

MICROSOFT CORPORATION'S HIRING OF CERTAIN FORMER EMPLOYEES OF INFLECTION AND ITS ENTRY INTO ASSOCIATED ARRANGEMENTS WITH INFLECTION

Decision on relevant merger situation and substantial lessening of competition

CMA/14/24

ME 7103/24

The Competition and Markets Authority's decision on relevant merger situation and substantial lessening of competition under section 22(1) of the Enterprise Act 2002 given on 4 September 2024. Full text of the decision published on 24 October 2024.

The Competition and Markets Authority (**CMA**) has excluded from this published version of the decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range, which are shown in square brackets.

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SUMMARY

1. OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the transaction described below involving the acquisition by Microsoft Corporation (**Microsoft**) of certain assets of Inflection AI, Inc. (**Inflection**), is a relevant merger situation falling within the merger control jurisdiction of the CMA but that the transaction does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
2. On 19 March 2024, Microsoft announced that it had hired several former Inflection employees, which the CMA understands amounted to almost all of Inflection's team, including two of its co-founders: Mustafa Suleyman and Karén Simonyan. In addition to hiring the core team, Microsoft also entered into a series of arrangements with Inflection including, among others, a non-exclusive licensing deal to utilise Inflection IP in a range of ways. The CMA refers to these various arrangements as the '**Transaction**'.
3. The CMA considers Microsoft to be the '**Acquirer**', and those assets acquired by Microsoft as a result of the Transaction as the '**Target Enterprise**'. Together the Acquirer and Target Enterprise are the '**Parties**'.

Who are the businesses and what products/services do they provide?

4. Microsoft is a global technology company, which as part of its operations, and those of its related entities, is engaged in a range of artificial intelligence (**AI**) related activities, including as a foundation model (**FM**) developer and supplier of downstream AI applications, such as chatbots. Microsoft also has a longstanding partnership with OpenAI. For the purposes of its jurisdictional and substantive analysis set out in this Decision, the CMA has treated OpenAI's products, such as ChatGPT, as also falling within Microsoft's activities. This is on the basis that Microsoft's initial investment in 2019 conferred on it the ability to materially influence OpenAI's policy.¹
5. Prior to the Transaction, the Target Enterprise also developed FMs and its flagship AI powered chatbot Pi, which has been supplied in the UK since May 2023. The Target Enterprise had also commenced an 'AI studio business' for enterprise customers.

¹ The Microsoft/OpenAI partnership is under ongoing investigation by the CMA. The CMA has not reached any view on whether Microsoft's partnership falls within the merger control jurisdiction of the CMA and/or gives rise to competition concerns in the UK.

6. The products that the CMA looked at in detail were:
 - (a) FMs, which are a type of technology trained on vast amounts of data to perform a wide range of tasks; and
 - (b) consumer chatbots, which are built on top of FMs and provide responses in text, speech, image and/or code to user prompts.

Why did the CMA review this merger?

7. Given the overlapping activities of Microsoft and the Target Enterprise outlined above, the CMA sought to understand whether the Transaction falls within the merger control jurisdiction of the CMA and whether it may give rise to competition concerns in the UK through the elimination of the Target Enterprise as a competitive constraint.
8. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so. In this case, the CMA has concluded that the CMA has jurisdiction to review this Transaction because a relevant merger situation has been created. In making the jurisdictional assessment, the CMA has applied the standard legal framework, as set out below.
9. The definition of a relevant merger situation under the Enterprise Act 2002 (the **Act**) covers various kinds of transactions and arrangements, subject to the following three criteria being met: (i) two or more enterprises cease to be distinct, (ii) either the UK turnover test or the share of supply test is met, and (iii) in the case of a completed merger, the reference is made not more than four months from the later of the merger taking place or material facts being notified.
10. In assessing the first criterion, the CMA applied its standard framework for assessing what constitutes an enterprise. An 'enterprise' in this context does not mean a separate legal entity, but rather the activities, or part of the activities of a business. To determine whether an enterprise has ceased to be distinct in this case, the CMA considered whether the assets that Microsoft acquired through the Transaction constitute at least part of the activities of the pre-Transaction Inflection business. An important part of its assessment is whether the relevant combination of assets enable a degree of economic continuity in the activities of the Target Enterprise pre-Transaction.

11. There is no particular combination of assets that constitutes an enterprise. As set out in the CMA's guidance, it may include a group of employees and their know-how where this enables a particular business activity to be continued.²
12. Prior to the Transaction, the objective of the Inflection team was 'creating personal AI for everyone'. Following the Transaction, the vast majority of this team was employed by Microsoft, and with them, Microsoft acquired the team's collective know-how of Inflection's activities pre-Transaction to support and grow Microsoft's AI activities. Given that any technology in this space can quickly become obsolete without ongoing development, the CMA notes the importance of expertise to the development and supply of FMs and chatbots. Based on the evidence seen by the CMA, the team of staff responsible for development is therefore at the core of any business seeking to develop FMs or chatbots. In this context, the CMA considers that acquiring a team with relevant know-how – even without further assets – may fall within the CMA's merger control jurisdiction.
13. In addition to hiring the core former Inflection team, Microsoft also acquired additional assets, including access to Inflection IP. The combination of acquiring the core team together with these assets was key to the value of the Transaction, as it enabled the former Inflection team to continue the pre-Transaction Inflection roadmap for consumer-facing AI product development within Microsoft.
14. On this basis, the CMA believes that Microsoft has substantively acquired Inflection's pre-Transaction FM and chatbot development capabilities. Accordingly, the CMA has found that at least part of the activities of pre-Transaction Inflection has been brought under the control of Microsoft and, as a result, that two enterprises have ceased to be distinct such that the Transaction falls within the CMA's merger control jurisdiction for review.
15. In assessing the second jurisdictional criterion, the CMA considered whether the share of supply test is met on the basis of Microsoft's and the Target Enterprise's overlapping supply of chatbots in the UK and globally. Based on SimilarWeb data for web visits by domain for chatbots in February 2024 in the UK, the CMA considers that Microsoft and the Target Enterprise's share of supply is above 25%, with an increment of [0-5%]. On this basis, the CMA considers that the share of supply test is met.
16. In assessing the third jurisdictional criterion, the CMA notes that its decision has been made before the statutory deadline of 20 September 2024.

² [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2021 (as amended on 25 April 2024), paragraph 4.9.

What evidence has the CMA looked at?

17. In assessing this Transaction, the CMA considered a wide range of evidence in the round.
18. The CMA received several submissions and responses to information requests from Microsoft and Inflection. The CMA examined internal documents provided by each of them, which show the rationale for the Transaction, the activities and future plans of each of Microsoft and the Target Enterprise for their businesses, and how they view their rivals in the ordinary course of business.
19. The CMA spoke to and gathered evidence from other companies and organisations to understand better the competitive landscape and to get their views on the impact of the Transaction. In particular, the CMA received evidence from competing FM developers and chatbot suppliers, and potential customers of the Target Enterprise.

What did the evidence tell the CMA...

...about the effects on competition of the Transaction?

20. The CMA looked at whether the Transaction would lead to a substantial lessening in competition in:
 - (a) the development and supply of consumer chatbots globally; and
 - (b) the development and supply of FMs globally.

Theory of harm 1: horizontal unilateral effects arising from the loss of competition in the development and supply of consumer chatbots

21. As noted above, both Microsoft and the Target Enterprise developed and supplied consumer chatbots pre-Transaction. The CMA considered the impact of the Transaction on this market, including in relation to product development and innovation. An important part of its assessment was the extent to which the Parties were close competitors based not only on the strengths and weaknesses of the Target Enterprises' offering but also its plans and product development pipeline.
22. The CMA found that prior to the Transaction, Inflection had a very small share of UK domain visits for chatbots and conversational AI tools and unlike many of its competitors, had not been able to materially increase or sustain its chatbot user numbers. The evidence shows that despite Pi having broadly comparable general intelligence and accuracy capabilities to many of its competitors at the time of the Transaction and being differentiated by its focus on emotional intelligence (**EQ**), it is not a material competitive constraint on the consumer chatbots that have been developed directly by Microsoft (Copilot), or in partnership with OpenAI

(ChatGPT), or other competitors.¹ These competitors did not regard Inflection's capabilities with regard to EQ or other product innovation as a material competitive constraint. This was consistent with other evidence that showed the Target Enterprise is not an important source of product innovation which may exert material competitive constraint now or in the future, as many of the features it was developing could be readily replicated by competitors to the extent that they became valued by consumers. In addition, the CMA considers that the Target Enterprise would have faced significant challenges in winning customers from its competitors and realising its development ambitions.

23. On this basis, the CMA found that the Transaction does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects arising from the loss of competition in the development and supply of consumer chatbots.

Theory of Harm 2: horizontal unilateral effects arising from the loss of competition in the development and supply of FMs

24. The CMA found that the Target Enterprise's plans for its AI studio business for enterprise customers were in the initial stages and understands that it would have involved the development and supply of an FM (for example by providing access through API or licensing arrangements) which could be fine-tuned to meet the use-case requirements of enterprise customers.
25. The Target Enterprise's development and supply of FMs to enterprise customers was to be largely aligned with its consumer business – leveraging the same underlying FM and FM post-training techniques developed by the former Inflection team, such as fine-tuning for EQ to develop Pi-styled applications for the Inflection FMs. Of the potential customers that engaged with the Inflection FM offering, none identified any features that made it more attractive than other competitors with more established enterprise offerings. Meanwhile, the Target Enterprise's competitors, including those that have built FMs specifically for enterprise use, are actively developing or are capable of innovating their FMs to address the developing needs and preferences of enterprise customers. As such, the CMA found that the Target Enterprise's FM offering would not exert material competitive constraint on Microsoft or other suppliers of FMs to enterprise customers.
26. On this basis, the CMA found that the Transaction does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects arising from a loss of competition in the development and supply of FMs.

