

Google's Response to the CMA's Consultation on SMS Levy Rules

1. Executive summary

- 1.1. Google welcomes the opportunity to respond to the CMA's consultation on its proposed approach to a levy for the digital markets competition regime and the draft SMS Levy Rules (the "**Consultation**").¹
- 1.2. Google agrees that, of the options presented in the Consultation, dividing the SMS Levy evenly between SMS Firms (a "per-capita" approach) is the comparatively fairer option. See [Section 2](#). Nevertheless, we have six overarching concerns with the proposals outlined in the Consultation:
 - a. **Contrary to the principle of fairness, the burden of the SMS Levy as currently envisaged will fall disproportionately on the first SMS Firms that are designated.** See [Section 3](#). The DMU has been sized and resourced for a much wider scope of work than it is currently undertaking, including SMS investigations into digital firms other than Apple and Google (which are the only firms currently being investigated under the new regime) and future ongoing monitoring and compliance functions. Indeed, Google anticipates that eventually there will be a similar number of designated SMS Firms as there are "gatekeepers" under the EU Digital Markets Act. It will be some time, however, before the CMA has carried out initial SMS designation investigations for all of the digital firms that are expected to be the focus of the new regime. This means that during the 'start up' phase of the new regime, on the CMA's proposed approach, it appears that just one or two SMS Firms will bear all of the Qualifying Costs including the costs of the DMU's preparatory work for the designation of *other* SMS Firms in the future. This is manifestly unfair. The CMA's recent announcement that there will be no new SMS investigations until 2026 implies that the start-up phase will continue for an even more extended period than initially contemplated. To avoid the manifest unfairness of certain firms bearing disproportionate costs from being the first to be designated, the SMS Levy should not be introduced until all potential SMS firms have been considered for designation or delayed for a period of at least two years to allow the DMU's work to reach a 'steady state'.² Alternatively, the amount of the DMU's costs recovered via the SMS Levy should be reduced in at least the first two years of the regime's operations.
 - b. **The proposed scope of Qualifying Costs is also overly broad.** See [Section 4](#). The legislation is clear that the scope of Qualifying Costs should be limited to what is directly required by the CMA for carrying out its SMS related activities. The CMA should commit in its Levy Rules that any work carried out of a strategic or preparatory nature, as well as any work that the DMU carries out as part of its general management function within the CMA, is excluded from the Qualifying Costs and therefore not borne by SMS Firms. The CMA should provide a full and comprehensive list of the activities that it intends to include as Qualifying Costs, as well as which activities of the DMU are excluded.
 - c. **The CMA has not explained why the SMS Levy should cover 100% of Qualifying Costs. To incentivise efficient cost management the proportion of Qualifying Costs recovered by the SMS Levy should be less than 100%.** See [Section 5](#). The Act empowers the CMA to recoup costs via a levy, and specifies certain costs that may not be recovered from SMS Firms. When introducing the legislation the Secretary of State made clear that the levy was

¹ Capitalised terms used herein have the same meaning as in the Consultation, unless stated otherwise.

² Where a certain minimum number of SMS designations has not been reached, there should be a commitment to ensure that the amount paid by each SMS firm is as though the minimum number was met (i.e., if a total of five firms are expected to be designated, then no SMS firm would pay more than 20% of the total cost).

not expected to cover 100% of the Qualifying Costs. To do so is a policy choice by the CMA that is contrary to parliament's intention. Google considers that such an approach is unfair, disproportionate, and reduces the CMA's incentives to manage costs efficiently (see below). No rationale for this approach has been provided in the Consultation materials.

