

The SMS Levy Rules

Consultation

5 June 2025

Competition and Markets Authority

The SMS Levy Rules consultation

Presented to Parliament pursuant to section
110(10) of Part 1 of the Digital Markets,
Competition and Consumers Act 2024



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1. About this consultation

- 1.1 This consultation seeks the views of interested parties on the approach to a levy for the digital markets competition regime and draft Strategic Market Status ('SMS') Levy Rules made by the Competition and Markets Authority ('CMA') under Section 110 of the Digital Markets, Competition and Consumers Act 2024 (the 'Act').
- 1.2 Part 1 of the Act establishes the digital markets competition regime, a new pro-competition regime focused on firms designated under the Act as having Strategic Market Status. Section 110 gives the CMA powers to charge a levy to firms designated with Strategic Market Status ('SMS Firms'). The levy only applies to SMS firms, that is firms satisfying the turnover condition¹ and which are found by the CMA, after a nine-month investigation, to have Substantial and Entrenched Market Power and a Position of Strategic Significance in a particular digital activity.²
- 1.3 The CMA's budget is set by the Government. As provided for by Section 110, the costs of the digital markets competition regime can be recouped through a levy. The Government believes the funding for the regime should be fair, transparent and provide value for money for British taxpayers, and as such has confirmed the CMA should now launch its consultation on draft SMS Levy Rules to gather stakeholder views. Since the Act does not prescribe how the SMS Levy should be allocated between SMS Firms, this consultation focuses on the options the CMA has considered and its proposed methodology for how to apportion the SMS Levy among SMS Firms.
- 1.4 Annex 1 sets out the draft SMS Levy Rules,³ which cover the following areas:
- (a) Part A of the draft SMS Levy Rules outlines the legal basis of those rules and how to interpret them. This includes an explanation of the definitions used in the SMS Levy Rules.
 - (b) Part B outlines how the CMA proposes to calculate the costs it incurs in exercising its digital markets functions in each year (the 'Qualifying

¹ The turnover condition is met only if the firm has UK turnover of more than £1 billion or global turnover of more than £25 billion.

² For more information on the test for designating firms with SMS please see chapter 2 of the [Digital Markets Competition Regime Guidance](#).

³ This consultation satisfies the requirements of section 110(8) of the Act.

Costs'⁴). These are the costs that will be recovered through the SMS Levy.

(c) Part C explains how the CMA proposes to calculate the levy invoices payable by each SMS Firm, including the proposed approach to apportioning the SMS Levy between SMS Firms (the 'allocation methodology').

(d) Part D sets out the proposed process for invoicing and recovery of the SMS Levy.

1.5 As required by Section 110(10) of the Act, at the same time as beginning this consultation, the CMA has arranged for a draft of the SMS Levy Rules to be laid before Parliament.

1.6 The CMA welcomes feedback on the options it has considered and its proposed approach, as well as any further aspects of its draft SMS Levy Rules for firms designated with SMS. Details on how to respond to this consultation are set out in Chapter 3 below.

⁴ See further paragraph 2.1 below.

2. The allocation methodology

The legal framework

- 2.1 The Act (Section 110) sets out various requirements for the SMS Levy Rules including that:
- (a) the aggregate amount recouped from SMS Firms cannot exceed the costs which the CMA incurs in exercising its digital markets functions during a Chargeable Year, excluding any costs specifically incurred for the purposes of litigation.⁵ The CMA will calculate the total annual SMS Levy that it recoups as the sum of such costs ('Qualifying Costs')⁶ in a Chargeable Year (being a period of 12 months ending with 31 March).
 - (b) the rules must set out a method for allocating the SMS Levy between SMS Firms, and
 - (c) payable amounts are to be reduced proportionately where firms are only designated for part of the relevant Chargeable Year.
- 2.2 The draft SMS Levy Rules set out how the CMA will satisfy those and the other requirements of section 110 the Act.
- 2.3 The Act does not specify the particular method that the CMA should use to allocate the SMS Levy between SMS Firms. Rather, the CMA must establish an allocation methodology, subject to consultation. This is the focus of this consultation.

The CMA's budget and the levy

- 2.4 The costs of the digital markets competition regime are part of the CMA's budget. In line with other government departments, the CMA's budget is set by the Government. Within the total CMA budget, the CMA has to fund all its statutory and non-statutory activity. This includes the digital markets competition regime.

