Technology Ireland submission on The Competition and Consumer Protection Commission's (CCPC) proposed DSA Levy Order in respect of the levy period from 1 April 2025 to 31 December 2025, under the Digital Services Act 2024, as amended

4 March 2025

Technology Ireland welcomes the opportunity to contribute to the Competition and Consumer Protection Commission's (**CCPC**) public consultation on its proposed DSA Levy approach and proposed Levy Order for the levy period of 1 April to 31 December 2025.

We appreciate that the CCPC has the power to impose such levies in accordance with section 45A of the Digital Services Act 2024 (**the 2024 Act**). However, we ask that the CCPC take into account in the development of its proposed Levy Order, and its estimation of expenses and working capital, that some providers may now be required to pay three separate DSA levies (as outlined below). This is an unprecedented and onerous obligation to impose on a provider in respect of one piece of EU legislation (the intention of which was to harmonise, and remove barriers in, the internal market for intermediary service providers).

In addition, we have a number of specific concerns with the CCPC's proposed Levy Order, which we have set out below.

Key concerns

(1) Risk of double-charging and overlap between supervisory fees and levies imposed by different regulators

As it stands, the same intermediary service provider may be subject to three separate DSA-related levies from:

(1) the CCPC - if providing a consumer online platform;

(2) Coimisiún na Meán (**CnaM**) - if providing an online platform with over one million average monthly active recipients (**AMAR**); and

(3) the European Commission - if providing a service which has been designated as a very large online platform or very large online search engine pursuant to Article 33 of the DSA.

To the extent that a provider falls within the competence of one or more of these supervisory bodies, any levy imposed should reflect the division of supervisory and enforcement functions

between those supervisory bodies. In this regard, the CCPC must ensure that providers are not subject to "*double charging*", whereby the CCPC is incurring expenses and working capital in order to carry out the overlapping regulatory functions as those being carried out by CnaM and the European Commission.

In this respect, we note that as part of the public consultation, the CCPC says that the levy for 01/04/25 - 31/12/25 "*will be in the region of €1 million*". However, the CCPC has not yet provided any meaningful information as to how the CCPC arrived at this figure, or as to whether/how the CCPC engaged with CnaM or the European Commission to ensure that these estimated costs were not duplicative of costs already being incurred and levied by the European Commission and CnaM.

As a basic matter of fairness and proportionality, we believe the CCPC should agree with CnaM and the European Commission on its proposed estimated expenses and the apportionment of fees, depending on the role they will have in regulating the platform or service provider. It would be reasonable for the CCPC to provide CnaM/the European Commission with a reasonably detailed analysis of its estimated expenses, so that it can take feedback on the extent to which CnaM/the European Commission have already allocated expenses for carrying out the same regulatory functions. For reasons of transparency (as discussed further below) the results of that consultation process should be shared with in-scope providers before any levies are imposed.

(2) AMAR figures as basis of levy fee calculation

The proposed Levy Order sets out the CCPC's formula for calculation of levy fees. This formula is based on the AMAR figures of in-scope consumer online platform providers published in accordance with Article 24(2) of the DSA.

We are concerned that the CCPC's proposed formula may result in certain consumer online platform providers bearing a disproportionate share of the CCPC's costs and expenses. It is well-known and accepted that different providers use different methodologies to calculate their AMAR figures. Article 24(2) of the DSA is not prescriptive as to how AMAR figures are to be calculated. In the absence of a delegated act laying down a methodology for calculating AMAR figures, the approaches taken by service providers continue to differ. Accordingly, using those figures raises concerns that certain service providers will be advantaged or disadvantaged over others depending on the methodology they use.

It was acknowledged by CnaM in its public consultation on its 2025 Levy Order that there are "*difficulties in identifying unique logged-out users and de-duplicating logged-in and logged-out users*" and therefore it was proposed that providers would provide AMAR figures "*based on logged-in users, rather than including users who had not logged in*".[1]

It is important to recognise that different providers and platforms host varying types of content and as such the level of risk varies, as does the cost of regulation.

(3) Transparency of levy calculation

Breakdown of estimates

In circumstances in which it is proposed that the CCPC impose a levy in respect of prospective estimated costs (as opposed to costs which have actually been incurred), it is important from a transparency perspective, that the CCPC provide a detailed breakdown of the CCPC's estimated costs for the applicable levy period.

Transparency as to providers in-scope

As noted above, a core element of the CCPC's proposed levy calculation methodology is the sum of the total AMARs of in-scope consumer online platforms. In order for providers to be in a position to understand and verify the levy amount imposed on them, we submit that it will be important that they be provided with a list of all in-scope consumer online platform providers. We see this as being important because there is currently no requirement for online consumer platforms to be designated or registered.

(4) Surplus levy income

Section 45A(8) of the 2024 Act requires surplus income from levies to be used to offset future levy obligations or to be refunded. We would welcome more specific details as to the process the CCPC will follow to verify whether surplus income has been collected, and how that surplus income will be treated. In this respect, we note that CnaM has proposed introducing a Levy Reconciliation Assurance Work Programme.

(5) Levy fee cap

As things stand, there is a lack of clarity as to the number of in-scope providers and what their AMARs are. We are concerned that if there is a relatively small pool of in-scope providers, the level of levy paid by each in-scope provider could be significant. As such, if the pool of in-scope providers remains low, regulatory operating costs should be reviewed so as not to disproportionately impact in-scope providers who will be of varying size.

Moreover, should such circumstances materialise, we submit that the CCPC should consider introducing a fee cap pursuant to section 45A(6) and/or (7) of the 2024 Act. Further consultation would be required on such a fee cap, as it is difficult to make meaningful suggestions as to the approach the CCPC should take in this regard at this point, with the limited information available about in-scope providers and their relevant AMARs.