- d. **The proposed approach to recovering Qualifying Costs provides poor incentives for the DMU in regard to exercising budgetary discipline.** See [Section 6](#). Without prejudice to Google's position above, the SMS Levy should not in any circumstances exceed the Qualifying Costs provided for in the CMA's annual budget.
- e. **Other SMS Firms should not bear the cost of pending appeals.** See [Section 7](#). The Levy Rules should be amended so that even if a firm appeals an SMS designation, each SMS Firm's share of the Levy is still adjusted on a 'per capita' basis to include the new SMS firm from the time of the CMA's decision. It is currently proposed that in the case of an unsuccessful appeal, the SMS Firm should only become liable to pay for its share once its appeal has been concluded. Existing SMS Firms should likewise only be required to top up their contributions if the new SMS Firm is successful in its appeal, at which point the portion of the SMS Levy for which the applicant would have been liable is redistributed among the other SMS Firms.
- f. **The proposed payment terms are unreasonably short.** See [Section 8](#). A longer period for payment of the SMS Levy (at least 90 days from the issuing of an invoice) would be more appropriate than the 30 days currently proposed, particularly as these invoices will involve substantial amounts for the first SMS Firms that are designated.

1.3. In summary, Google suggests the following alterations to the CMA's proposed approach to the SMS Levy:

- a. The SMS Levy should either: (i) be delayed for at least two years or until a certain minimum number of firms (e.g. five) have been designated; or (ii) in the alternative, be adjusted to reduce the proportion of costs recovered through the SMS Levy in at least the first two years of the DMU's work;
- b. The Levy Rules should specify how any potential de-designation of a firm will affect the levy that a firm is liable to pay;
- c. The definition of Qualifying Costs should expressly exclude any strategic or preparatory work that is not directly connected to what is required of the CMA when carrying out its SMS related activities and the scope of what Qualifying Costs include and exclude should also be further clarified;
- d. The CMA should seek to recover less than 100% of its Qualifying Costs from SMS Firms to help incentivise cost efficiency;
- e. SMS Firms should have a right to appoint an independent party to audit the DMU's costs that they are required to pay for;
- f. The SMS Levy should be capped at the level of the DMU's approved budget for the relevant year and not cover unbudgeted overruns;

- g. Other SMS Firms should not be expected to cover any shortfall in the SMS Levy whilst any newly designated firms seek to appeal; and
- h. The period for payment of the SMS Levy should be extended to at least 90 days from when it is issued.

2. Google supports allocating the SMS Levy equally between SMS Firms

2.1. Without prejudice to the foregoing, of the allocation options presented in the Consultation Google supports the CMA's preferred approach of apportioning the SMS Levy evenly each year between those firms designated with SMS. As the CMA correctly notes:

- a. Other metrics, such as an SMS Firm's share of total designations, are likely to be poor proxies for the amount of work involved in supervising a given SMS Firm (Consultation paper, paragraph 2.15-2.16). It also risks introducing perverse incentives for SMS Firms to seek to consolidate digital activities under a single designation, irrespective of the merits of such an approach.
- b. Similarly a turnover-based approach would be unfair in that there may be no correlation between a SMS Firm's turnover and the number or scope of its designations, nor the nature or complexity of any interventions the CMA might impose (Consultation paper, paragraph 2.13).
- c. Google agrees that a per-capita approach to allocation of the SMS Levy is likely to be administratively simpler and more predictable for SMS Firms (Consultation paper, paragraph 2.20).

3. The CMA should avoid imposing a disproportionate burden on the first SMS Firms to be designated

3.1. On the CMA's proposal, in the early years of the DMU's work all costs would be borne by only the very small number of undertakings that are first designated as SMS Firms. Currently, it is expected that the costs for at least the first year of the regime (which could be as high as £25m-£26m)³ may be borne only by Google and/or Apple.

