

## Empowering drivers and boosting competition in the road fuel retail market

### Open Data Scheme

**Question 1:** Do you have an estimate of the number of UK drivers that currently use price comparison tools?

No.

**Question 2:** Are there any other price comparison tools that you are aware of that we have missed from this list?

None to add, however, we are aware that Experian Catalist has announced that it will no longer be collecting /making available data from March 2024

**Question 3:** Are there any additional ways third parties could use the fuel prices data, other than price comparison/navigational tools, to maximise its benefits to the consumer?

Fuels Industry UK does not have a view on this question.

**Question 4:** We propose that the aggregator model is the most practical and efficient way to deliver the open data scheme in the UK and should meet the objectives set out. Do you agree?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

We agree that the aggregator model appears to offer a practical and somewhat efficient means to deliver the statutory open data scheme. A key benefit of this model is that it does not promote direct sharing of data between PFS operators (although based on the evidence collected from the CMA in their investigation, there is no suggestion that the market is not performing appropriately or that any alleged collusion is occurring).

However, given the relative ease with which data is already being shared on a voluntary basis by some retailers in a form that can be readily accessed by third parties to potentially make available to the consumer, as well as that there are other existing price reporting platforms available, the aggregator model does not appear to be the most efficient option. Introducing a new entity where it may not be needed is not efficient and has a potential new cost of £5m to the sector based on the impact assessment.

There appear two potential roles for an aggregator that go beyond the current voluntary arrangements, if unmet it may be that the aggregator model is unnecessary:

- i) Delivering some form of quality assurance on the data received before it is published – this may be of some small benefit to all stakeholders to avoid accidental incorrect reporting being shared with the public (e.g. if a very low price is shared this may result in a ‘rush’ on a particular site, which could create safety issues around the site). It is unclear if an aggregator has the information or capability to do this, and it would need to balance any quality assurance with the need to publish data to the public in a timely fashion.
- ii) Making the data more widely available to the public – this second function is hinted at in the consultation by suggesting an aggregator share data “freely and openly with third parties”, however, as assessment of fuel price reporting from Germany indicates, an open data scheme “should not only make price information available, but also push for large-scale adoption by consumers to fully reap the pro-competitive effects. This could, for example, be done through public information campaigns or media reports (Price Transparency Against Market Power, Montag and Winter 2020, p46) but in the current proposals it is unclear how this benefit would be met, or if it is intended in the proposals.

**Question 5:** Are there any considerations we should take into account for this aggregator model?

It is unclear from the consultation the speed at which the aggregator will make reported information available publicly. While clear that PFS operators will report within a fixed time period, more information is needed about when and precisely how the public data will be updated and how. The potential success of the scheme is dependent on the *public* data being available in a consistent and timely fashion.

It is also essential that companies are only required to report data once and in a single format to minimise these new administrative burdens.

**Question 6:** What are the risks of an aggregator model and how could those be mitigated?

See answer to question 5. In addition, the aggregator cost in the impact assessment could be £5m which would be substantially reduced without an aggregator, whose value is unclear.

**Question 7:** We propose that it should be mandatory for all PFSs in the UK to participate in the open data scheme. Do you agree?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

It is essential that all PFS have the same obligations placed on them so as not to distort competition, either in terms of price transparency as the scheme seeks to address, or in terms of costs of doing business, where not reporting would offer a PFS operator savings against those who must.

**Question 8:** Do you agree with the proposed data that needs to be reported?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

The data to be reported should focus on price given the focus of the proposals, combining essential information for the consumer which is directly comparable across all PFS. As such there are some areas proposed which should be considered further:

Price reporting should only be required for 'standard' forms of fuels, e.g. B7 diesel and E10 petrol and not for 'Super' petrol and diesel. While it is appropriate to report if Super is sold at a site, reporting of price for purposes of comparison is less applicable due to significant differences in Super e.g. there is greater brand differentiation due to proprietary additives and most notably with some Super fuels containing no biofuel content and octane level differences. Decisions by consumers to purchase Super grades are less focussed on price than the standard grades due to such differentiation.

It is also important to understand if non-reporting or erroneous reporting of non-price data will be treated in the same way as for price, which is the focus of the scheme. The inclusion of trading hours in the data to be reported would not appear a fair item to pursue as failure to report as price information. A situation where an operator forgets to update opening times for e.g. a bank holiday weekend could now become an offence and be pursued by the enforcer.

Given the above, it is recommended that data to be reported be limited to what is essential for the consumer (price of common fuels i.e. not Super fuels, trading name, location, and address) and that other data shared (such as opening times and phone numbers) not be subject to the same potential sanctions and fines if not reported (or not reported correctly).

