

The SMS Levy Rules

Amazon's response to the consultation



Introduction

1. The Competition and Markets Authority (**CMA**) has invited Amazon to submit a response to the CMA's consultation on the CMA's proposed approach to a levy for the digital markets regime (the **Levy**) and in particular the draft "SMS Levy Rules" (**Draft Rules**) contained within the **Consultation Document** published by the CMA on 5 June 2025. Amazon welcomes this opportunity and sets out below its preliminary observations, followed by more detailed comments on the CMA's proposed allocation methodology.

Preliminary observations

2. The Digital Markets, Competition and Consumer Act (**DMCC Act**) represents the biggest change to UK competition enforcement and regulation in the last thirty years. As the UK Government has noted in its strategic steer to the CMA, there is an expectation that the CMA will operate the regulatory model set out in the DMCC Act flexibly, proportionately and collaboratively to effectively unlock opportunities for growth across the UK digital economy and wider economy. Proportionate regulation is a source of economic advantage, and the UK has an opportunity to take an innovation-friendly and consumer-oriented approach.
3. By contrast, disproportionate enforcement carries a real and acute risk of chilling investment and innovation in the UK to the detriment of stakeholders and consumers, whether large or small.
4. Accordingly, the CMA's approach to the Levy, and accompanying Rules, must deliver on the core objectives of transparency, proportionality and fairness in terms of both substance and procedure. The approach to the Levy should be underpinned by clear and transparent Rules with accompanying guidance driven by principles, whilst recognising that, as the DMCC regime and Levy system is in its infancy, the Rules (and any accompanying guidance) will need to be reviewed and potentially updated after an initial implementation period and taking into consideration further input from stakeholders (and this should be explicitly recognised in the Rules). Unless the goals and principles guiding the allocation methodology are clear, there is little basis against which to measure the proposals. Amazon endorses the principle of fairness as a key goal – and in our view the primary goal – particularly given the novelty of this regulatory regime. Unlike industry regulation that applies to all firms operating in a sector – for example, telecoms, banking, energy – the parties that are subject to this Levy will be discretionarily selected by the CMA for SMS designation proceedings and, as a consequence, will have to absorb costs that their competitors do not.
5. The Rules (and any accompanying guidance) must not only provide for a system which fairly allocates costs to the Levy, and fairly apportions the Levy between SMS Firms, but which also provides sufficient clarity and transparency on how these exercises will be completed. This includes transparency and clarity on when SMS Firms will be invoiced, when the Levy will be collected and when surpluses refunded.

Comments on the proposed allocation methodology

6. **It is unclear that any of the three potential allocation models considered by the CMA are an appropriate, fair or proportionate approach for calculating the SMS Levy, and in particular it is unclear how the principle of fairness applies to the CMA's considerations.**
 - 6.1. The CMA has indicated that in considering how the SMS Levy should be allocated to SMS Firms, it will be guided by two key principles: fairness (ensuring Levy invoices on SMS Firms are reasonable, predictable and proportionate); and administrability (ensuring the methodology is simple and practical to administer for the CMA and SMS Firms).
 - 6.2. However, the CMA has not detailed how the principle of fairness in particular applies, at a granular level, to its considerations in respect of the three main allocation options, all of which arguably raise issues of fairness.
 - 6.3. With regard to the three main allocation options the CMA has considered:

- 6.3.1. A turnover based approach is unlikely to be a fair and proportionate basis for determining an SMS Firm's Levy Share, and would also be more administratively burdensome (particularly in respect of determining relevant turnover) for both the SMS Firms and the CMA, than the other options considered. It is relevant: that turnover and profitability will almost certainly differ dramatically across SMS Firms, given that the digital markets regime does not apply to a single digital activity; and also that SMS Firms with high turnover but low profit margins could pay disproportionately more than SMS Firms which are highly profitable but have lower turnover.
- 6.3.2. It is unclear to Amazon at this early stage whether either of the other two proposed approaches (dividing the SMS Levy according to the number of designations; and dividing the SMS Levy equally between the number of SMS Firms) would be fair and reasonable, given the infancy of the regime and the lack of clarity as to how either of these approaches would operate in practice. In addition, both of these options raise questions of fairness and proportionality, which the CMA has not addressed in its consultation document, including that neither of these options takes into account:
- 6.3.2.1. the complexity and actual cost of CMA oversight of a particular SMS Firm, with the result that: if only two firms were designated in a given year and they were designated at the same time, the Levy would be divided equally between both SMS Firms even if one of those designations accounted for 90% of the CMA's qualifying costs; and
 - 6.3.2.2. that certain SMS Firms would pay more of the Levy than other SMS Firms simply by virtue of the fact that the CMA had used its discretion to decide to investigate/designate those firms before the CMA investigated/designated others.
- 6.3.3. As alluded to at paragraph 4 above any approach will need to be reviewed in the short-medium term (within the first 3 years), once a number of SMS designations have been carried out by the CMA, to assess whether the methodology is the most fair and proportionate method for calculating the SMS Levy share at that time. At that stage the CMA could also consider other potential allocation options, including for example an allocation methodology based on a combination of: dividing a proportion of the SMS Levy between SMS Firms; and allocating the remainder of the Levy in accordance with the regulatory burden each SMS Firm imposes on the CMA (with SMS Firms that require more regulatory oversight and resources paying a higher levy).