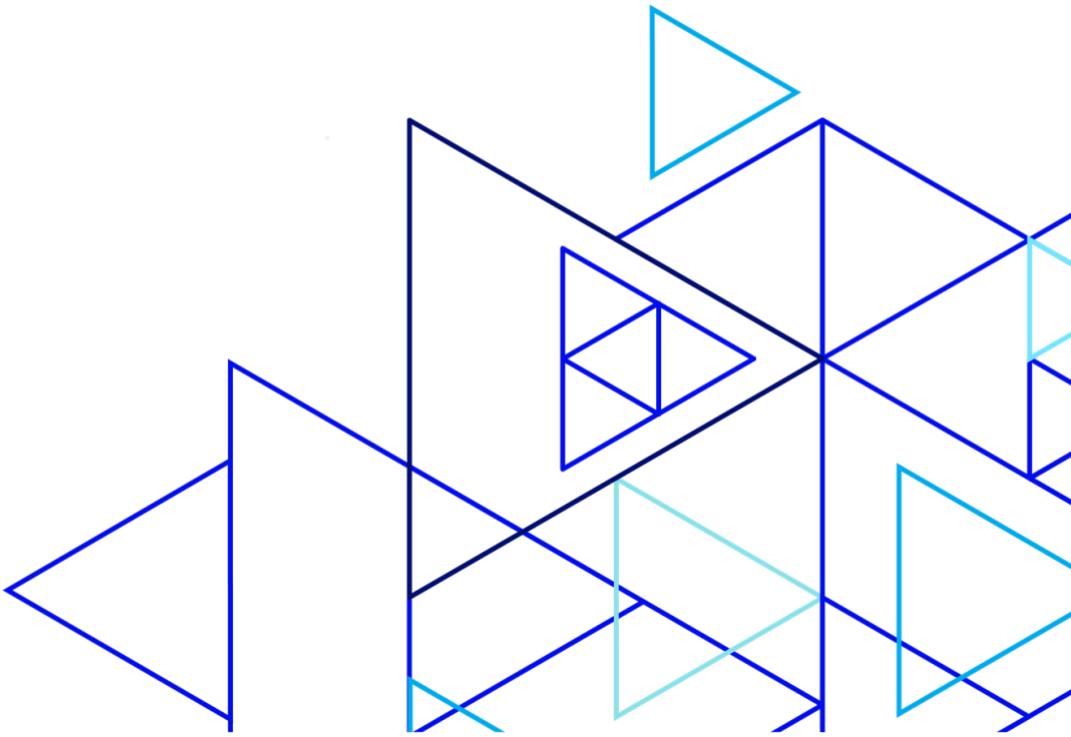
OVHcloud

Response to the CMA's Issues statement on the public cloud infrastructure services market investigation



14 December 2023

OVHcloud welcomes the possibility to provide observations on the CMA's issues statement regarding the public cloud infrastructure services market investigation issued on 17 October 2023 (the "Issues Statement"), which follows the final report of Ofcom issued on 5 October 2023 (the "Ofcom Final Report").

Founded in France in 1999, OVHcloud is a European cloud provider offering to businesses a suite of solutions designed to meet multi-cloud and hybrid cloud strategies. OVHcloud, an open, reliable and trusted cloud provider, proposes secured data cloud solutions for clients. It offers an optimal price/performance ratio thanks to its in-house technology.

OVHcloud is based on an integrated model, guaranteeing total control over its value chain, from the design of its servers to the construction and management of its data centers, including the orchestration of its fiber-optic network. This unique approach enables OVHcloud to independently cover all the uses of its customers so that they can seize the benefits of an environmentally conscious model with a frugal use of resources and a carbon footprint reaching the best ratios in the industry.

OVHcloud operates 38 data centers on 9 locations, in France, in the United Kingdom, in Europe, in Northern America, in Asia and in Australia, hosting over 450,000 servers built by OVHcloud. The group employs approximately 2,900 persons.

OVHcloud supports the development of a dynamic and sustainable cloud services market in order to offer viable alternatives to hyperscalers such as Amazon Web Services ("AWS"), Microsoft Azure and Google Cloud.

OVHcloud's philosophy is to provide SMART cloud:

- ***Simple***. First, OVHcloud endeavours to confirm that its solutions are able to be implemented quickly and easily, and that they are time saving for its customers;

- ***Multi-local***. OVHcloud believes that product and offering solutions should be local to everyone, everywhere. It also works to adapt its offerings to the needs, wants and constraints of customers with respect to data safety and local regulations;

- ***Accessible***. OVHcloud targets solutions that are affordable and accessible to a wide range of customers. It also focuses on a transparent pricing model;

- ***Reversible***. To increase flexibility, OVHcloud assesses whether its innovations are reversible, open and interoperable to ensure that it is not limiting its direction in the

future. It also provides robust and reliable technologies and ensures that customers are not "locked in" and do not pay for bandwidth; and

- ***Transparent***. Lastly, OVHcloud treats all of its customers equally. It offers its solutions to every customer and is committed to clarity in all of its customer communications and to predictable pricing.

These principles guide OVHcloud in the design of its IaaS and PaaS solutions and are at the centre of its architecture. They are central in OVHcloud's identity and are a truly differentiation parameter in comparison with alternative providers.

While building a new regulatory environment for the cloud sector, OVHcloud believes public policy and regulation are necessary to protect and develop competition, given that, for instance and as pointed out by the French Competition Authority ("FCA"), self-regulatory initiatives have proven to be inefficient to restore the fast-deteriorating competition within the cloud market.[1]

As such, OVHcloud welcomes recent developments in neighbouring jurisdictions including the European Union *Data Act*[2] and the French draft *Law to secure and regulate the digital space*[3], as they set out a series of key measures to address the dangerous and anticompetitive practices implemented within the cloud market (e.g. interoperability and portability requirements, egress fees withdrawal, prohibition of tied selling, abusive credit cloud). OVHcloud also welcomes the numerous reports published by competition authorities around the world on the topic of competition within the cloud market over the past months (e.g. Japan FTC, Korean FTC, FCA, Netherlands' ACM), which are of peculiar relevance to the CMA's market investigation.

This briefing paper addresses the theories of harm presented in the Issues Statement as well as suggested remedies discussed in the Ofcom Final Report in relation to: technical barriers to interoperability and portability (1), egress fees (2), committed spend discounts (3), as well as software licensing practices (4). Furthermore, OVHcloud intends to bring to the attention of the CMA some related practices which should be addressed as part of crosscutting remedies (5).

1. Technical barriers to interoperability and portability

OVHcloud shares Ofcom and the CMA's concern that hyperscalers practices are increasing technical barriers to interoperability and portability, thereby hindering multi-cloud strategies and switching (1.1), which calls for effective remedies (1.2).

