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**Competition and Markets Authority**

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For the attention of: The CMA Fuel Market Study Team  
By email: [RoadFuels@cma.gov.uk](mailto:RoadFuels@cma.gov.uk)

**The CMA's Invitation to Comment on its Fuel Market Study**

**A. Introductory Remarks**

1. We refer to the CMA's Invitation to Comment (the "ITC") published on 8 July 2022 relating to the Fuel Market Study (the "MS") launched on the same day. This follows the CMA's urgent review into the fuel market (the "Review") and the report it published summarising its Review findings (the "Report").
2. As set out in the submission we made as part of the Review, the cost-of-living crisis is a real and growing challenge for many households, and Sainsbury's remains wholly committed to helping our millions of weekly customers as much as we can with these pressures. We are investing to deliver great prices and great value for customers, and to support colleagues and suppliers. In addition to the measures already outlined in our previous submission, we have now also joined the Government's Help for Households initiative led by the new Cost of Living Business Tsar, David Buttress, to raise public awareness of existing deals and offers that could benefit struggling households.
3. We welcome the CMA's findings following the Review that:
  - a. The presence of supermarkets in a local area exerts a downward pressure on pump prices, suggesting that supermarkets offer customers good value for money and play a key role in facilitating competition at the retail level.
  - b. Supermarkets – including Sainsbury's – passed on the fuel duty cut immediately and in full at a "personal cost", to ensure customers could benefit from that relief as soon as possible.

- c. The retailer spread is not a key contributor to rising pump prices (and indeed, any reduction to retailer margins – particularly supermarket margins – is unlikely to deliver meaningful price relief to customers on fuel).
4. Against the above background and consistent with the CMA’s findings in its Report, we reiterate our position that the retail fuel market is characterised by high levels of competitor activity.
5. We also submit that in defining the scale, scope and potential outcomes of the MS, the CMA should be cognisant of the following:
  - a. The Review found that pump prices have spiked following the cumulative effect of several different and unprecedented recent factors / events (e.g., COVID recovery, the Russia/Ukraine war etc<sup>1</sup>). Against this background:
    - i. Given the temporary and unprecedented nature of these factors, now is not an appropriate moment to assess the “health” of the industry. Any analysis of the industry in these circumstances is unlikely to be representative, given that it would be founded on conditions unrelated to the normal position and thus unreflective of true market circumstances. In fact, it is possible that the factors identified stabilise before the CMA has had the opportunity to complete the MS.<sup>2</sup> In that scenario, any CMA findings following the MS could already be out of date and ill-suited to the market conditions in play at the time of publication of the CMA’s report. Accordingly, we submit that CMA intervention in these circumstances is **ill-timed and unwarranted**.
    - ii. It is also unlikely that the MS will be able to address **these variable, external and temporary features of the industry** in a timely and meaningful way. The MS is by its nature a deep-dive (and thus lengthy) study of a relevant market. Accordingly, a market study is **an inappropriate tool** through which to deliver impactful financial relief to the public in relation to the price of fuel. Changes to Government’s taxation policy (on a temporary or permanent basis), would deliver far more meaningful and timely relief. See paragraph 20 below.
    - iii. The MS will place a significant burden – in terms of cost, resource, and time – on the businesses involved. Particularly in circumstances where these factors are temporary and may “self-resolve”, CMA intervention is **disproportionate**.
  - b. For the various reasons set out in paragraph 22, the fuel industry is likely to experience significant decline (or at least flux) in the medium to long term.<sup>3</sup> Unwarranted and disproportionate intervention is likely to **(i) deter investment and innovation** by current or new players; and **(ii) disrupt “business as usual”**, which could result in a concomitant adverse impact on competition within the industry.
  - c. The Review (and by extension the MS) was ultimately triggered because of political pressure to investigate a now disproved allegation that fuel retailers did not pass on the fuel duty cut to the public. Participants in the fuel industry **should not be subjected to a lengthy and expensive review process without due cause**.

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<sup>1</sup> There are a number of other extraordinary factors that have played a role here, including for instance, increases in utilities costs, labour costs and also “panic buying” in the fuel industry.

