and promoting the South Africa's natural heritage has been carried out.

There is no question in the Directorate's mind that the work of Sanparks is geared towards environmental protection, and that support of Sanparks therefore supports environmental protection. For this reason, the claim "*committed to . . . environmental protection*" is not unreasonable in this context.

**This part of the claim is therefore not in breach of Clause 2 of Section II or Clause 4.2.1 of Section II of the Code.**

The remaining issue is whether the Advertiser's support of Sanparks amounts to a commitment to sustainable development.

The Complainant states that the most commonly accepted definition of "*sustainable development*" is, "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*". The Directorate confirmed that this is the definition provided by the International Institute for Sustainable Development, on its website.

The Directorate accepts that:

- The Advertiser has shown that many of its projects are indeed directed at sustainable development. There is no doubt that this is an issue high on the Advertiser's priority list;
- However, it is also no doubt that the core business of the Advertiser is directly opposed to the issue of sustainable development, as the ongoing exploitation of fossil fuel is contra-indicated in this context.
- Because of this, the Advertiser needs to be very mindful of the context in which it claims "sustainable development", being sure to link it to a project that actually supports this agenda. To make a claim out of context would be to claim "sustainable development" across all the company's activities.

As stated above, the context of the claim before the Directorate is that of the Sanparks relationship. The Directorate has no evidence that there is a link between the support of Sanparks, and any definition of sustainable development.

**Given this, the claim “sustainable development” in the context of the Sanparks support is misleading and in contravention of Clause 4.2.1 of Section II of the Code.**

### Instruction to members

The ARB instructs its members not to accept any advertising from the Advertiser with the wording “committed to sustainable development”, relating only to its support of Sanparks.