1 FCA Opinion, point no. 626.
2 https://data.consilium.europa.eu/doc/document/PE-49-2023-INIT/en/pdf
3 https://www.assemblee-nationale.fr/dyn/16/textes/l16t0175_texte-adopte-seance#

1.1 Hyperscalers' technical strategies to limit interoperability and portability are hindering competition in the United Kingdom

OVHcloud considers that there are several technical obstacles to interoperability, which have also been identified by the ACM[4]:

- The interconnexion of different IT services within a company can make migrations very difficult. It may then be necessary to rewrite numerous code lines in order to ensure communication between different cloud services. This process, which can be time and money consuming, requires staff (internal and/or external) who have been specifically trained for the new environment;

- The diversity of cloud providers' offers can also slow the migration towards an alternative cloud service provider. Although the majority of the services and functionalities offered by cloud providers are very much alike, they can slightly differ from one another and make difficult to replace one offer by another one.

- Data portability can also be an important stake in terms of migration because it requires a dedicated API, and the adaptation of the migrated data's format. Portability concerns SaaS and PaaS only since IaaS is highly standardised.

The existence of different data formats depending on cloud providers also forces cloud users to invest in additional tools or services to reprocess and reformat their data in order to adapt them to a new cloud provider.

Furthermore, in addition to these technical barriers to multi-cloud, OVHcloud shares Ofcom's concerns in relation to some practices of hyperscalers which may further hinder interoperability among cloud services providers.

Technical differentiation. In that respect, technical differentiation of cloud infrastructure services and cloud ancillary services, through proprietary technologies, makes it very difficult for users to adopt a multi-cloud strategy. Ofcom itself considers that justification for such important technical differentiation is "*less clear*".[5] The use of some open-source solutions within cloud architecture is to be welcomed but is obviously not sufficient. As Ofcom rightly points out:

> "*if a customer wishes to maximise interoperability and portability for its cloud architecture, it would not be enough to run all its workloads on Kubernetes (the open-source container orchestration service hyperscalers have noted) which is only one part of their cloud architecture. The customer would also need to ensure that all other parts of their cloud architecture are open-source or cloud-agnostic*."[6]

[4] https://www.acm.nl/system/files/documents/public-market-study-cloud-services.pdf
[5] Ofcom Final Report, point no. 5.52.
[6] Ofcom Final Report, point no. 5.46.

Asymetry of functionalities. Another concerning feature of technical limits to multi-cloud is the asymmetry of functionalities. Hyperscalers are developing cloud solutions and functionalities which are "single-cloud by design" as they are available only within their ecosystem and cannot be adapted nor made available to third party cloud services providers. Again, Ofcom rightly describes such phenomenon and its adverse effects on competition:

> "*We have also seen evidence that AWS and Microsoft make some functionalities of their cloud infrastructure services available only to their own cloud infrastructure services and not to competitors. In other words, in some cases the full set of functionalities of a certain service from AWS or Microsoft is only available when this service is used in combination with another first-party service. We refer to this type of restriction as 'asymmetry of functionalities'*."[7]
>
> "*Depending on whether it applies to any third-party cloud service or only to third-party cloud services hosted on a different cloud, asymmetry of functionalities can discourage both integrated multi-cloud and multi-vendor architectures. Asymmetry of functionalities would not appear to be a necessary precondition to or the natural result of healthy competitive dynamics.*"[8]

Lack of transparency and training. OVHcloud further contends that the lack of clarity relating to technical features of cloud services, together with the development of cloud-specific skills by cloud customers, benefits entrenched market positions of hyperscalers. Indeed, this allows them to develop "lock-in" strategy based on training. As Ofcom mentions:

> "*We recognise that hyperscalers typically publish documentation around the compatibility of their first-party proprietary services with competing ISVs' or open-source services. However, we have also seen evidence suggesting that in some cases the degree of compatibility may not be unequivocally clear from such documentation*"[9]
>
> "*Companies looking to switch to or add a new cloud provider will face costs associated with retraining existing staff or hiring new staff. The market research found that 'the need to retrain staff' was the second most cited challenge to switching provider, with 33% of respondents perceiving it as a barrier to switching and 8% considering it the most important barrier*."[10]

In such complex and opaque context, Google, Amazon and Microsoft offer trainings to future IT specialists, and mainly those of their clients, in order to get them to use their solutions and to gain their loyalty. For instance, in their 16 June 2021 press release, "*LVMH and Google Cloud, strategic partners for artificial intelligence and cloud innovation*", indicate:

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7 Ofcom Final Report, point no. 5.64.
8 Ofcom Final Report, point no. 5.82.
9 Ofcom Final Report, point no. 5.91.
10 Ofcom Final Report, point no. 5.19.

> "*LVMH will benefit from Google Cloud's support to develop its data and innovation culture, through dedicated training and certification programs for the in-house teams. The two partners will jointly define co-innovation opportunities and launch a Data and AI Academy in Paris to refine even more the expertise and their innovation in these fields.*"[11]

The 2020 United States Congress report "*Investigation of Competition in Digital markets*" mentions as well that:

> "*The widespread adoption of AWS's developer certification programs, partner networks, and student programs has meant that there are far more engineers familiar with AWS technology than with any other platform. Several market participants listed the availability of AWS-trained engineers as a reason for selecting AWS over other cloud vendors and as a barrier for switching platforms or attempting to multi-cloud.*"[12]

1.2 OVHcloud supports suggested remedies aimed at enhancing interoperability among cloud services providers.

In view of the above mentioned restrictions to multi-cloud, OVHcloud supports remedies suggested by the CMA in the Issues Statement and presented in the Ofcom Final Report. In particular, OVHcloud considers that it would be necessary to require cloud providers to make their services easier to interoperate with other third party cloud services (a)), to increase standardization in the industry (1.2(b)), while promoting further transparency as to interoperability (1.2 (c)). Furthermore, OVHcloud supports the development of interconnectivity via private networks connecting data centers (1.2 (d)) and considers that remedies should also address the key issue of trainings (1.2 (e)).

(a) Requiring cloud providers to make their services easier to interoperate with other third-party cloud services

Ofcom contemplates two requirements with respect to AWS and Microsoft in order to make their cloud infrastructure services compatible with interoperability, portability and multi-cloud strategies:

- First, "*a service access requirement for AWS and Microsoft to make the individual elements of their cloud infrastructure services available to use in conjunction with those of third parties*";[13]

- Second, AWS and Microsoft would be required to ensure equivalence to ensure that their "*cloud infrastructure services (for example a type of PaaS service) can interoperate with third*

[11] https://r.lvmh-static.com/uploads/2021/06/pr_lvmh_google.pdf
[12] United States Congress Report, p. 269.
[13] Ofcom Final Report, point no. 10.34.

parties (for example IaaS service from another cloud provider) in the same way as first-party cloud services".[14]

OVHcloud supports such requirements and considers that they are likely to improve interoperability within the cloud sector.

Indeed, the persistence of lock-in situations shows the need to take extra steps towards fairer competition in the cloud market. While the *Digital Markets, Competition and Consumers Bill* is a positive step towards restoring fair competition in the British cloud market, the CMA's market investigation into cloud services has an even more important role to play and should aim at addressing remedies designed to smoothly and quickly abolish all switching barriers to the benefit of users and the British digital economy.

The suggested two-limb access requirement is an effective way to foster interoperability among providers of cloud services. In that respect, OVHcloud considers that the CMA should pay attention to such access being granted on the basis of objective, transparent, and non-discriminatory conditions.

