

CMA CLOUD SERVICES MARKET INVESTIGATION

Google Cloud's response to the CMA's Committed Spend Agreements working paper dated 23 May 2024

I. Introduction and Executive Summary

1. Google Cloud welcomes the opportunity to comment on the CMA's working paper on Committed Spend Agreements (**CSAs**) (the **CSA Working Paper**).
2. The CSA Working Paper sets out the CMA's initial analysis of the potential impact of CSAs/committed spend discounts (**CSDs**) on competition in the supply of public cloud infrastructure services in the UK and, in particular, the potential impact on switching and multi-cloud. It notes that:
 - a. As the two largest cloud providers, AWS and Microsoft, have significant market power, and any impact on competition arising from their CSAs is therefore likely to be greater than the impact from CSAs offered by smaller cloud service providers (**CSPs**), including Google Cloud.
 - b. CSAs can be a form of price discrimination that create a link between sticky and contestable demand. If providers benefit from a larger share of sticky demand, then CSAs offered by those providers are more likely to harm competition, and may reduce the ability and incentive of rival suppliers to compete even for that customer's contestable share of demand. In turn, this could increase barriers to entry/expansion and lead to the weakening or marginalisation of smaller CSPs, resulting in potential adverse effects on competition (**AECs**).
3. We agree with the CMA's assessment of AWS' and Microsoft's significant market power and that any impact on competition arising from their CSAs is therefore likely to be greater than the impact from CSAs offered by smaller CSPs like Google Cloud. As a provider with a 5-10% market share, our interests are aligned with those of the CMA and other smaller CSPs in identifying and resolving any structural barriers to switching and/or multi-cloud in the market, including any CSAs which may incentivise AWS' and Microsoft's customers to continue to place all or most of their cloud spend with them, rather than switching to an alternative CSP and/or pursuing a multi-cloud strategy for incremental workloads.
4. For Google Cloud, it is important to have the commercial freedom and flexibility to be able to put ourselves in a position where our commercial offering is similar to or more attractive than what is on offer by AWS and Microsoft. Given the two market leaders' prevalent use of CSAs,¹ our ability to offer similar or better discount levels and structures is an important competitive tool to encourage customers to move some or all of their business away from their primary cloud provider.
5. Google Cloud also believes that volume-based discounts are generally viewed positively by customers, including small businesses and startups. Likewise, other types of discounting structure may be equally beneficial to customers provided that they are available across the market.
6. Moreover, in Google Cloud's experience, CSAs do not stop customers from switching away from AWS and Microsoft to an alternative CSP and/or pursuing a multi-cloud strategy for incremental workloads. Rather, as supported by customer feedback in the Jigsaw Report, the real barriers to switching and multi-cloud are artificial licensing restrictions and certain technical barriers imposed

¹ CSA Working Paper, para. 2.16.

by the market leaders – Microsoft in particular – which result in material switching/multi-cloud costs for customers that smaller CSPs simply cannot absorb or otherwise overcome.² Google Cloud believes that if those – more material – barriers are effectively and appropriately addressed, this will ensure that CSPs of all sizes can compete on a level playing field across the market and there is unlikely to be a need for regulatory intervention in CSAs across the board.

7. Nevertheless, if the CMA deems a CSA-focused remedy to be necessary, Google Cloud agrees that any restrictions should only apply to the two players with market power. It is widely recognised in legal precedent³ and economic literature that certain types of volume rebates are only of concern where there is evidence of market power or dominance and, as such, that imposing restrictions on other CSPs would be inappropriate and disproportionate. Indeed, this would likely further entrench AWS' and Microsoft's positions of market power as it would take away a lever through which challenger CSPs can compete with incumbents.