<sup>2</sup> Since the MS was announced on 8 July 2022, average weekly petrol prices have declined from 191.55 ppl to 186.67 ppl (as of 26 July 2022). See National statistics: Gov.uk, Weekly road fuel prices, accessed on 26 July 2022 and available [here](#).

<sup>3</sup> As set out in paragraph 22, the fact that the market is declining has a significant impact on its economics – it will be more difficult for market players to offset the fixed costs of their estates and variable costs of supply, against lower volumes sold.

6. In any event, assuming there are features of the fuel industry that are not working as well as they could be, such features are likely to relate to upstream fuel markets (as the Review concluded) and these should thus be the focus of the MS.
7. Mindful of (i) the CMA's own findings / views in its Report as per paragraph 3 above; and (ii) the fact that the retail market has already been the subject of several previous analyses by the CMA in the last five years, we submit that the retail market should not form part of the MS. If the retail market is nonetheless in scope, any resulting assessment of it by the CMA should be **limited and proportionate** given the CMA's own findings as per the Report.
8. We address the questions raised in paragraph 35 of the CMA's ITC below.

## **B. Sainsbury's Response to the ITC**

*Question (a): What elements of road fuel refining should we focus on, and why?*

9. We note that the CMA proposes not to consider extraction or crude oil dealing as part of its MS, given that the price of crude oil fluctuates on global markets and there is limited scope for UK action to affect this.<sup>4</sup>
10. However, there are aspects of these processes that have a direct bearing on the supply, demand and pricing levels within the UK fuel market which cannot be controlled / influenced by UK stakeholders, and which are also relevant to understand the refining spread. This should be considered by the CMA as part of the MS, at least insofar as to provide context for some of the pricing outcomes evident within it.
11. We underscore two relevant factors:
  - a. OPEC and other oil producing nations may have the capacity / ability to produce additional volumes of crude oil. However, they are incentivised to constrain supply such that demand (and concomitantly, the price for supply) is "pegged" at a higher level. If additional volumes of crude oil were produced, it would lower the global cost price of crude oil which – if passed-through the supply chain in whole or part – could result in lower pump prices.<sup>5</sup>
  - b. Crude oil is not traded in Pound Sterling. Accordingly, fluctuations in the USD-GBP exchange rate have a direct and significant impact on the cost of crude oil.
12. In addition to the above, we note that the MS' proposed retail level analysis will consider the extent to which rises and falls in wholesale prices are reflected at the pump.<sup>6</sup> [✂].
13. [✂]<sup>7</sup>

*Question (b): What elements of road fuel wholesaling should we focus on, and why?*

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<sup>4</sup> See paragraph 28 of the ITC.

<sup>5</sup> This is clearly an issue of global concern, given, for instance, President Joe Biden's recent trip to the Middle East to discuss, inter alia, the benefits of increased oil production.

<sup>6</sup> See paragraph 25 of the ITC. We note that the Review dismissed any claimed "rocket and feather" characteristics of the retail fuel market and remarked that "*care should be taken when comparing week by week movements in wholesale costs and retail prices*" (para 4.11 of the Report).

<sup>7</sup> In its Report the CMA identifies a number of demand and supply side factors that might have an impact on refining spreads, including the COVID-19 recovery period and increased summer demand; and the Russia/Ukraine crisis and the mothballing of certain refining facilities during COVID.

14. [✂]

15. [✂]

*Question (c): Do you agree with the three areas we have identified as our focus in road fuel retailing?<sup>8</sup>*