**Question 9:** Is there any other data that you think should be reported?

No. We believe it is a priority to ensure the reporting requirement is kept proportionate.

**Question 10:** We have proposed the following methods for reporting: online portal, Application Programming Interface (API) system, SMS text message and Interactive Voice Response (IVR). Are there other methods we should consider including, or removing, if they are not necessary?

Fuels Industry UK does not have a view on this question.

**Question 11:** Are there any other methods for reporting we should consider for PFSs without a reliable internet connection?

No.

**Question 12:** Are there any PFSs which would not be able to use any of these methods to report price changes?

Many may not be able to use these methods and currently follow a manual process to update prices. Developing a technological solution may require upgrades, time, and cost to implement.

**Question 13:** We propose that it should be the responsibility of each individual PFS to report retail price changes. Do you agree?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

This appears the only option whose application would be consistent across all operations and business models of fuel retailers, however, given the complexity of operating models for sites, a more flexible model seems appropriate e.g. PFS and central offices could both be responsible for reporting as long as there is a system that specifies which party is responsible for the reporting of prices for each site.

It is rare that the pole sign fuel brand is responsible for setting and/or implementing/reporting the prices as acknowledged by the CMA investigation. Similarly, responsibility for setting prices is often not taken on the PFS site itself, but by central offices with defined windows set by the central office for changes to be implemented at the PFS – it is possible that in this case such processes may be directly impacted by these proposals, for example, where a 2 hour window for price changes exists.

Rather than making only PFS sites only responsible for price reporting, a model whereby for a given site where a person/persons can be named as responsible for reporting would better be able to reflect the complexity of the market. It may be that in many cases this is still done by the PFS site but would allow for other more centralised models to report efficiently too.

**Question 14:** We propose that PFSs must report retail price changes to the aggregator within 30 minutes of the price changing. Do you agree this is a reasonable timeframe?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please provide your reasons.

We believe that a timeframe of 90 minutes is more appropriate. It is likely to be very difficult for all operators to meet this reporting requirement. Technical issues already identified in the consultation response e.g. lack of access to portals / online reporting methods are not sufficiently mitigated.

As noted in Q13, it is also the case that some prices are set by a central office with those on site expected to implement the change within a defined (often 2 hour) window. In such a case, the central office may report the price in advance of the change being made at the forecourt site, which could have competition law and or false advertising implications. As such, it is important that a time reporting requirements should be included for the aggregator so that consumers know how old the published data is.

**Question 15:** Are there specific types of PFS who would find it difficult to meet the 30 minutes requirement, if so, how could they be supported?

As noted in Q14 we anticipate it will be difficult for many PFS sites to report, as well a potential issue with the models where prices are set at a central office before implementation at sites. It is also notable that rural PFSs may struggle with connectivity (as noted in the consultation document).

**Question 16:** We propose that the non-personal data outlined in Table 1 above, should be shared openly and freely with any type of third party that wishes to access it. Do you agree?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

As noted in Q8, we believe that the data needed to be reported should be limited to that which can directly meet the objectives of price transparency for the consumer. Once data has been shared, it should be proactively shared with relevant third parties who can help consumers benefit through price transparency – as noted in Q4, this may be a role where an aggregator model could add value to the system (if used).

**Question 17:** We propose that the aggregator should share the data with third parties through APIs or flat file transfer. Do you agree?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

As noted in Q5, it is vital that the provision of the data from the aggregator is made clear given that the scheme's success or otherwise is dependent on that dataflow (the consumer has to have the data to see any benefits). API and flat file transfer would both appear valid means to share data with third parties, however, there may be other technology types that may emerge which would work better, and it is important for a wide set of groups (potentially unknown) to the aggregator to have access too so how the API and flat file transfers are shared should be considered further.

In all cases, the data reported by companies must only be provided once in one pre-agreed format.

**Question 18:** Are there particular restrictions we should impose on how the data is used by third parties?

Fuels Industry UK does not believe there are necessary restrictions providing that the scheme is mandatory. However, we would note that third parties who seek to monetise the data should not be allowed to imply they influence the decisions or commercial activities of reporting entities.

**Question 19:** If the aggregator were to provide a price comparison tool for consumers, in addition to carrying out its aggregator role, would you have any concerns with this?

Such activity is unlikely to see the benefits identified for growth of price comparison providers identified in the impact assessment and could reduce the societal benefits identified. We are already aware that the main current provider of price comparison, Experian Catalist, has decided to pull its fuel price offering from Spring 2024 due to the decision by government to proceed with a mandatory reporting regime.