3.2. This is inherently unfair, particularly given that:

- a. There is no objective reason as to why these firms in particular should be the first designated SMS Firms (this is simply a result of the CMA's chosen sequencing for its SMS investigations);
- b. Although other regulatory regimes exist which are funded by industry (e.g., the European Commission's work under the Digital Services Act ("DSA") and the work of the UK Financial Conduct Authority ("FCA")), it is unprecedented for just two firms to be singled out and required to fund a regime that has been resourced to deal with a larger number of firms and cases. By way of comparison, we understand that there are 20 firms currently responsible for the levy imposed by the European Commission under the DSA⁴ and 41,826 firms paid the

³ Per the Government's Impact Assessment for the DMCC Act (21 April 2023) ([digital-markets-reforms-impact-assessment-annex-1.pdf](#)), Table 10.

⁴ This figure is based on the number of firms currently designated as very large online platforms and search engines under DSA, who are all subjected to the payment of the levy (charged proportionately to each service's number of users): [Supervision of the designated very large online platforms and search engines under DSA | Shaping Europe's digital future](#)

Financial Services Compensation Scheme Levy to the FCA in the period 2023-2024.⁵

- c. The DMU has been set up and resourced to handle a much larger caseload than at present. In January 2024, the CMA initially stated that it envisaged opening 3-4 SMS investigations in its first year.⁶ In January 2025 the CMA said that it would open two investigations in January 2025 and a third in June-July 2025⁷. It has now said that there will be no further SMS investigations in 2025. The next SMS investigations will not be considered by the CMA Board until early 2026.⁸ It will therefore be a number of years before the CMA has undertaken SMS assessments for all the firms intended to be potentially in scope of the new regime. We assume that the CMA would continue to open designation investigations at a similar or greater rate in future years, while also ramping up its work on designing, monitoring, and enforcing conduct requirements, as well as potentially initiating PCI investigations and non-compliance investigations. We therefore expect that the DMU's casehandling capacity far exceeds the scope of the SMS investigations it has opened so far. On the CMA's current proposals, Google and/or Apple would effectively fund all of the DMU's resources and workload for a significant period of time until it reaches a 'steady state', including the DMU's preparatory work and investigations concerning *other* potential SMS Firms; and
- d. It is also reasonable to expect the CMA to become more efficient over time, as staff become more familiar with the requirements of the new regime. It is notable that there have been a number of 'in-flight' adjustments to procedural aspects of Google's SMS investigations, such as the introduction of 'roadmaps'. SMS Firms designated later will benefit from the DMU's learnings in this regard, and we expect this will continue for the foreseeable future while the regime is in the 'start-up' phase.

3.3. The Consultation recognises this potential unfairness but fails to address it.

- a. At paragraph 2.20, the Consultation paper states that "*particularly at the start of the regime [an SMS Firms' share of the SMS Levy] could be expected to decrease over time, as more firms are investigated and designated with SMS*". In other words, at the start of the regime some SMS Firms will have to pay more than their fair share would be once the regime reaches steady state. The delaying of further investigations until 2026 implies it will take even longer for a steady state to be reached compounding this unfairness.
- b. Given the emphasis that the CMA has recently placed on the principles of predictability and proportionality in its operation - and the Consultation's own statement that one of the two core principles underpinning the draft SMS Levy Rules is "*ensuring levy invoices on SMS Firms are reasonable, predictable and proportionate*" - this is an issue which should have been addressed directly in the Consultation.
- c. As it stands, on the CMA's proposal, Google and/or Apple would be left with no clarity on the extent of their financial liability until an invoice is issued, just 30 days before payment is due, and in respect of the entire Qualifying Costs of a regime which has been set up to cater to a much greater number of designated undertakings - an outcome that is hard to reconcile with the goals of reasonableness, predictability and proportionality.