What happens next?

27. The Transaction will therefore **not be referred** under section 22(1) of the Act.

ASSESSMENT

2. PARTIES, MERGER AND MERGER RATIONALE

28. Microsoft Corporation (**Microsoft**) is a global technology company founded in 1975 and headquartered in Redmond, Washington, USA. Microsoft is publicly listed on NASDAQ.³ The turnover of Microsoft in 2023 was approximately USD211,915 million worldwide and £[<] million in the UK.
29. Inflection AI, Inc. (**Inflection**) was founded in March 2022 by CEO Mustafa Suleyman, Chief Scientist Karén Simonyan and board member Reid Hoffman, as an 'AI-first consumer products company'.⁴ Inflection's activities included the development of large language models (**LLMs**), and its artificial intelligence (**AI**) chatbot, Pi.⁵ Inflection generated [<] in the UK in 2023.⁶
30. In March 2024, Microsoft entered into a number of agreements with Inflection and persons associated with Inflection.⁷ These included:
- (a) **Offers of employment to [<] Inflection employees by Microsoft.**⁸ⁱⁱ As a result, [<] Inflection employees became Microsoft employees,⁹ including Mr Suleyman who was hired as CEO of Microsoft AI and Mr Simonyan who was hired as Chief Scientist of Microsoft AI¹⁰ (together, the **Relevant Employees**).¹¹
 - (b) **A Non-Exclusive Intellectual Property License**, which in exchange for USD[<], provides Microsoft with a license to Inflection's intellectual property (**IP**) as at the date of the agreement and grants [<].¹²
 - (c) **A Waiver and Release Agreement.** In exchange for USD[<], Inflection and its equity holders agreed to waive any claims against Microsoft with respect to the solicitation and hiring of the Relevant Employees.¹³ Inflection also [<].¹⁴

³ See [Microsoft 2023 Annual Report](#).

⁴ 'A new paradigm in human-machine interaction: Introducing Inflection.ai', Mustafa Suleyman blog post, 8 March 2022 (accessed at [A New Paradigm in Human-Machine Interaction | Greylock](#)).

⁵ See [Inflection-2.5: meet the world's best personal AI](#).

⁶ Inflection Tranche 1 response to the CMA's Request for Information dated 25 April 2024, paragraph 11.1.

⁷ Microsoft's employee offers were made between [<], while the Associated Agreements were executed on [<].

Microsoft's response to the CMA's Enquiry Letter dated 8 April 2024 (**Enquiry Letter response**), paragraphs 10 to 13.

⁸ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 17.

⁹ One offer was made to an individual who was not an employee of, but had an outstanding offer from, Inflection. Enquiry Letter response, footnote 3.

¹⁰ Enquiry Letter response, paragraph 16.

¹¹ Enquiry Letter response, paragraph 16.

¹² Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 14(a).

¹³ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 14(b).

¹⁴ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 14(b).

- (d) A **Line of Credit Agreement**. Microsoft amended its pre-existing Line of Credit to Inflection to remove restrictions on the use of funds [§<], to increase Inflection's available balance by USD[§<].¹⁵
- (e) A **Transition Services Agreement (TSA)**, pursuant to which Microsoft agreed to dedicate a team drawn from the Relevant Employees to provide ad hoc engineering and technical support to Inflection for a transition period [§<].¹⁶

- 31. For the purposes of this Decision, the agreements referred to in paragraphs (b) to (e) above are referred to as the **Associated Agreements**, and the **Transaction** refers to Microsoft's (i) hiring of the Relevant Employees; and (ii) entry into the Associated Agreements.
- 32. Negotiations for the Transaction took place between Microsoft and Inflection [§<] between [§<].¹⁷ The Transaction was publicly announced on 19 March 2024.
- 33. The CMA has treated the Transaction as completed, as it has already taken effect. The CMA considers Microsoft¹⁸ to be the **Acquirer**, and those assets acquired by Microsoft as a result of the Transaction as the **Target Enterprise**. Together the Acquirer and Target Enterprise are the **Parties**. As such, the Relevant Employees, including Mr Suleyman, are now considered to be part of Microsoft, while Inflection post-Transaction is considered as a third party.
- 34. The expected total consideration for the Transaction was USD[§<], including USD[§<] in [§<]¹⁹ and USD[§<] for a line of credit.²⁰

2.1 Reasons for the Transaction

2.1.1 Microsoft

- 35. Microsoft submitted that its strategic rationale for the Transaction was to [§<].²¹ By doing so, Microsoft submitted this would [§<].²² Microsoft submitted that its [§<].²³

¹⁵ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 14(c).

¹⁶ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 14(d).

¹⁷ Enquiry Letter response, paragraph 8.

¹⁸ Including all entities under its common ownership or common control or over which it exerts at least material influence within the meaning of section 26 of the Act.

¹⁹ [§<].

²⁰ Microsoft's Internal Document, MSFT-INFIN-S109-0009688, [§<], 12th March 2024, slide 3.

²¹ Microsoft's letter to CMA dated 15 July 2024, pages 5 and 6; Microsoft's response to the CMA's Request for Information dated 3 June 2024, paragraph 9.

²² Microsoft's letter to CMA dated 15 July 2024, page 6.

²³ Microsoft's response to the CMA's Request for Information dated 3 June 2024, paragraph 8.

Microsoft submitted that Microsoft Copilot [X].²⁴ Microsoft submitted that Microsoft's AI FM development [X].²⁵

36. Microsoft [X], Microsoft had participated in fundraising rounds for Inflection and provided a line of credit to be used for [X].²⁶
37. Microsoft submitted that an outright acquisition of Inflection was not an option, given this would not have given rise to any material synergies.²⁷ Microsoft was not interested in a second AI chatbot, Pi's user base, or an additional trademark, as it had already built and invested in Copilot.²⁸
38. The CMA considers that Microsoft's internal documents support this rationale to an extent.²⁹ Some Microsoft documents, however, indicate some additional motivations, such as for Microsoft:
 - (a) [X],³⁰ and
 - (b) [X].³¹

2.2 [X]

39. [X] submitted that Inflection [X] in continuing to develop its business, including its FMs and Pi. These included [X] Pi and challenges in [X] Pi to the necessary standard to be able to continue competing with leading FMs.³² Further detail is provided at paragraphs 179 to 184.
40. Given these challenges, [X] submitted that the Transaction allowed [X] the former Inflection team to realise their personal ambitions and continue working on consumer-facing AI with the necessary financial resources available within Microsoft, while the remaining Inflection business pivoted towards a B2B (enterprise) business.³³ The Relevant Employees were also to be provided with remuneration offers [X].³⁴

²⁴ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraphs 5 – 7.

²⁵ Microsoft's letter to CMA dated 15 July 2024, pages 5 and 6. Microsoft has also been active in the development of large-scale FMs (see for example, [Turing-NLG: A 17-billion-parameter language model by Microsoft - Microsoft Research](#)).

²⁶ Microsoft's letter to CMA dated 15 July 2024, page 6.

²⁷ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 12.

²⁸ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 12.

²⁹ For example: Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [X], 12 March 2024, slides 3 to 17; Microsoft's Internal Document, MSFT-INFIN-S109-0002502, [X], 19 March 2024, pages 1 to 3; Microsoft's Internal Document, MSFT-INFIN-S109-0006354, [X], 12 March 2024, slides 1 to 7.

³⁰ Microsoft's Internal Document, MSFT-INFIN-S109-0006354, [X], 12 March 2024, slide 3 and 5; Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [X], 1 March 2024, slide 14.

³¹ Microsoft's Internal Document, MSFT-INFIN-S109-0006354, [X], 12 March 2024, slide 3; Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [X], 12 March 2024, slide 3.

³² [X] response to CMA Request for Information dated 2 May 2024, Q1; [X] response to CMA Request for Information dated 30 May 2024, Q5.

³³ [X] to the CMA dated 11 July 2024; Transcript of Inflection event dated 19 March 2024, pages 2 and 3.

³⁴ Transcript of Inflection event dated 19 March 2024, page 3; Enquiry Letter response, paragraph 15.

2.3 Inflection investors

41. [X], submitted that Inflection considered ideas such as a B2B model [X].³⁵ However, Mr Suleyman wanted to [X], following which Inflection decided that the Transaction was the right thing to do, as it enabled Inflection to pivot its focus to developing its [X] B2B AI-studio model.³⁶
42. [X] submitted that the [X].³⁷ In this regard, Microsoft submitted that it wanted to [X].³⁸ⁱⁱⁱ At the time of the Transaction, Mr Suleyman noted that [X].³⁹
43. The CMA considers that the evidence considered throughout its investigation is broadly consistent with the primary rationales identified by the various parties involved in the Transaction in that Microsoft [X] which was aligned to the [X], while the [X] sought to refocus on its enterprise offering.

