

## Microsoft Corporation's partnership with OpenAI, Inc. Invitation to comment: 8 December 2023 to 3 January 2024

Microsoft Corporation (**Microsoft**) has a long-term partnership with OpenAI, Inc. (**OpenAI**), involving a multi-year, multi-billion dollar investment and agreement to collaborate across artificial intelligence (**AI**) supercomputing and research. As part of the agreement, Microsoft and OpenAI are able to independently commercialise resulting AI technologies and Microsoft is the exclusive provider of cloud services to OpenAI. There have recently been a number of developments in the governance of OpenAI, some of which involved Microsoft.

The CMA is considering whether it is or may be the case that the Microsoft / OpenAl partnership, or any changes thereto, have resulted in the creation of a relevant merger situation under the merger provisions of the Enterprise Act 2002 (the **Act**)<sup>1</sup> and, if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

The CMA is keen to ensure that all interested parties have the opportunity to make their views known and present all relevant evidence to the CMA. The CMA is therefore issuing this preliminary 'invitation to comment' asking all interested parties to submit to the CMA any initial views on (i) whether the partnership, including recent developments, has resulted in the creation of a relevant merger situation

\_

¹ There are three criteria that must be met in order for there to be a relevant merger situation under the Act: (i) first, either two or more enterprises must cease to be distinct, or there must be arrangements in progress or contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct – this means that there must be an acquisition of control or a change in the level of control held by at least one enterprise over another; (ii) second, at least one of the 'turnover test' (the UK turnover of the target exceeds £70 million) or the 'share of supply test' (the enterprises ceasing to be distinct both supply or acquire goods or services of any description and have a combined share of 25% or more of such acquisition or supply in the UK) set out in section 23 of the Act must be met; and (iii) third, either the merger must not yet have taken place or the date of the merger must be no more than four months before the day the reference is made, unless the merger took place without having been made public and without the CMA being informed of it (in which case the four-month period starts from the earlier of the time the merger was made public or the time the CMA was told about it). This four-month deadline may be extended in certain circumstances. Further detail is set out in the CMA's jurisdictional and procedural guidance (CMA2), chapter 4.



under the Enterprise Act 2002 and (ii) if so, the impact that the partnership could have on competition in the UK. This invitation to comment is the first part of the CMA's information-gathering process, in advance of any decision to launch a phase 1 investigation.

The CMA may proactively contact companies and organisations that are active in the markets affected by the partnership or have valuable insights or evidence that could assist the CMA's investigation.

To assist it with this investigation, the CMA invites comments from any interested party.

Comments should be provided by the deadline set out above to:

microsoft.openAl@cma.gov.uk

All updates on significant case developments will be available on the Microsoft/OpenAl case page.