II. Customers benefit from CSAs and they are an important tool for Google Cloud – and other small cloud service providers – to compete with AWS and Microsoft

A. Small businesses and start-ups benefit from volume-based discounts

8. Google Cloud agrees with the CMA's emerging view that generally “CSDs allow customers to pay less than they would if they paid list prices”.⁴ This is also consistent with multiple CSPs' submissions that these discounts are customer-led and that “customers like the lower prices that are offered via CSDs”.⁵
9. Google Cloud negotiates with and offers CSDs to customers of all sizes, which are based on volume/spend commitments and contract length tailored to different customer needs. While customers with a higher annual spend will generally be able to benefit comparatively more from CSDs, all Google Cloud agreements are open to individual contract negotiation at the customer's request (including on volume-based discounts), irrespective of their contract value.
10. The Jigsaw Report describes how CSDs have contributed to healthy competition between CSPs in the cloud services market for the workloads of small/start-up businesses. It mentions that start-up businesses have described CSPs as being “quite active in trying to win their business”, e.g., through the use of credits or other types of discounts.⁶ In particular, one of Google Cloud's small business customers cited “significant cost savings” and free credits as the reasons for why they switched their entire workload from AWS to Google Cloud.⁷
11. It is therefore not the case, at least in Google Cloud's experience, that only the largest customers can benefit from these types of discounts. CSDs are beneficial to small and start-up businesses, particularly given those businesses' “tight cost constraints”, as they provide many opportunities for reduced-price offerings.⁸ This is a view echoed by the ACT/The App Association, which submitted that the removal or prohibition of existing cloud discount structures could “inadvertently negatively

² See for example customer feedback on the price differences between using Microsoft software products on Azure as compared to other public clouds in the licensing practices working paper, para. 4.9–4.11.

³ See for example *Intel v Commission* (Case C-413/14), paras. 136–137 citing *Hoffman-La Roche v Commission* (Case 85/76), para. 89 and para. 37 of the Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings.

⁴ CSA Working Paper, para. 2.113(a).

⁵ CSA Working Paper, para. 2.113(a).

⁶ Jigsaw Report, para. 6.1.18.

⁷ Jigsaw Report, para. 6.2.6.

⁸ Jigsaw Report, para. 1.3.3.

affect” smaller and start-up businesses as they operate with limited resources.⁹ Similar benefits would likely be important to *inter alia* public sector cloud customers who also face significant budget constraints.

B. The ability to offer similar discount levels and structures is an important tool for smaller CSPs, including Google Cloud

12. The flexibility to negotiate discounts related to a customer’s cloud spend is a key part of Google Cloud’s strategy to try to win new business and retain existing customers across all industries, and in public and private sectors. In Google Cloud’s experience, customers generally welcome CSDs as they drive down prices and allow customers to predict their cloud spend more easily.
13. As a challenger CSP, Google Cloud often competes fiercely for customers’ secondary workloads, given that many existing cloud customers are likely to have their primary workloads hosted on AWS or Azure.¹⁰ To have any chance of winning those incremental workloads, Google Cloud – at a minimum – needs to be able to offer better or similar discount levels and structures to those offered by a customer’s existing CSP (as well as offering more innovative, user-friendly cloud products and services). CSAs are just one of the ways we compete to offer customers better commercial terms and greater flexibility.¹¹
14. CSAs therefore are amongst the competitive tools that Google Cloud can use to (i) incentivise customers who are looking to deploy their first workloads in the cloud to try Google Cloud and/or (ii) encourage those who have already placed all of their business with their primary CSP to consider allocating some of their new workloads to Google Cloud as their secondary CSP. In some cases, CSAs can also help customers overcome concerns with migrating to a smaller cloud provider like Google Cloud. As one Google Cloud customer explains in the Jigsaw Report, “[w]e moved everything from Amazon, where we had been for 2 years, to Google Cloud. Although the migration process was challenging, we moved our entire workloads from AWS across to Google because of significant cost savings”.¹²
15. However, for the reasons explained below, Google Cloud notes that – in practice – it remains very difficult to win new or existing workloads from traditional enterprise customers due to the other, more significant, barriers erected by Microsoft in particular, irrespective of the level and type of discount Google Cloud is able to offer.

III. The real barriers to switching and multi-cloud are artificial technical and licensing restrictions, not CSAs

16. Google Cloud notes the concerns the CMA has outlined in the ‘Conceptual Framework and Analysis’ section of the CSA Working Paper as regards the potential impact and effect of certain volume/spend based discounting structures on customers’ decision-making. However, we believe that if customers are free to switch and multi-cloud across CSPs (*i.e.*, without facing artificial barriers and costs), then more of their demand is genuinely contestable and they can negotiate better deals regardless of their existing cloud footprint and discount arrangements. In this scenario, CSAs are less likely to influence customers’ switching and multi-cloud decisions.