3. PROCEDURE

44. The CMA's mergers intelligence function identified the Transaction as warranting an investigation.⁴⁰
45. The CMA commenced its phase 1 investigation on 16 July 2024. As part of its phase 1 investigation, the CMA gathered a significant volume of evidence from Microsoft, Mr Suleyman and Inflection. In response to targeted information requests, the CMA received and reviewed internal documents from Microsoft, including Mr Suleyman, and Inflection, to understand whether any competition concerns arose from the Transaction. Mr Suleyman also provided evidence, including in a 'teach-in' to the CMA about Inflection's activities prior to the Transaction as well as the industry and the Transaction. In addition, the CMA held discussions with some of Inflection's investors, to assist with its assessment. The CMA also gathered evidence from other market participants, such as competitors and potential customers. The evidence the CMA has gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.
46. Where appropriate, this evidence has been referred to within this Decision.

³⁵ Note of a call with [X], 21 June 2024.

³⁶ Note of a call with [X], 21 June 2024.

³⁷ Note of a call with [X], 21 June 2024.

³⁸ Microsoft's response to the CMA's Request for Information dated 3 June 2024, paragraph 16.

³⁹ Transcript of Inflection event dated 19 March 2024, page 4.

⁴⁰ [CMA2](#), paragraphs 6.4–6.6.

4. BACKGROUND

47. Pre-Transaction, Microsoft and Inflection were both active in the generative AI market, having developed FMs and deployed user-facing apps such as AI-powered chatbots.
48. FMs are a type of technology trained on vast amounts of data that can be adapted to a wide range of tasks and operations.⁴¹ There are various types of FMs that differ based on their size and capabilities. For example, 'large language models' or LLMs are trained on very large datasets and can be used for a variety of tasks, such as natural language generation, translation and question answering.⁴² There are also 'small' FMs that require fewer resources to develop or deploy and may be most appropriate for specific use cases,⁴³ and multimodal FMs, which can process prompts and outputs of a range of modalities within the one FM (eg text, image, video and audio).⁴⁴
49. The market for FMs is continuing to develop, with a wide range of FMs being developed by a variety of organisations.⁴⁵ FMs are currently seeing large gains in performance at each iteration⁴⁶ and many models are a 'proof of concept'. The first FM which was publicly released was OpenAI's GPT.⁴⁷ Following this, models of increasing size have been released by suppliers such as OpenAI, Google, Meta, Microsoft and NVIDIA.⁴⁸ There is a significant amount of differentiation in the FM offerings of these developers and their competitors, with some offering 'frontier' models, which broadly refers to models which are advancing the state of the art,⁴⁹ while others are designed for more specific purposes.
50. As shown in Figure 1 below, there are four broad levels to the FM supply chain.⁵⁰ Upstream there is AI infrastructure, which includes the key inputs to develop a FM which are compute, expertise and data. The second level of the supply chain involves the development and pre-training of FMs, with the next level being the release of FMs. And finally, at the downstream level there is the deployment of FMs, which may require additional fine-tuning (described below) and the use of FMs in user facing applications, such as chatbots or productivity software.
51. Some FM suppliers are vertically integrated and own relevant FM inputs (eg compute), and carry out their own FM development and FM deployment, while

⁴¹ AI Foundation Models Initial Report, paragraph 2.2.

⁴² AI Foundation Models Initial Report, page 125.

⁴³ AI Foundation Models Technical Update Report, paragraph 2.8.

⁴⁴ AI Foundation Models Technical Update Report, paragraph 2.20.

⁴⁵ AI Foundation Models Initial Report, paragraph 2.33.

⁴⁶ Performance gains seen in FMs include improvements in efficiency of use of compute, accuracy of output, or a reduction in errors and hallucinations (when FMs output content which does not align with real-world knowledge).

⁴⁷ AI Foundation Models Initial Report, paragraph 2.30.

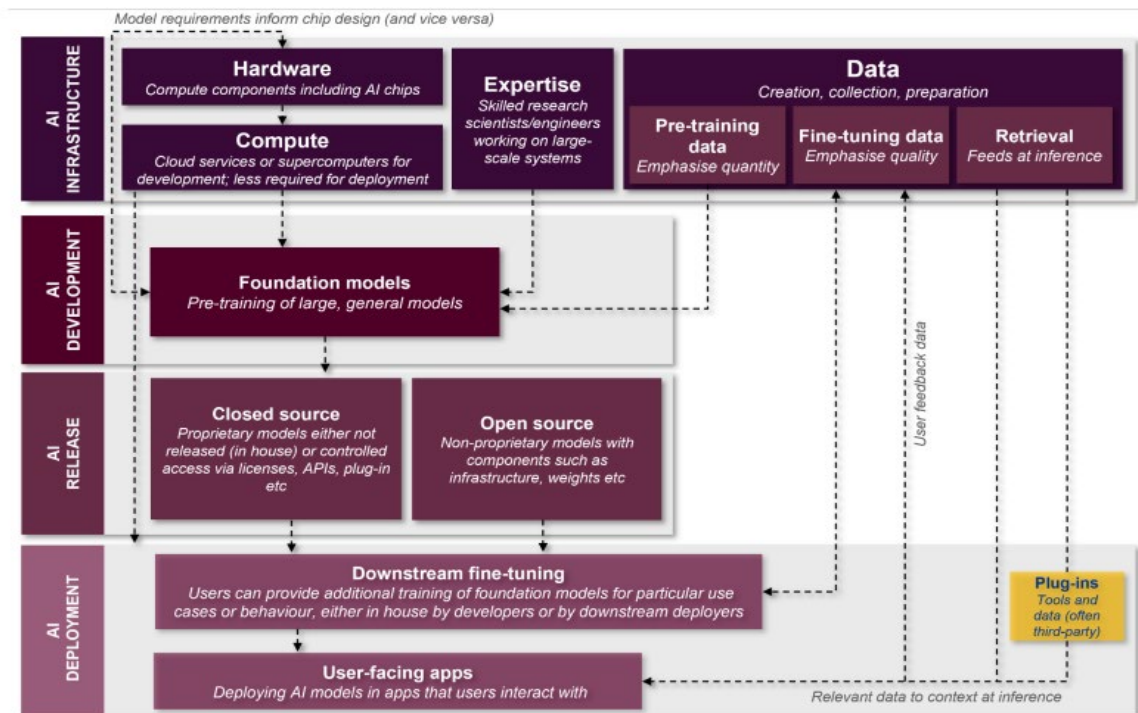
⁴⁸ AI Foundation Models Initial Report, paragraph 2.30.

⁴⁹ Microsoft's response to the CMA's Request for Information dated 5 April 2024 in the Microsoft / OpenAI investigation, paragraph 1.3.

⁵⁰ AI Foundation Models Technical Update Report, page 8.

some FM developers have partnerships or supply relationships with providers of key inputs, such as cloud service providers (**CSPs**).⁵¹

Figure 1: Overview of FM value chain



Source: AI Foundation Models Technical Update Report, Figure 1, page 8.

4.1 FM inputs and development

52. For an FM to be developed, it must be ‘pre-trained’ on data, often using data from publicly available sources such as web crawling or open datasets, although proprietary data can also be used.⁵² Following this, FMs may be ‘fine-tuned’ to add specific capabilities or behaviours using specific datasets.⁵³

53. FMs are generally trained on computer chips called graphical processing units (**GPUs**), a type of accelerator chip.⁵⁴ Compute is also required each time a model does inference,⁵⁵ with the larger the model, the more compute that is required for inferencing.⁵⁶ Compute is one of the most significant costs for FM developers.

54. Expertise is also an important input for FM development, being staff with the necessary know how and skills to develop FMs. There is significant competition

⁵¹ AI Foundation Models Technical Update Report, paragraph 2.49.

⁵² AI Foundation Models Initial Report, paragraph 2.10.

⁵³ AI Foundation Models Initial Report, paragraph 2.12.

⁵⁴ AI Foundation Models Initial Report, paragraph 2.14.

⁵⁵ Inference is the process of a pre-trained AI model making predictions from new input data (text, prompt, images or any other form of data which the model is designed to operate with). This is done by feeding the model new data and then using the model's parameters to generate a prediction. AI Foundation Models Initial Report, page 125.

⁵⁶ AI Foundation Models Initial Report, paragraph 3.35.

between FM developers to attract skilled staff, with competitors offering large remuneration packages to potential employees.⁵⁷

55. As noted in the CMA's AI Foundation Models Technical Update Report, 'FM development so far has been characterised by rapid innovation'.⁵⁸ In this context, there may be an imperative for some firms to attract and retain expertise as its existing products and know-how may otherwise quickly become outdated.

4.2 FM release

56. FMs are generally made available to customers on a spectrum of open- to closed-source.⁵⁹ Open-source models are freely available to third parties and customers, who can use or fine-tune existing models or use the underlying code, architecture and data, for example to replicate the model, while closed-source models are generally developed by companies for use within their own businesses or made available to third-party customers at a cost.⁶⁰ Closed-source models can be fine-tuned by FM developers depending on customer need and/or accessed by FM customers via application programming interfaces (**API**).⁶¹

4.3 FM deployment

57. FMs can be deployed in a myriad of downstream applications. One example includes chatbots, which provide either text, speech, image and/or code responses to user prompts. Chatbots can be used by consumers to ask questions, have a conversation, seek recommendations etc, and can also be used in enterprise applications, for example as customer service assistants or internal back-office assistance.⁶²
58. Other examples of FM deployment include creative industries, such as marketing, where FMs are being used by firms to produce materials, such as visuals,⁶³ or in productivity software, such as Microsoft's trial Copilot virtual assistant in its Office suite, Outlook email, Bing search and Azure cloud services.⁶⁴ FMs are also being used in search (eg Microsoft Copilot has been integrated into Microsoft's search engine, Bing), social media, healthcare, legal, education and other applications.⁶⁵

⁵⁷ AI Foundation Models Technical Update Report, paragraph 2.34.