(b) *Requiring cloud providers to increase the degree of standardisation. This option could be implemented through a set of detailed, specific requirements, or through broader principle-based obligations.*

Ofcom presents the possibility to require standardization for ancillary cloud services and opens the door to possible standardization for cloud infrastructure services.[15]

Interoperability is an essential pillar to guarantee users a concrete freedom of choice regarding their data usage, based on their current and future needs and capacities, i.e. to ensure a multi-cloud approach through tailor-made cloud solutions.

To achieve this, having a set of technical standards, preferably open-source, that are easily understandable and approachable is key as well as considering the specific needs of certain sectors. In that respect, OVHcloud supports the following objectives to facilitate interoperability of data:

- the establishment of essential requirements of interoperability, based on open-source standards, that would apply to all operators;
- the principle of a presumption of conformity for interoperability solutions that meet harmonised standards.
- the possibility to adopt, at a later stage, common specifications in the different sectors.

[14] Ofcom Final Report, point no. 10.36.
[15] Ofcom Final Report, point no. 10.44 et seq.

Although it is true that the full standardization of cloud infrastructure services would be technically complex and costly, OVHcloud considers that this does not prevent from setting common standard or at least pave the way for future standardization (except for functionalities that are obviously inherent to a given provider).The elaboration of common standards which is, by nature and across all industries, a complex process involving numerous stakeholders, is central to the development of interoperability. In particular, standardization has historically been key to the development of major technological sectors, such as the telecom industry, without dampening innovation.

Switchability is often hampered by the lack of common data standards, which makes the process more difficult. The promotion of open-source standards (at all levels of the value chain) can reduce these barriers, ensuring a smoother data porting and switching process. OVHcloud has for years supported the conversion to open-source solutions and software, for instance within the Open Cloud Foundation or as an Open Invention Network member.[16] It increases not only trust and collaboration between the parties, but also contributes to data portability.

For instance, OVHcloud puts interoperability, portability and reversibility at the centre of its architecture. Therefore, all OVHcloud solutions are designed to be interoperable with other services by using open-source technologies.

In response to Ofcom's concerns about the risks associated with mandatory standardization, OVHcloud submits that the definition of such standards could take place as part of existing initiatives such as Gaia-X, Openstack, Cloud Infrastructure Services Providers in Europe, the Cloud Native Computing Foundation. Their creation was motivated by the need to offer users cloud services based on European values of openness, transparency, authenticity and trust, self-determination and free market access. Moreover, OVHcloud recalls that the EU *Data Act* mandates cloud providers to ensure compatibility with common specifications and standards for interoperability to be developed in the market and/or by European standardization bodies. However as pointed out by the FCA, OVHcloud agrees that it is important that the standardization process does not lead to "*regulatory capture*" by hyperscalers.[17]

In a nutshell, Ofcom suggested remedies would ensure full interoperability, which would in turn allow users to develop smooth multi-cloud strategies with limited (if any) residual latencies and hurdles and allow them to switch provider or services easily.

(c) *Requiring cloud providers to be more transparent about the interoperability of their cloud services*

Ofcom suggests to "*require the hyperscalers to publish documentation on the interoperability of their cloud infrastructure services. This would include, for example, requiring hyperscalers to explain the compatibility of their cloud infrastructure services with open-source software. We believe this*

[16] https://corporate.ovhcloud.com/en-ie/newsroom/news/ovhcloud-joins-open-invention-network-and-renews-its-commitment-open-source/

[17] FCA Opinion, point no. 579.

would allow customers to make more informed choices when designing their cloud architectures and facilitate the integration of multiple clouds and switching between clouds. It would also facilitate the integration of first- and third-party services (i.e. multi-vendor cloud architectures) and switching within the same cloud".[18]

OVHcloud welcomes such remedy proposal and considers that it is indeed critical to allow the development of multi-cloud strategies.

On its end, OVHcloud has developed its solutions being focused on customers' right to reversibility in cloud services. This means that any customer of OVHcloud is free to retrieve his data and / or transfer it without being locked-in nor face constraints that would impede his decision to reverse his choice. In that respect, OVHcloud therefore complies with SWIPO's Switching and Porting IaaS code of conduct that maintains a high level of interoperability.[19]

OVHcloud has therefore adopted various measures that are efficient to let customers switch to another cloud service provider through enhanced transparency and training such as, *inter alia*:

- Use of standard technology with non-customised solution
- Use of open-source technology
- Publishing of source code for specific implementation
- Publishing how to reverse data and transfer them outside of OVHcloud https://docs.ovh.com/gb/en/reversibility/
- Specific program "Open Trusted Cloud" to build an ecosystem of certified solutions.[20]

OVHcloud considers that these initiatives could serve as a basis for the design of future transparency requirements at industry level. In that respect, it is worth noting that hyperscalers are far from meeting similar transparency standards for the moment, which reinforces their established market position.

In any case, OVHcloud would also like to point out that transparency requirements (although necessary) are not sufficient. Indeed, they would not, as such, lift the technical barriers that interoperability and portability restrictions constitute today. With solely transparency requirements, the burden to ensure interoperability with the hyperscaler's services would remain either on the user (who is not always trained to do it) or the other provider. Taking the example of public APIs, they remain in proprietary formats, thus hindering their interoperability. The user or the other provider has to engage into an important work to become compatible with this API and is at the mercy of the hyperscaler's decision to modify this API, forcing to engage further work after every such decision. This example illustrates that transparency requirements are not

18 Ofcom Final Report, point no. 10.28.
19 https://swipo.eu/
20 https://opentrustedcloud.ovhcloud.com/en/

sufficient to ensure interoperability and portability, and that such objective can only be reached through a certain level of standardization preferably via open-source standards.

(d) *Requiring cloud providers to increase interconnectivity, for example, by connecting their data centres to other cloud providers' data centres*

Ofcom suggests to have data centres interconnected:

> "*We understand that physically interconnecting data centres of different cloud providers is likely to be a technically feasible solution to help mitigate such cross-cloud latency, particularly when the data centres are located within the same availability zone. With a direct interconnection between clouds, data traffic remains on a private network which can increase the speed of data movements, enhance control of network traffic and reduce the chance of unexpected increases in latency. This would help customers, especially those that run latency sensitive workloads, to more easily integrate multiple clouds and switch between clouds*."[21]

OVHcloud considers that private networks may be appropriate in certain cases to ensure a flow of data among data centres with reduced costs and latency. Indeed, cloud service providers have concluded *Private peering* or *Private Network Interconnect* ("PNI") agreements that interconnect their services to reduce the cost of transferring data from one service provider to another. PNI agreements allow data transfer via a private network instead of the Internet. This method does not require the use of the Internet bandwidth and each cloud service provider then bears its own costs in relation to the connection to the private network.

However, PNI agreements alone are not adequate alternative to foster multi-cloud strategies. Connecting infrastructures of different cloud service providers requires a stack of software solutions on top of the services. Due to the current lack of interoperability between each provider's solutions, supporting the idea of connecting data centres to improve quality of service and freedom of choice of customers is not sufficient.