If the aggregator was to provide a price comparison tool, it is essential that it does not benefit from its unique position e.g. reporting data before it is available to potential third-party providers as this would unfairly advantage the aggregator over market actors which did choose to provide the same/similar services. It is also important not to add further cost to the reporting requirement if benefits to the consumer are to be realised.

**Question 20:** Are there any considerations we should take for those consumers that are digitally excluded or less able to use digital price comparison tools?

Fuels Industry UK does not have a view on this question.

**Question 21:** Are there ways to make this data more accessible for consumers?

Fuels Industry UK does not have a view on this question

**Question 22:** Which public authority is best placed to be appointed as the 'enforcer' of the open data scheme?

There appear few public authorities who would have relevant powers and or resource to act as enforcer of the open data scheme. Broad principles which may be helpful to guide this decision by government should include:

- An existing body be used and use existing resource if possible.
- The entity should already have existing powers to underpin necessary access and potentially enforcement measures.
- Use of enforcement measures should be in line with the proposal's aim to be proportionate.

It is notable that there is no assessment of the costs and benefits of the enforcement regime for the proposals in the Impact Assessment. This seems a notable omission given that existing enforcement regimes have been associated with chronic under-resourcing

(<https://www.theguardian.com/money/2016/aug/07/trading-standards-institute-consumers-are-no-longer-protected>)

**Question 23:** Do you have views on the overall proposed approach to the enforcement of the open data scheme outlined in this section?

Civil penalties should not be introduced. There is significant adverse reputational impact to PFS if they post incorrect prices and therefore an incentive for them to comply with any mandated scheme. There is no harm to consumers for inaccuracies, who can still elect whether to purchase at the site based on the pole sign and pump pricing.

More generally, it is not possible to have precise views on the enforcement proposed as there is insufficient detail, however, the intent to both take a proportionate approach and produce guidance is welcome and we would suggest that any such guidance is worked on with trade associations in the sector to ensure there is common understanding of expected requirements and interpretation.

The enforcement regime needs to be proportionate to ensure that a minor delay in reporting timing does not result in a significant punishment, although repeated or significant deviations can be penalised. Enforcement needs to ensure appropriate accountability for the respective Parties involved in the process (including at a reporting, aggregator, and publication stage).

It is also noted that potential fines are not set out in the consultation nor defined by the provision in Par 3 of the DPDI Bill so it is unclear what enforcement will really be taken.

**Question 24:** What factors should the 'enforcer' take into consideration before imposing civil penalties?

As noted in Q23 Civil penalties should not be introduced. There is significant adverse reputational impact to PFS if they post incorrect prices and therefore an incentive for them to comply with any mandated scheme. There is no harm to consumers for inaccuracies, who can still elect whether to purchase at the site based on the pole sign and pump pricing.

Subject to that position, Key principles of proportionality, intent and repetition of offences are all important considerations.

At a more granular level, identification of where in the process the error occurred to ensure appropriate accountability (including at a reporting, aggregator, and publication stage).

Whether the infraction was minor in terms of accuracy or delay, repeated infractions (including past fines), force majeure circumstances (including technology outages), other mitigating circumstances including genuine staff error at the site, actions take to rectify any infraction and timeliness of corrections implemented.

**Question 25:** What should be the range and level of civil penalties? Please provide reasons.

Per Q23 & Q24 civil penalties should not be introduced given there is significant adverse reputational impact to PFS if they post incorrect prices and therefore an incentive for them to comply with any mandated scheme. There is no harm to consumers for inaccuracies, who can still elect whether to purchase at the site based on the pole sign and pump pricing.

Subject to that primary position, it is essential that penalties are proportionate – given reporting is proposed at the PFS level this means that penalties should not be too strong and should be capped. Any penalties should be limited to the market in which any offence takes place and should not be linked e.g. to global turnover. It should also be borne in mind that where there are major concerns related to competition that these are treated in other regulations and that the enforcement in this case is related to data reporting.

The Australian model – principally Queensland on which much of the UK proposals seem based has individual fines of 2 penalty units (~AU\$616) while companies might see fines of up to AU\$3130 (10 penalty units) – appears proportionate if a penalty regime were introduced.



(<https://www.legislation.qld.gov.au/view/html/asmade/sl-2018-0185#pt.3>  
accessed 22 February 2024)

It is also understood that the fines in Austria are limited to €2,180 for infringements to the Price Labelling Act and up to €7,260 for repeat offences (<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007203>). Again, this appears proportionate given it is a data reporting offence.

**Question 26:** Should the government consider criminal offences for exceptional circumstances?

Answer: Yes; No; Unsure. Please expand on your response.

