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Administrative Penalties: Statement of Policy on the CMA's Approach (Draft CMA4)

Petrol Retailers' Association response

In responding back to the consultation concerning the level of fines to be implemented for non-compliance with the CMAs' request for information, the Petrol Retailers' Association believes the following points should be carefully considered:

1. Points to be established before fines for non-compliance can be considered

This consultation stems from the CMA's market report on Retail Road Fuel Pricing, published in 2023. The report recommended two interventions from Government:

(1) An open data fuel finder scheme requiring forecourt operators to update a database with their last implemented pump price within 30 minutes of making the change thus providing as close to real time pricing so that price-sensitive consumers can choose where they fill up.

(2) The creation of a fuel monitor function with yet undefined parameters.

The CMA has recently issued two separate interim reports concerning the state of the retail road fuel market. The data used in these reports was supplied voluntarily by several companies, including PRA members, to enable an analysis to be conducted. The latest report published in July established that fuel margins were elevated when compared with historic averages with a conclusion that competition wasn't working as it should.

Despite multiple representations from the PRA, the reports consistently fail to include the increase in operating costs that retailers have experienced over the last few years. These include an increase to the National Minimum Wage, increased business rates, increased energy cost and soaring levels of forecourt crime. These are costs that have significantly impacted forecourt operators, and not including them constitutes a significant methodological limitation. I am pleased, however, that the CMA has at least acknowledged this in the report, and I hope that the subsequent analysis of the market will take this into account.

2. Consultation structure: requests for data

The CMA requested via a consultation concluding in March 2024 views on the on the best way to design and implement the open data scheme and elements of the monitoring function. The results of this are yet to be published.

The details of the data that will be requested from retailers, by when it should be submitted, and the scope has not yet been defined. The consultation also appears to suggest a one size fits all approach that is informed by an approach to larger organisations like multinational oil companies. The CMA must consider the administrative burden that these (undefined) data requirements would have on the smaller operators that comprise the backbone of the nation's energy resilience. 64% of the

overall number of forecourts are classified as independents, many of which are small family run businesses.

The CMA suggests that the failure to provide information will incur penalties. Once again, the consultation is suggesting running before walking. Sanctions can't be considered before the information requirements have been established.

The objectives of the proposed market monitor are not clearly defined. Is the Government advocating a regulator or a shift to a command economy whereby fuel prices are subject to price controls? The supply and demand dynamics of a free market serve as an efficient regulator of price. Fixing the price of fuel would lead to forecourt closures, fuel shortages and long lines outside forecourts, like during the October 2021 crisis.

The proposed fines outlined in the consultation reflect a draconian and extreme approach to enforcement. Fines set at this level without a structured outline of the information required suggest a revenue generating exercise as opposed to one that is limited to information collection. With this proposal, it is incumbent on the Government to help industry understand what laws they would breach that would lead to them incurring fines equivalent to an unacceptably high 1% of global turnover.

The Government can't impose sanctions on the entirety of a multifaceted business on the basis that one branch of its operations has not adhered to undefined rules. This is as true for a multinational oil company as it is for a small operator that will receive non-fuel income such as shop turnover. Additionally, this calculation of turnover should exclude fuel duty and VAT as these are included in the turnover of a company but are outside of the company's control.

The PRA would be pleased to lend its support to establishing the structure of this information provision scheme by way of a working group or other appropriate forum. However, it is unreasonable to establish a sanctions regime before clarifying the rules that the regime would enforce.