OVHcloud believes that this proposal of remedy would mostly benefit and favour the hyperscalers, and especially Microsoft and AWS whose services are based on proprietary solutions. In that respect, the examples that are referred to by Ofcom in its Final Report may not be extended on a large scale. Indeed, and as recognised by Ofcom itself, connecting data centres requires a complex design, including high implementation costs, that smaller cloud providers cannot afford.

Therefore, OVHcloud believes that increased interconnectivity between competing cloud service providers should not be seen as an alternative measure to enhancing interoperability of services between providers and alone, will not be a relevant means to foster multi-cloud strategies.

[21] Ofcom Final Report, point no. 10.53.

(e) *Seeking to improve the training available to customers' technical staff, for example by requiring the provision of technology-agnostic training including recognised qualifications, or a recommendation to government.*

Although Ofcom does not suggest any specific remedy in relation to training of cloud users, OVHcloud welcomes the decision of the CMA to include that matter in the agenda for a more competitive and dynamic cloud environment.

As mentioned above in section 1.1, hyperscalers have developed strong training strategies aiming at locking in not only customers, but also IT specialists.

In that respect, the provision of "technology-agnostic" training, including in IT engineering schools and universities, is likely to empower customers, improve interoperability and facilitate multi-cloud strategies and switching between clouds. OVHcloud already does so, in particular via:

- the Open Trusted Cloud Program, which aims at providing software publishers and editors of PaaS and SaaS with tools to develop interoperable and reversible services that are complementary to those of OVHcloud[22]

- its own Professional Service team (as well as certified third parties) that provide expertise to customers on OVHcloud solutions, which are interoperable by design.

2. Egress fees

Egress fees are invoiced to customers whenever they retrieve their data or transfer it to an alternative cloud solution. OVHcloud considers that they harm competition by preventing users from switching providers or using multi-cloud architectures (2.1). As part of this market investigation, OVHcloud suggests the CMA to adopt remedies toward the complete withdrawal of egress fees (2.2).

2.1 Egress fees harm competition by creating barriers to switching and multi-cloud, leading to cloud services providers entrenching their position

To align with its values of openness, transparency and reversability, OVHcloud does not charge any egress fees for data that customers want to transfer to another cloud service provider. Conversely, OVHcloud considers that egress fees are unduly used by hyperscalers to lock customers in their ecosystem and prevent them from switching.

OVHcloud believes that such fees represent artificial costs, concurring with Ofcom's interim report[23], which points out they are "loosely related" to real costs for providers, and the FCA which highlights they are non-justified by technical or economic reasons. As such, egress fees are solely the result of a commercial strategy from the hyperscalers, with the aim to dissuade users from

[22] https://opentrustedcloud.ovhcloud.com/en/

[23] Ofcom Interim Report, point no. 5.109.

transferring their data to another provider. This makes these fees a major financial barrier to switching, thus contributing to the lock-in of users.

This practice also has negative consequences on the companies' long-term growth potential, because of "the cloud's paradox". In the long-term, costs advantages have an important impact of the growth potential for organizations willing to optimize their cloud use, and, eventually, to switch from cloud provider. By making data downloading or recovering more complicated for companies, main cloud providers harm the performances enabled by the cloud.

The United States Congress report "*Investigation of Competition in Digital markets*" confirms the existence of these practices as well:

> "*When an Amazon customer chooses to move data to another cloud provider, they are charged an egress fee. Market participants told Subcommittee staff that they view these fees less as a cost for Amazon to transport data and more as friction imposed by Amazon for switching providers, noting that Amazon charges egress fees even when data is staying locally within the same data center.*"[24]

OVHcloud considers, following the ACM opinion, that this billing strategy has a deterrent impact:

> "*Because of the current pricing structure, the barrier to store data in the cloud is low, but it does sometimes require considerable investments to get data from the cloud when a user wishes to switch. Discussions held by ACM have revealed that, sometimes, in part because of the egress fees, multimillion investments are needed for switching. This investment sometimes equals the initial investment that was made for using cloud services.*"[25]

The only technical justification for invoicing egress fees is the cost for using the Internet bandwidth from Internet service providers or from other operators, such as suppliers of connectivity solutions (Lumen, Cogent, Opentransit, etc.).

When data is transferred by an Internet service provider to a third party, the cost for using the bandwidth is invoiced to the party that initiates the transfer (not the party that receives data). This explains the fact that ingress is almost always free in the cloud industry (because the cost for bandwidth is not borne by the cloud service provider). Conversely, egress generates costs for cloud service providers when (i) the customer transfers data to another cloud service provider; or (ii) the customer retrieves data directly.

However, invoicing of egress fees by hyperscalers is not technically justified when it comes to transferring data to a competing cloud service provider.

[24] United States Congress Report, p. 270.

[25] Autoriteit Consument & Markt, Market Study Cloud services, 5 septembre 2022, p. 59.

Indeed, cloud service providers have made *Private peering* or PNI agreements that interconnect their services to reduce costs (as mentioned above in section (d)).

Therefore, there is no technical justification for the widespread use of significant egress fees among hyperscalers. As part of the Ofcom market study, hyperscalers however explained that egress of data includes additional costs that would not be borne by other smaller cloud services providers. In particular, Ofcom noted that:

> "*However, the hyperscalers stated that the costs of providing data transfer include a broader set of costs than transit, including those relating to the network infrastructure over which data is transferred. AWS said that these costs are significant because of the enhanced security and reliability features in its proprietary network*."[26]

OVHcloud does not share this assessment. There is no objective reason why egress would incur greater costs for some cloud providers and not for others. In fact, OVHcloud is concerned that hyperscalers tend to allocate a significant portion of common costs to egress in order to artificially inflate egress fees. Such strategy supports the overall locked in cloud environment and has recently been spotted by the FCA as part of its own market investigation into the cloud sector:

> "*The investigation showed that hyperscalers pass on a significant proportion of their costs to these egress fees (i.e. "outgoing" billing for costs linked to data centres, servers, optical fibres, bandwidth, etc.). In reality, however, these numerous costs are common to all the different services offered by a cloud service provider. They could therefore be covered just as well by storage or computing fees, which are by nature more predictable since they are independent of traffic, unlike egress fees, whose pricing structure is proportionate with the volume of data transferred*."[27]

In fact, it is assumed that costs truly associated with egress are minimal since network costs typically make up about 10% of a provider's total expenses, with bandwidth costs being just a portion of this total.[28]

As such, OVHcloud concurs with the FCA's conclusions which states that egress fees cannot be justified by technical or economic reasons, but truly are the results of commercial strategies implemented by the hyperscalers.[29]

In view of the above, OVHcloud confirms that egress fees are a significant obstacle for users wishing to switch cloud providers or to use a multi-cloud architecture in all cloud markets, including in the United Kingdom.

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[26] Ofcom Final Report, point no. 5.163.
[27] FCA Opinion, point no. 425.
[28] FCA Opinion, point no. 446.
[29] FCA Opinion, point no. 433.

2.2 OVHcloud supports suggested remedies aimed at eliminating egress fees

Capping egress fees by comparison to the costs incurred could be a temporary and transitional remedy (2.2 (a)) towards their complete withdrawal (2.2 (b)). However, OVHcloud does not support the idea of capping egress fees by reference to other fees charged for different services (2.2 (c)). In any case, OVHcloud supports any initiative aiming at promoting transparency with respect to pricing (2.2 (d)).