No, unless a company fails to make payment of a fine

**Question 27:** How can we best support PFSs to ensure compliance with the requirements and regulations of the open data scheme?

Given that the proposals vary significantly from the ongoing voluntary action, it will be appropriate to introduce a limited grace period on enforcement while new reporting requirements are adapted to in the sector.

**Question 28:** Should we explore partial or full levy funding, subject to the provisions in the DPDI Bill?

Answer: Yes; No; Unsure. Please expand on your response.

It is highly unclear how this is proposed to work and given there is significant uncertainty about the level of costs of this regime, there is not a compelling case for a levy, which we would note tends to be reserved for far larger fiscal issues than the price reporting function is likely to result in.

As noted in Q22, it is unclear if any existing public authority has the resource to undertake the enforcement role so levy funding may offer a transparent way to show and socialise the costs of enforcement (and other costs of the scheme), however, this must be subject to a fully evidenced consultation to understand exactly what this may entail for all parties.

**Question 29:** What are the risks and challenges of a levy?

Fuels Industry UK does not have a view on this question

**Question 30:** What can the government do to support PFSs with the transition to the statutory open data scheme, in advance of it coming into force and during its operation?

We note that the Queensland scheme had a two-year trial period before becoming permanent and a similar trial period – with an independent

assessment seeking to quantify benefits to the consumer – would appear appropriate, during which enforcement (or at least civil penalties as a form of enforcement) should be relaxed.

**Question 31:** What further mitigations should we consider to reduce the risk of price collusion?

We note that the CMA investigation found no evidence of price collusion, however, the mitigations identified appear suitable to avoid potential for future such activity.

**Question 32:** Are there any other risks that we have not considered?

None that we can identify.

## Monitor Function

**Question 33:** We expect the transition to net zero to be a particular issue the monitoring function takes into account whilst carrying out its role and considers the impact of. What are your views on this?

We would first note that the decision – taken without consultation – for the monitor function to be delivered by the CMA may make assessment of net zero as a relevant factor in evolution of the retail sector more difficult as they will not have relevant context available to them on how the sector is changing, and why, that would have been available e.g. to DESNZ. Given that decision has already been taken, it would appear appropriate to limit the scope of the monitor function to data which is already proposed to be collected and ensuring that reports issued are statements of fact rather than speculative. The impacts of Net Zero, or indeed many other policies on PFS sites will vary greatly given the wide array of operating and ownership models employed across the sector and given there remains strong competition in the sector, it is difficult to see any value to the consumer or to the industry in broadening the scope of the monitor.

**Question 34:** We propose that the monitoring function publishes an annual report, with two or three more focused updates during the year. Do you agree with this approach?

Answer: Strongly agree; Partially agree; Neither agree or disagree; Partially disagree; Strongly disagree. Please expand on your response.

Publishing up to 4 times a year (annual report plus 2/3 focused updates) as is proposed should be the most, or risk reporting schedules becoming particularly burdensome for both CMA and companies.

Having a main annual report which can take a considered view on actual changes to the sector (rather than speculative or half-confirmed assessments) is appropriate given this is a business-as-usual monitoring function, changes will

take time to show up, and that reports from the monitor are unlikely to affect consumer behaviours, which might justify more regular reports.

If there are particular concerns of potentially uncompetitive behaviour, then the CMA's usual investigation powers are still the appropriate means to check them.

It is important that any statements from the monitor about emerging concerns they have are fully evidenced rather than speculated or 'showing early signs' (as already seen in the first report in the Autumn

<https://www.gov.uk/government/publications/interim-road-fuel-monitoring-updates-november-2023>) – these will create news stories on incomplete assessments which invite speculation and will not meet the objectives and benefits identified.

**Question 35:** What topical issues or themes should the monitoring function examine?

We do not believe there is a clear rationale or set of suggestions for topical issues or themes. Inclusion of them is likely to increase reporting requirements on companies and would not necessarily be aligned to objectives and benefits.

**Question 36:** How should the monitoring function decide on what topical issues or themes to focus on?

As noted in Q35, we do not believe there is a clear rationale for such topics, however, if the CMA identifies during its usual monitoring that there are specific trends that are affecting competition in the market then that may be appropriate to look into further, but only where it is within existing scope. Examples of this may be the changing structure of decision making within the sector (e.g. change of ownership may change commercial decisions, net debt of the sector likewise).

**Question 37:** How can the government and the CMA support businesses to comply with requests for information?

We note that the inclusion in the legislation of the power to require companies to 'generate' new information, rather than make use of existing reporting could significantly increase reporting burdens on companies. Given that potential additional burden, but in wider consideration too, it is vital that companies are given suitable time to respond to requests for information.