

# ROAD FUEL MONITORING

**Guidance on the CMA's information gathering powers relating to road fuel monitoring**

19 December 2024

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## Contents

Introduction .....	4
Purpose of this document.....	4
Background summary .....	4
1. Legal framework.....	5
Information gathering powers .....	5
Compliance and enforcement.....	6
Disclosure and transparency .....	7
2. The exercise of the CMA’s information gathering powers for road fuel monitoring.....	8
CMA monitoring reports .....	8
Annual update reports.....	8
Quarterly updates.....	8
Retailers’ reporting requirements .....	9
Information requests and other monitoring sources .....	9
Use of section 311 Information Notices.....	10
Use of the CMA’s enforcement powers .....	11
How information will be submitted .....	11

## Introduction

### Purpose of this document

1. This document sets out guidance on the CMA's exercise of our information gathering powers when we monitor competition in connection with road fuel in the UK. These powers are contained in sections 311 to 318 of the Digital Markets, Competition and Consumers Act 2024 (the '**Act**'). This guidance is intended to support businesses to comply with our information requests and minimise the need for enforcement action.

### Background summary

2. In 2023 the CMA completed a market [study](#) into the supply of road fuel in the UK. The study found that competition in the retail sector for petrol and diesel had weakened since 2019, meaning that drivers were paying more for road fuel at any given level of wholesale prices. To address this weakened competition, we made two recommendations to government, which were both accepted:
  - create a fuel monitor function within an appropriate public body and provide it with information gathering powers; and
  - establish an open data fuel finder, on a statutory basis.
3. The government confirmed that it intended to legislate to deliver both recommendations, and that the CMA would take on the new statutory monitoring function. Sections 311 to 318 of the Act provided the CMA with statutory information gathering powers for the monitoring function.
4. The monitoring function will act as a deterrent against businesses taking actions that may weaken competition in the road fuel market. It will hold industry to account. The monitoring function will also provide the government and the public with an ongoing assessment of competition as the UK transitions to net zero.

# 1. Legal framework

## Information gathering powers

- 1.1 New powers have been conferred on the CMA for the purposes of allowing the CMA to monitor competition in connection with road (“motor”) fuel in the UK. These powers, contained in sections 311 to 318 of the Act, allow the CMA to require the provision of specified information and to impose financial penalties where businesses do not comply.<sup>1</sup>
- 1.2 For the avoidance of doubt, the CMA will not be regulating the road fuel market, nor have any role in setting or approving retailers’ fuel prices.
- 1.3 Section 311 of the Act sets out that the CMA may require an undertaking to give specified information to us for the purposes of: assessing competition or publishing information about competition in connection with the retail of road fuel; making proposals or giving information or advice to the Secretary of State about action that could be taken to increase competition or benefit road fuel customers; and assessing the effectiveness of such action. The power to require specified information includes the power to require undertakings to obtain or generate information, and to collect or retain information they would not otherwise collect or retain.
- 1.4 Section 311 states that the CMA’s power to require specified information should be exercised by giving the undertaking in question an information notice (a ‘section 311 Information Notice’). A section 311 Information Notice must include, amongst other things, the time and/or frequency of submission of the information requested. All the relevant information required will be clearly stated in each individual notice issued by the CMA.
- 1.5 The power to require an undertaking to give information to the CMA includes the power to:
  - (a) take copies or extracts from information;
  - (b) require a party to obtain or generate information;
  - (c) require a party to collect or retain information that they would not otherwise collect or retain;

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<sup>1</sup> These powers are time limited to five years from commencement under section 318.