(a) Capping egress fees by comparison to the costs incurred by the cloud provider

Ofcom first contemplates the possibility to cap egress fees by reference to the costs incurred by the cloud provider.

First, OVHcloud considers that the suggested remedy may only be a transitional measure toward the complete removal of egress fees, as OVHcloud believes – in accordance with FCA's opinion – that egress fees are artificial fees, not justified by economic or technical reasons. In that respect, it is worth noting that the European Union *Data Act* already provides for a 3-year transitional period during which cloud services providers may charge egress fees that do "*not exceed the costs incurred by the provider of data processing services that are directly linked to the switching process concerned and shall be linked to the mandatory operations that providers of data processing services must perform as part of the switching process*".[30] The sooner the abolition of switching charges, the quicker fairer competition can take place as well as making British users' freedom of choice even more concrete.

Second, OVHcloud contends that this remedy would only ensure workable competition if the CMA remains very strict with respect to costs that are directly and solely related to the switching process, as hyperscalers often justify their charging of egress fees by highlighting certain costs (e.g. network maintenance, deployment of fiber optic cable) which are necessary to their day-to-day functioning and thus cannot be justified as a charge to users wishing to leave their services.

(b) Preventing cloud providers from charging egress fees

Ofcom also suggests the complete removal of egress fees.

OVHcloud supports this remedy, which is instrumental to the development of an open transparent, reversible and interoperable cloud environment in the United Kingdom. It would allow users to change cloud provider or implement multi-cloud strategies without bearing excessive costs locking them in a single environment, thus having a positive effect on users' freedom of choice and the market structure.

Furthermore, this remedy would be consistent with the regulatory developments in the European Union, which will gradually implement the complete removal of egress fees.[31]

[30] EU *Data Act*, Article 29.
[31] EU *Data Act*, Article 29.

In addition to this, OVHcloud does not consider that concerns raised by hyperscalers during the Ofcom market study are such as to prevent the CMA from adopting the suggested remedy.

First, in line with Ofcom, OVHcloud does not share the view that removing egress fees would risk seeing an increase in services prices, thus penalizing small businesses which transfer less data and would allegedly subsidize customers with larger data transfer volumes. As mentioned above in section 2.1, the true cost of egress is limited since it mostly depends on PNI agreements.

Second, it is for cloud services providers to conceive and build their cloud environment as inherently reversible, so that customers do not have to suffer friction costs when transferring their data. Any cloud user (be it an individual or a large business), should be in a position to easily retrieve its data to transfer them to another provider. In that respect, OVHcloud considers that removing of egress fees enables to alleviate the costs of data transfers on the entire client base. It ensures great predictability for companies since the price does not change depending on the volume of data transferred.

Third, contrary to what hyperscalers pretend, removal of egress fees would not deter investment and innovation for the network. On this point, the FCA has noted that hyperscalers have a sufficient customer base to recoup their investments (irrespective of the level of egress fees) and that smaller, alternative cloud providers have been able to invest in their network while charging lower egress fees:

> "[…] *hyperscalers benefit from very significant economies of scale and scope, enabling them, with the help of a large and diverse customer base, to recoup the essentially fixed costs of their networks, which are based not on total demand activity but on peaks in activity. Such competitive advantages should a priori benefit their customers in terms of both cloud services and data transfers. However, the investigation revealed that despite these significant scale and range effects, and due in particular to this asymmetrical allocation of many costs to data output, the egress fees of the three hyperscalers are much higher than those of alternative cloud service providers (up to ten times higher), who also have hardware infrastructures, but a smaller and less diverse customer base*."[32]

In that respect, the very activity and business model of OVHcloud proves that a reversible and interoperable cloud is compatible with growth and innovation. Indeed, OVHcloud does not charge (or very limited) egress fees and manages to invest without having financial resources comparable to those of hyperscalers. OVHcloud continuously innovates to improve its customers' experience and ensure the development of an open, transparent, interoperable and reversible cloud environment.

[32] FCA opinion, point 452.

In view of the above, while the gradual abolition of egress fees discussed in section 2.2 (a) would be a positive development, OVHcloud encourages the immediate and complete removal of egress fees given the fast rate at which competition within the cloud market is deteriorating.

(c) Capping egress fees by reference to other fees charged by the cloud provider (eg ingress fees or other data transfer fees)

Another potential remedy that Ofcom contemplates is the capping of egress fees by reference to other fees charged for other services. According to Ofcom, "*this means that customers would face the same cost for data transfer whether they are moving data between clouds or within the cloud of a single provider. The aim would be to help facilitate the take-up of multi-cloud architectures and reduce frictions to switching*".[33]

OVHcloud is reluctant to such approach. Although it would indeed remedy the issue of hyperscalers abusively allocating common costs to egress in order to justify egress fees, it would not address the overall issue of switching costs and may well have indirect adverse effects on cloud users and competition.

First, hyperscalers would then be able to raise the overall level of their fees, without users being able to swiftly change providers due to the other aspects of the lock-in strategy. In the end, prices for cloud services (which are already very opaque), could even become completely decorrelated from the actual operation costs of hyperscalers. This remedy therefore creates a strong risk of exploitation of captive cloud users. As noted by Ofcom:

> "*Once an appropriate data transfer charge is identified, there would be a risk that cloud providers raise this price in line with egress charges, rather than lowering egress fees accordingly*."[34]

Second, it is worth noting that the compliance and monitoring process would be incredibly complex for the CMA or any other regulatory authority, which would result in the proposed remedy being of limited impact on competition. Ofcom itself has voiced its concerns over the matter:

> "*Stakeholders agreed with our view that determining exactly which other data transfer charges to equalise egress fees against would be complex. Charges vary based on factors such as the volume of data transferred, location of originating and destination data centres and type of infrastructure used to transfer the data (e.g. private network or public internet). There also may be differences between the cost of providing internal data transfer and external data transfer."*[35]

[33] Ofcom Final Report, point no. 10.15.
[34] Ofcom Final Report, point no. 10.17.
[35] Ofcom Final Report, point no. 10.16.

In view of the above, OVHcloud does not support this remedy and calls for the complete removal of egress fees.

> *(d) Increasing the visibility and understanding of egress fees for potential customers, potentially as part of wider requirements to improve predictability and control spend on cloud.*

OVHcloud supports all measures ensuring greater transparency and price comparison for customers.

However, OVHcloud does not consider that merely increasing transparency for egress fees would be sufficient to tackle the challenge of interoperability and reversibility of cloud services.

First, when users subscribe to a cloud service, they do not always consider their "exit" possibilities. On this point, the FCA specifically noted that:

> "*[customers] are not necessarily considering a future change of provider or the use of a multi-cloud architecture, and therefore give relatively more weight to the short-term cost represented by the fees for the different cloud services. By shifting a significant part of the network cost to egress fees, cloud service providers can reduce the price of their offerings*."[36]

This means that it is for cloud services providers to ensure that any transfer of data is reversible and that users will always be empowered with respect to their cloud strategy (i.e., if they want to change provider or opt for a multi-cloud strategy).

