



Pinterest Response to Consultation on Implementing Fees and Penalties under the Online Safety Act

The following is Pinterest’s response to the Consultation published by Ofcom on 24 October 2024 regarding the proposed implementation of the new Online Safety fees regime pursuant to the Online Safety Act of 2023 (“the Act”). We appreciate the opportunity to comment on the proposed fees regime and set out our observations below, with a particular focus on Sections 3.1, 3.3 and 3.4 of the Consultation.

Ofcom proposes to calculate online safety fees for each regulated provider of user-to-user and/or search services based on a percentage of the provider’s qualifying worldwide revenue (QWR), without taking into account whether the provider is profitable. We appreciate Ofcom’s detailed Consultation setting out its proposed new fees regime in a manner that is both comprehensive and comprehensible. We also share Ofcom’s goals of tailoring the fee to each platform’s resources, as well as ensuring simplicity, transparency, and cost effectiveness in administration of the fee.

At the same time, we are of the view that a *profit-based* approach to calculating fees – rather than one relying solely on revenue – would create a more proportionate fee structure. Such an approach would aid competition and innovation by smaller, newer market entrants, which would align with Ofcom’s obligations under Sections 3(4)(b) and (d) of the Communications Act 2003 to consider “the desirability of promoting competition in relevant markets” and “encourag[e] investment and innovation.”¹ The new fees regime provides Ofcom an opportunity to impose fees on providers in the most proportionate manner, while also promoting competition and innovation in digital markets. This is particularly salient considering that platforms are subject to increasing regulatory compliance fees and costs, globally.

Further, we respectfully submit that a profit-based fees approach would be practicable for Ofcom and consistent with platforms’ experience with regards to other fees. As Ofcom is aware, the European Commission has already taken such an approach to calculating its supervisory fees under the DSA (see Commission Delegated Regulation (EU) 2023/1127), and in our experience its approach is simple and predictable, with limited administrative cost. Further, a number of larger platforms that Ofcom regulates will already be subject to the EC’s supervisory fee. Accordingly, they are familiar with a profit-based fee approach and relevant information on their profits is readily available.

In addition to supporting the objectives of promoting competition by imposing fees in a proportionate manner, a profit-based approach to fees would be permissible under the Act. At Section 3.4.8(iv) of the Consultation, Ofcom notes that “the Act stipulates that fees should be based on revenues rather than profits.” While Section 84(2) of the Act does provide that online safety fees are to be calculated by reference to a provider’s

¹ See *also* Consultation Sections 2.16 and 3.3.2.

QWR, it also grants Ofcom discretion to consider “any other factors that Ofcom consider appropriate,” which could include whether or not a regulated platform is profitable.

The Act also gives Ofcom the discretion to exempt certain providers from paying fees for a particular year. As noted in Sections 3.3.19 through 3.3.20 of the Consultation, under Section 83(6) of the Act, subject to Secretary of State approval, “Ofcom may exempt ‘particular descriptions of providers of regulated services’ from the duty to notify and the duty to pay fees” where it deems the exemption is appropriate.

Therefore, prior to finalising its approach to the new fees regime, we invite Ofcom to reconsider its position with respect to loss-making providers by exempting them from paying fees, or in the alternative, permitting them to pay lesser fees than profitable providers.

We thank Ofcom for the opportunity to comment on the proposed new fees regime and hope that it will give the above comments careful consideration prior to finalising online safety fees regulations. If it would be of assistance, we are more than happy to discuss the above comments further with Ofcom.

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