⁹ CSA Working Paper, para. 1.39(a).

¹⁰ See paras. 3.73–3.89 of the CMA’s competitive landscape working paper.

¹¹ We also offer discounts which do not require customers to agree to a certain level of committed spend under our Flex Agreement. For more details on our Flex Agreements, see [Introducing flexible new cloud services and pricing | Google Cloud Blog](#).

¹² Jigsaw Report, para. 6.2.6.

17. However, as described at paras. 2.54-2.56 of the CSA Working Paper, barriers to switching and multi-cloud arising from certain technical barriers and artificial licensing restrictions mean that the level of “sticky demand” in the market is currently high, especially for traditional enterprise customers. This means that when Microsoft – in particular – offers CSAs, those discounts can (and likely do) serve to further reinforce those artificial technical and licensing restrictions which, in their own right, make switching or pursuing a multi-cloud strategy difficult and costly. Microsoft further compounds the effect of those restrictions by offering customers a discounted bundle of products across cloud and non-cloud services which acts as a further incentive for customers to continue to place all their demand with Microsoft. Those discounts notably extend to Microsoft’s most popular non-cloud products, including its ‘must-have’ Office software productivity suite and client PC and work group server operating systems.
18. In Google Cloud’s experience, these cloud and non-cloud bundled discounts, alongside Microsoft’s restrictions that prevent customers from bringing their existing licences to Listed Providers,¹³ have a far more significant impact in terms of locking customers into Microsoft’s ecosystem of products and services¹⁴ than the CSAs the CMA is investigating. For example, one customer cited in the Jigsaw Report describes how its historic connections to the Microsoft ecosystem have led it to choose Azure: “We’re a Microsoft shop. So we use Microsoft productivity tools... the whole 365 suite. We used to have on prem exchange and email servers that we ran ourselves. We moved to 365, and then we’re also moving from on prem Windows servers to Azure 3M Windows servers. It’s as simple as that.”¹⁵ Another described the way its agreement with Microsoft covers a bundle of both services: “[our] significant amount of committed spend with Azure [...] will include Azure, it will include SPLA [Service Provider License Agreement], it’ll include Office 365”.¹⁶ Given that other CSPs do not enjoy a comparable position of market power (and captive customer base) in legacy on-premises IT and software that they can leverage into cloud negotiations, it is simply impossible to replicate or negate the effect of these bundled discounts (or to otherwise compensate customers for the loss of such discounts if they were to switch or multi-cloud with a non-Azure CSP).¹⁷
19. In these circumstances, Google Cloud considers that any intervention in CSAs is unlikely to meaningfully alter customer behaviour unless and until the real switching and multi-cloud barriers – in particular, the artificial technical and licensing restrictions and mixed bundling/discounting strategies deployed by Microsoft – are effectively addressed.

IV. If the real barriers to switching and multi-cloud are addressed, CSA remedies are not necessary. However, to the extent that remedies are imposed, they should only apply to cloud providers with market power

20. As recognised in the CSA Working Paper and described above, the root cause of sticky customer demand in this market is artificial licensing restrictions and certain technical barriers (as well as more harmful discounting structures deployed by Microsoft under its Enterprise Agreement). Google Cloud therefore considers that any regulatory intervention should focus on removing these

¹³ ‘Listed Provider’ is a term used by Microsoft to refer to Alibaba, Amazon and Google. Technically, Microsoft also refers to itself as a Listed Provider, but it applies a completely different set of rules to itself and its own cloud offering.

¹⁴ In contrast, and by way of clarification of para. 1.37(b) of the CSA Working Paper, Google Cloud’s non-cloud services (such as Google Ads) are neither eligible to be discounted nor to be drawn down against CSD commitments.

¹⁵ Jigsaw Report, p. 83.

¹⁶ Jigsaw Report, p. 85.

¹⁷ [redacted].

barriers, which in turn will reduce sticky demand and enable smaller CSPs to effectively compete for all or part of a customer's workloads, irrespective of whether that customer has any existing CSA in place (as, then, the CSP can compete on a level playing field by offering similar or better discounts than the customer's incumbent provider).

