

United Kingdom

COMPETITION

Sector review—retail competition in supply of road fuel—analysis—recommendations—market study

🇬🇧 Competition and Markets Authority; Competition policy; Petrol; Pricing; Road fuel; Service stations

UK Government responds to CMA's road fuel review

On 12 October 2022, the UK Government published its response to the recent road fuel review conducted by the Competition and Markets Authority (CMA).¹

Background

The CMA was asked to conduct the “urgent review” by the Secretary of State against the backdrop of climbing fuel prices, including “the price of both petrol and diesel” having increased by “over 60p in the last year”, and households “now pay[ing] on average more than £500 per year extra to run a medium-sized petrol car”.²

The CMA's review of retail competition

As part of its review, the CMA investigated whether retail competition is working well across the UK in relation to the fuel sector. The authority notes first of all that this competition “principally takes place at a local level”, considering that “retailers typically set prices based on what others in their local area are charging, with some aiming to match or undercut their rivals”.³ The CMA suggests that strong competition with nearby rivals is likely to be beneficial to motorists.⁴ In this way, the CMA notes that the fact that some areas of the UK have higher fuel costs than others is not solely due to the higher costs of supplying fuel to such areas, but also weak competition, which “may lead to price differences that are unrelated to costs”.⁵

The CMA's preliminary analysis found that “a number of inter-related factors influence local price variation”.⁶ These are:

1. The number of local competitors, with prices tending to be lower with a greater number of competitors in closer proximity;⁷
2. The presence of supermarkets, which tend to provide cheaper fuel than other types of retailer.⁸ Some analysis suggests the presence of supermarkets also lowers fuel in the surrounding local area;⁹ and
3. Whether an area is rural or urban, with rural areas paying slightly more for road fuel.¹⁰ The CMA suggests that the reasons for this might include (i) fewer competitors; (ii) less fuel supplied; and (iii) higher transportation costs to rural areas.¹¹

¹ Department for Business, Energy & Industrial Strategy, “Government's response to the Competition and Markets Authority's Road Fuel Review” (12 October 2022) (Government Response), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1110652/cma-road-fuel-review-government-response.pdf.

² CMA, Road Fuel Review (8 July 2022, updated 12 October 2022) (Road Fuel Review), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089125/Road_fuel_review.pdf, para. 1.

³ Road Fuel Review, para. 9.

⁴ Road Fuel Review, para. 9.

⁵ Road Fuel Review, Executive Summary, para. 10.

⁶ Road Fuel Review, Executive Summary, para. 11.

⁷ Road Fuel Review, Executive Summary, para. 11(a).

⁸ Road Fuel Review, Executive Summary, para. 11(b).

⁹ Road Fuel Review, Executive Summary, para. 11(b).

¹⁰ Road Fuel Review, Executive Summary, para. 11(c).

¹¹ Road Fuel Review, Executive Summary, para. 11(c).

Proposed next steps and Government response

The key step that the CMA is taking pursuant to its findings in the review is the initiation of a formal market study into road fuel, to further examine the issues highlighted.¹² An important aim of the study will be to gain a deeper understanding of “how far local price variation is being driven by weak competition, and whether there has been a softening of competition from supermarkets”.¹³

The CMA also proposes, however, two steps which the UK Government could consider in order to strengthen competition and improve transparency. The advice is clear, though, that the effect of such measures on pump prices will be modest, since “retailer profits represent a relatively small share of the pump price”.¹⁴ Indeed, when considering the extent to which increased wholesale costs of petrol have been passed through to consumers, the CMA’s analysis suggests “retailers appear unlikely to have increased their profits” since in the months prior to the publication of the review, the retail spread—the difference between wholesale and retail prices—had not increased.¹⁵

The first recommendation by the CMA is an open data scheme which collects forecourt prices and makes them freely available.¹⁶ The aim of this recommendation is to negate the need for consumers to drive around in search of cheaper prices, notwithstanding prominent display of prices at individual forecourts.¹⁷ The CMA suggests that such a scheme would “encourage petrol stations to compete more intensely to attract customers”.¹⁸

In its 12 October response, the Government commits to “swift further work and analysis to assess the feasibility” of the open data scheme.¹⁹ The Government’s work will include timescales and consideration of any necessary legislation.²⁰ In assessing the CMA’s suggestion of an open data scheme, the Government has said that it will look to evidence from similar schemes in Germany and Austria.²¹ It is interesting to note in this connection that the CMA’s review discusses recent actions taken by other competition authorities in response to an increase in petrol prices. It notes, for example, that the Italian Autorità Garante della Concorrenza e del Mercato has issued requests for information to leading oil companies, and its Austrian counterpart has opened a market inquiry “looking at whether, leaving other current developments aside, the current prices are also due to a lack of, or restricted, competition”.²²

