



Apple's Response to the CMA's SMS Levy Rules Consultation

July 3, 2025

Introduction and summary

- (1) Apple welcomes the opportunity to respond to the CMA's consultation on its draft SMS Levy Rules.
- (2) The SMS levy represents a substantial and recurring financial burden for firms designated with SMS under the Digital Markets, Competition, and Consumers Act 2024 ("**DMCC Act**")—potentially much larger than levies imposed in other regulatory contexts.¹ It is therefore important that the SMS levy is allocated, calculated, and operated in a manner that is not only fair and administrable (as the consultation document recognises²), but also transparent, proportionate, and predictable.
- (3) The draft SMS Levy Rules reflect a clear intention to meet these principles. For example, they explain how the allocation methodology would apply as more firms are designated as having SMS. They recognise that allocation based on the number of designations per SMS firm could produce arbitrary results, as it would depend on how firms' digital activities are scoped or grouped, which may vary for different SMS firms offering competing services. And they contain a high-level description of how the CMA will calculate its costs. These are important considerations in a levy regime that is intended to be broad-based, future-proof, and accountable to the public, government, SMS firms, and other stakeholders. Apple welcomes them.
- (4) Apple believes, however, that the SMS Levy Rules could go further in certain respects to meet the above principles. This Response identifies five main suggested improvements:
 - **First, allocation of the SMS levy should be kept under review to ensure that it remains fair, proportionate, and predictable over time.** Given the SMS levy's expected magnitude, it is critical that it is allocated in a fair, proportionate, and predictable manner. The CMA has proposed to allocate the SMS levy based on the number of designated firms, which by nature is liable to change over time. However, because the ultimate number and scope of designations under the regime are currently unknown, any allocation methodology fixed now could prove unfair or disproportionate in the future.

¹ See Department for Science, Innovation, and Technology, [Impact Assessment of the DMCC regime](#) (April 21, 2023), pp. 45-46 (estimating that the total annual costs of the digital markets regime to SMS firms would be £25-26 million in 2022 prices). Based on these estimates, Apple's liability for the SMS levy (if it is designated as having SMS) is expected to be larger than other levies Apple pays, such as those imposed under the Online Safety Act or Digital Services Act.

² CMA, [The SMS Levy Rules Consultation](#) (June 5, 2025), ¶12.7.

The final SMS Levy Rules could therefore benefit from a commitment to revisit the allocation methodology, for example within three years of their implementation, to ensure that allocation remains fair on a lasting basis.

- **Second, the SMS Levy Rules should take a proportionate approach to calculating turnover where appropriate.** It is currently difficult to assess the suitability of allocation based on turnover without further detail on how revenues would be calculated. If the CMA ultimately decides to allocate the SMS levy based on designated firms' revenues, this allocation should not unduly disadvantage SMS firms with a high proportion of revenues attributable to products or services that are not subject to SMS designation, or firms with disproportionately high ex-UK revenues relative to UK revenues.
- **Third, the final SMS Levy Rules should explain how the CMA intends to estimate its costs.** The DMCC Act requires the CMA to explain how it will estimate its costs, which the draft SMS Levy Rules currently do not do. Apple believes it is important for the CMA to include a clear description of how it intends to estimate its costs to ensure predictability for SMS firms.
- **Fourth, the CMA's cost calculation methodology would benefit from additional transparency.** The final SMS Levy Rules should explain in more detail how the CMA anticipates calculating the costs it actually incurs in exercising its digital markets functions. In particular, they would benefit from additional detail on how the CMA anticipates calculating relevant non-staff costs and overhead costs.
- **Fifth, the CMA should publish its actual incurred costs in sufficient detail.** The final SMS Levy Rules would benefit from greater transparency in relation to the CMA's actual costs by committing the CMA to publish a sufficiently detailed breakdown of the costs attributable to its digital markets functions. This would enable relevant stakeholders to understand the CMA's incurred costs and whether the levy has been allocated fairly and proportionately. Such transparency is especially important given the apparent lack of ongoing formal government or parliamentary oversight or scrutiny of the SMS levy and how it is calculated, following finalisation of the SMS Levy Rules.

(5) This Response expands on these suggested improvements below.

Allocation of the SMS levy should be kept under review to ensure that it remains fair, predictable, and proportionate over time

- (6) The draft SMS Levy Rules' proposal to divide the SMS levy evenly between designated firms has the benefit of relative administrative simplicity. Nonetheless, under this approach, Apple is at risk of bearing a disproportionate share of the CMA's costs for the first chargeable year (and potentially subsequent chargeable years). The CMA has opened three SMS investigations, only one of which concerns Apple. Without more information regarding the CMA's actual costs, it seems unlikely that Apple will account for much more than approximately one-third of the CMA's costs.