⁵ See [FSCS Annual Report and Accounts 2023/24](#), page 6.
⁶ [Overview of the CMA's provisional approach to implement the new Digital Markets competition regime](#)
⁷ [CMA sets out initial plans as new digital markets competition regime comes into force - GOV.UK](#)
⁸ [CMA takes first steps to improve competition in search services in the UK](#)

- 3.4. We reiterate that the CMA is delaying announcing any further SMS investigations until early 2026, contrary to its initial timeline.⁹ Assuming that no further investigations will be opened before early 2026, no other SMS Firm designations would be made until at least Q3-Q4 2026 (assuming no extensions to the statutory timetable). If SMS Firms appealed their designation decision then their obligation to contribute to the SMS Levy would also be suspended, on the CMA's proposals. Therefore for the foreseeable future, the burden of funding the DMU's work looks set to fall exclusively on Google and/or Apple, should their ongoing SMS investigations result in designation.
- 3.5. Google submits that the CMA should therefore either:
- a. Delay introduction of the SMS Levy for at least two years or until a certain minimum number of firms (e.g. five) have been designated¹⁰, until the regime reaches 'steady state' and its costs can be recouped evenly from among SMS Firms in a proportionate manner;¹¹ or
 - b. In the alternative, reduce the proportion of costs recovered through the SMS Levy in at least the first two years of the DMU's work. For example, assuming that the CMA continues to open investigations into two potential SMS Firms per year, and that five SMS Firms may be designated under the Act by the time the regime reaches a steady state in March 2027,¹² Google and/or Apple should be liable for (at most) 40% of the DMU's Qualifying Costs in the current financial year.
- 3.6. In addition, the CMA should expand on its approach to how any potential de-designation of a firm will affect the levy that that firm is liable to pay (Consultation paper, Annex 1, D8). This section should be developed to avoid any perception that the CMA would factor in financial considerations (and the disruption thereto that may result) when deciding whether and when to de-designate a firm. Additionally, should the final allocation approach be not based on whether a firm has any SMS designations, the guidance should also allow for a reduction in the number of SMS designations and/or relevant turnover leading to a proportional reduction in the SMS Levy.

4. The CMA should follow a reasonable approach to identifying Qualifying Costs

- 4.1. The legislation is clear that the scope of Qualifying Costs should be limited to what is directly required by the CMA for carrying out its SMS related activities. The CMA's proposal in B1 of the Consultation largely reflects this, but also provides that the Qualifying Costs will include "*preparatory work, management, decision-making, administration and other activities that are calculated to facilitate, or are conducive or incidental to, any of the Digital Markets Functions*".¹³ The CMA needs to specify which specific activities it intends to include in this category and, as importantly, what it excludes. This category should only include costs that are directly incurred to support the DMU's ongoing SMS related activities in respect of designated firms and should not be overly broad in scope.
- 4.2. It follows that any costs incurred by the DMU that cannot be directly related to existing SMS-related activities should be excluded. For example, work of a more strategic or preparatory nature (such as work to assess whether there is a case for launching an SMS designation process, or work to gather market intelligence ahead of launching an SMS investigation) should be explicitly excluded as

⁹ See CMA Press release of 7 January 2025: [CMA sets out initial plans as new digital markets competition regime comes into force](#), and CMA Press release of 24 June 2025: [CMA takes first steps to improve competition in search services in the UK - GOV.UK](#)

¹⁰ Where the certain minimum number has not been reached, there should be a commitment to ensure that the amount paid is as though the certain minimum number has been reached (i.e., if this number is five, then no firm would pay more than 20% of the total cost).

¹¹ As discussed further below, in the event of a de-designation of a firm, the CMA should ensure that a proportionate cost is allocated to that firm covering only the time period for which it was a designated firm.

¹² This estimate is entirely plausible, given 7 firms have been designated under the EU DMA already.

¹³ Consultation, Section B1 7(h).

Qualifying Costs. Similarly, any work that the DMU undertakes as part of its general management function within the CMA (such as internal management reporting or supporting the work of other parts of the organisation) should be excluded. Funding for work of this nature should come out of the CMA's general budget and not count towards Qualifying Costs, as it is unfair that SMS Firms should bear these costs.