Second, even when they anticipate their "exit" possibilities, users have difficulty predicting the volume of data they will generate. This is all the more true that the impact of egress fees grows over time as customers migrate more data to cloud. It is therefore more difficult for them to make an *ex ante* price comparison, even with transparent pricing information from all cloud services providers.

Therefore, although OVHcloud supports transparency, it should not be the only measure targeting egress fees in the enforcement toolbox of the CMA.

3. Committed spend discounts

Users may commit to a certain level of spendings with a cloud services provider in exchange for a discount. Such committed spend discounts, when implemented by hyperscalers, may raise barriers to entry and expansion for smaller cloud services providers (3.1). OVHcloud therefore recommends adopting remedies aimed at limiting potential anticompetitive effects of these committed spend discounts, while preserving the ability to offer targeted and limited discounts that benefit competition and users (3.2).

[36] FCA Opinion, points 427 and 428.

3.1 Committed spend discounts raise barriers to entry and expansion for smaller cloud service providers by incentivizing customers to concentrate their business with one provider.

Ofcom is concerned that committed spend discounts would have a loyalty inducing effect on cloud users and would therefore favor lock-in to the benefit of hyperscalers. Indeed, cloud users have a strong incentive to concentrate their purchases of cloud services within this single provider, hence limiting any multi-cloud strategy.[37]

OVHcloud shares Ofcom concerns with respect to hyperscalers discount policies.

First, although they may be offered by all cloud services providers, committed spend discounts have a significant loyalty effect with hyperscalers. Indeed, cloud users are more likely to agree to committed spendings when they are ensured that there is a wide variety of services eligible to meet their commitment. This benefits operators that have a wide selection of cloud core and ancillary services (namely software), which may therefore be bundled. This is the reason why the loyalty inducing effect of committed spend discounts is so important with hyperscalers, which are large conglomerate groups that also operate adjacent activities. In that respect, the 2020 United States Congress report "*Investigation of Competition in Digital markets*" confirms that Google has been implementing this strategy with the view of securing single-homing:

> "*Google's documents suggest the company is considering bundling its popular machine learning service with other services that Google is seeking to promote. One recent Google cloud pricing strategy document explains, "the question that we need to think about is whether we use our entry point with Big Query to get a customer to use all the services such as Data Proc, Data Flow, as a suite and give them a price break on the Analytics Suite because it will be much harder for them to migrate away from us if they use all the other services." The document goes on to describe potential discounts and ultimately a plan to have "a pricing model that makes it advantageous for customers to put 80% of their workload on GCP." As described elsewhere in this Report, absent interventions, the barriers to entry and network effects in this market mean there is a high potential for single-homing and an overall concentrated market*." (emphasis added)[38]

Second, this loyalty inducing effect toward hyperscalers grows over time. Indeed, each contract renewal is the opportunity for the hyperscaler to set higher committed spend targets. Ofcom confirms such risk:

> "*Under these circumstances, the customer is in a weaker bargaining position, as it faces a cloud provider who has a degree of market power over that customers' existing cloud usage. When this customer renegotiates its contract, the cloud provider may require the customer to increase the amount of spend they commit not to lose*

[37] Ofcom Final Report, point no. 5.198.

[38] United States Congress Report, page no. 206.

> *(some of) their current discount across their entire spending with them. Should the customer face a substantial cost to switching some or all their existing cloud use with the provider, the prospect of losing a discount can create a strong incentive to purchase incremental workloads from their existing provider, even where these workloads would otherwise be contestable.*" (emphasis added)[39]

Third, it is clear that smaller cloud services providers as efficient as hyperscalers cannot match these discounts for at least two reasons:

- Due to the more limited width of their services, these players cannot negotiate the same level of committed spendings, while customers would expect at least the same level of discount. Ofcom itself considers that:

> "*If a customer chooses to purchase one or a few workloads from a smaller provider, the customer may be forgoing an increase in their discount on the workloads that customer must purchase from a hyperscaler. In that case, the smaller provider must be able to compensate the customer for this loss in discount to win the individual workload. We are concerned that this reduces the opportunity for smaller cloud providers to compete for components of the demand of these large customers*."[40]

- The level of discount itself might also be very difficult to match since hyperscalers can benefit from their conglomerate structure to implement cross-subsidies between their different activities, hence financing discounts.

3.2 OVHcloud supports suggested remedies aimed at limiting the anticompetitive influence of committed spend discounts

While OVHcloud supports the idea of regulating committed spend discounts (3.2 (a)), it considers that a blanket prohibition would not be appropriate (3.2 (b)).

> *(a) Prohibiting the use of specific discount structures, such as certain rates or volume requirements*

OVHcloud considers that discounts are not *per se* problematic, as long as they remain limited and proportionate (in duration and rate) and do not hold customers captive.

In particular, OVHcloud considers that targeted remedy with respect to discounts would foster competition.

First, committed spend discounts should not be designed in such a way that they cover bundle strategies, which have the effect of securing and expanding market power of incumbent hyperscalers (see below section 4.2 (b)). As such, one scenario would be to limit committed spend discounts to a customer's specific need, rather than allowing them to be cross services (e.g. IaaS

[39] Ofcom Final Report, point no. 5.209.
[40] Ofcom Final Report, point no. 5.232.

and SaaS), to prevent hyperscalers from leveraging such discounts as a way to bundle their services together. This would apply to firms which own a significant market status in the UK, on discounts that would amount to a certain rate or volume requirements, to be further determined based on the CMA and Ofcom works.

Second, discounts granted in return for committed spend should not be financed via cross-subsidization from other activities of conglomerate hyperscalers. In that respect, hyperscalers should not operate at loss and sacrifice profits for securing customers.

Third, as rightly pointed out in the Ofcom Final Report, users should remain free not to increase their committed spending nor discount levels upon renewal of their contract.[41] Those willing to benefit from better conditions should equally be offered the possibility to increase their commitments and discounts, provided that such adjustment corresponds to their actual needs.

In any case, any remedy designed to tackle the anticompetitive effects of committed spend discounts should be carefully designed and be strictly adapted to the level of market power held by cloud services providers. In that respect, any remedy that deprives smaller cloud services providers from the ability to compete and offer discounts would be counterproductive. In that respect, OVHcloud fully subscribes to Ofcom's conclusion on the matter:

> "*Any intervention would need to be targeted at addressing the structure of the discounts that risk distorting competition. It would be important to preserve the ability of cloud providers to gain the commitments of customers to the extent that these are necessary to protect investment and innovation, and also the ability of customers to exercise their bargaining power to gain lower prices and other concessions from cloud providers.*"[42]

(b) Prohibiting the use of discount structures, such as through a principle-based approach

OVHcloud does not support the blanket prohibition of discount structures in the cloud services industry and warns against an excessively rigid approach towards such sales initiatives.

First, OVHcloud considers that discounts may benefit both users and providers without inducing anticompetitive effects.