⁵ See sections 110(4)(a) and 110(13)(b) of the Act. "Digital markets functions" are defined in section 118 of the Act as the CMA's functions under Part 1 of the Act, including its ability to do anything intended to facilitate, or which is conducive or incidental to, performing those Part 1 functions,

⁶ As noted in Part B1 of the draft SMS Levy Rules, this includes qualifying staff costs, non-staff costs, and overhead costs (the meaning of which is also set out in the draft SMS Levy Rules).

- 2.5 The CMA reports publicly on its performance and financial outturn in our annual report and accounts which are audited by the National Audit Office. Our Chief Executive and Chair regularly appear in Parliament to discuss our priorities, activities and performance.
- 2.6 As provided by Section 110 (7) of the DMCC Act, money raised through the SMS levy is returned to the Consolidated Fund.⁷ This means that the CMA does not benefit directly from the money raised through the levy, rather this goes to HM Treasury to recoup the costs of the regime.

Options and our proposed approach

Options for how the SMS Levy should be allocated to SMS Firms

- 2.7 Given the above, the CMA has considered how the SMS Levy should be allocated to SMS Firms. These considerations are guided by two key principles:
- (a) Fairness: ensuring levy invoices on SMS Firms are reasonable, predictable and proportionate; and
 - (b) Administrability: ensuring the methodology is simple and practical to administer for the CMA and SMS Firms.
- 2.8 The CMA has also had regard to comparable methodologies used in other levy-based regimes.
- 2.9 The CMA has considered three main options in the course of policy development:
- (a) A turnover-based approach, with the SMS Levy divided proportionate to the turnover of SMS Firms.
 - (b) Dividing the SMS Levy according to the number of designations for particular digital activities held by each SMS Firm, such that, for example, a firm designated in respect of two digital activities would pay twice as much as a firm designated in one.

⁷ This is the same as the way the CMA must also pay into the Consolidated fund, for example, merger fees paid by firms notifying their mergers to it (see s.121 of the Enterprise Act 2002) and fines it has imposed on firms breaking competition law (see s.36 of the Competition Act 1998).

- (c) Dividing the SMS Levy evenly between the number of firms designated with SMS.

Turnover-based approach

- 2.10 A turnover based approach would apportion the SMS levy each SMS firm pays relative to the SMS firm's turnover.
- 2.11 The benefit of a turnover based approach is that it ensures the SMS levy takes due account of the varying financial resources of different regulated parties and ensures that levy invoices imposed on each are affordable. However in this regime, by virtue of the Act's turnover condition for designation,⁸ all firms designated with SMS will generate significant revenue relative to the costs of the regime, and we do not expect that affordability will be a significant differentiator between designated firms.
- 2.12 The main challenge of a turnover based approach is that administratively, it is liable to be more burdensome for both SMS Firms and the CMA, particularly insofar as the identification and calculation of an appropriate turnover measure is liable to be complex.
- 2.13 Further, a firm's revenue is unlikely to correlate with the volume of activity for the CMA that a firm's designation may attract. As a result, we consider turnover is likely to be a less fair, proportionate basis for determining an SMS Firm's share of the levy.

Dividing the SMS Levy according to the number of designations per SMS Firm

- 2.14 Using this approach, the CMA would divide the SMS levy according to the total number of designated digital activities. This would mean, for example, that a firm designated in respect of two digital activities would pay twice as much as a firm in respect of only one digital activity.
- 2.15 This option may in principle be expected to help more closely align a firm's levy invoice with the cost incurred by the CMA in relation to the particular digital activity for which that firm is designated (in particular compared to a turnover based approach). In practice, however, this would be unlikely to be a close match and may still be unrepresentative. For example, some designations – and associated interventions – may be significantly larger,

⁸ Section 7(2)(a) and (b) of the Act. The turnover condition is met only if the firm has UK turnover of more than £1 billion or global turnover of more than £25 billion.

complex and more costly to oversee than others and in the same vein, generate different levels of engagement and resource on the SMS Firms' sides. Similarly, the CMA's work in exercising its digital markets functions may not necessarily be directly attributable to just one firm, for example were it to focus on issues that span digital activities or otherwise relate to multiple firms.