(d) if specified information is not given to the CMA, require a party to state, to the best of their knowledge and belief, both where that information is and why it has not been shared with the CMA.<sup>2</sup>

- 1.6 For example, the CMA may include in a section 311 Information Notice a requirement that a firm create, gather, aggregate or combine specific financial information in a way which may be different to its existing internal practices, should this be required to inform its investigations.
- 1.7 Information may include documents, whether in draft or final form, as well as data, code, algorithms, estimates, forecasts, returns, explanations, or information in any other form.
- 1.8 The CMA cannot require a person to produce, generate or give to the CMA a 'privileged communication' (i.e. information subject to legal professional privilege or, in Scotland, confidentiality of communications) when exercising its information gathering powers under section 311 of the Act.<sup>3</sup>

## **Compliance and enforcement**

- 1.9 We anticipate that retailers will seek to comply with our section 311 Information Notices, especially given the history of co-operation we have received from retailers with voluntary information requests throughout our interim monitoring function.
- 1.10 However, where there is non-compliance, section 312 of the Act grants the CMA power to impose financial penalties on undertakings that, without reasonable excuse, fail to comply, destroy or conceal information, or give false or misleading information.<sup>4</sup> Such penalties may include a fixed penalty of up to 1% of the undertaking's turnover, a daily amount of 5% of the undertaking's turnover, or both. Turnover for these purposes will be determined in accordance with the Act and the Consumer Rights Act 2015 (Turnover and Control) Regulations 2024.
- 1.11 The CMA is required under section 314 of the Act to consult on and publish a statement of policy on the exercise of our powers to impose financial penalties for failure to comply with a section 311 Information Notice. Since the procedure for imposing and appealing against penalties under section 312 of the Act is the same as for administrative penalties levied in the CMA's other tools, the CMA's consultation took place as part of our broader consultation on administrative

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<sup>2</sup> Section 311(4) of the Act.

<sup>3</sup> Section 311(5) of the Act.

<sup>4</sup> Destruction, falsification or concealment of information, or the provision of false or misleading information, in response to an information notice may also be a criminal offence under section 315 of the Act.

penalties as set out in *Administrative Penalties: Statement of Policy on the CMA's Approach (CMA4)*.<sup>5</sup> [New CMA4 guidance](#) will be effective from 1 January 2025.

## Disclosure and transparency

- 1.12 Our road fuel monitoring will rely upon information provided to us by relevant parties. The CMA is committed to being open and transparent about the work we do and how we engage with those directly involved in or affected by our work, while seeking to give appropriate protection to the confidentiality of information we obtain in the exercise of our functions.
- 1.13 Information that the CMA obtains through the use of our road fuels powers under the Act will be subject to the restrictions on disclosure in Part 9 of the Enterprise Act 2004,<sup>6</sup> in the same way as information obtained through our other tools. Disclosure of 'specified information' can only occur if it is permitted under Part 9. Before disclosing specified information, the CMA must have regard to several considerations. These include the need to exclude from disclosure (as far as practicable) commercial information whose disclosure might significantly harm the legitimate business interests of the business to which it relates and whether disclosure is necessary.
- 1.14 In a similar vein, the CMA's guidance on transparency and disclosure (CMA6)<sup>7</sup> also applies to information that the CMA obtains through the use of our road fuels powers under the Act. Following a consultation that closed in June 2024,<sup>8</sup> [new CMA6 guidance](#) will be effective from 1 January 2025.
- 1.15 The CMA6 guidance sets out the CMA's policy and approach to transparency and information disclosure across our tools – including how to raise a complaint in relation to decisions about disclosure.

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<sup>5</sup> <https://www.gov.uk/government/consultations/administrative-penalties-statement-of-policy>. Motor (road) fuels was explicitly included in the CMA4 consultation; see para 1.2 of CMA4.

<sup>6</sup> Section 317 of the Act adds the motor (road) fuels powers to Schedule 14 of the Enterprise Act, such that information received under those powers is 'specified information' for the purposes of section 238(1)(b) of the Enterprise Act.

<sup>7</sup> [https://assets.publishing.service.gov.uk/media/6650a641dc15efddd1a83f0/CMA6\\_con\\_draft\\_-\\_Transparency\\_and\\_disclosure\\_Statement\\_of\\_the\\_CMA\\_s\\_policy\\_and\\_approach.pdf](https://assets.publishing.service.gov.uk/media/6650a641dc15efddd1a83f0/CMA6_con_draft_-_Transparency_and_disclosure_Statement_of_the_CMA_s_policy_and_approach.pdf) (draft CMA6 consultation).