⁵⁸ AI Foundation Models Technical Update Report, paragraph 5.1.

⁵⁹ AI Foundation Models Initial Report, paragraph 2.20; AI Foundation Models Technical Update Report, paragraph 2.5.

⁶⁰ AI Foundation Models Initial Report, paragraph 2.20. Closed-source software is software whose source code is not made available to the public and cannot be modified or inspected by users. It is often proprietary, meaning that it is owned by a private company and is not subject to the same open licensing terms as open-source software. AI Foundation Models Initial Report, page 123.

⁶¹ AI Foundation Models Initial Report, paragraph 4.9. An API is code that enables communication between two software programs. In this context, it can be used to submit a prompt to the model and receive the model response in return.

⁶² Third Party Competitor questionnaire, question 2.

⁶³ AI Foundation Models Initial Report, paragraph 4.6.

⁶⁴ AI Foundation Models Initial Report, paragraph 4.20.

⁶⁵ AI Foundation Models Initial Report, paragraph 2.37.

59. FM developers are monetising their FMs in different ways. For enterprise customers, many FM developers offer a variety of paid tiers (such as monthly subscriptions or pay as you go) for API access.⁶⁶ For non-enterprise customers, the majority of services, such as some chatbots, are free or available on a subscription basis.⁶⁷ Some competitors are also providing access to FMs as a paid for ‘add on’ to their existing products, such as Microsoft Copilot for Windows Home, Pro or Enterprise users.⁶⁸

4.4 Performance measurement of FMs

60. Many FMs have been trained to have generalised functionalities, the performance of which can be measured using automated benchmarks (see below). However, some FMs and the products they are being deployed in, such as chatbots, are being trained to cater to differentiated use cases, which can be less easy to measure the performance of.
61. Most FMs have been trained to have general ‘intelligent quotient’ or general accuracy and reliability capabilities, being the relative capability to provide factually accurate responses to questions on a range of topics, generate code and data etc. FM developers can evaluate the performance of their FMs across a range of tasks known as ‘industry benchmarks’. There are a broad range of these benchmarks which test a wide variety of desirable criteria from accuracy to truthfulness, such as MMLU,⁶⁹ BIG-Bench,⁷⁰ HELM,⁷¹ and others. The CMA understands that benchmarks are evolving to keep pace with the innovation in FMs.⁷²
62. FMs and their services can also be assessed on other measures, such as how efficiently they use compute, response time (latency),⁷³ safety, user interface (**UI**) and user experience (**UX**).
63. FMs can have ‘emotional quotient’ or ‘**EQ**’ capabilities, which is the relative capability of an FM, particularly in relation to chat functionalities, for emotional intelligence. Chatbots or consumer facing FMs, such as customer service FMs for example,⁷⁴ can be fine-tuned to offer EQ, which enables the FM to engage with

⁶⁶ AI Foundation Models Technical Update Report, paragraphs 2.45 and 2.47.

⁶⁷ AI Foundation Models Technical Update Report, paragraph 2.45.

⁶⁸ AI Foundation Models Technical Update Report, paragraph 2.4.

⁶⁹ MMLU measures multitask performance across 57 tasks including maths, history, law and more. AI Foundation Models Initial Report, paragraph 2.27.

⁷⁰ BIG-Bench consists of 204 tasks, contributed by 450 authors across 132 institutions in topics from linguistics to biology and more. It focuses on tasks that are believed to be beyond the current capabilities of LLMs. AI Foundation Models Initial Report, paragraph 2.27.

⁷¹ HELM is a living collection of benchmarks across many tasks, measures multiple metrics at once (eg. accuracy, robustness, calibration, efficiency) for each task, and tries to standardise by using the same evaluation approach (prompting) across all. AI Foundation Models Initial Report, paragraph 2.27.

⁷² Microsoft’s response to the CMA’s Request for Information dated 25 June 2024, paragraph 19.

⁷³ Microsoft’s response to the CMA’s Request for Information dated 3 June 2024, paragraph 65.

⁷⁴ Third Party Competitor questionnaire, question 5.

users in a more human style. The CMA understands that currently there are no objective criteria for measuring the performance of a FM for EQ.⁷⁵

64. The CMA understands that some FM developers are in the initial stages of developing the ability for FMs to operate as 'AI assistants' and take actions on behalf of users, such as performing specific tasks such as an online purchase, with limited human supervision and guidance.⁷⁶ Given the nascent stage of development of these capabilities, neither the CMA nor third parties have identified any objective criteria to assess these.

4.5 Parties' activities

4.5.1 Microsoft's AI related activities

65. Microsoft is engaged in a range of AI related activities, both in-house and through its partnership with OpenAI (see 66) including:
- (a) as a CSP via Microsoft Azure, a general cloud computing platform, which can be used for FM training and inference;⁷⁷
 - (b) as a FM developer, with a range of models including small and large language models, and more specialised models such as for computer vision;⁷⁸ and
 - (c) deploying FMs in a range of consumer and enterprise applications. In relation to consumer products, Microsoft Copilot (formerly Bing Chat), is an AI-powered search assistant for Bing,⁷⁹ and has been developed to help users with broad tasks, such as generating text and images and answering general questions.⁸⁰ Microsoft Copilot is offered free of charge, [redacted].⁸¹
66. Microsoft has had a long-term partnership with OpenAI since 2019, pursuant to which Microsoft has made multi-billion-dollar investments in OpenAI, has been the exclusive CSP for OpenAI, and deploys OpenAI's FMs across Microsoft's consumer and enterprise products, for example [redacted].^{82iv} The CMA is currently

⁷⁵ Microsoft's response to the CMA's Request for Information dated 25 June 2024, paragraph 21(a); Third Party Competitor questionnaire, questions 5 and 6.

⁷⁶ Microsoft's response to the CMA's Request for Information dated 25 June 2024, paragraph 24.

⁷⁷ Enquiry Letter response, paragraph 53 and 62. Microsoft's Azure services include Azure Machine Learning Studio, a platform for building, training and deploying AI models, which also provides access to a FM catalogue.

⁷⁸ Enquiry Letter response, paragraph 44.

⁷⁹ Microsoft response to the CMA's Request for Information dated 26 January 2024 in the Microsoft / Open AI investigation, paragraph 1.4.

⁸⁰ Enquiry Letter response, paragraph 60.

⁸¹ Microsoft response to the CMA's Request for Information dated 26 January 2024 in the Microsoft / Open AI investigation, paragraph 1.4. Microsoft has recently released a paid subscription for Copilot Pro, which offers additional features such as priority access to GPT-4 and GPT-4 Turbo and integrates Copilot into certain Microsoft 365 apps.⁸¹

⁸² See [Microsoft and OpenAI extend partnership - The Official Microsoft Blog](#); Enquiry Letter response, paragraph 49; Microsoft response to the CMA's Request for Information dated 26 January 2024 in the Microsoft / Open AI investigation, paragraph 1.4.

investigating Microsoft and OpenAI's partnership and the extent of control Microsoft may have over OpenAI.⁸³ For the purposes of this Decision, the CMA has treated Microsoft and OpenAI as having ceased to be distinct enterprises for the purposes of the Act.⁸⁴ This is on the basis that Microsoft's initial investment in 2019 conferred on it the ability to materially influence OpenAI's policy.⁸⁵

67. OpenAI is a developer of several leading LLMs and other specialist FMs as well as downstream activities including its chatbot ChatGPT, first released in November 2022, and other products and services aimed at enterprise customers.

4.5.2 Target Enterprise's activities

68. Pre-Transaction, developing 'personal AI' was the main focus of Inflection's business and engaged most of its staff.⁸⁶ Inflection had developed its own FMs, the most recent version of which was Inflection 2.5, and a consumer AI chatbot Pi, which is based on Inflection's FM.⁸⁷ Pi was released in May 2023 and has been made available to users free of charge.⁸⁸
69. Inflection's objective was to 'create a personal AI for everyone',⁸⁹ and it had designed Pi to be a companion to users, offering conversations, friendly advice and concise information in a natural, flowing style.⁹⁰ Inflection promoted Pi as not just being smart, but having good EQ.⁹¹ Inflection intended Pi to be a teacher, coach, confidante, creative partner and sounding board.⁹² Pi's so called 'IQ' capabilities included the general accuracy described in paragraph 61, coding and mathematics.⁹³ Inflection benchmarked itself against OpenAI when it released Inflection 2.5, revealing that its models performed relatively strongly on a range of industry benchmarks.⁹⁴ [redacted].⁹⁵

⁸³ See [Microsoft / OpenAI partnership merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/microsoft-openai-partnership-merger-inquiry).

⁸⁴ Microsoft has submitted that [redacted]: See [redacted], 7 May 2024 in the Microsoft / Open AI investigation, paragraph 2.11 and [redacted] dated 23 July 2024 in the Microsoft / Open AI investigation, paragraph 28.

⁸⁵ The Microsoft/OpenAI partnership is under ongoing investigation by the CMA. The CMA has not reached any view on whether Microsoft's partnership falls within the merger control jurisdiction of the CMA and/or gives rise to competition concerns in the UK.

⁸⁶ Inflection Tranche 2 response to the CMA's s.109 Notice dated 25 April 2024, paragraph 5.1.1.

⁸⁷ Enquiry Letter response, paragraph 45.

⁸⁸ Enquiry Letter response, paragraph 45.

⁸⁹ See [Inflection-2: The Next Step Up and Inflection-2.5: meet the world's best personal AI](#).