- 2.16 Further, where the CMA is investigating several related digital activities for possible designation, the amount a firm had to pay if designated could also vary materially depending on whether the CMA designated those digital activities individually or treats them for designation purposes as a single activity under its 'grouping' powers in section 3(3) of the Act.
- 2.17 This option may also give rise to a greater degree of instability and uncertainty in the amounts invoiced to and payable by firms, as specific designations may change more often than the overall number of designated firms. Administratively, this may mean it is more difficult for SMS firms to accurately predict and budget for future levy invoices.

Dividing the SMS Levy equally by the number of SMS Firms

- 2.18 Using this approach, the CMA would divide the SMS levy by the total number of designated firms.
- 2.19 As with the previous option, there may not be a direct correlation between the share of the levy that the firm pays and the proportion of costs that the firm's activities may be estimated to have 'generated' for the CMA in exercising its digital markets functions. However, given the challenges of - and potentially arbitrariness in - seeking to attribute costs incurred to specific firms, it does not appear practicable to achieve such correlation fully (in particular while maintaining a degree of predictability for firms). And as noted above, it is not necessarily the case that apportioning the levy according to the number of digital activities for which a firm is designated will necessarily result in a firm's share being more 'representative'.
- 2.20 However, this option is likely to be the most predictable and administrable for both the SMS firm and parties. The share of the levy an SMS Firm will be expected to pay will also be relatively stable over the designation period (and - particularly at the start of the regime - could be expected to decrease over time, as more firms are investigated and designated with SMS).

Proposed approach

- 2.21 Having weighed the principles of fairness and administrability, the CMA proposes to calculate the SMS Levy shares payable by firms by **apportioning the SMS Levy evenly between those firms designated with SMS**. For example, if four firms are designated for the full Chargeable Year, each would pay 25% of the SMS Levy in that year. Section C1 of the draft SMS Levy Rules sets out in detail the CMA's proposed 'allocation methodology': that is, the approach it proposes to take to dividing the SMS Levy between SMS Firms.
- 2.22 On balance, the CMA considers this approach the fairest and most administratively efficient:
- (a) This approach best provides clarity and predictability for SMS Firms in budgeting for the SMS Levy as the overall number of designated firms is likely to change less often over time than the number of designations held by firms, particularly once the regime is embedded.
 - (b) Focusing on the number of designated firms, as opposed to the number of designated digital activities, provides a balanced proxy for the variety of costs that different activities and firms may attract over time. As such, the CMA considers it overall the most proportionate approach, bearing in mind characteristics such as the relative similarities in resources of firms likely to be designated with SMS given the turnover element of the SMS test, and the nature of the costs likely to be incurred.
 - (c) This option also minimises administrative burdens for both SMS Firms and the CMA, for example through preventing the need for complex methodological discussions as would be needed for a turnover-based approach.
- 2.23 The CMA welcomes views from stakeholders on these options and its proposed approach.

The Inaugural Chargeable Year

- 2.24 If the final SMS Levy Rules come into effect part way through a Chargeable Year then the CMA proposes to calculate the SMS Levy in that year in the same way as for subsequent years. That is, the SMS Levy will be based on Qualifying Costs incurred by the CMA throughout the full Chargeable Year, which will then be divided by 12 to find the average monthly SMS Levy. That average monthly SMS Levy is then divided equally between the existing SMS

Firms in a particular month. As will be the case for subsequent Chargeable Years, and as required by the Act, the amount payable by an SMS Firm will be proportionate to the amount of time in the first Chargeable Year it is designated for. We expect this to aid administrability for the SMS Firms and the CMA. For the avoidance of doubt, if the SMS Levy Rules first come into effect after a firm has been designated with SMS, the CMA will not seek to recover the average monthly SMS Levy for those months in which the firm was designated but which fell before the rules took effect.

Worked example of how SMS Levy invoices are calculated

- 2.25 The following is an indicative example to demonstrate how the CMA expects its approach to calculating and invoicing the SMS Levy will work in practice. It is hypothetical and the costs shown are not intended to reflect the anticipated costs of the regime. Furthermore, it does not seek to prejudge the sequencing and timing of SMS investigations, which are subject to decisions by the CMA Board, and their outcomes.