16. The CMA's own findings in the Review highlight the high levels of competition at the retail level, and the important role supermarkets play to facilitate competition at this level:
- a. The presence of supermarkets in a local area exerts a downward pressure on pump prices, suggesting that supermarkets offer customers good value for money and play a key role in facilitating competition at the retail level.<sup>9</sup>
  - b. Supermarkets – including Sainsbury's – passed on the fuel duty cut immediately and in full at a "personal cost", to ensure customers could benefit from that relief as soon as possible.<sup>10</sup>
  - c. The retailer spread is not a key contributor to rising pump prices (and indeed, any reduction to retailers' margins – particularly supermarkets' margins – is unlikely to deliver meaningful price relief to customers since retailers' margins account for only a small fraction of the pump price).<sup>11</sup>
17. The ITC indicates that the CMA will nonetheless consider the retail market as part of the MS.
18. Given (i) the CMA's own findings in the Review; and (ii) the fact that the retail market has already been the core focus of several recent previous analyses by the CMA, we consider the retail market should be excluded from the ambit of the MS. Moreover, the elements which the CMA proposes to consider as part of the MS have already been assessed by the CMA in detail in previous investigations/reviews.
19. If the retail market is nonetheless in scope, any resulting assessment of it by the CMA should be **limited and proportionate** given the CMA's own findings as per the Report, and mindful of the small proportion of overall fuel costs that retailers account for.
20. The **CMA's query on how retailers set the pump price:**<sup>12</sup> As above, the CMA has already considered this in detail in the context of previous merger analyses, and indeed as part of the Review. Assuming the CMA proceeds with this line of inquiry, we reiterate that the CMA should assess Government's taxation receipts as a component of pump prices. As the CMA is aware, c.50% of the pump price is dictated by Government. We consider that the CMA should thus assess the appropriateness / reasonableness of Government's taxation receipts (in the form of the fuel duty and VAT) earned from the sale of fuel/petrol, both during the cost-of-living crisis and beyond. We note the CMA's initial findings in section 5 of the Report which indicate that the UK collects more tax on both petrol and diesel than the average collection rates across other EU member

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<sup>8</sup> In paragraphs 19 to 27 of its ITC, the CMA indicates that the retailing aspect of the market study will focus on (i) local and regional variations in price; (ii) how retailers determine the prices they set at the pump; and (iii) the role played by major supermarkets in road fuel retail markets and potential for further benefits.

<sup>9</sup> Paragraphs 3.25-3.26 of the Review.

<sup>10</sup> Paragraphs 4.22 and 6.5 of the Review.

<sup>11</sup> Paragraph 6.6 of the Review.

<sup>12</sup> See paragraphs 24 and 25 of the ITC.

states.<sup>13</sup> Accordingly, the CMA should also consider whether the UK Government should further reduce these taxation levels to deliver impactful and more timely financial relief to the public<sup>14</sup>; and/or make permanent the existing fuel duty cut.<sup>15</sup> We understand, for instance, that Rishi Sunak has recently pledged to temporarily scrap VAT on household energy bills if he was elected as Prime Minister.<sup>16</sup> See also paragraph 22.f below.

21. The **CMA's comments regarding possible local variations in prices:**<sup>17</sup> As above, this has also been assessed by the CMA previously. We thus reiterate the submissions we have previously provided to the CMA on this point (both as part of the Review, and in the context of other merger activity). We consider that customers' purchasing decisions for fuel are primarily driven by convenience of location and price. Accordingly, competition for fuel is fundamentally and inherently local. We set our pricing policy centrally, and then make adjustments to take account of local competitive conditions relevant to each site within our portfolio. Against that background, we would expect any local variations in price to be reflective of the competitive conditions prevalent in that local area [X]. It is therefore, in our view, to be expected that local and regional price variations would naturally exist.

*Question (d): What potential future developments should we be aware of that may affect the demand for, or supply of, road fuel, for example the development of alternative sources of fuel, and how, if at all, we should take these into account in our assessment?*

22. There are several potential future developments that might affect the UK demand and supply of fuel, which the CMA should consider as part of its MS:

- a. **The rise of biofuels / alternative fuel sources:** The development of alternative sources of road fuel might have several adverse impacts on road fuel. For instance, customers that prioritise sustainability over price, might switch entirely from petrol/diesel to alternative fuel sources reducing the overall demand for road fuels. This is likely to exert considerable pressure on retailers as they seek to offset the fixed costs of their estates and the variable costs of supply, against lower volumes sold.