⁹⁰ Enquiry Letter response, paragraph 60; See [Press release: Inflection AI Introduces Pi, Your Personal AI](#).

⁹¹ See [Press release: Inflection AI Introduces Pi, Your Personal AI](#).

⁹² See [Press release: Inflection AI Introduces Pi, Your Personal AI](#).

⁹³ See [Inflection-2.5: meet the world's best personal AI](#).

⁹⁴ See [Inflection-2.5: meet the world's best personal AI](#).

⁹⁵ Inflection's response to the CMA's Request for Information dated 2 July 2024, paragraph 7.1; Inflection's Internal Document, INFL-0000706, [redacted], 7 March 2024, slide 7 and 11; Inflection's Internal Document, INFL-0001571, [redacted], 15 January 2024, pages 2, 7, 8; Inflection's Internal Document, INFL-0005874, [redacted], 11 January 2024, pages 8 and 9; Inflection's Internal Document, INFL-0007044, [redacted], slides 19, 23, 42 and 65; Inflection's Internal Document, INFL-0026337, [redacted], 23 January 2024, slide 87; Inflection's Internal Document, INFL-0050385, [redacted], 28 March 2024, pages 20 to 23.

70. In February 2024, Inflection described its '[X]' contrasting this with the '[X]'.⁹⁶ Despite this focus, Inflection was also at the [X].⁹⁷ [X]⁹⁸ [X].⁹⁹ The Target Enterprise sought to [X].¹⁰⁰ [X].¹⁰¹

4.6 Inflection's activities post-Transaction

71. Immediately following the Transaction, Inflection had [X].¹⁰² The new CEO, Sean White, was appointed on 19 March 2024.¹⁰³ The CMA understands that, as of 30 July 2024, Inflection had [X], which includes its new management team which was announced on 20 May 2024.¹⁰⁴ The new management team has been [X].¹⁰⁵

72. At the same time as the Transaction, Inflection also (i) [X]; (ii) [X]¹⁰⁶ [X];¹⁰⁷ and (iii) [X].¹⁰⁸

73. Following the Transaction, Inflection announced Inflection 2.5 will be made available to third parties via APIs, and licensing partnerships,¹⁰⁹ including on Microsoft Azure.¹¹⁰ Inflection submitted that it [X].¹¹¹ Inflection noted that it may [X].¹¹² Inflection estimated that, [X].¹¹³

74. In relation to Pi, Inflection [X].¹¹⁴ Inflection is [X].¹¹⁵ Inflection estimates that [X].¹¹⁶

75. Inflection's anticipated [X].¹¹⁷ This document also [X].¹¹⁸

76. On 26 August 2024, Inflection announced that it will begin to implement a cap of the message volume for free users of Pi to 'reduce the strain on its GPU

⁹⁶ Inflection's Internal Document, INFL-0000706, [X], 7 March 2024, slides 17 to 18.

⁹⁷ Enquiry Letter response, paragraph 50.

⁹⁸ Inflection's response to the CMA's Request for Information dated 2 May 2024, paragraph 3.2; Inflection's Internal Document, INFL-0000125, 18 January 2024, [X], page 15.

⁹⁹ Inflection's Internal Document, INFL-0000125, 18 January 2024, [X], page 15.

¹⁰⁰ Inflection's Internal Document, INFL-0000125, 18 January 2024, [X], page 16.

¹⁰¹ Inflection's response to the CMA's Request for Information dated 2 May 2024, paragraph 7.4.

¹⁰² Inflection's Tranche 1 response to the CMA's s.109 Notice dated 25 April 2024, paragraph 14.1 and Annex 001. The TSA provided for [X] former Inflection employees to provide transition services for [X] as reasonably necessary to continue operating [X].

¹⁰³ Microsoft's response to the CMA's Request for Information dated 22 March 2024, paragraph 40.

¹⁰⁴ Inflection's response to the CMA's Request for Information dated 25 July 2024; See [Blog \(inflection.ai\)](#).

¹⁰⁵ Note of a call with [X], 21 June 2024.

¹⁰⁶ [X].

¹⁰⁷ [X].

¹⁰⁸ [X].

¹⁰⁹ Enquiry Letter response, paragraph 45. See also [Inflection-2: The Next Step Up](#).

¹¹⁰ Enquiry Letter response, paragraph 53.

¹¹¹ Inflection's response to the CMA's Request for Information dated 30 May 2024, paragraph 12.2.

¹¹² Inflection's response to the CMA's Request for Information dated 2 May 2024, paragraph 4.1.

¹¹³ Inflection's response to the CMA's Request for Information dated 30 May 2024, paragraph 12.3.

¹¹⁴ Inflection's response to the CMA's Request for Information dated 2 May 2024, paragraph 4.2.

¹¹⁵ Inflection's response to the CMA's Request for Information dated 30 May 2024, paragraph 15.1.

¹¹⁶ Inflection's response to the CMA's Request for Information dated 30 May 2024, paragraph 14.1.

¹¹⁷ Inflection's Internal Document, INFL-0046798, [X], 19 April 2024, slides 11 to 25.

¹¹⁸ Inflection's Internal Document, INFL-0046798, [X], 19 April 2024, slides 19 and 25.

resources' while it continues to build out its B2B offering.¹¹⁹ It will also allow Pi users to export their data, which may facilitate migrating Pi conversations to another provider.

5. JURISDICTION

77. Under section 23 of the Act, a relevant merger situation arises when (i) two or more enterprises cease to be distinct, (ii) either the UK turnover test or the share of supply test is met, and (iii) in the case of a completed merger, the reference is made not more than four months from the later of the merger taking place or material facts being notified.¹²⁰

5.1 Enterprises ceasing to be distinct

78. Under section 26 of the Act, two enterprises cease to be distinct if they are brought under common ownership or common control. The CMA is satisfied that Microsoft meets the definition of an enterprise. The CMA considers in this section whether what Microsoft has acquired through the Transaction constitutes an enterprise that has been brought under Microsoft's control.

79. The term 'enterprise' is defined in section 129 of the Act as 'the activities, or part of the activities, of a business'. An 'enterprise' is therefore defined by reference to business activities, as opposed to the legal entities that carry them on.¹²¹

80. In this context, the CMA will have regard to the substance of the transaction under consideration, rather than merely its legal form.¹²² The CMA's assessment is based on the specific facts and circumstances of each case and the industry in question. No single factor will necessarily be determinative, and the CMA's assessment is based on the totality of all relevant considerations.¹²³

81. A collection of 'bare assets' is unlikely to amount to an enterprise. The Supreme Court has stated that the object of distinguishing between 'bare assets' and assets amounting to an 'enterprise' is to prevent the merger control regime from capturing an acquisition of assets which simply serve as factors of production in a new enterprise or as a means of achieving organic growth. It is designed to distinguish a case in which the acquirer acquires a business exploiting a combination of assets and a case where it acquires no more than it might have acquired by going into the market and buying equipment, hiring employees, or acquiring other assets

¹¹⁹ See [The Future of Pi \(inflection.ai\)](#) and [Five months after Microsoft hired its founders, Inflection adds usage caps to Pi | TechCrunch](#).

¹²⁰ See part 4 of CMA2.

¹²¹ CMA2, paragraph 4.6. See also *Société Coopérative de Production SeaFrance SA v The Competition and Markets Authority and another* [2015] UKSC 75, paragraph 33.

¹²² CMA2, paragraph 4.7.

¹²³ CMA2, paragraph 4.10.

separately.¹²⁴ The CMA will also consider whether the combination of components results in a degree of economic continuity in the activities of the business being transferred.¹²⁵

82. The Act does not require that a business (or part thereof) be of any minimum scale or include any particular combination of components in order to constitute an enterprise.¹²⁶ In some cases, the transfer of employees alone may be sufficient to constitute an enterprise: for example, where a group of employees and their know-how enables a particular business activity to be continued.¹²⁷

5.1.1 Microsoft's submissions

83. Microsoft submitted that there are no reasonable grounds to find that, as a result of the arrangements, two or more enterprises have ceased to be distinct under s23(1) of the Act.¹²⁸ Microsoft submitted that the correct jurisdictional analysis for the CMA is to assess the Hiring Arrangements in the round, to see (i) whether 'economically the whole is greater than the sum of its parts' on the way to establishing (ii) whether that 'economic whole' leads objectively to the conclusion that Microsoft has obtained the activities of the relevant 'business' – namely, the AI Studio business of Inflection.¹²⁹

84. More specifically, Microsoft submitted that:

- (a) The former-Inflection assets acquired by Microsoft amount to 'bare assets' or 'factors of production', rather than an enterprise because there is no economic continuity of those activities within Microsoft. The merger regime is not intended to capture factors of production previously employed in another business, if control of the other business has not itself been achieved. In those circumstances, the commercial destiny of that other business is not in the acquirer's hands.¹³⁰
- (b) In this case, certain former-Inflection employees individually chose to resign from Inflection and accept individual employment offers made by Microsoft. This is not equivalent to the situation in which a group of employees are transferred through an agreement by an acquirer and target or TUPE transfer.¹³¹ By itself, the hiring or poaching of Inflection employees on the labour market is an employer availing themselves of so-called factors of

¹²⁴ Société Coopérative de Production SeaFrance SA v CMA and another [2015] UKSC 75, paragraph 39.

¹²⁵ CMA2, paragraph 4.12.

¹²⁶ CMA2, paragraph 4.8.

¹²⁷ CMA2, paragraph 4.9.

¹²⁸ Microsoft's letter to CMA dated 15 July 2024, page 5.