Assumptions

- 2.26 In this example, it is assumed that in respect of a particular Chargeable Year⁹ X:
- (a) Firms A and B are already designated at the start of the Chargeable Year
 - (b) Firm C is designated for the first time in month 7 of the Chargeable Year
 - (c) Firm D is designated for the first time in month 8 of the Chargeable Year
 - (d) For ease of illustration, the total SMS Levy is £18m.

Calculation

- 2.27 The CMA first calculates the SMS Levy. This is the sum total of the Qualifying Costs to the CMA of exercising its digital markets functions, comprising staff costs, non-staff costs and a proportion of the CMA's broader organisational fixed overhead costs, as established in Part B of the SMS Levy Rules. In this Chargeable Year X, the SMS Levy is calculated as £18m.

⁹ A period of 12 months ending with 31 March as set out under Section 110(13)(a) of the Act.

2.28 The SMS Levy is divided by 12, to reach the monthly average SMS Levy. The monthly average is therefore £1.5m.

2.29 This monthly average is split between the firms designated in each month, and an SMS Levy Share is allocated as follows.

	Month of Chargeable Year X												
Firm	Apr	May	Jun	Jul	Aug	Sep ¹⁰	Oct	Nov	Dec	Jan	Feb	Mar	Total invoice
A	0.75	0.75	0.75	0.75	0.75	0.75	0.5	0.375	0.375	0.375	0.375	0.375	6.875m
B	0.75	0.75	0.75	0.75	0.75	0.75	0.5	0.375	0.375	0.375	0.375	0.375	6.875m
C							0.5	0.375	0.375	0.375	0.375	0.375	2.375m
D								0.375	0.375	0.375	0.375	0.375	1.875m
Total recovered (£)	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	1.5m	18m

Invoicing

2.30 SMS Firms are then invoiced for the SMS Levy in two tranches: a first invoice will be sent part way through the year (typically October) and a second invoice will be sent in April of the following Chargeable Year. For firms C and D, who are designated in or after October, only one invoice will be sent the following April and once the window to appeal the designation has elapsed or, in the event that the designation is appealed, once any such appeal has been finally determined (in the event that the designation is upheld). The invoices will then be backdated to the point of the CMA's decision to designate.

2.31 In general, the first invoice will aim to cover the SMS Levy for the first 6 months of the Chargeable Year. This invoice will be calculated on the basis of

¹⁰ As referred to in paragraph 2.24, if the rules were to come into effect only in September of the example year, then firms A and B would not be liable to pay the monthly average levy (£1.5) for the months from April to August.

actual qualifying costs. The second invoice will require payment of each firm's outstanding balance for the whole of the Chargeable Year.

- 2.32 As noted in Part D3 of the draft SMS Levy Rules, for the inaugural Chargeable Year, where the final SMS Levy Rules come into effect part way through that year and to the extent that a firm is designated as having SMS in that year, only one invoice will be sent in April of the following Chargeable Year.

3. Consultation responses

- 3.1 The CMA welcomes feedback on the options it has considered and its proposed approach, as well as any further aspect of its draft SMS Levy Rules for firms designated with SMS.

How to respond

- 3.2 We encourage you to respond to the consultation either by email using the contact details provided below or through the CMA's consultation portal.
- 3.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 3.4 In pursuance of our policy of openness and transparency¹¹ we may publish a non-confidential version of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive.

Duration and contact details

- 3.5 The consultation will run until 3 July 2025. Responses should be submitted no later than 11:55 pm on 3 July 2025. They should be sent to SMSLevyConsultation@cma.gov.uk or submitted through the CMA's consultation portal [here](#).
- 3.6 Any queries about this consultation should also be sent to SMSLevyConsultation@cma.gov.uk.

