

1. Do respondents have any comments on the CMA's proposed targeted and proportionate approach to enforcement?

Support the principle of a centralised data aggregator to promote consistency and transparency.

However, the governance, oversight, and independence of the aggregator are not well-defined. The draft regulations (regs. 3–5, 14) grant the aggregator discretion to monitor, interpret compliance, and escalate to the CMA without clear criteria or right of reply for traders. This could result in uneven or premature referrals for enforcement, particularly where non-compliance may be technical or temporary (e.g. API outage, reporting delay).

We may also question what the incentive for the aggregator is to work through potential non-compliance points before they refer to the CMA and whether this may result in a high level of referrals where the aggregator has not worked to understand the issue. It appears that the aggregator has quasi-enforcement role and it may be better to remain an administrative data steward, not a compliance body.

We would recommend that the Department or CMA issue clear guidance on:

1. "What constitutes a "reasonable belief" of breach (reg. 14(5));"
2. "How traders are notified and allowed to correct issues before escalation;"

2. Do respondents view the balance of informal and formal action to be appropriate?

FIUK strongly recommends a mandatory warning stage always be the case before any formal compliance notice, and a more clearly defined minimum grace period for rectification.

The introduction in the Guidance of informal actions is welcome and it is hoped that it is those actions which will be used most often. Nonetheless the existing framework allows CMA to impose financial penalties of up to 1 % of global turnover or 5 % of daily turnover per day (reg. 19), without any explicit thresholds or graduated process which presents a very large financial / legal risk to our member companies some of whom

are global entities with £billions in global turnover. As we have fed back previously to government, we believe these potential fines are disproportionate to the non-compliances likely to take place – while the Guidance does seek to offer reassurance on the proportionality of enforcement proceedings, the high impact fines remains a risk for companies.

We also note that due to the drafting of the regulations, that it appears that enforcement proceedings can be applied – equally in terms of potential maximum liability – to non-price data which is (or is not) reported by companies. We do not believe this is appropriate and believe it should be changed in the legislation.

If the legislation remains as published, we would suggest that further reassurance of proportionality by the CMA on enforcement could be offered in the Guidance by distinguishing clearly between types of non-compliance and how they will be treated – for example:

- Administrative, non-price (i.e. reporting against all data in Schedule 1 of the legislation except (9) Selling price of each grade of motor fuel) or minor breaches e.g. late submission, incomplete data = informal warning;
- Repeated or negligent non-compliance (ideally against a defined threshold) = potential for compliance notice;
- Deliberate falsification or refusal to cooperate = potential for financial penalty or criminal offence.

It would be helpful to offer greater detail on what mitigation criteria would be assessed by the CMA, and offer examples as well as what level of proof might be necessary to share. For example in the “Reasonable Excuse” section of the Guidance, (paragraph 7) it only states that the demonstrable IT failure “might amount to a reasonable excuse” – but it is unclear why it wouldn’t given the circumstances described.

3. Do respondents have any comments on the factors we propose to take in to account when considering penalties?

As noted in our response to question 2, the interaction of reg. 26 (offences) with the Data (Use and Access) Act 2025 could criminalise minor administrative errors, such as failure to report an amenity change within three days (reg. 8) which we do not believe is proportionate. We view that the factors on penalties should differentiate between price and non-price reporting non-compliance, particularly if it is the case that the legislation is not changed from current drafting.

4. Do respondents have any comments on the CMA's proposed approach to complaints relating to the exercise of the CMA's functions under the Regulations?

The complaints procedure broadly appears fine with a clear escalation where necessary.

5. Is the guidance clear on the CMA's proposed approach? If not, where would further clarification be helpful?

In general the Guidance is clear, however, the following areas could benefit from further explanation:

3.2 – It is unclear from the Guidance (or elsewhere) how the aggregator will work with the CMA given they “have a critical role to play as the operator of the Fuel Finder with responsibility for resolving issues of non-compliance in the first instance”. While it is noted that there is to be guidance from the aggregator themselves, which may help clarify – it would be useful to have clearly defined roles and responsibilities for both the aggregator and how this relates to the enforcement role of the CMA.

21 – Related to the point above on the role of the aggregator in resolving issues of non-compliance in the first instance, paragraph 21 could be better clarified to show how the proposed informal actions of the CMA are different from any initial actions undertaken by the aggregator before they notify the CMA.

22 – it would be useful to understand how the CMA will assess breaches against the criteria listed e.g. “impact on consumers” as this may be difficult to quantify (both for price data and particularly so for non-price data reported).