¹²⁹ Microsoft's letter to CMA dated 15 July 2024, page 12.

¹³⁰ Microsoft's letter to CMA dated 15 July 2024, page 13-14.

¹³¹ Microsoft's letter to CMA dated 15 July 2024, page 7.

production; it is an important aspect of a free and competitive labour market and self-evidently not the acquisition of an enterprise.¹³²

- (c) There was no inter-conditionality or threshold acceptance rate between the employment offers and it was not certain how many Inflection employees would ultimately move to Microsoft. Some individuals elected to either stay at Inflection or take up employment in other organisations;¹³³
- (d) Microsoft entered into a non-exclusive licence agreement for Inflection IP to ensure that the former-Inflection employees would be free to use their know-how within Microsoft without the risk of litigation.¹³⁴
- (e) Inflection is a start-up AI studio, active in developing AI products for consumers (B2C) and enterprises (B2B). These activities are inextricably linked – the B2C activities act as a proof of concept for the B2B activities; while the B2B activities provide an essential monetisation route to support ongoing B2C activities.¹³⁵ The Transaction did not enable continuity of the Inflection AI studio business model within Microsoft, [redacted].¹³⁶
- (f) Inflection retains ownership of all Inflection products and IP and has the unfettered ability to commercialise this IP further, including by licensing it to third parties or making other strategic decisions, such as future product development and marketing. Inflection therefore has control of the commercial destiny of its IP.¹³⁷
- (g) The former Inflection employees that are now employed by Microsoft now work exclusively on Microsoft AI projects centred on Copilot [redacted].¹³⁸

85. Microsoft also submitted several annexes to its response that provided further details, including as to why the employees and non-exclusive licence could not in and of themselves amount to an enterprise.¹³⁹

86. Microsoft provided further submissions following Inflection's blog update 'The Future of Pi' on 26 August 2024,¹⁴⁰ (as noted in paragraph 76), concerning Inflection's ongoing operation of Pi and its 'forthcoming enterprise offering'. Microsoft submitted that these developments to the Inflection business further

¹³² Microsoft's letter to CMA dated 15 July 2024, page 12.

¹³³ Microsoft's letter to CMA dated 15 July 2024, page 6.

¹³⁴ Microsoft's letter to CMA dated 15 July 2024, page 13.

¹³⁵ Microsoft's letter to CMA dated 15 July 2024, pages 9-12.

¹³⁶ Microsoft's letter to CMA dated 15 July 2024, pages 12-15.

¹³⁷ Microsoft's letter to CMA dated 15 July 2024, pages 12-15.

¹³⁸ Microsoft's letter to CMA dated 15 July 2024, page 15.

¹³⁹ Microsoft's letter to CMA dated 15 July 2024, Annexes 1, 2 and 3.

¹⁴⁰ See [The Future of Pi \(inflection.ai\)](https://inflection.ai).

evidence that Pi's destiny and its economic continuity has remained with Inflection.¹⁴¹

5.1.2 CMA analysis

87. As noted above, the CMA's assessment of whether a combination of assets amounts to an enterprise depends on the specific facts and circumstances of each case. To determine whether the assets in question in this case enable a degree of economic continuity with the activities or part of the activities of Inflection's pre-Transaction business, the CMA has had regard to the benefit accruing from the combination of assets, ie whether Microsoft has obtained more through the Transaction than it could have done by acquiring assets on the open market, and whether any additional benefit is attributable to the fact that the assets were previously employed in combination in the activities of the Target Enterprise.¹⁴²
88. As part of its assessment, the CMA has sought to identify Inflection's activities prior to the Transaction and the full scope of the Transaction.
89. For the reasons set out below, the CMA believes that Microsoft has substantively acquired Inflection's pre-Transaction FM and chatbot development capabilities. As an important part of its assessment, the CMA believes that Microsoft has obtained the benefit of continuity of at least the activities relating to the development of consumer-facing AI products. The CMA therefore believes that at least part of the activities of pre-Transaction Inflection have been brought under the control of Microsoft and, as a result, that two enterprises have ceased to be distinct.

5.1.2.1 *Inflection's activities prior to the Transaction*

90. Pre-transaction, Inflection was led by CEO Mustafa Suleyman and Chief Scientist Karén Simonyan. The team of [redacted] employees comprised technical staff such as software engineers, product designers and managers, talent acquisition and administrations.¹⁴³ [redacted] described handpicking this team based on their interest and capability in developing consumer AI products.¹⁴⁴
91. The Inflection team's objective was 'creating a personal AI for everyone' through its development of Pi.¹⁴⁵ Inflection's roadmap [redacted].¹⁴⁶ Inflection [redacted],¹⁴⁷ [redacted].
92. Evidence suggests that pre-Transaction Inflection was also in the preliminary stages of developing a B2B offering based on supplying [redacted], as described in

¹⁴¹ Microsoft's email to CMA dated 30 August 2024, 'Microsoft / Inflection – update on Inflection's developments'.

¹⁴² See *Société Coopérative de Production SeaFrance SA v CMA and another* [2015] UKSC 75, paragraph 39.

¹⁴³ Enquiry Letter response, Table 1.

¹⁴⁴ [redacted] to the CMA dated 11 July 2024.

¹⁴⁵ Inflection's Internal Document, [redacted], January 2024, slide 2.

¹⁴⁶ Inflection's Internal Document, INFL-0024536, [redacted]. 28 January 2024, sheet '2024-26'.

¹⁴⁷ Inflection's Internal Document, INFL-0050385, [redacted], 28 March 2024, pages 1 to 154.

paragraph 70. This strategy was complementary to the existing Inflection focus on building personal AI.

93. The Inflection team also sought to optimise the compute infrastructure assets required for its training and fine-tuning objectives within Inflection’s roadmap. In conjunction with the team’s efforts in product development it also worked with NVIDIA and in ‘close collaboration’ with CoreWeave to build and, optimise through tuning, the Inflection AI cluster which it described as ‘one of the largest computing clusters in the world’.¹⁴⁸ The initial cluster commissioned by Inflection, containing NVIDIA Tensor Core GPUs, [REDACTED].¹⁴⁹

5.1.2.2 *The scope of the Transaction*

94. The CMA has sought to identify what assets have been acquired by Microsoft through the Transaction, and whether as a result of this Transaction Microsoft has acquired bare assets or business activities. It has considered the various agreements entered into by Microsoft which gave effect to the Transaction as a whole, described in paragraph 30.

95. Following the Transaction, the vast majority, ie [REDACTED],¹⁵⁰ of Inflection employees took up employment at Microsoft. Notwithstanding the precise numbers, the Transaction resulted in the movement of the core Inflection team to Microsoft with a wide range of roles including [REDACTED], along with other supporting functions.

96. With the employment of the Inflection core team, Microsoft acquired the collective know-how of Inflection’s pre-Transaction activities – which in and of itself may be sufficient to constitute an enterprise.¹⁵¹ The CMA notes the importance of expertise to the development and supply of FMs and chatbots. As stated above at paragraph 55, technology in this space can quickly become obsolete without ongoing development and any existing intellectual property rights are unlikely to retain value for a competitive offering unless the underlying products are developed on an ongoing basis by a team with the expertise to do so. Based on the evidence seen by the CMA, the team of staff responsible for the development of an FM or chatbot is therefore at the core of any business seeking to develop FMs or chatbots.

97. The collective value of the employment offers, [REDACTED].¹⁵²

¹⁴⁸ [Announcing our collaboration with NVIDIA and CoreWeave on MLPerf \(inflection.ai\)](#)

¹⁴⁹ [REDACTED] to the CMA dated 11 July 2024; Microsoft’s response to the CMA’s Request for Information dated 3 June 2024, question 6.

¹⁵⁰ Both figures include one employee that had been recruited by Inflection but had not yet started in their role at Inflection.

¹⁵¹ CMA2, paragraph 4.9.

¹⁵² Microsoft’s Internal Document, MSFT-INFIN-S109-0001508, [REDACTED], ‘12 March 2024, Page 5.

98. In addition to [X], Microsoft acquired access to the following elements that further allow at least Inflection’s pre-Transaction consumer-facing activities to be carried on within Microsoft:
- (a) the entirety of Inflection’s pre-Transaction IP relevant to the development of FMs and chatbots,¹⁵³ by virtue of the Non-Exclusive IP License Agreement between Microsoft and Inflection, for USD[X] in consideration; and
 - (b) [X].¹⁵⁴
99. Microsoft has argued that the Non-Exclusive IP was necessary to enable the former Inflection employees to work on Microsoft projects without risk of IP infringement. The CMA notes, however, that as a result of the Transaction, Microsoft acquired almost all the employees, the know-how and the IP of pre-Transaction Inflection. Following the Transaction, a TSA was required so that former Inflection employees could assist new post-Transaction Inflection employees [X].¹⁵⁵
100. As noted above, the acquisition of the core pre-Transaction Inflection team, with the associated know how of that team, would be sufficient in itself to constitute the acquisition of an enterprise. The acquisition, in addition, of a license to Inflection’s pre-Transaction IP reinforces the CMA’s conclusion that as a result of the Transaction, Microsoft acquired an enterprise. The following section sets out in more detail the connection of these assets to Inflection’s pre-Transaction activities.
101. In addition to acquiring the staff, know-how and IP described above, Microsoft acquired compute clusters [X], the CMA notes that when announcing the Transaction, Mr Suleyman [X], noting that ‘[X]’.¹⁵⁶ On this basis, the CMA considers that Microsoft’s acquired access to the compute clusters should be assessed as part of the overall impact of the Transaction. The CMA notes, however, that as set out above, the acquisition of these compute clusters was not necessary to the CMA’s conclusion that Microsoft acquired an enterprise.