Compliance with government consultation principles

- 3.7 In preparing this consultation, the CMA has taken into account the published government consultation principles, which set out the principles that

¹¹ [Transparency and disclosure: Statement of the CMA's policy and approach](#) (CMA6).

government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

- 3.8 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 3.9 The CMA is processing this personal data for the purposes of our work under Part 1 of the Digital Markets, Competition and Consumers Act 2024. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.
- 3.10 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long the CMA retains personal data, see the CMA's Privacy Notice.
- 3.11 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002.¹²
- 3.12 We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business, where we consider that disclosure might significantly harm the interests of that individual or business.
- 3.13 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you in support of

¹² Part 9 of the EA02 imposes a general restriction on the disclosure of information which the CMA obtains during the exercise of any of its functions (referred to as 'specified information') to other persons. This will include the functions of the CMA under the Act, as exercised by the CMA. Guidance on the application of Part 9 EA02 and when disclosure of specified information may be permitted is set out in CMA6.

confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.

- 3.14 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

Next steps

- 3.15 After the consultation, we will consider all responses received and decide whether to make changes to the draft SMS Levy Rules in light of these.
- 3.16 We may publish a summary of the responses received that fall within the scope of the consultation on our webpages. We may also publish non-confidential versions of the responses received. These documents will be available on our webpages and respondents will be notified when they are available.
- 3.17 We will publish the final version of the SMS Levy Rules on our website.¹³ The SMS Levy Rules will take effect from the date of their publication.
- 3.18 Subject to consultation, it is expected that the levy will be in effect and will cover the cost of the regime from the point the first SMS designations are made. The CMA's first SMS investigations are due to conclude in October 2025.

¹³ Section 114(4)(b) of the Act.

Annex 1: Draft SMS Levy Rules

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Rules made by the Competition and Markets Authority under section 110 of the Digital Markets, Competition and Consumers Act 2024 ('the Rules')

The Competition and Markets Authority (CMA), in exercise of the powers conferred on it by section 110 of the Digital Markets Competition and Consumers Act 2024 (DMCC Act), hereby makes the following Rules to calculate the amount of the levy (the 'SMS Levy') that an undertaking designated with strategic market status under Chapter 2 of Part 1 of the DMCC Act will be required to pay in respect of a chargeable year during the whole or part of which it is designated.

The SMS Levy Rules will apply to the chargeable year starting on [X] and ending on [X], and any subsequent chargeable years, unless they are amended or replaced by the CMA under section 110(3) DMCC Act.

THE SMS LEVY RULES

Part A - How to interpret the SMS Levy Rules

A1. Definitions used in the SMS Levy Rules

1. In these Rules, the following expressions have the meanings shown next to them or, as the case may be, provided by the provision referred to:
 - a) **Chargeable Year**: a period of 12 months ending with 31 March.¹⁴
 - b) **Conduct Requirements**: requirements imposed by the CMA on SMS Firms under Chapter 3 of Part 1 of the DMCC Act.
 - c) **The DMCC Act**: The Digital Markets, Competition and Consumers Act 2024.
 - d) **Digital Markets Functions**: the functions specified in section 118 of the DMCC Act, namely:
 - i. the functions the CMA has under Part 1 of the DMCC Act; and
 - ii. the CMA's power to do anything that is calculated to facilitate, or is conducive or incidental to, the performance of those functions (see paragraph 20 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (additional powers)).
 - e) **Overhead Recovery Rate**: For a given Chargeable Year, a pre-determined rate taking the CMA's budget for corporate and support services (back-office) and dividing it by its frontline budget to calculate the overhead charge to be recovered by the SMS Levy.
 - f) **PCI**: a pro-competition intervention in relation to an SMS Firm under Chapter 4 of Part 1 of the DMCC Act
 - g) **Qualifying Costs**: Costs which the CMA incurs in exercising its Digital Markets Functions during a Chargeable Year and which can be recouped through the SMS Levy under Section 110(4)(a) of the DMCC Act.
 - h) **SMS**: Strategic Market Status.
 - i) **SMS Firms**: Undertakings designated as having SMS in relation to one or more digital activities under Chapter 2 of Part 1 of the DMCC Act.
 - j) **SMS Investigation**: An initial or further investigation conducted by the CMA under Chapter 2 of Part 1 of the DMCC Act to decide whether to designate an undertaking as having SMS in relation to a given digital activity.
 - k) **SMS Levy**: The levy that the CMA may require SMS Firms to pay under Section 110 of the DMCC Act in respect of a Chargeable Year.

¹⁴ Section 110(13)(a) of the DMCC Act.