- (7) Correspondingly, it is currently unclear when the CMA intends to initiate SMS investigations in respect of additional firms. While further SMS investigations are expected, the number of firms involved and digital activities that will be designated is undetermined. And recent delays to opening investigations into the potential SMS of additional firms mean that initially designated firms will shoulder a disproportionate share of the CMA's costs at least until the latter half of 2026.³
- (8) To ensure that any unintended unfairness does not become entrenched, Apple would welcome a commitment in the final SMS Levy Rules for the CMA to revisit its proposed allocation methodology, for example within three years of the date of the implementation of the SMS Levy Rules. In the meantime, and while this might be a matter for the government in the first instance, Apple believes that a fairer approach would be to: (i) denominate relevant costs following initial SMS designation decisions as "ramp up" costs; and (ii) recoup those costs from all (or at least a critical mass of) designated firms once the CMA has concluded subsequent SMS investigations.

An SMS levy allocation based on designated firms' turnover should be calculated in a proportionate manner

- (9) The draft SMS Levy Rules consider, but ultimately reject, allocating the SMS levy based on designated firms' turnover.⁴ The draft SMS Levy Rules do not explain how turnover would be calculated, which is critical for understanding the appropriateness of this methodology. In the event that the CMA does opt for a turnover-based allocation, relevant turnover should be calculated in a proportionate manner. In particular, the CMA should consider the following principles:
- First, a turnover-based approach should not disproportionately disadvantage firms that have high revenues (in the UK or elsewhere) attributable to products or services that are not subject to SMS designation.
 - Second, a turnover-based approach should not unduly disadvantage firms with a relatively high proportion of turnover generated outside the UK. The CMA's digital markets functions apply to firms designated with SMS in relation to digital activities "*linked to the United Kingdom*."⁵ It would therefore not be appropriate for the CMA to recoup its costs based on SMS firms' revenues generated outside the UK.
- (10) If the CMA ultimately adopts a turnover-based approach, relevant turnover should be calculated in a proportionate manner, consistent with these points. The CMA should also consult on revised draft SMS Levy Rules addressing turnover calculation to give

³ See CMA, [CMA takes first steps to improve competition in search services in the UK](#) (June 24, 2025) (noting that the CMA "*will keep under review possible options for a further designation investigation and anticipate this will be considered by the CMA Board in early 2026*").

⁴ Regarding the third potential approach considered for allocating the SMS levy (namely, dividing the SMS levy by the number of designations per SMS firm), Apple agrees with the CMA's concerns that this methodology could risk leading to arbitrary results depending on how the CMA defines and designates individual digital activities.

⁵ DMCC Act, s. 2(1).

stakeholders an opportunity to comment on the fairness and proportionality of the proposed allocation before finalising the SMS Levy Rules.

The final SMS Levy Rules should explain how the CMA intends to estimate its costs

- (11) The DMCC Act requires the SMS Levy Rules to *"set out how the CMA is to estimate the costs which it expects to incur in exercising its digital markets functions during a chargeable year."*⁶ This requirement ensures that all stakeholders have appropriate visibility into the CMA's estimated costs, including so that SMS firms can predict their financial obligations and plan accordingly.
- (12) The draft SMS Levy Rules do not explain how the CMA will estimate its costs and, therefore, the potential levy that SMS firms will face.⁷ Apple would welcome confirmation in the final SMS Levy Rules of how the CMA will estimate the costs it expects to incur in exercising its digital markets functions and when it intends to publish such estimates.⁸ Apple would also welcome an indicative estimate of what the CMA's total Qualifying Costs are estimated to be in respect of the inaugural chargeable year.⁹

The CMA's cost calculation methodology would benefit from additional transparency

- (13) The DMCC Act also requires the SMS Levy Rules to set out how the CMA will *"calculate the costs which it actually incurs in exercising its digital markets functions during a chargeable year."*¹⁰ Apple would welcome more detail regarding this calculation in the final SMS Levy Rules, to enhance stakeholders' understanding of whether the proposed methodology results in the CMA's "Qualifying Costs" accurately reflecting the relevant costs it actually incurs. In more detail:
- (14) **Overhead costs.** The final SMS Levy Rules could usefully provide greater clarity as to how the CMA will apportion total CMA overhead costs to its digital market functions. The draft SMS Levy Rules refer to the CMA recovering an appropriate share of its fixed overhead costs, reflecting the approximate size of its digital markets functions as a proportion of the CMA's overall activity, by applying an "Overhead

⁶ DMCC Act, s. 110(4)(d). This is consistent with the approach taken under other regimes such as the Digital Services Act (see Commission Delegated Regulation (EU) 2023/1127 of March 2, 2023, Art. 2).