5.1.2.3 *Benefit accruing from the combination of assets*

102. The CMA has considered whether the benefit that accrued to Microsoft from the Transaction exceeded what it would have obtained by acquiring the assets separately on the open market; and if so, whether that additional benefit is attributable to the fact that the relevant assets had been previously employed in the activities of Inflection pre-Transaction. The CMA has assessed whether the acquisition of this combination of assets has resulted in economic continuity

¹⁵³ The IP covered is [X] and includes: [X].

¹⁵⁴ Microsoft’s response to the CMA’s Request for Information dated 3 June 2024, question 6.

¹⁵⁵ Annex 5 – Infinity – [X] (executed 18 March 2024).

¹⁵⁶ Transcript of Inflection event dated 19 March 2024, page 3.

between at least part of the activities carried on by Inflection pre-Transaction and Microsoft post-Transaction.

103. As set out above, the CMA considers that the effective transfer of the large majority of pre-Transaction Inflection's staff, its know-how and a license to its IP to Microsoft is sufficient to find that Microsoft acquired an enterprise. The CMA has also considered whether evidence regarding the Transaction itself, or the activities of Microsoft or Inflection following the Transaction suggest that Microsoft acquired an enterprise.
104. The Microsoft Board's consideration of the Transaction indicate that its value '[redacted]'.¹⁵⁷ In addition, this presentation to Microsoft's board highlighted the importance of providing '[redacted]'¹⁵⁸ and the [redacted]. Similarly, this combination of assets was highlighted by Mr Suleyman during the announcement of the Transaction to Inflection employees when he noted '[redacted]'.¹⁵⁹
105. The Microsoft Board anticipated that the Inflection team would '[redacted]' within Microsoft.¹⁶⁰ This is consistent with other evidence which confirms that while the former Inflection team would be working on Copilot, [redacted]:
- (a) Microsoft Board papers refer to pre-Transaction Inflection's [redacted].¹⁶¹
 - (b) Mr Suleyman's explanation of the Transaction to Inflection staff noted that '[redacted]'. Mr Suleyman outlined the objective was to '[redacted]'.¹⁶² At the same event, Mr Suleyman noted '[redacted]'.¹⁶³
 - (c) Inflection internal documents from days before the Transaction reference this [redacted]¹⁶⁴; while Microsoft internal documents from shortly after the Transaction [redacted]¹⁶⁵ [redacted].¹⁶⁶
 - (d) Similarly, Inflection internal documents from before the Transaction refer to [redacted].¹⁶⁷ The former Inflection team then commenced [redacted].¹⁶⁸
 - (e) At the time of the Transaction, the Inflection team [redacted].¹⁶⁹ [redacted].¹⁷⁰

¹⁵⁷ Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [redacted], 12 March 2024, slide 3.

¹⁵⁸ Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [redacted], 12 March 2024, slide 4.

¹⁵⁹ Transcript of Inflection event dated 19 March 2024, page 3.

¹⁶⁰ Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [redacted], 12 March 2024, slide 13.

¹⁶¹ Microsoft's Internal Document, MSFT-INFIN-S109-0006354, [redacted], 12 March 2024, slide 3.

¹⁶² Transcript of Inflection event dated 19 March 2024, page 7.

¹⁶³ Transcript of Inflection event dated 19 March 2024, page 12.

¹⁶⁴ Inflection's Internal Document, INFL-0021469, [redacted], 20 March 2024, pages 2 to 15.

¹⁶⁵ Microsoft's Internal Document, MSFT-INFIN-S109-0020248, [redacted], 3 April 2024, page 3; Microsoft's Internal Document, MSFT-INFIN-S109-0020214, [redacted], 29 April 2024, sheet [redacted].

¹⁶⁶ Microsoft's Internal Document, MSFT-INFIN-S109-0021676, [redacted], 31 March 2024, page 2.

¹⁶⁷ Microsoft's Internal Document, MSFT-INFIN-S109-0019410, [redacted], 28 April 2024, page 12.

¹⁶⁸ Microsoft's Internal Document, MSFT-INFIN-S109-0021224, [redacted], 9 May 2024, sheet 'sheet1'.

¹⁶⁹ Inflection's Internal Document, INFL-0000234, [redacted], 22 March 2024, sheet [redacted].

¹⁷⁰ Inflection's Internal Document, INFL-0032247, [redacted], 4 April 2024, page 1.

106. The CMA considers that the evidence consistently suggests that the particular combination of assets acquired by Microsoft results in economic continuity of at least part of Inflection's business activities, as the former Inflection team have continued at least the consumer-facing AI activities of Inflection within Microsoft. Had these assets not been acquired from a single source, Microsoft would not have gained the benefit of having a team, with established projects, priorities, shared know-how and ways of working available to immediately transition to the development of Microsoft's products (including the development of EQ capabilities and fine-tuning of FMs).
107. The CMA considers that through the Transaction, Microsoft achieved more than what could have been achieved by organic growth through acquiring assets on the open market. The value of the 'whole' acquired by Microsoft was greater than the sum of its parts, by virtue of the fact that this combination of assets was previously employed in combination in the activities of Inflection.
108. As set out above, the CMA believes that Microsoft has substantively acquired Inflection's pre-Transaction FM and chatbot development capabilities. The CMA believes that Microsoft has obtained the benefit of economic continuity of at least the activities relating to the development of consumer-facing AI products. The CMA therefore believes that at least part of the activities of pre-Transaction Inflection have been brought under the control of Microsoft and, as a result, that two enterprises have ceased to be distinct.

5.1.2.4 *Sequencing of transaction*

109. Microsoft has made submissions about the structure and sequencing of the Transaction, for example, noting that the employment offers to individual employees were not conditional on other Inflection employees also accepting an employment offer from Microsoft. For the reasons set out below, the CMA does not consider that this undermines the finding that Microsoft has acquired an enterprise for the purposes of the Act.
110. This movement of staff from Inflection to Microsoft took place:
 - (a) following a Waiver and Release Agreement entered into by Microsoft, Inflection [redacted], to release Microsoft from any claims for solicitation and hiring of Inflection employees for USD[redacted] in consideration.¹⁷¹ This agreement was a condition precedent for the subsequent employment offers Microsoft made to all Inflection employees and Associated Agreements.

¹⁷¹ Microsoft's Internal Document, MSFT-INFIN-S109-0001503, [redacted], 12 March 2024, slides 7 to 12; Microsoft's Internal Document, MSFT-INFIN-S109-0001508, [redacted], '12 March 2024, pages 3 to 5.

(b) for each Inflection employee, [REDACTED]¹⁷² and the acceptance of an offer of employment from Microsoft.

111. The CMA does not consider that it is determinative whether the employees' contracts with Inflection were transferred through operation of law from Inflection to Microsoft (eg via TUPE or otherwise). In this case, pre-Transaction employment contracts with Inflection were terminated and new contracts entered into with Microsoft. The CMA does not, however, consider that this impacts the economic reality, which is that the core of Inflection's pre-Transaction team moved to Microsoft.
112. The CMA notes that Microsoft's willingness to hire individual employees, even if other Inflection employees did not transfer to Microsoft, is consistent with a competitive market for employees involved in AI, as described in paragraph 54.
113. To achieve the retention of the team, Microsoft and Inflection committed to [REDACTED].¹⁷³ Indeed, following the announcement of the Transaction, [REDACTED].¹⁷⁴
114. The effect of Microsoft's agreements with the employees was that the vast majority of Inflection employees transferred to Microsoft, and that they transferred with arrangements in place that ensured they could continue to use the know how they had developed at Inflection in their new roles at Microsoft.
115. As set out above, the CMA does not consider that the acquisition of compute clusters [REDACTED] was necessary for Microsoft to have acquired an enterprise. Microsoft submitted that its decision to acquire this capacity was motivated by '[REDACTED]'.¹⁷⁵ As also noted above, however, statements made by Mr Suleyman at the time of the Transaction [REDACTED] and the CMA considers that Microsoft's acquired access to the compute clusters should be assessed as part of the overall impact of the Transaction.

5.1.3 CMA conclusion on whether enterprises have ceased to be distinct

116. The CMA therefore believes that each of Microsoft and the Target Enterprise amounts to an enterprise under section 129 of the Act. The CMA believes that those two enterprises have ceased be distinct as a result of the Transaction.

¹⁷² The offers of employment and Associated Agreements are also conditional on [REDACTED].

¹⁷³ Letter of Intent, 1 March 2024, page 3.

¹⁷⁴ Microsoft's Internal Document, MSFT-INFIN-S109-0008159, [REDACTED], '21 March 2024, pages 1-3; Microsoft's Internal Document, MSFT-INFIN-S109-0004773, [REDACTED], 27 March 2024, pages 1 to 3.

¹⁷⁵ Microsoft's response to the CMA Request for Information dated 3 June 2024, question 6.

5.2 Turnover test

117. Inflection [§<].¹⁷⁶ Accordingly, the Transaction does not satisfy the turnover threshold set out in section 23(1)(b) of the Act.

5.3 Share of supply test

118. Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire 25% of more of those goods or services in the UK as a whole or in a substantial part of it.