- l) **SMS Levy Share:** The share of the SMS Levy that the CMA may require an SMS Firm to pay under Section 110 of the DMCC Act in respect of a Chargeable Year.
- m) **SMS Reporting Requirement:** The requirement on SMS Firms to submit a report regarding certain merger activity under Chapter 5 of Part 1 of the DMCC Act.

A2. General Interpretation

- 2. The following general interpretation rules will apply to these Rules:
 - a) All references to dates and times in these Rules relate to Greenwich Mean Time or, at the times when it is in force, British Summer Time.
 - b) Unless the context otherwise requires, terms used in these Rules bear the same meaning as in the DMCC Act.
 - c) Headings are not part of the SMS Levy Rules and are only for ease of reference and shall not be used in its construction and interpretation.
 - d) References to any gender include all genders.
 - e) References to the singular include the plural and vice versa unless the context suggests otherwise.
 - f) A reference to any statutory provision includes a reference to any amendment, consolidation or re-enactment of the provision from time to time in force and all secondary legislation made under it.
 - g) The term “calculate” and associated terms shall in any relevant case include “re-calculate” and its associated terms.
 - h) In determining whether it is satisfied as to any matter set out in these Rules, the CMA shall take such steps as it thinks fit and may (but shall not be obliged to) seek further information from any party.
 - i) References to any English legal term, concept, requirement or provision shall, in respect of any jurisdiction other than England, be deemed to include what most closely approximates in that jurisdiction to the English legal term, concept, requirement or provision.
 - j) The capitalised terms used in these Rules shall, unless specifically stated to the contrary, have the meanings set out in Part A1 of these Rules.
 - k) Unless specifically stated to the contrary, references to any documents or information published on the CMA’s website are to those documents as updated from time to time.

Part B – Determining the SMS Levy

- 3. Section 110 of the DMCC Act allows the CMA to require SMS Firms to pay it a levy to recoup its Qualifying Costs.

B1. Identifying Qualifying Costs

4. The Qualifying Costs for a given Chargeable Year will be accurately identified and recorded in line with the CMA's wider approach to financial management.
5. The Qualifying Costs are the costs which the CMA incurs in exercising its Digital Markets Functions during a Chargeable Year. There are three categories of Qualifying Costs that will be recovered via the SMS Levy: staff costs, non-staff costs, and overhead costs.¹⁵
 - a) **Staff costs** – the SMS Levy will recover the costs of staff time associated with the exercise of the Digital Markets Functions, based on time recording data.¹⁶
 - b) **Non-staff costs** – the SMS Levy will recover the costs of procured goods and services associated with the exercise of the Digital Markets Functions. Such costs could include, for example, travel costs, subscription fees, or fees for professional services.
 - c) **Overhead costs** – the SMS Levy will recover an appropriate share of the CMA's fixed overhead costs (for example, accommodation) reflecting the approximate size of the Digital Markets Functions as a proportion of the CMA's overall activity. This will be calculated by applying the Overhead Recovery Rate to total staff costs. The Overhead Recovery Rate will be set at the beginning of the Chargeable Year and confirmed as part of invoicing.
6. As required by section 110(13)(b) of the DMCC Act, costs incurred by the CMA for the purposes of litigation will be excluded from the Qualifying Costs, even where they relate to a Digital Markets Function.
7. Accordingly, the Qualifying Costs will include, but will not be limited to, costs the CMA incurs associated with:
 - a) Its power to designate undertakings as having SMS, including SMS investigations;
 - b) Its power to impose Conduct Requirements;
 - c) Its power to make PCIs, including PCI investigations;
 - d) The administration of the SMS Merger Reporting Requirement;
 - e) The use of the investigatory powers under Part 1 of the DMCC Act;¹⁷
 - f) Monitoring compliance with obligations imposed on parties under Part 1 of the DMCC Act;

¹⁵ See Parts D4 and D5 for how the CMA calculates the SMS Levy Share payable by a firm.

¹⁶ These costs will comprise the time cost of CMA staff engaged in any matters relating to the exercise of the CMA's Digital Markets Functions (excluding matters undertaken for the purposes of litigation, pursuant to section 110(13)(b)).

¹⁷ For the avoidance of doubt, this does not include costs for which an SMS Firm is directly liable pursuant to a notice issued to it by the CMA under sections 79(3) and (4) of the Act, requiring it to remunerate and expense a skilled person for the preparation of a report.