The CMA’s second policy suggestion relates to the pricing of fuel on motorways. The CMA notes the “long-standing concerns about the higher price of fuel on motorways”.²³ The CMA advocates for higher quality information on motorways about pump prices, to include those at nearby off-motorway petrol stations.²⁴ Pre-empting potential concerns with this proposal, the CMA notes that the Government would have to evaluate the potential advantages of the policy “against other important public policy considerations, such as the impact on local road traffic volumes”.²⁵

Whilst the Government in principle accepts the utility of providing more information to motorway users, it encourages further inquiry into whether the move would have a notable impact on fuel price transparency.²⁶ Traffic

¹² Road Fuel Review, para.6.7.

¹³ Road Fuel Review, para.13.

¹⁴ Road Fuel Review, para.14.

¹⁵ Road Fuel Review, para.4.27.

¹⁶ Road Fuel Review, para.6.9.

¹⁷ Road Fuel Review, para.6.9.

¹⁸ Road Fuel Review, Executive Summary, para.16.

¹⁹ Government Response, Section 3.

²⁰ Government Response, Section 3.

²¹ Government Response, Section 3.

²² Road Fuel; Review, para.5.8

²³ Road Fuel Review, Executive Summary, para.18.

²⁴ Road Fuel Review, Executive Summary, para.18.

²⁵ Road Fuel Review, Executive Summary, para.18.

²⁶ Government Response, Section 3.

and road safety would then need to be considered, alongside environmental and monetary costs and the legislative options available, before any decision is made regarding implementation.²⁷

The statutory deadline for the CMA to publish its market study report is 7 July 2023.²⁸

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US

ANTI-COMPETITIVE PRACTICES

Enforcement—restrictive business practices—third-party seller and wholesale pricing policies—lawsuit filed

☞ Anti-competitive practices; California; Enforcement; Online marketplaces; Pricing; Unfair competition

California files second high-profile antitrust lawsuit against Amazon

After defeating earlier this year an antitrust suit brought by the Attorney General for the District of Columbia regarding its pricing policies, Amazon now faces a new lawsuit brought by California's state Attorney General. On 14 September 2022, California's Attorney General filed an antitrust suit against Amazon in San Francisco County Superior Court, alleging violations of California's state antitrust law, the Cartwright Act, and unfair competition laws.

At the core of the lawsuit is Amazon's alleged practice of entering into agreements with third-party sellers and wholesale suppliers that prohibit them from offering lower prices to consumers on websites other than Amazon.com, and punishing non-compliant sellers by removing the "Buy Now" and "Add to Cart" buttons from their product listing pages, demoting their offerings in Amazon's search results, and blocking them from adding new product offerings to their third-party seller accounts. The California suit claims that these agreements "insulate Amazon from price competition, entrenching Amazon's dominance, preventing effective competition, and harming consumers and the California economy". It also alleges that, although this practice may lead to lower prices on Amazon.com, it leads to higher prices elsewhere.

The California suit is brought solely on behalf of California consumers, but its core factual allegations mirror those in other parallel government enforcement in private cases. Specifically, in 2021, the District of Columbia sued Amazon for the same set of practices in the Superior Court of the District of Columbia. In March 2022, the District of Columbia court dismissed it. The United States Department of Justice then took the unusual step of filing a statement of interest supporting the suit in connection with the District of Columbia's effort to seek reconsideration of the court's decision. Despite that step, on 1 August 2022, the court declined to reconsider. The District of Columbia has indicated that it will appeal that decision.

Amazon is also currently defending itself against a putative class action lawsuit in the federal district court in Seattle that focuses on the same practices. In a 11 March 2022 decision, the court granted in part and denied in part Amazon's motion to dismiss, finding that the private plaintiffs had stated facts (taken as true for purposes of early motion practice) that were sufficient to allege that "Amazon ... suppresses competition from its sellers on external platforms". The Seattle case is now proceeding based on claims asserted under the federal antitrust laws as well as the Cartwright Act.

²⁷ Government Response, Section 3.

²⁸ CMA, Road Fuel Market Study case page, available at: <https://www.gov.uk/cma-cases/road-fuel-market-study>.