

bp's response to the Competition and Market Authority's consultation on draft Fuel Finder enforcement guidance

Introduction

bp is a leading global energy company – our strategy is to transition from an international oil company to an integrated energy company delivering solutions for our customers.

bp has been based in the UK for more than 100 years and operates in over 70 countries around the world. We have a primary listing on the London Stock Exchange and a secondary listing in the US, on the New York Stock Exchange.

In our recently published UK Economic Impact Report, Oxford Economics found that in 2024:

- bp's direct contribution plus the impact of our supply chain spend supported £11.6bn in gross value-added (GVA) contributions to UK GDP
- Equivalent to 0.41% of UK GDP.
- In addition, bp paid and collected £3.4 billion in tax to the UK and devolved governments
- bp supported around 75,000 jobs both directly and indirectly through the supply chain across the UK
- In total, that equates to 1 in every 450 UK jobs
- Of this number, around 15,675 people were employed directly by bp in the UK.
- bp spent £4.6bn with UK suppliers. This procurement, combined with bp's spending elsewhere around the world, was spent with:
 - Over 2,800 suppliers of operational goods and services, and
 - Over 520 suppliers of capital goods and services.

bp welcomes the opportunity to respond to the CMA's consultation on the draft fuel finder enforcement guidance.

Consultation questions

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

bp welcomes the general principles set out by the CMA in respect of proportionality, and in particular that the CMA's approach to investigations will be "*targeted and proportionate*." In order to ensure that investigations are targeted and proportionate, bp considers the CMA should take into account the parties' intention and whether consumers are likely to have suffered any actual loss when considering whether to open an investigation in the first place, and whether to pursue enforcement action at all. Consideration of these factors should not solely be reserved for the determination of the level of financial penalties (if any).

bp understands that the CMA has a general power to take enforcement action against a failure to comply with *any* requirement imposed by the regulations. This may include technical breaches, such as a failure on behalf of an operator to update the "*registration information*"

contained in Schedule 1 of the regulations for a given site within a three-day period. bp notes that the list of registration information is extensive and, in some instances, unclear. Most notably, it includes the need to provide (and keep updated) a list of “*amenities and facilities*” at each location. The concept of “amenities and facilities” is not defined in the regulations, but is instead mandated by the aggregator (and, by extension, carries an additional risk that the list could be subject to change without appropriate consultation). The current list of amenities and facilities provided by the aggregator includes a long list of items which do not relate to road fuel or road fuel pricing, including for example, the availability of microwaves, hot drinks, take away food, dog-friendly exercise areas, car wash services, tyre services, ATM machines, and many more. The CMA should clarify in its guidance that enforcement action (whether formal or informal) will focus solely on breaches which directly impact the pricing of road fuel only, not purely technical breaches which relate to factors other than road fuel pricing. Investigations into matters extending beyond road fuel pricing would be disproportionate in the context of the regulations and a regulatory regime which is specifically targeted at road fuel pricing.

The guidance should clarify that the CMA will not seek to pursue enforcement action where breaches are inadvertent, particularly for an operator which is generally seeking to comply in good faith. One practical example of this is that pricing data will be reported 24/7 via technical feeds, but where pricing and technical teams do not work 24/7, it may take time to identify and resolve any issues of a technical nature. If such issues arise and are resolved as soon as practicable, this should not warrant enforcement action.

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

The CMA should consider granting a reasonable grace period for businesses to adapt to the new regime and to allow a reasonable period for any initial issues to be resolved with the aggregator, without risk of enforcement action. It would be helpful if the CMA could also clarify that any such initial issues (particularly, where inadvertent) would not factor into the CMA’s subsequent consideration of recidivism when considering formal action, particularly where those initial problems are resolved in the early stages of the new regime. These points could be reflected in the guidance or other public statements made by the CMA.

The CMA’s draft guidance indicates that informal action is more likely where a trader breaches the regulations for the first time (para 22), whereas recidivism (and ongoing compliance problems) will be a factor considered by the CMA in determining whether to utilise its formal enforcement powers (para 24). bp considers that when considering instances of potential recidivism, the CMA should expressly take into account the size, complexity and scale of different operators to reflect the commercial possibility that larger, more complex operators will inherently be at a greater risk of more than one breach occurring across their estate as compared to a trader with a single, or a small number of, site(s). The CMA’s guidance should clarify that instances of recidivism will not simply be a question of numbers, but will be considered in the round, including whether an operator is, in general, acting in good faith to ensure compliance.

Finally, bp notes the CMA’s draft guidance has been drafted in line with the CMA’s commitment to its “4Ps” framework, including ‘pace’. While bp welcomes the CMA’s commitment to pace in its investigations, pace should not be prioritised at the expense of a trader’s ability to understand any potential breaches, rectify any breach, and otherwise exercise its rights of defence.

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

bp is supportive of the principles associated with the Fuel Finder Scheme to develop a mechanism to provide live pricing data to consumers and has already made this data available on a voluntary basis. Given the extent of the maximum penalties available to the CMA, the CMA must ensure that any penalties levied on traders for failure to comply with the regulations are proportionate and take into account the level of any loss actually suffered.

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 relating to the exercise of the CMA's functions under the regulations is clear. However, bp is concerned that no clear framework exists for how complaints will first be managed by the aggregator. Traders need to understand this complaints procedure well ahead of the regulations coming into legal effect.

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

Paragraph 18 of the draft guidance states that *"Before proposing any enforcement action in relation to a breach, the CMA will typically ensure that the MFT involved is aware of the breach and has had an opportunity to liaise with the CMA to rectify the breach"*. It is not clear to bp the circumstances in which it would be appropriate for the CMA to take enforcement action without ensuring that the party under investigation is aware of the breach. bp would suggest that the word "typically" is deleted from paragraph 18, or further clarification provided to explain the types of circumstances in which a trader would not be made aware of the breach to which action relates, and would not have (or be given) an opportunity to rectify the breach.