21. Nevertheless, in the event the CMA decides to impose a CSA-focused remedy, Google Cloud supports the CMA's emerging view that any restrictions should be limited to those players with market power. It is widely recognised that certain types of volume rebates are only of concern where there is evidence of market power or dominance.¹⁸ Further, if it is correct that multi-cloud customers spend approximately 80% of total spend with their primary provider,¹⁹ then forcing those primary providers to remove CSAs should resolve any potential AEC. As described above, discounts are an important tool for smaller CSPs and challengers like Google Cloud to compete with AWS and Microsoft. A market-wide restriction on discounts would likely have a disproportionately negative impact on smaller players like Google Cloud, and may have the perverse result of entrenching the positions of AWS and Microsoft as it would take away a lever through which challenger CSPs can compete with the market leaders.

22. Please see **Annex** for Google Cloud's responses to the CMA's consultation questions on potential remedies.

* * *

¹⁸ See for example *Intel v Commission* (Case C-413/14) , paras. 136–137 citing *Hoffman-La Roche v Commission* (Case 85/76), para. 89 and para. 37 of the Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings.

¹⁹ See para. 3.77 of the CMA's competitive landscape working paper.

Annex - Google Cloud's responses to remedy consultation questions

As set out in our main submission, Google Cloud considers that CSAs are a positive feature of the cloud market that bring meaningful benefits to customers (in the form of lower prices) and that any market-wide intervention could impact our, and other CSPs', ability to continue to compete effectively with the two market leaders. Google Cloud therefore responds to these consultation questions solely for completeness, in the event that the CMA is nevertheless minded to pursue remedies related to CSAs.

1. Banning the use of discounts based on commitments (CSA Working Paper para 3.22)

(a) Is it preferable to ban all types of commitments to prevent circumvention risks or just specific types of commitment? If so, which?

Google Cloud considers that, in circumstances where the CMA deems intervention in CSAs to be necessary and appropriate to address an AEC resulting from AWS' and Microsoft's significant market power, any restrictions (whether full or partial) on the use of discounts based on commitments would need to be sufficiently clear-cut and understandable, both to industry players and customers (as well as capable of effective oversight by the CMA – consistent with the CMA's own guidance).²⁰

Google Cloud considers that a partial intervention in CSAs which leads to less transparency and clarity around permitted discounting structures would be the worst-case outcome for both the industry and for customers.

(b) Which cloud providers should any ban apply to? Should it be restricted to those that are found to have market power (our emerging view is that this includes AWS and Microsoft), those with the highest share of 'sticky' demand or all cloud providers?

Google Cloud supports the CMA's emerging view that any restrictions should be limited to those players with significant market power (AWS and Microsoft). It is widely recognised that certain volume rebates are only of concern where there is evidence of market power or dominance.²¹ Conversely, a market-wide ban or restriction on CSAs would have a disproportionately negative impact on smaller players like Google Cloud, and could have the perverse result of entrenching the positions of AWS and Microsoft further.

(c) How important are commitments in predicting future demand, for the purposes of planning investment? To what extent do other approaches (eg observing current trends across a diverse customer base) provide equivalent information?

For Google Cloud, CSDs are not an important factor in predicting future demand and planning investment. To the extent other CSPs use CSAs for these purposes, Google Cloud considers that it would be relatively straightforward to find alternative comparable metrics for projecting future expected demand (including for the purposes of investment planning).

(d) How should we define the duration of any ban on customer commitments? Under what conditions could CSDs in their current form be reintroduced in this market?

Any restriction on commitment-based discounts should continue to apply for as long as a cloud provider retains market power (with appropriate sunset and/or review clauses).

²⁰ See para 4.17 of the CMA's market investigation guidance.

²¹ See for example *Intel v Commission* (Case C-413/14), paras. 136–137 citing *Hoffman-La Roche v Commission* (Case 85/76), para. 89 and para. 37 of the Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings.

- (e) To what extent could cloud providers use other forms of commitment eg reserved instances, committed use discounts and/or other discounts (such as credits) to create sticky demand and/or reduce contestable demand and by doing so circumvent any potential remedies targeted at spend commitments?