- g) Enforcement of breaches of obligations imposed on parties under Part 1 of the DMCC Act, including the imposition of penalties; and
- h) Preparatory work, management, decision-making, administration and any other activities that are calculated to facilitate, or are conducive or incidental to, any of the Digital Markets Functions.

B2. Setting the SMS Levy

- 8. The annual SMS Levy will be the sum of all Qualifying Costs in a Chargeable Year. The aggregate amount payable by SMS Firms via the SMS Levy will not exceed the Qualifying Costs in a given Chargeable Year.
- 9. The SMS Levy will be allocated to SMS Firms in accordance with the methodology set out in Part C. An SMS Firm's SMS Levy Share will be calculated and recovered in accordance with the methodology set out in Part D.

Part C – Allocating the SMS Levy to SMS Firms

C1. The allocation methodology the CMA will use for dividing the SMS Levy among SMS Firms

- 10. In each Chargeable Year, the sum or total value of the SMS Levy identified at Part B will be divided among SMS Firms according to the CMA's allocation methodology. The allocation methodology is that the SMS Levy will be **divided equally** between SMS Firms, having regard to the proportion of the relevant Chargeable Year for which each firm was designated.¹⁸
- 11. This approach applies to SMS Firms, regardless of the number of designations each holds.

C2. How the CMA calculates the SMS Levy Share owed by each firm

- 12. The total SMS Levy in a given Chargeable Year will be calculated in two parts, a first invoice covering the first six months of the Chargeable Year as set out at Part D4, and finalised in a second invoice as set out at Part D5. The total SMS Levy in a given Chargeable Year will be apportioned to SMS Firms on a monthly basis, in line with the allocation methodology set out at Part C1.
- 13. Consequently, the CMA will calculate the SMS Levy Share for a particular SMS Firm as follows:

¹⁸ In the inaugural Chargeable Year (20XX-XX), a firm will not be liable to pay their share of the average monthly SMS Levy in a month in which they were designated with SMS but that predates the coming into effect of these SMS Levy Rules.

- a) The total SMS Levy for the relevant Chargeable Year is divided by 12 to identify an average monthly SMS Levy;
 - b) SMS Firms that are liable to pay the SMS Levy (subject to Part D1) in each month of the Chargeable Year will be identified;
 - c) The average monthly SMS Levy will be divided equally between SMS Firms identified as liable to pay the levy in each given month, in accordance with the allocation methodology set out at Part C1.
14. An SMS Firm's overall SMS Levy Share for a given Chargeable Year will be the sum of its share for each month for which it is designated. This approach will ensure that, where a firm is designated with SMS for only part of a Chargeable Year, its SMS Levy Share and invoice will be proportionate to the amount of time it is designated, as required by the DMCC Act.
15. The exceptional invoicing arrangements for the inaugural Chargeable Year 20[XX]-[XX] are set out at Part D3.

Part D - Invoicing and Recovery of the SMS Levy

D1. When the SMS Levy Shares will become collectible

16. SMS Firms are subject to the levy from the first calendar month they are designated, being liable for its full share of the average monthly SMS Levy for that month, irrespective of when in that month they are designated.
17. As noted above, if a firm is designated for only part of a Chargeable Year, it will only pay the levy in respect of the months in which it is designated.
18. The CMA will not seek collection from an SMS Firm until the timeframe to appeal the CMA's decision to designate that firm for the first time as having SMS has elapsed, or any appeal to that decision has been finally determined. The timeframes for appeals are set out in the Competition Appeal Tribunal Rules 2015.¹⁹
19. Following conclusion of any appeals, or once the appeal period has elapsed, the SMS Levy will become collectible. The invoice for the new SMS Firm will be backdated to the date of the CMA's decision to designate the firm with SMS. Where this occurs, and in line with Part D6, invoices issued to any prior or existing SMS Firms will be adjusted in the following Chargeable Year to reflect the effect on their SMS Levy Share that results from such backdating.

¹⁹ [The Competition Appeal Tribunal Rules 2015 \(as amended by The Competition Appeal Tribunal \(Amendment\) Rules 2024\)](#).