- 4.3. To this end, the CMA should publish a full and comprehensive list of the activities that it intends to include as Qualifying Costs, and also which activities of the DMU are excluded, ahead of the imposition of any levy. Alongside this, the CMA should set out the method it will use to identify and exclude from the levy all costs incurred by the DMU that do not reasonably constitute Qualifying Costs.

5. The Consultation provides no justification for recovering 100% of Qualifying Costs from SMS Firms, which should be reduced to incentivise cost efficiency

- 5.1. The Act gives the CMA the power to impose a levy on SMS Firms, but it does not require the CMA to do so.¹⁴ The CMA has discretion to determine whether and how to raise such a levy, in relation to which it should ensure that the SMS Levy accounts for less than 100% of Qualifying Costs.
- 5.2. The Consultation exclusively addresses the question of how the SMS Levy should be apportioned among SMS Firms. There is no consideration of whether the CMA should impose a levy, nor what proportion of Qualifying Costs the levy should seek to recover. Notably, when introducing the legislation in parliament, the then-Secretary of State explicitly referred to the cost of the new digital markets regime being “*partially recouped by levy funding*” (emphasis added).¹⁵ Starting from the assumption that *all* Qualifying Costs associated with the new regime should be recovered from SMS Firms is inconsistent with the intention of parliament. Failure to consider whether, and at what level, the SMS Levy should be set is a manifest deficiency in the Consultation process that needs addressing.
- 5.3. There are good reasons why the Secretary of State took the position she did. As a matter of principle it is unfair and disproportionate to impose 100% of the Qualifying Costs of the new regime on SMS Firms. Designation does not imply any wrong-doing on the part of a SMS Firm; indeed, it is entirely possible for an undertaking to be designated and yet not be made subject to any conduct requirements or pro-competition interventions. Where other sectoral regulators or supervisory regimes in the UK are funded via an industry levy, the costs are spread across all undertakings operating in that sector, helping to minimise competitive distortion among competitors.¹⁶ While imposing an SMS Levy in respect of a lower proportion of Qualifying Costs would still subject SMS Firms to an additional cost that their rivals do not face, the magnitude of its effects would at least be reduced.
- 5.4. We also note that recouping 100% of Qualifying Costs from SMS Firms does not encourage budgetary discipline on the part of the DMU. In the Consultation, the CMA notes that its budget is set by the Government, and that its outturn performance is audited by the National Audit Office. These measures do not allay concerns around budget discipline, however.
- 5.5. When requesting its budget envelope, the CMA, and the Government, would know that 100% of the DMU's Qualifying Costs may be recouped from SMS Firms. There would therefore be no incentive to exercise restraint in forecasting expenditure for this aspect of the CMA's budget. Similarly, the

¹⁴ DMCC Act, Section 110(1).

¹⁵ [Consultation Response: a New Pro-competition Regime f - Hansard - UK Parliament](#)

¹⁶ We have considered a number of regimes in the UK including, for example, the Green Gas Levy overseen by Ofgem (which is charged to all licenced fossil fuel gas suppliers in Great Britain) and the General Levy overseen by the Pensions Regulator (which is paid by all pension schemes in bands according to scheme type and number of members).

Consultation proposes that the CMA would recoup 100% of Qualifying Costs incurred (i.e. including costs in excess of budgeted allowances), weakening the CMA's incentive to ensure that the DMU's costs remain in budget. We make a number of specific recommendations in Section 6 that seek to mitigate these concerns, but these could also be addressed by reducing the proportion of the DMU's costs that are recovered through the SMS Levy. The CMA's incentive to deliver value for money for the UK taxpayer would thus encourage spending discipline across the DMU's work and ensure that the costs in which SMS Firms are to share are fair and reasonable.

6. The CMA should ensure a disciplined approach to costs

- 6.1. As explained above, Google is concerned that recouping 100% of Qualifying Costs from SMS Firms discourages cost discipline and may result in inefficiency.