A more likely outcome relates to the nature and cost of renewables obligations / mandates on market players (for instance, the obligation to produce and sell blended products with more sustainable / environmentally friendly credentials). Such an obligation could increase the input and operating costs of market players.<sup>18</sup>

- b. **The ban on the sale of new petrol and diesel cars:** As part of a package of green initiatives, the Government announced a sales ban on new solely petrol and diesel cars from 2030; and a ban on new hybrid cars from 2035.<sup>19</sup> The sales ban on new solely petrol / diesel cars was initially intended to take place from 2040, but was subsequently accelerated to 2035, and now to 2030.<sup>20</sup> Clearly, a drop in the sales of new solely petrol/diesel cars and thereafter hybrid cars will have a direct, adverse impact on the demand for petrol and

<sup>13</sup> Paragraph 5.4 indicates that on petrol, the median tax collection is c.41%ppl where the UK collects c.45%; and for diesel the median is 36% where the UK collects 44%.

<sup>14</sup> We also note the CMA's finding in para 2.17 of the Report that the one-off effect on prices following the fuel duty cut in March 2022 was offset by c.June 2022 by the increase in VAT following sustained increases to the pump price since March 2022.

<sup>15</sup> The CMA's Report also notes that the depth of the taxation cuts applied by other governments are much deeper than the UK Government – for instance, Germany applied fuel tax cut of 25ppl, Netherlands and Spain 17ppl and Ireland 14ppl. Some US states have temporarily removed gas taxes in their entirety.

<sup>16</sup> See [here](#).

<sup>17</sup> See paragraphs 22 and 23 of the ITC.

<sup>18</sup> As an example, Sweden and other Scandinavian countries use Hydrogenated Vegetable Oil (HVO) in place of diesel, which incurs a significant product cost premium for a decarbonised product.

<sup>19</sup> See [here](#).

<sup>20</sup> See, for instance [here](#) and [here](#).

diesel. This could exert considerable pressure on retailers, as they seek to offset the fixed costs of their estates and the variable costs of supply, against lower volumes sold.

- c. **Electric vehicles:** Demand for electric cars has increased over time. This trend is expected to continue given *inter alia* the ban on the sale of new solely petrol/diesel and hybrid cars referred to above; Government and private sector investment in electric charging networks; and a heightened sense of “sustainability responsibility” on the part of the public. Again, this could have an adverse impact on the demand for fuel, which may increase market players’ cost base as compared to potential sales.
- d. [✂]
- e. **Transformation of the industry during the current cost-of-living crisis:** We are hopeful that the cost-of-living crisis is temporary, and that the UK will achieve a state of economic stability in the short to medium term. However, during times of economic recession, it is possible to see market consolidation as businesses try to cope with the pressure of rising costs. Further consolidation / ownership change within the industry could have an impact on the competitive dynamics therein (albeit that it is difficult to predict the impact of that on the state and levels of competition). In addition to this and considering the likely decline of the market (see points a to c above), the CMA should also consider whether the prospect of more intense regulation could reduce competition and discourage further entry and any necessary investment in the market going forward.
- f. **Political changes:** We are working through a time of intense political change, given in particular the Prime Minister’s recent resignation. The CMA should bear in mind that the future Prime Minister / Chancellor might have a different agenda in relation to the fuel industry. This could, for instance, take the form of more aggressive timing targets on the sales ban of new petrol / diesel cars; different mandated renewables obligations<sup>21</sup>; and/or an inclination to make more significant changes to the taxation policy to ease the current pricing pressures on the public.<sup>22</sup> In the case of the latter, any such relief might be more impactful (both in terms of timing and effect, and to stimulate even more intense competition going forward) than any other regulation / intervention. The CMA should consider this in determining the scale, scope and potential outcomes of the MS.

As part of this, we consider the CMA should also assess the nature and scope of the (potentially temporary) sanctions imposed by the UK Government in connection with the Russia/Ukraine crisis (which currently prohibit sourcing supply from Russia by the end of 2022). The new Government’s stance on these sanctions will have a direct impact on market players’ ability to secure supply at a reasonable cost and with a degree of certainty. This would also have an impact on the demand, supply and pricing of road fuels going forward.

- 23. Finally, in its assessment the CMA should also carefully consider the medium to long term transitional path of the industry to net zero, the requirement for investment to achieve that transition and the impact that short term regulatory intervention might have on this, particularly in the context of a retail market that is already characterised by high levels of competitor activity.

