

Comments on CMA's working paper on committed spend agreements

IBM welcomes the opportunity to comment on the CMA's preliminary views in relation to committed spend agreements ("**CSA**") at this stage of the market investigation and appreciates the CMA's extensive work so far. As previously explained in IBM's comments on the CMA's Issues Statement, CSAs can reinforce the technical barriers to multi-cloud and present a challenge from customers' standpoint, as they can limit their ability to switch providers [redacted].

CSAs however warrant a nuanced approach as they also allow customers to benefit from lower prices and stability/predictability of spend. IBM sets out below its preliminary views on the remedies considered by the CMA in its working paper on CSAs ("**CSA Working Paper**"). However, as a first step, IBM considers it is important to clarify the differences between committed use agreements/discounts and reserved instances agreements. In particular, reserved instances agreements do not warrant the same treatment as CSAs. [redacted]

Committed use agreements/discounts vs reserved instances agreements

The CMA's analysis focussed so far on agreements for which customers commit to a certain level of spend.¹ The CMA however notes that other agreements exist where customers commit to use a certain volume of resources, "*sometimes called Reserved Instances or Committed Use Discounts*".² The CMA also asks whether a possible ban on commitments should apply to reserved instances.³

There are fundamental differences between committed use agreements/discounts, on the one hand, and reserved instances agreements, on the other hand:

- Committed use agreements or discounts are agreements whereby customers agree to use a certain volume of resources and benefit from a discount. These types of agreement present similarities with CSAs.
- Reserved instances agreements go beyond a mere use commitment. Under a reserved instance agreement, the customer ensures that it will have guaranteed access to the capacity it needs, within the point of development and data centre of its choice, throughout the duration of the contract. These agreements ensure that customers are able to deploy in a single location as needed throughout the life of the agreement and should not be assimilated to committed spend or use agreements. Availability of reserved instances agreements is critical for many customers. Absent reserved instances, in business-critical events customers have to gamble on availability. For retail customers, this may mean downtime during the busiest days of the year (e.g., Boxing Day). For critical industries such as banking, healthcare, and government services, the inability to reserve capacity [redacted] may mean that the client spends significantly more [redacted] to guarantee the availability or takes a risk that may result in downtime, degraded services, or the inability to implement their strategic imperatives because the capacity that was available during their first purchase is no longer available months later. Furthermore, from a CSP standpoint, [redacted].

Remedies

• **Types of remedies**

- Banning the use of discounts based on commitments: IBM considers that such a remedy is not warranted and would be detrimental for customers and CSPs. From a customer standpoint, the prohibition of CSAs would prevent customers from making long-term decisions and pricing

¹ CSA working paper, para. 1.32.

² *Ibid.*, para. 1.32.

³ *Ibid.*, para. 3.22.

commitments. [redacted] If customers were not able to benefit from CSAs, it would complicate the procurement process and impact long-term price stability and predictability. CSAs provide customers with a long-term view of their spend, and help solidify discounting. From a CSP standpoint, an overall ban would [redacted].

- Restrictions on the structure of volume-related discounts: cloud services are a consumption-based business which leads to significant fluctuations in terms of usage throughout the year. CSAs introduce a degree of predictability for customers as to their monthly spend. IBM considers that implementing a step-discount structure, as suggested by the CMA, would create significant challenges. Such a structure would introduce complexity and variability in customers' invoices which would decrease predictability and increase the need for close monitoring and audit on both sides. Such a discount structure would likely increase costs for both customers and CSPs as both sides would need employees that are dedicated to auditing and monitoring invoices.

[redacted]

- Restrictions on the duration of CSAs: If the CMA were to decide to cap the duration of CSAs that could be agreed between CSPs and customers, the CMA should take into account market realities. [redacted]

[redacted]

- Information remedies: As previously explained in its comments on the CMA's Issues Statement, overall, IBM believes that greater transparency would improve competitive conditions in the cloud market and help customers with the procurement process.

- **Scope of possible remedies**

The CMA notes that it is considering whether remedies should be imposed market-wide or limited to specific CSPs. [redacted].⁴

- **Duration of possible remedies**

Considering the fast-moving nature of this market, [redacted]. IBM considers that any remedies that may be imposed by the CMA should [redacted] subject to review provisions allowing for modification or withdrawal depending on changes in market conditions.

⁴ [redacted].