Second, these discounts may actually be a parameter of competition among smaller providers of cloud services to the benefit of customers. In that respect, OVHcloud shares the assessment of Ofcom with respect to discounts, which do not *per se* restrict competition:

> "*Given the narrower product ranges of smaller providers, in principle, their use of such discount structures is less likely to limit the ability of rivals to compete for some of their customers' demand. Our concern is with the structure and use of committed*

[41] Ofcom Final Report, point no. 10.60.

[42] Ofcom Final Report, point no. 10.62.

spend discounts by the hyperscalers, not with those of smaller providers that have a narrower range."[43]

4. Software licensing practices

Some cloud providers who hold strong positions in the software market might use it to enhance their positions in the cloud market through self-preferencing practices. These are practices that have been documented by several competition authorities in Europe, including the FCA which has seen several customers testify that as part of their migration to the cloud, they were forced to accept new proprietary products and services systematically associated with cloud services, preventing them from combining the cloud services they wanted from their incumbent software vendor with other services that could have been offered by third-party providers.[44]

Several actors have complained about Microsoft's practice of linking Office 365 to other services, notably Azure but all hyperscalers should also be carefully monitored.

OVHcloud believes that competition authorities should be mindful of such practices when investigating their own market and ensure they are effectively banned, as they have for direct effect to unfairly reinforce dominant software providers' positions within the cloud market.

As part of its market study, Ofcom raised concerns regarding the practices implemented by Microsoft with respect to software licensing (4.1). OVHcloud supports remedies aimed at promoting interoperability among cloud services providers with respect to such licenses (4.2).

4.1 Software licensing practices of cloud service providers restrict customer choice and prevent effective competition

Hyperscalers' importance and the barriers to entry they generate have a tendency to delay the emergence of new entrants or of more competitive offers on the market. In view of the very large bundled offers of hyperscalers, the rise of a new entrant could be very difficult since it is necessary to offer a range of services as wide as possible to meet all of the clients' needs.

4.2 OVHcloud supports remedies aimed at limiting the anticompetitive impact of software licensing practices

OVHcloud considers that software practices need to be addressed via dedicated remedies, including increased pricing transparency (4.2 (a)), prohibition of bundles (4.2 (b)), software version equivalence for third parties (4.2 (c)), and portability of software licenses (4.2 (d)).

(a) Increasing pricing transparency of cloud services that are sold to customers as part of a larger bundle that includes cloud services and software

The migration of companies to the cloud is driven by multiple benefits: increased agility and scalability, optimised IT investments. Today, cloud products and services have become a major budgetary item that companies are seeking to better control. To this end, it is particularly

[43] Ofcom Final Report, point no. 5.255.

[44] FCA Opinion, point no. 494.

important to understand the structure of costs related to the use of the cloud and to be able to anticipate them. In a spirit of openness, OVHcloud advocates transparency and defends a predictable and "all inclusive" cloud pricing model in order to simplify the budgeting of cloud costs for users.

OVHcloud considers that cloud users, when deprived of information with respect to price structure, are likely to suffer from higher prices while being captive of a single-cloud environment, as rightly described by the FCA in its own market investigation:

> "*This is the case, for example, when providers offer bundled services that include a number of services that are "free" but linked to underlying and complementary purchases in a way that is less easy for customers to decipher. Once relationships have been established, providers may have an incentive to offer high prices on high value-added products, while making competition for new demand as unobjectionable as possible outside their own environment*." [45]

It has become a common practice for the hyperscalers to offer a free tier with their main software solutions, bundled with cloud services. They leverage their traditional SaaS activity to establish themselves in the world of IaaS and PaaS: conditioning the sale of licenses makes their strengths by hosting customer data.

For example, AWS encourages prospects to sign up for cloud services with its database organization system (S3) as an argument to win the decision. Google offers its search engine algorithm as a powerful way to search big databases (Big Query) to bring customers into its cloud. Microsoft offers its Office suite with all the features if the customer comes to Azure to host their data.

Therefore, OVHcloud supports remedies aimed at promoting an open, interoperable and reversible cloud environment via increased transparency, in particular in relation to the pricing of stand-alone products (i.e., without them being automatically bundled). These remedies would allow better comparison of individual cloud products for customers wishing to integrate services from multiple cloud providers. It should also be made clear to users that cloud services may perfectly be used without being bundled to ancillary services.

> *(b) Prohibiting the sale of cloud services as part of a larger bundle that includes cloud services and software*

OVHcloud considers that transparency requirements mentioned above are very relevant to address competition concerns but are not sufficient. In that respect, OVHcloud considers that the prohibition on bundles for hyperscalers is an absolute necessity to promote fair competition in the cloud services sector in the United Kingdom.

Recent enforcement examples in other jurisdictions confirm the possibility to limit the market power of hyperscalers via remedies designed to prevent bundles. OVHcloud considers that the

[45] FCA Opinion, point no. 402.

issue of bundling should also be addressed as part of the upcoming *Digital Markets Competition and Consumer Bill*. In that respect, the CMA's current market investigation will be critical to the implementation of the future British regulatory framework. In particular, the fact that hyperscalers' cloud services have not been designated as core platform services under the European Union *Digital Markets Act* (i) reinforces the relevance of the CMA's action with respect to the present market investigation, and (ii) does not prevent the United Kingdom to designate hyperscalers as undertakings having a strategic market status once the *Digital Markets Competition and Consumer Bill* is adopted.

In any case, OVHcloud considers that the prohibition of bundling with respect to cloud services will not have any adverse effect on the market and would not be specifically difficult to implement. On the contrary, it would foster competition in a dynamic competitive context – which would result from other above-mentioned remedies. Providers of cloud services would be competing fiercely since an increasing number of users would be relying on multi-cloud. This shift could be severely threatened if hyperscalers were allowed to maintain bundles.

(c) Requiring cloud providers to ensure version equivalence for software hosted on cloud infrastructure, regardless of who provides the cloud infrastructure

OVHcloud considers that some cloud providers with popular software products or SaaS services make little or no important software available to customers in another cloud environment or do so only on the basis of higher costs or license fees. Such position is shared by various competition authorities, including in particular Netherlands' ACM.

This practice, which OVHcloud believes to be similar to self-preferencing, can also lead to a deterioration in the user experience of such software – for example by offering fewer features, security updates or flexibility of use – when used through a third-party cloud provider.

There is a significant risk that these practices will lead to a strong market consolidation around the hyperscalers, who are also dominant in the software layer. Indeed, with most of the cloud markets' growth expected to come from the migration from on-premise to cloud services, these practices will lead captive users to be strongly encouraged to migrate into the cloud service of their software provider: the software will be cheaper and more functional than through a third party cloud provider.

As mentioned above in section 1.2 (a), OVHcloud supports remedies which would make mandatory for hyperscalers to make functionalities available to third parties, without limitation as to interoperability or latency. OVHcloud considers that such access should be granted on the basis of objective, transparent, and non-discriminatory conditions.

In that respect, OVHcloud suggests to take into account recent regulatory developments in other jurisdictions, such as France, where the draft Bill to secure and regulate the digital space plans to

entrust the FCA with the power to sanction self-preferencing practices in the cloud sector, when qualified as unfair commercial practices[46].

> *(d) Allowing customers to port existing software licences to any cloud provider, without incurring any additional charges or fees*

OVHcloud supports this measure, which aims at promoting an open, interoperable and reversible cloud environment.