<sup>8</sup> <https://www.gov.uk/government/consultations/updated-cma-transparency-and-disclosure-statement-including-new-overseas-investigative-assistance-guidance>. Motor (road) fuels was explicitly included in the CMA6 consultation; see para 1.4 of the draft revised CMA6.

## 2. The exercise of the CMA's information gathering powers for road fuel monitoring

- 2.1 This section sets out a high-level overview of the approach the CMA intends to take to our information gathering powers for our road fuel monitoring function.

### CMA monitoring reports

- 2.2 As set out in the [government's response](#) to DESNZ's consultation on our market study recommendations, the CMA will publish an annual report, along with three shorter updates throughout the year. We intend to publish these monitoring reports on a quarterly basis.

### Annual update reports

- 2.3 The CMA's annual report will focus on the state of competition in the petrol and diesel markets and how well the market is working for consumers. It will include coverage of: price and margin trends; regional pricing variations; analysis of changes in local market concentration (eg petrol filling station (PFS) closures); commentary on the progress of the open data fuel finder scheme; and the intersection of the petrol and diesel markets with the development of zero carbon transport technologies and markets. We also intend to assess which topical issue or issues may also be appropriate to cover.
- 2.4 Some of the above analysis – specifically the analysis of regional pricing variations and of changes in local market concentration – will not be undertaken until the statutory open data fuel finder scheme is in operation. We anticipate the open data scheme will be a rich source of information across our monitoring reports.
- 2.5 We anticipate section 311 Information Notices for annual reporting purposes to be issued as and when the information is needed and, unlike for quarterly updates, be non-recurring, although that does not preclude the same or similar information being requested in consecutive years.

### Quarterly updates

- 2.6 We expect the shorter quarterly update reports will be similar in their coverage to the existing interim monitoring reports, at least in the near term. The update reports will focus on: prices, costs and retail margins; retail and refining spreads for petrol and diesel markets; and (once data becomes available from the statutory open data scheme) information on price trends across the UK and over time.



## **Retailers' reporting requirements**

- 2.7 We intend to require information to be provided on a consistent basis across retailers, and will issue formal section 311 Information Notices for these purposes.
- 2.8 As we will be publishing four monitoring reports each year, we will require four quarterly submissions from relevant retailers each year.
- 2.9 We will require that the relevant information is provided to the CMA no later than 5pm on the 15th of the second month following the end of the period to which it refers. Therefore we will require the following quarterly submissions: data for the financial period closing 31 March to be provided by no later than 15 May; data for the financial period closing 30 June to be provided by no later than 15 August; data for the financial period closing 31 September to be provided by no later than 15 November; and data for the financial period closing 31 December to be provided no later than 15 February. Where the data falls due on a weekend or bank holiday it should be provided no later than 5pm on the next working day.
- 2.10 The CMA will also facilitate more frequent submissions of information, such as monthly, for those retailers who would prefer to do so. The deadline for receiving the relevant information will be the same as described above; that is, we will require the relevant information covering the period to 31 December by 5pm on 15 February, and so on.

## **Information requests and other monitoring sources**

- 2.11 The CMA will require certain information on an ongoing basis to undertake our analysis of key metrics relevant to market monitoring, such as retailer margins. The CMA will request this information from supermarket retailers, which have been the historic price leaders in the market, motorway retailers and other non-supermarket retailers. However, we will not require every retailer to supply this information to us.
- 2.12 We will direct our ongoing information requests to: (i) supermarkets; (ii) motorway retailers with five or more sites; and (iii) other retailers who have 80 or more sites across their group. This will allow the CMA to ensure we are capturing a significant proportion of retail sites across the UK, ensuring our analysis is robust, while being proportionate about our information gathering.
- 2.13 However, the CMA will keep our approach under review and may make changes should it be necessary to do so. This may mean that, for example, the CMA may from time-to-time request information from a broader set of retailers, suppliers and/or distributors.