As explained above, Google Cloud considers that the use of mixed bundling/discounting structures across cloud and non-cloud products – in particular those discounts offered by Microsoft under its Enterprise Agreement which offers discounts across bundles of ‘must-have’ non-cloud and cloud products – create sticky demand and remove the ability for other cloud providers to compete on a level playing field for a large portion of the otherwise contestable demand in the market.

The continued use/availability of these bundled discounts would likely undermine the effectiveness of any remedy that seeks to limit the use of CSAs by players with significant market power, and therefore potentially fail to meet the CMA’s intended objective.

- (f) Are there any other circumvention risks and, if so, what are they?

See response to 1(e) above.

2. Restrictions on the structure of any volume-related discounts (CSA Working Paper para 3.33)

- (a) Which cloud providers should any restriction on discount structures apply to? Should it be only those with market power or should it apply to all cloud providers?

Google Cloud supports the CMA’s emerging view that any restrictions on the structure of any volume-related discounts should be limited to those players with significant market power (AWS and Microsoft). It is widely recognised that certain types of volume rebates are only of concern where there is evidence of market power or dominance.²² A market-wide restriction on volume-related discounts would therefore have a disproportionately negative impact on smaller players like Google Cloud, and likely create the perverse result of entrenching the positions of AWS and Microsoft further.

- (b) How could we improve the design of the discount structure to reduce the potential for circumvention?

See response to part 1(e) above.

- (c) Would it be beneficial to set a cap on the maximum level of discount that cloud providers could offer?

See response to part 1(a) above.

- (d) Is an alternative discount structure more appropriate for this market and, if so, what are the features of an alternative discount structure?

See response to part 1(a) above.

- (e) How should we define the duration of any CSD pricing structures? Under what conditions could CSDs in their current form be reintroduced in this market?

See response to part 1(d) above.

²² See for example *Intel v Commission*(Case C-413/14) , paras. 136–137 citing *Hoffman-La Roche v Commission* (Case 85/76), para. 89 and para. 37 of the Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings.

(f) Are there any other circumvention risks and, if so, what are they?

See response to part 1(e) above.

3. Setting a maximum duration for any CSDs (CSA Working Paper para 3.39)

(a) What should be the maximum allowable term for a CSD?

We consider that setting a maximum duration for CSDs would have little impact in practice. As noted in the Jigsaw Report,²³ CSDs typically only run for 1 to 3 years and are regularly renegotiated. Therefore the effect of any maximum allowable term could easily be circumvented by players with market power through renewals or renegotiations (as they do today).

(b) How should we define the duration of any limits on the length of CSDs? Under what conditions could we remove any limits on the length of CSDs in this market?

See response to part 3(a) above. In line with the CMA's guidance, the CMA should consider including a sunset clause and keep any remedy under review and remove or revise it once it is no longer appropriate.²⁴

4. Potential information remedies (CSA Working Paper para. 3.49)

(a) Which providers should be subject to any information remedy? Should this only apply to AWS and Microsoft?

Yes, Google Cloud agrees that any remedy should only apply to those with significant market power – i.e., AWS and Microsoft – for as long as they retain such a position.

(b) Should we require cloud providers to apply the published discounts in all negotiations with customers, if not, why not?

While there is already a high degree of transparency in this market, Google Cloud is generally supportive of any measures that seek to further improve transparency for the benefit of customers. However, we do not consider that increasing the amount of information available to customers would address the underlying barriers to switching or multi-cloud, which are artificial licensing restrictions and certain technical barriers.

(c) What should be the duration of any information remedies? For example, should we consider 'sunsetting' it?

In line with the CMA's guidance, the CMA should consider including a sunset clause in relation to any information remedy and should keep the remedy under review and remove or revise it once it is no longer appropriate.²⁵

(d) Are there any circumvention risks and, if so, what are they?

Google Cloud is not aware of any circumvention risks for a potential information remedy.

²³ See para. 6.1.7 of the Jigsaw Report.

²⁴ See para 4.22 of the CMA's market investigation guidance.

²⁵ See para 4.22 of the CMA's market investigation guidance.