OVHcloud welcomes the decision of Microsoft to review its policies regarding licences as from October 2022. In particular, users can now move their licences to some third-party providers:

> "*Microsoft will introduce a new Flexible Virtualization benefit for customers that will greatly expand customer choice when outsourcing. Under this benefit, customers with Software Assurance or subscription licenses will be able to use their own licensed software to build and/or install solutions and run them on any outsourcers' infrastructure (except Listed Providers'* [i.e., Alibaba, Amazon Web Services, Google, and Microsoft, and any outsourcer using a Listed Provider as part of the applicable outsourcing service.]*) — dedicated or shared."*[47]

This positive development should however be expanded and OVHcloud considers that Microsoft's initiative should be grounded in the regulatory framework. Indeed, other hyperscalers or large cloud services providers maintain restrictions on licenses which are likely to hinder multi-cloud strategies. For instance, Oracle licenses for databases may only be transferred to authorized third-party cloud services providers (i.e., such as AWS and Microsoft Azure).[48]

Hence, portability of software licenses cannot depend on the sole initiative of cloud services operators, which may have limited incentives to allow it. In that respect, remedies should clarify the conditions under which users may port software licenses onto third party cloud infrastructures.

5. Crosscutting remedies and further issues to be addressed as part of the market investigation

As part of the Issues Statement, the CMA calls stakeholders to submit their views on crosscutting remedies, which could include structural divestures or behavioral remedies.

OVHcloud suggests that crosscutting remedies should in any case address the following issues, which could be included in the scope of the market investigation: cloud credits (5.1), mergers (5.2), public procurement (5.3), other competition parameters (5.4) and cross-use of data (5.5).

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46 Article 7 of French draft Bill to secure and regulate the digital space as approved on 17 October 2023.

47 https://blogs.partner.microsoft.com/partner/new-licensing-benefits-make-bringing-workloads-and-licenses-to-partners-clouds-easier/

48 FCA Opinion, point no. 486.

5.1 Cloud credits may support lock-in strategies of hyperscalers

Although the Ofcom Final Report focuses on committed spend discounts, OVHcloud considers that the CMA should address the issue of cloud credits, which are another similar pricing mechanism which may be implemented by hyperscalers to lock users in a single-cloud environment.

The cloud credit's practice consists in offering a free access to cloud services for a very long time for the benefit of certain cloud providers. As for committed spend discounts, cloud credits may have a positive impact on competition and benefit customers, when they remain limited and proportionate. However, they may also have the effect of "locking in" cloud users. This practice encourages users to choose cloud services not based on objective criteria linked to their needs but only based on the number of credits granted to them. The main cloud providers rely on their superior capacity to offer free credit packages that most smaller providers cannot compete with. Once the services have been activated, customers are trapped in the services of these dominant providers with no possibility of going back.

Indeed, hyperscalers have developed this strategy to the degree that it is becoming almost the standard in the market. These practices are even more dangerous because they are targeted primarily at customers with a high potential for innovation (such as start-ups or research centres). Thus, hyperscalers ensure that future discoveries and solutions are directly constructed and integrated with reference to their ecosystems. The result is an undue appropriation of future innovation. For instance, Google provides up to $200,000 a year in cloud credits as part of its offers to the start-ups ($350,000 for AI startups).[49] Likewise, AWS offers similar programs with credits offers of $100,000 for start-ups.[50]

One potential remedy which has been explored by France's *draft Bill to secure and regulate the digital space* is to: (i) allow cloud credits to the same customer only for a limited period of time; and (ii) prohibit the possibility to make cloud credits conditional to exclusivity.[51]. Although this constitutes a first step in the right direction, OVHcloud believes that the amount of cloud credits that can be granted by a cloud provider to a user should also be capped to prevent lock-in effects.

5.2 Hyperscalers rely on mergers to further expand their market power

Hyperscalers have a strong advantage (which results from above mentioned competition issues), with respect to mergers and acquisitions: (i) they have the financial resources to make more appealing offers to sellers; and (ii) innovating companies are more likely to be bought by a hyperscaler when they have previously developed their technologies on the basis of the hyperscaler's cloud solution.

Ofcom Final Report confirms such trend:

49 https://cloud.google.com/startup

50 https://aws.amazon.com/startups#benefits

51 Article 7 II of French draft Bill to secure and regulate the digital space as approved on 17 October 2023.

> "*We note that despite their much lower revenue shares in cloud, IBM and Oracle are large, well-resourced technology companies. The spend of these companies and the hyperscalers over this period on individual acquisitions ranges from a few tens of millions to tens of billions of pounds, and small-scale companies that compete in cloud may not be able to match this level of investment*."[52]

In that respect, OVHcloud respectfully submits that the CMA market investigation should also focus on this aspect. This issue may be partly addressed under the *Digital Markets, Competition and Consumers Bill,* whose draft currently foresees a mandatory merger control mechanism for undertakings having a strategic market status when (i) they acquire a 15%, 25% or 50% shareholding in a UK corporate body; and (ii) for a consideration exceeding GBP 25 million.[53]

5.3 Public Procurement mechanisms may sometime participate to the hegemony of hyperscalers

The CMA should recall buyers to carefully define their needs in calls for tender. As a matter of fact, OVHcloud notices a tendency to combine several distinct needs (for instance, cloud infrastructures and office suites) within a single call for tender, which, as a consequence, (i) favours hyperscalers that benefit from a wider range of activities and can thus provide for all of the clients' needs; and (ii) constrain a large number of specialized operators, such as OVHcloud, to submit joint bids.

In that respect, OVHcloud joins the concerns raised by Ofcom:

> "*In response to our consultation, some respondents noted the risk of hyperscalers dominating the public sector part of the cloud infrastructure services market. Two individual respondents went further, citing concerns about a lack of competition in the existing processes, and the impacts this could have across resilience, security of personal data, the UK economy.*"[54]

5.4 Beyond pricing, there are other competition parameters to protect

Beyond price and technical parameters, the CMA should also focus its market investigation on other competition parameters which are becoming more important for customers. OVHcloud considers that services are likely to differentiate through quality parameters such as data sovereignty, data security.

In that respect, OVHcloud considers that the following features are essential to guaranty the development of a sovereign cloud in the United Kingdom, irrespective of the technology used: (i) immunity to extra-territorial laws; (ii) choice of data localization; and (iii) advanced security certifications (i.e., G-CLOUD for public buyers in the United Kingdom).

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52 Ofcom Final Report, point no. 6.64.

53 Draft Digital Markets, Competition and Consumers Bill, Sections 56 and 57.

54 Ofcom Final Report, point no. 3.90.

Furthermore, OVHcloud considers that the environmental impact of cloud services is bound to become an important parameter of differentiation in the future.

5.5 Cross-use of data between activities remains a risk for competition

There is also a risk for competition connected to the cross-use of data by hyperscalers to strengthen their market power on other activities. OVHcloud trusts that this matter would be addressed as part of the *Digital Markets, Competition and Consumers Bill*. Yet, this parameter would deserve to be explored as part of the CMA's market investigation.

Annexes

[Confidential]