- 2.14 While it would be helpful if a retailer notifies the CMA in the event that it expands to 80 or more PFS sites (or five or more for a motorway retailer), there is no obligation placed on retailers to do so. We anticipate being able to gather this information, as part of our ongoing monitoring of the market, particularly when data from the Fuel Finder scheme becomes available.
- 2.15 As part of our monitoring and reporting, we may also utilise other sources of information, such as industry-level pricing data published by DESNZ, published reports and the media. We intend to engage regularly with key stakeholders, in particular retailers, trade associations, and motoring / consumer groups. This is to maintain and enhance our understanding of key issues and ensure our monitoring function provides as much value as possible, as well as ensuring key stakeholders are kept well informed of our work.
- 2.16 We have established a dedicated Road Fuel email where information or road fuel related complaints can be shared with the CMA, which may also identify potential concerns. This is: [RoadFuel.Monitoring@cma.gov.uk](mailto:RoadFuel.Monitoring@cma.gov.uk).
- 2.17 The CMA's general approach to gathering information is set out in CMA6 and an updated version will be effective from 1 January 2025.

## **Use of section 311 Information Notices**

- 2.18 In line with our general approach to information-gathering the CMA will strive to avoid imposing unnecessary burdens on the recipients of section 311 Information Notices, while also considering the need to gather the necessary information to carry out our monitoring and reporting functions efficiently and effectively.
- 2.19 The CMA's section 311 Information Notices will specify the information that the CMA requires, the time at which, or the frequency with which, the information must be given to the CMA, the manner and form in which it must be given<sup>9</sup> and the possible consequences that may apply if the recipient does not comply.<sup>10</sup>
- 2.20 Addressees should make known any potential difficulties in responding (such as administrative, resourcing, financial, logistical and practical issues) as early as possible. Addressees should also raise with the CMA any matters they do not understand as soon as possible after receiving a section 311 Information Notice.

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<sup>9</sup> For example, a section 311 Information Notice might specify the format in which a dataset should be provided and how it should be transferred (eg the means by which information should be provided to the CMA by uploading it to a secure server).

<sup>10</sup> Section 311(3) of the Act. A person could face penalties or prosecution for failing to comply with the requirements of a section 311 Information Notice. Further detail on penalties is provided in *Administrative Penalties: Statement of Policy on the CMA's approach (CMA4)*.

- 2.21 The CMA will, in particular, take into consideration any concerns raised by notice addressees about their ability to provide the information required – including given the nature and the type of the information requested.
- 2.22 The CMA may send out more than one section 311 Information Notice to the same addressee during its consideration of the issues. For example, the CMA may ask for additional information after considering material submitted in response to an earlier request.

### **Use of the CMA’s enforcement powers**

- 2.23 Given the importance of accurate data and other information to the CMA’s road fuel monitoring and reporting function, there are a number of adverse consequences if an addressee fails to comply with a section 311 Information Notice. If information is delayed, incomplete or unreliable this will impact on the quality of the CMA’s reports and therefore the considerations based on these outputs, with potential implications for competition within the UK road fuel market and for the addressees.
- 2.24 The CMA will expect recipients to comply fully with any section 311 Information Notice within the given deadline. Any extension requests will be considered based on the merits. The CMA will seek to set a reasonable deadline for all information requests, and where draft formal requests have been issued the final request will have considered any representations on the proposed deadline.

### **How information will be submitted**

- 2.25 The CMA will detail the type of information required, and how to submit it, in formal section 311 Information Notices that will be issued to the relevant party.
- 2.26 The CMA expects to seek information in a generally consistent format, both over time and across the sector, and to make submitting responses as straightforward as possible. The CMA’s intention is that, in due course, we will develop an online portal to facilitate the submission of information, which will include templates for providing information.