⁷ Section B of the draft SMS Levy Rules does not address the requirements of DMCC Act, s. 110(4)(d), as Section B includes a methodology for a backwards-looking assessment of the CMA's actual costs, rather than a forward-looking estimate of the CMA's expected costs. It is unclear that these requirements cease to apply if the CMA proposes to charge SMS firms a levy based on actual rather than estimated costs.

⁸ For example, if a Chargeable Year is defined as a period of 12 months ending March 31, the CMA could publish estimates in the January prior to the Chargeable Year.

⁹ DMCC Act, s. 110(13)(a), defines a "chargeable year" as a period of 12 months ending March 31.

¹⁰ DMCC Act, s. 110(4)(e).

Recovery Rate” to total staff costs.¹¹ Apple would welcome further clarity on how this calculation will work in practice.¹² For example, it is currently unclear:

- How the CMA intends to distinguish its frontline services from its back-office services (e.g., whether the Legal Service or the Office of the Chief Economic Advisor would be included in frontline services).
 - Whether overhead costs will include costs incurred in addition to back-office costs.¹³
 - How applying the Overhead Recovery Rate to total staff costs would accurately reflect an appropriate share of the CMA’s overhead costs.
- (15) In addition, Apple would welcome confirmation of when the CMA proposes to determine and communicate the actual rate to be applied in calculations for the inaugural Chargeable Year. The final SMS Levy Rules could also usefully include a worked example of the Overhead Recovery Rate calculation.
- (16) **Non-staff costs.** The draft SMS Levy Rules state that non-staff costs associated with the CMA’s digital markets functions will be recovered and could include, for example, travel costs, subscription fees, and professional services fees.¹⁴ The final SMS Levy Rules should clarify further the categories of non-staff costs that are envisioned to constitute Qualifying Costs (and how they are intended to be apportioned between the CMA’s digital markets functions and other functions, to the extent they are shared).

The CMA should publish its incurred costs in sufficient detail

- (17) Apple welcomes the CMA’s commitment to identify and record accurately its relevant costs.¹⁵ Given the potentially significant sums the SMS levy entails, maximum transparency around the CMA’s incurred costs is important to ensure that: (i) the public, government, regulated firms, and other stakeholders can hold the CMA to account for its cost calculations; and (ii) the SMS Levy Rules—including how the SMS levy is allocated—remain fair and proportionate over time.

¹¹ See draft SMS Levy Rules, ¶5(c). In particular, the draft SMS Levy Rules state that for a given chargeable year, a pre-determined Overhead Recovery Rate will be defined by reference to the “CMA’s budget for corporate and support services (back-office),” which will be divided by the CMA’s “frontline budget”. The resulting ratio will then be applied to the CMA’s total staff costs to calculate an overhead charge. See draft SMS Levy Rules, ¶1(e).

¹² The draft SMS Levy Rules simply note that the Overhead Recovery Rate will be set at the start of the Chargeable Year and confirmed as part of invoicing. See draft SMS Levy Rules, ¶5(c).

¹³ For example, although accommodation is referred to as an example of overhead costs, the definition of the Overhead Recovery Rate does not refer to non-staff costs such as accommodation, and the draft SMS Levy Rules refer to the application of the Overhead Recovery Rate to total staff costs. See draft SMS Levy Rules, ¶5(c).

¹⁴ See draft SMS Levy Rules, ¶5(b).

¹⁵ See draft SMS Levy Rules, ¶4.

- (18) While the CMA publishes a breakdown of operating costs (including the Digital Markets Unit) in its Annual Report and Accounts,¹⁶ Apple would welcome a more detailed breakdown in respect of the SMS levy. In particular, the final SMS Levy Rules should commit the CMA to greater transparency in respect of the costs of each SMS investigation or other investigation under the CMA's digital markets functions, as well as a breakdown of costs according to staff costs, non-staff costs, and overhead costs. This would be broadly consistent with information disclosed by the European Commission on the costs it incurs under the Digital Services Act and requisite annual supervisory fees it levies on regulated firms.¹⁷
- (19) Apple would be happy to discuss any of the points raised in this submission with the CMA, if the CMA would find it useful.

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¹⁶ See CMA, [Annual Report and Accounts 2023/24](#) (July 21, 2024), p. 157 (showing that the costs of the Digital Markets Unit were £4.8 million in 2023/2024).

¹⁷ See European Commission, Report on the overall annual costs incurred for the fulfilment of the Commission's tasks pursuant to Regulation (EU) 2022/2065 in the period from 1 January 2024 until 31 December 2024 and the total amount of the annual supervisory fees charged pursuant to Article 6(4) of Commission Delegated Regulation (EU) 2023/1127 in 2024, COM/2025/150 final (March 31, 2025).