

Comments on CMA's working paper on egress fees

IBM welcomes the opportunity to comment on the CMA's preliminary views in relation to egress fees at this stage of the market investigation and appreciates the CMA's extensive work so far. IBM reiterates that a cloud infrastructure market that is working well needs to ensure that customers can switch cloud service providers ("**CSPs**") and adopt a multi-cloud model. The assessment of the impact of egress fees on market dynamics however warrants a nuanced approach, and IBM considers that egress fees are not a significant barrier to switching or multi-clouding.

While egress fees can on paper appear to be such a barrier, this is a red herring. Egress fees when switching/adding a supplier are not an exit charge imposed for the mere fact of a customer making that change; they are a charge aiming to cover the costs that are inherent in the move. In a way egress fees are analogous to the charges of a furniture removal company fees when moving home. It is indeed a cost that people will take into account when deciding whether to move, but (i) it is not the main driver of the decision and (ii) it is not a cost that they would expect anyone else to pay.

This is reflected in the customers' feedback set out in the CMA's working paper on egress fees ("**Egress Fees Working Paper**"). The CMA indeed notes that (i) most large customers have not identified egress fees as the main challenge to switching cloud provider¹ or implementing a multi-cloud architecture,² and (ii) almost none of the customers interviewed by Jigsaw Research viewed egress fees as the main or one of the main barriers to switching³ or multi-clouding.⁴

IBM asks that the CMA keep these key considerations in mind when assessing the cloud infrastructure market and ensure that any remedy related to egress fees, if it considers that there is a need for such a remedy, allows providers at the very least to recoup the cost of the services they provide to the customer.

IBM sets out below its preliminary views on the potential remedies, as well as responses to select questions in the Egress Fees Working Paper. [X]

Structure of potential egress fees remedies

- Information transparency remedy

The CMA is considering mandating an increase in the visibility and clarity of egress fees, potentially as part of wider requirements on providers to improve the predictability of, and customers' ability to control, their spend on cloud.⁵

As previously explained in its comments on the CMA's Issues Statement, IBM considers that increased transparency would limit the potential foreclosure effects of egress fees, at least for B2B customers. Giving enterprises, during contract negotiations, clear information about egress fees would give these sophisticated customers a better understanding of the total cost of ownership of the contract, so that

¹ Egress Fees Working Paper, paras. 2.39-2.45. According to the CMA, only a few customers identified egress fees as either a challenge, a factor that could disincentivise switching or a factor that would impact their decision. At the same time, a few customers also said that egress fees were not a challenge or an issue. On this basis, we understand that most of the customers the CMA talked to did not identify egress fees as a significant barrier to switching.

² *Ibid*, paras. 2.53-2.63. According to the CMA, while the majority of large customers with an integrated multi-cloud architecture said that egress fees have either been a challenge or taken into consideration, only a few customers with a siloed cloud architecture said that they had a significant impact and none of the customers with a single cloud architecture said so. On balance, we consider that most large customers have not identified egress fees as a significant barrier to multi-clouding.

³ *Ibid*, para. 2.46.

⁴ *Ibid*, para. 2.65.

⁵ *Ibid*, para. 2.91.

they can select their CSP based on all relevant criteria. It may also better equip customers to consider optimising their IT infrastructures to reduce the amount of data that needs to egress the cloud.

As such, IBM considers that an information transparency remedy would be sufficient to address any perceived issues with egress fees, without the need for stronger price control remedies.

- Prohibiting egress fees

IBM considers that a complete prohibition of egress fees is neither warranted nor efficient. As outlined above, egress fees are not the main nor one of the main barriers to switching and multi-clouding. But more importantly, egressing data through the internet generates costs for CSPs. As such, if CSPs are prevented from recouping these costs via egress fees, they would likely need to be recouped through increases in other prices.

- Price control remedies

IBM considers that price control remedies are not warranted in relation to egress fees. If the CMA were to consider that a price cap was necessary, IBM considers that this should be framed by reference to costs, and not other fees charged by the CSP. IBM however considers that such a price cap would be challenging to implement in practice as identified by the CMA.⁶

Answers to CMA's specific questions

General questions on remedies (as set out in para. 4.96)

- ***How should we define the scope and duration of any egress fee remedies?***

As outlined above, IBM does not consider that remedies are necessary in relation to egress fee, beyond information transparency. If the CMA were to consider that remedies are nevertheless necessary, IBM asks that the CMA take into account the following:

- [X]
- The CMA primarily focuses on data transfers via the public internet but is considering whether other egress routes, including direct connections, should also be covered by a possible egress fees remedy.⁷ IBM wishes to emphasise that direct connections (and other routes) should be distinguished from the public internet. While direct connections allow customer to transfer data, they also cater to specific use cases and customer needs. For instance, IBM Cloud Direct Link allows for more flexibility in terms of bandwidth, and more importantly provides customers with a private and secure connection. CSPs have to incur significant costs in order to offer direct connections to their customers; this is also why direct connections have a different pricing structure, as acknowledged by the CMA.⁸

[X]

- ***Could ASNs be a reasonable proxy for determining whether an external data transfer has gone to another cloud provider? Are there ways that ASNs could be feasibly supplemented (eg a step in the data transfer process that requires customers to select their purpose from a menu) to more accurately determine the purpose of a data transfer?***

IBM considers that any price control remedy on egress fees for switching or multi-clouding will lead to challenges in identifying the relevant customers subject to these provisions. As noted by the CMA, self-identification by the customer is currently the most accurate means of identifying switching/multi-

⁶ *Ibid*, paras. 4.72 et seq. The CMA notes that using cost guidelines could create challenges for monitoring and/or enforcement and that a CMA-determined price would be hard to set and may create distortion. A negotiation/arbitration model would also involve significant costs and challenges.

⁷ *Ibid*, paras. 4.39-4.40.

⁸ *Ibid*, para. 4.40.

clouding customers.⁹ IBM considers that ASNs are unlikely to be a reasonable proxy for determining the destination of an external data transfer, for the reasons already identified by the CMA (ASNs may not reflect the ultimate use or end destination for the data and it may not allow identification of the specific business unit or subsidiary that the data is transferred to).¹⁰ [3<]

Specific questions on an egress fees ban (as set out at para. 4.52)

- ***How likely it may be that customers would continue to have an incentive to design their IT architectures efficiently and avoid significant volumes of unnecessary egress, for example for latency, availability, security and/or data governance reasons.***

IBM understand this question as relating to egress fees within a multi-cloud architecture, as the need for an efficient IT infrastructure is less relevant when switching CSP entirely. [3<]

- ***How easy or difficult it may be for a customer to inadvertently accumulate a high volume of egress via the internet.***

Designing an efficient IT infrastructure requires some effort from a customer and it is very easy to accumulate a high volume of egress data very quickly. [3<]

⁹ *Ibid*, para. 4.42.

¹⁰ *Ibid*, para. 4.43.