Transparency

- 6.2. In addition to the measures discussed above, Google submits that SMS Firms should have a right to appoint an independent party to audit the DMU's costs that they are required to pay for. This is needed in order to ensure that the DMU is operating efficiently and that expenditure is reasonable and properly allocated. This audit right should extend to both staff and non-staff costs and should include a right to review the DMU's forward-looking budget for the upcoming financial year, in order to promote transparency, accountability, and informed financial planning.
- 6.3. Such an audit right would be consistent with the approach under the DSA, under which the European Commission publishes an annual report detailing its costs at a granular level.¹⁷ This transparency enables designated entities to assess how the fees charged to them have been calculated and ensures accountability in the administration of the regime. As another example, the FCA consults annually on its proposed fee rates and levies, including a breakdown of how its annual funding requirement is determined and allocated.¹⁸
- 6.4. Moreover, it would also be consistent with the CMA's own approach in the context of open banking, whereby the nine banks who are subject to the order have the right to commission an annual financial audit of the "Implementation Entity". This shows that the CMA has accepted that funding parties who are subject to regulation having the right to commission their own independent audit does not compromise operational independence.

Capping costs

- 6.5. If the CMA were to maintain its position that the SMS Levy should recoup 100% of Qualifying Costs, contrary to Google's submissions above, Google considers that SMS Firm contributions should be capped at the level of the DMU's approved budget for the relevant year. This would ensure that:
- a. The levy reflects a reasonable and proportionate recovery of anticipated costs;
 - b. SMS Firms would be able to anticipate and account for their likely levy contributions with greater certainty; and
 - c. An appropriate incentive is provided for the DMU to operate efficiently and to prioritise its focus.

¹⁷ See, for example, the 2024 report here: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0150.

¹⁸ See, for example, the 2025 consultation here: [CP25/7: FCA regulated fees and levies: rates proposals for 2025/26](#).

7. Other SMS Firms should not bear the costs of appeals

- 7.1. Currently, under paragraphs 18 and 19 of the draft SMS Levy Rules, where a firm appeals an SMS designation and the appeal is unsuccessful, the firm only then becomes liable to pay the SMS Levy, back-dated to the date of the CMA's decision. However, existing SMS firms are not reimbursed for over-payments made during this period until the next invoice period, when the over-payment is deducted.
- 7.2. Google submits that a more appropriate approach would be for each SMS Firm's share of the levy to be adjusted using the 'per capita' approach from the moment of the CMA's decision designating the new SMS Firm (on the working assumption that that the new SMS Firm is now liable for a proportionate share of the levy). At the same time, the newly designated SMS Firm would only become liable to pay for its share of the SMS Levy once its appeal had been concluded (assuming it is unsuccessful), as is currently proposed. Existing SMS Firms would then likewise only be required to top up their contributions if the new SMS Firm is successful in its appeal, at which point the portion of the SMS Levy for which the successful applicant would have been liable is redistributed among the other SMS Firms.
- 7.3. Given that the CMA is funded by the central Government, and the SMS Levy is paid into the Consolidated Fund, there is no cashflow impact for the CMA of this alternative approach - whereas it avoids existing SMS Firms being deprived of funds while an appeal is being heard.

8. The CMA should ensure reasonable payment terms

- 8.1. Given the significant sums involved, and that the levies are to be paid into the Consolidated Fund (i.e., the CMA is not reliant on the SMS Levy proceeds for cashflow), a longer period for payment (of at least 90 days from issue of an invoice)¹⁹ would be more appropriate than the 30 days currently proposed.²⁰ This is particularly needed given the disproportionate burden that is proposed to be placed on early SMS Firms.

¹⁹ We note that in the case of fines imposed for infringements under the Competition Act 1998 that typically parties have 60 days to pay. In contrast, SMS firms that have committed no wrongdoing are currently expected to pay invoices in half of that time. If anything SMS firms should benefit from a longer payment period.

²⁰ Draft SMS Levy Rules, paragraph 31.