D2. The invoicing timetable

20. Subject to Part D3, in each Chargeable Year in which there is one or more SMS Firms, the CMA will invoice SMS Firms in two tranches.
21. The first invoice will typically be issued by the end of October and will cover the SMS Firm's SMS Levy Share for the first six months of the Chargeable Year (i.e. April to September, inclusive). The first invoice will be based on the calculations under Part D4 below.
22. The second invoice will typically be sent in April of the following Chargeable Year. This second invoice will require payment of the balance of the SMS Firm's SMS Levy Share for the whole Chargeable Year less any amount already paid in respect of the first invoice. The second invoice will be based on the calculations under Part D5 below.
23. SMS Firms that are designated after the first invoice has been issued will receive only the second invoice and thus be invoiced only once.

D3. Exceptional invoicing arrangements for the inaugural Chargeable Year (20XX-XX)

24. Exceptionally, for the inaugural Chargeable Year, to the extent that these SMS Levy Rules come into effect part way through a Chargeable Year, the CMA will invoice SMS Firms only once, in April of the following Chargeable Year. This invoice will be based on actual Qualifying Costs for the year (described at Part D5).

D4. Calculating the SMS Levy for the purposes of the first invoice

25. For the purposes of the first invoice, the CMA will calculate the SMS Levy for the relevant Chargeable Year based on actual Qualifying Costs incurred to September. To calculate the SMS Levy for the first invoice, the CMA will take the following approach:
 - a) The costs of staff constituting Qualifying Costs ('staff costs') (see Part B) will be based on time recording data.
 - b) The costs of procured goods and services constituting Qualifying Costs ('non-staff costs') (see Part B) will be based on recorded procurement documentation.
 - c) Overhead costs constituting Qualifying Costs (see Part B), will be calculated by applying the CMA's Overhead Recovery Rate to staff costs.

D5. Calculating the SMS Levy for the purposes of the second invoice

26. For the purposes of the second invoice, the CMA will calculate the total SMS Levy based on actual Qualifying Costs incurred in a Chargeable Year.²⁰ To reach this calculation, the CMA will take the following approach:
- a) The costs of staff constituting Qualifying Costs (see Part B) will be based on time recording data.
 - b) The costs of procured goods and services constituting Qualifying Costs (see Part B) will be based on recorded procurement documentation.
 - c) Overhead costs constituting Qualifying Costs (see Part B), will be calculated by applying the CMA's Overhead Recovery Rate to staff costs.
27. The SMS Levy Share that an SMS Firm will be required to pay as part of its second invoice, will be less the amount already paid by the SMS Firm following the first invoice in respect of that Chargeable Year.

D6. Overpayments and underpayments

28. In the event of any surplus or deficits arising after the end of a Chargeable Year, the levy invoices will be adjusted in the Chargeable Year following which the surplus or deficit arose, either in the form of a credit note or a debit note included in the next relevant invoice.
29. A refund will be issued for any surpluses where no new invoice is to be issued (i.e. where a firm is no longer designated with SMS).
30. The above adjustments will ensure that the levy amounts received by the CMA in respect of a Chargeable Year do not exceed the Qualifying Costs in that given year. They also will ensure that any crediting or payment made in respect of a Chargeable Year is in proportion to the amount paid by an SMS Firm in respect of that year.

D7. How a designated firm will pay the SMS Levy

31. The invoice issued by the CMA to an SMS Firm will specify the CMA bank account, the accepted payment methods, and the deadline for making a payment. Payment will be due within 30 days of each invoice being issued.
32. Late payments may be subject to interest at the rate specified for the time being in section 17 of the Judgments Act 1838. The CMA will pay any late payment

²⁰ As noted at paragraph 24 above, this approach will also apply for the purposes of the single invoice issued in the inaugural Chargeable Year.

interest received into the Consolidated Fund. Enforcement action may be taken to recover the outstanding amount due.

D8. What happens if a firm is de-designated

33. If the CMA revokes a firm's SMS designation,²¹ and the firm has no other designations in force, the firm will be liable for the full levy charge (calculated according to the approach set out at Part C2) for the months in the Chargeable Year up to and including that in which its last remaining designation ends, irrespective of when in the month such revocation occurs.

²¹ Or is treated as having taken a decision to revoke such a designation, pursuant to section 14(6)(b) of the DMCC Act.

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