### C. Other comments

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<sup>21</sup> For instance, we understand that Liz Truss has indicated that she will reconsider policies aimed at achieving the net zero target, vowing to stop the levies which help pay for investment in renewable energy. See [here](#).

<sup>22</sup> See above where we refer to Rishi Sunak’s pledge to scrap VAT on household energy bills.

24. We raise a few additional points that we consider the CMA should take account of in its determination of the size, scope and potential outcomes of the MS.
25. First, we submit that the context in which the MS has arisen is highly relevant. To elaborate, the MS has been triggered following a request by BEIS for the CMA to conduct an urgent 4-week review to assess the extent to which the fuel duty cut was passed on to customers to ease the pressure on households given the cost-of-living crisis. In short, the MS has arisen following a discrete allegation of misconduct, which has subsequently been disproved – the CMA has confirmed that the fuel duty cut was passed on.<sup>23</sup> Participants in the fuel industry should not be unduly subjected to a lengthy and expensive process **without due cause**. In particular, the nature of the MS (and the burden that may be placed on relevant industry players as a result) should take this into account.
26. Second, the recent spike in pump prices is largely due to the combined and simultaneous impact of a number of **external (and temporary) factors**.<sup>24</sup> As each such feature stabilises, we would expect to see a “normalisation” of market conditions, which should give rise to a downward effect on pump prices. Given the temporary nature of this instability, an ill-timed study of the market could generate skewed findings that are not reflective of normal market conditions. We consider that the CMA should assess whether it is appropriate to take any further action / intervention following a study conducted in a time of such considerable (and temporary) flux.
27. Third, particularly in the context of a **declining market** (see paragraph 22 above), unwarranted scrutiny / the prospect of further intervention or regulation could seriously deter innovation and investment therein, and/or disrupt “business as usual” activities.<sup>25</sup> This disruption could have an unintended stifling commercial effect, which in and of itself could dampen competition in the industry.
28. Fourth, given in particular the circumstances in which the MS arose (i.e. as part of the work to aid struggling households through the cost-of-living crisis), the CMA should consider whether an **MS is an appropriate tool** to support the public; or if, in fact, further Government support (e.g. through cuts to fuel duty or VAT) is a more appropriate mechanism to deliver meaningful and immediate financial relief to customers. See also paragraph 19 above.
29. Fifth, as above, given (i) the CMA’s own findings in its Report; and (ii) the fact that the road fuel retail market has already been the subject of extensive analysis by the CMA, [§]. Any further review of the retail market (which we submit should fall out of scope) should be **limited, reasonable and proportionate** given the CMA’s own findings following the Review, and mindful of the small proportion of overall fuel costs that retailers account for.
30. Finally, we consider that the CMA should seek views from interested stakeholders on the advice it gave to Government in the Report on **proposed transparency measures** (i.e., in the form of an open data scheme and motorway pricing). For instance, we consider that the CMA should seek views on the feasibility and cost to the industry of maintaining an open data scheme as against the benefit it could deliver to consumers (considering in particular, potential gaps in the data, cost to access data, the various channels through which customers can already access real-time

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<sup>23</sup> Paragraph 8 of the Report confirms that supermarkets cut prices by just over 5ppl immediately following the cut, often at a “personal cost”. Other retailers also fell in the days following the cut, albeit by less than 5ppl. The CMA did note that the impact of the fuel duty cut on pump prices was likely minimal given (i) the relatively small size of the cut as a total proportion of the cost of a litre of fuel; and (ii) the consistently rising wholesale price of fuel at the time the cut was announced.

<sup>24</sup> For instance, we have noted that consumers are managing their immediate costs of fuel downwards by limiting the amount they drive. This is unlikely to be a permanent behaviour change, and we would expect driving patterns to normalise as the prevailing economic conditions improve.

<sup>25</sup> [§].

pricing, and the potential for such transparency to in and of itself generate anti-competitive market conditions).

**D. Concluding Remarks**

31. Information that is confidential to Sainsbury's in this response [✂].
32. We hope that the CMA will take account of our submissions above in its determination of the scale, scope and any potential outcomes of the MS.
33. We trust this addresses the CMA's queries, and would be happy to discuss in more detail.
34. Kindly acknowledge receipt.

Kind regards,

Sainsbury's