

CMA CLOUD SERVICES MARKET INVESTIGATION

Google Cloud's response to the CMA's Potential Remedies Working Paper, dated 6 June 2024

I. Introduction and Executive Summary

1. Google Cloud welcomes the opportunity to comment on the CMA's potential remedies working paper (the [Potential Remedies Working Paper](#)) dated 6 June 2024.
2. The Potential Remedies Working Paper sets out the CMA's remedies framework in a market investigation context and summarises the remedy considerations presented in each of the subject-specific working papers (as well as broader, cross-cutting considerations), the thinking for which is still "at an early stage".¹
3. Google Cloud's detailed remedies representations are contained in our subject-specific working paper responses and not repeated here. However, we set out below our view on each of the broader, cross-cutting remedies considerations set out in the Potential Remedies Working Paper.

II. Cross-cutting remedies considerations

A. Implications of ex-UK regulatory and/or legislative developments

4. The Potential Remedies Working Paper notes the various studies conducted into cloud services by regulators around the world, as well as new laws recently passed (such as the European Union (EU) Data Act and recent French Digital legislation). It states that the CMA "may consider the actions taken by regulatory and legislative authorities in other jurisdictions where they have or are likely to result in future changes in the conducts of market participants in the UK, which may have implications for any AEC finding, as well as when assessing the effectiveness and proportionality of potential remedies."²
5. Google Cloud considers it important for the CMA to take account of ex-UK regulatory action and/or legislative developments that impact the conduct of market participants in the UK in its assessment of whether any adverse effects on competition (AECs) arise in the UK.
6. From a remedies perspective, the CMA should be particularly mindful of the significant compliance burden that cloud service providers (CSPs) already face in the cloud services market globally and seek to ensure that any remedial action does not unnecessarily increase that burden or cut across existing regulatory or legislative requirements. There is a real risk of duplicative, conflicting and/or inconsistent approaches to how certain aspects of the cloud market are regulated globally which will make compliance by CSPs extremely challenging. This is already apparent in relation to the "recent French legislation"³ that the CMA refers to which seeks to regulate at a national level aspects of cloud computing, including egress fees and free credits, that are also separately regulated at an EU-wide level through the EU's Data Act. It is therefore imperative that any remedial action from the CMA seeks to avoid such an outcome wherever possible. Consistent with the proportionality principle, any incremental increase of the

¹ Potential Remedies Working Paper, para. 1.2.

² Potential Remedies Working Paper, para. 3.6.

³ Potential Remedies Working Paper, para. 3.5.

compliance burden on CSPs should be limited to what is strictly necessary to address any purported AECs.

B. Implications of geographic scope of potential remedies

7. The Potential Remedies Working Paper invites views *“on approaches to geographic classification that may be suitable for remedies in cloud services.”*⁴
8. Google Cloud considers that the CMA’s focus should rightly be on protecting customers and businesses from any harms resulting from any AEC(s) identified in the UK. As a general principle, when considering the geographic scope of potential remedies, we therefore agree that it is important to scope any remedy in such a way that the risk of circumvention is mitigated (whilst at the same time ensuring that the scope of the remedy goes no further than is necessary to address the AEC).
9. How this should be achieved will depend on the specific AEC and associated remedy concerned and is difficult to address in the abstract. We would be happy to engage on this question more concretely if the CMA does reach an AEC finding.

C. Implications of Digital Markets, Competition and Consumers (DMCC) Act

10. The Potential Remedies Working Paper notes that the CMA will consider its *“new powers under the DMCC Act and published guidance as part of our consideration of any potential remedies.”*⁵
11. We agree that in the context of an ongoing market investigation in the digital sector it is appropriate for the CMA to address its mind as to whether the DMCC Act would be an appropriate tool, either alone or in combination with the CMA’s market investigation powers under the Enterprise Act, to address competition issues resulting from substantial and entrenched market power in the relevant market under investigation. However, we consider that should an AEC be identified in relation to Microsoft’s anti-competitive licensing practices and related technical barriers, it would be more appropriate in these circumstances for the CMA to use its existing market investigation remedy powers to address these practices. This is the case given the exclusionary nature of the practices concerned - which are very specific and therefore easily remediable under the CMA’s market investigation powers - and the need for urgent remedial action to be taken to prevent further damage to competition in the cloud services market at a critical inflection point.

D. Effectiveness and proportionality of a “package” of remedies

12. The Potential Remedies Working Paper invites views on whether a single remedy or package of remedies would be appropriate, as well as the ways in which multiple remedial measures would interact with each other.
13. Google Cloud sets out our detailed remedy representations in the subject-specific working papers. We agree that where there is compelling evidence of conduct in the market of an AEC it is

⁴ Potential Remedies Working Paper, para. 3.15.

⁵ Potential Remedies Working Paper, para. 3.24.

appropriate to consider a package of remedies to address that AEC. As explained elsewhere, the evidence is clear that Microsoft is adopting a series of measures as part of an anti-competitive strategy designed to leverage its dominance across its enterprise software ecosystem to foreclose competitors, prevent competition on the merits, and entrench its market power in the cloud services market.⁶ In such circumstances, we consider a “package”⁷ of remedies to address the AEC flowing from Microsoft’s conduct to be necessary, effective and proportionate. A package of measures along these lines would be complementary and we see no obvious tension between individual measures or the potential for cross-cutting effects.

14. As opposed to the compelling evidence on the CMA’s file on the AEC caused by Microsoft’s anti-competitive licensing conduct, no evidence has been presented to justify the need for market-wide remedies. To the contrary, market-wide remedies or remedies that extend beyond the two incumbents with significant market power would penalise smaller CSPs, such as Google Cloud, and may have the unintended consequence of stifling innovation and competition and entrenching the market position of the two market leaders.⁸

E. Inappropriateness of structural remedies

15. The Potential Remedies Working Paper states that the CMA is “not currently minded to prioritise further consideration of structural or operational separation remedies”⁹ given the concerns identified and the availability of alternative remedies.
16. Google Cloud agrees with this emerging view. As a general principle, we do not consider structural or operational separation remedies to be necessary or proportionate as remedial action to the concerns being investigated - nor would they necessarily be effective.

* * *

⁶ Licensing Working Paper, paras. 3.213 to 3.218.

⁷ Potential Remedies Working Paper, para. 4.8.

⁸ CC3 (Revised), Guidelines for market investigations: Their role, procedures, assessment and remedies, **(CMA’s Market Investigation Guidelines)** para. 335.

⁹ Potential Remedies Working Paper, para. 5.14.