119. The Act confers on the CMA a broad discretion in both identifying categories of goods or services supplied or acquired by the merger parties and, also, the setting of any criteria used to identify when such goods or services can be treated as goods or services of a separate description.¹⁷⁷

120. The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment; therefore, the group of goods or services to which the jurisdictional test is applied need not amount to a relevant economic market. The description of goods or services to which the jurisdictional test is applied may differ from the relevant economic market used for the purposes of the substantive assessment of the merger.¹⁷⁸

121. The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. Whilst the share of supply used may correspond with a standard recognised by the industry in question, this need not necessarily be the case.¹⁷⁹ In applying the share of supply test, the CMA may, under section 23(8) of the Act, apply such criteria as it considers appropriate to decide whether certain goods or services should be treated as goods or services of a separate description (and therefore not taken into account in assessing whether the share of supply test is met) in any particular case. The same approach applies to whether goods or services are of the same description.¹⁸⁰

5.3.1.1 Microsoft's submissions

122. Microsoft submitted that shares of supply only attach to an enterprise, and no enterprise relating to Inflection has transferred to Microsoft. Microsoft submitted that

¹⁷⁶ Inflection's Response to CMA s.109 Notice dated 25 April, paragraph 11.1; Inflection's Internal Document, INFL-0024536, [§<], 28 January 2024, sheet [§<]; Inflection's Internal Document, INFL-0052245, [§<], 7 April 2024, sheet [§<]; Microsoft Response to CMA s.109 Notice dated 8 April 2024, paragraph 71.

¹⁷⁷ CMA2, paragraph 4.59.

¹⁷⁸ CMA2, paragraph 4.59.

¹⁷⁹ CMA2, paragraph 4.59.

¹⁸⁰ CMA2, paragraph 4.59.

the relevant employees have no attributable share of supply, because they do not own, control, or offer chatbots and that Inflection retains the unrestricted right to develop and license Pi.¹⁸¹ Microsoft further submitted that the non-exclusive IP licence [§]. Microsoft also submitted that none of the associated agreements purported to transfer the Pi service, users or their associated data to Microsoft, nor is there any plan to migrate or transition Pi users to Microsoft.¹⁸² Microsoft submitted that since there is no hypothetical increment in share of supply in chatbots, there is no need to find data to measure it.¹⁸³

123. Having provided data on selective AI-powered chatbots usage shares, collected through a third-party website traffic analysis provider, SimilarWeb, in response to the CMA's request for share of supply data, Microsoft submitted that it has numerous technical limitations. The CMA considers that these submissions relate more to the reliability of the data for calculating market shares within the competitive assessment and are addressed at paragraph 166 166.¹⁸⁴

5.3.2 CMA analysis

124. The CMA believes that Microsoft supplies chatbots through its Copilot product. As noted above the CMA has treated Microsoft and OpenAI as having ceased to be distinct enterprises for the purposes of the Act.¹⁸⁵ The CMA therefore treats OpenAI products as falling within Microsoft's supply of chatbots.
125. The CMA also considers that the enterprise that has ceased to be distinct with Microsoft, ie the Target Enterprise, is active in the supply of the same services as Microsoft. Pre-Transaction, the Target Enterprise carried on these services through the development and supply of Inflection's Pi product. Post-Transaction, the Target Enterprise is carrying on these services through the development of Microsoft's Copilot product.
126. The CMA therefore believes that the enterprises that have ceased to be distinct both supply services of a particular description.
127. While the CMA notes the limitations of the SimilarWeb data, in particular the fact that it is limited to domain visits and does not include, for example, visits through an app or a tail of smaller suppliers, the CMA nevertheless considers that it is a reasonable proxy for the purposes of the share of supply test as it reflects the relative strengths of the chatbots based on user web visits.

¹⁸¹ Microsoft's response to CMA s.109 Notice dated 16 July 2024, page 1.

¹⁸² Microsoft's response to CMA s.109 Notice dated 16 July 2024, page 1.

¹⁸³ Microsoft's response to CMA s.109 Notice dated 16 July 2024, page 1.

¹⁸⁴ Microsoft's response to CMA Request for Information dated 3 June 2024, paragraph 53; Microsoft's response to the CMA's s.109 Notice dated 16 July 2024, paragraph 10(b).

¹⁸⁵ [§], 7 May 2024 in the Microsoft / Open AI investigation, paragraph 2.11.

128. The CMA has a wide discretion to apply whatever measure, or combination of measures, it considers appropriate to calculate the merger parties' share of supply to determine whether the 25% threshold is satisfied.¹⁸⁶ In this case, the CMA considers it appropriate to use web visits by domain for chatbots in February 2024 in the UK as the criterion to assess whether the 25% threshold is met.
129. The CMA considers it appropriate to measure user domain visits immediately preceding the date of the Transaction. The CMA believes that Pi user numbers immediately preceding the Transaction are the best means available to estimate the share of supply of the Target Enterprise. This is because the shares of supply based on Pi performance immediately before the Transaction best demonstrate the relative strength of the enterprise that has ceased to be distinct with Microsoft in the supply of chatbots. As such, the CMA considers it appropriate to consider Microsoft's share of supply as increased by Pi's share of supply immediately preceding the Transaction to reflect the economic reality of what has occurred.
130. The CMA considers that Microsoft's (including OpenAI's) share of supply based on this measure is above 25% and that the Transaction results in an increment. Based on the data provided by Microsoft, its combined share of supply with pre-Transaction Inflection is [60-70%] - the increment of pre-Transaction Inflection is [0-5%].¹⁸⁷ The CMA notes that this dataset captures a selection of AI-powered chatbots supplied in the UK and has done further research to understand the magnitude of the tail not represented. Based on the CMA's assessment, it considers that there is a realistic prospect that the share of supply test is met as the tail would be unlikely to account for more than [\times]% of the total market (ie [\times] times larger than OpenAI's ChatGPT).

5.3.3 Conclusion on share of supply

131. For the reasons set out above, the CMA therefore considers that the share of supply test in section 23(2)(b) of the Act is satisfied.

5.4 Conclusion on jurisdiction

132. The Transaction completed and was made public on 19 March 2024. The four-month deadline for a decision under section 24 of the Act is 20 September 2024, following extensions under sections 25(1) and 25(2) of the Act.¹⁸⁸

¹⁸⁶ Section 23(5) of the Act and CMA2, paragraph 4.66.

¹⁸⁷ See Table 1 below.

¹⁸⁸ The four-month period mentioned in section 24 of the Act was extended by 20 working days by agreement, and was also extended between 9 May 2024 and 12 June 2024 following the Parties' failures to comply, with or without reasonable excuse, with requirements of notice[s] issued by the CMA under section 109 of the Act.

133. On the basis of the evidence set out above, the CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
134. The initial period for consideration of the Transaction under section 34ZA(3) of the Act started on 16 July 2024 and the statutory 40 working day deadline for a decision is therefore 11 September 2024.

6. COUNTERFACTUAL

135. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).¹⁸⁹
136. In completed mergers, the counterfactual may consist of the pre-merger conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the pre-merger conditions of competition.¹⁹⁰ In determining the appropriate counterfactual, the CMA will generally focus on potential changes to the prevailing conditions of competition only where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹⁹¹
137. The CMA's assessment on the counterfactual does not seek to ossify the markets at a particular point in time. An assessment based on the prevailing conditions of competition can reflect that, absent the merger, the position of the merging parties and their competitors would have continued to evolve in the market.¹⁹² The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger,¹⁹³ with the consideration of conditions of competition absent the merger more appropriately considered in the competitive assessment.¹⁹⁴
138. As noted above the CMA has treated Microsoft and OpenAI as having ceased to be distinct enterprises for the purposes of the Act.¹⁹⁵ In addition to the partnership between Microsoft and OpenAI, the CMA is cognisant of the various arrangements and partnerships that are arising throughout the market.¹⁹⁶ As set out in the CMA's guidance, significant changes affecting competition from third parties which would take place irrespective of the merger are unlikely to be assessed in any detail as part of the CMA's counterfactual assessment.¹⁹⁷

¹⁸⁹ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

¹⁹⁰ [CMA129](#), paragraph 3.2.

¹⁹¹ [CMA129](#), paragraph 3.9.

¹⁹² [CMA129](#), paragraph 3.3.

¹⁹³ [CMA129](#), paragraph 3.11.

¹⁹⁴ [CMA129](#), paragraph 3.7.

¹⁹⁵ [§<], 7 May 2024 in the Microsoft / OpenAI investigation, paragraph 2.11.

¹⁹⁶ See Figure 5, [CMA AI Foundation Models Update Paper](#), April 2024, paragraph 43.

¹⁹⁷ [CMA129](#), paragraphs 3.9-3.10.

139. In this case, the CMA has not received submissions (or other evidence) suggesting that the Transaction should be assessed against an alternative counterfactual. Therefore, the CMA believes the pre-Transaction conditions of competition to be the relevant counterfactual.

7. COMPETITIVE ASSESSMENT

7.1 Market definition

140. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.¹⁹⁸
141. Market definition involves identifying the most significant competitive alternatives available to customers of the merger parties and includes the sources of competition to the merger parties that are the immediate determinants of the effects of the merger.¹⁹⁹
142. While market definition can be an important part of the overall merger assessment process, the CMA’s experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger parties’ behaviour, captures the competitive dynamics more fully than formal market definition.²⁰⁰

7.1.1 Product market

143. In cases involving differentiated products, such as this one, there is often no ‘bright line’ that can or should be drawn. Rather, it can be more helpful to describe the constraint posed by different categories of products or suppliers as sitting on a continuum between ‘strong’ and ‘weak’. In that context, the CMA will generally not come to finely balanced judgements on what is ‘inside’ or ‘outside’ the market. In addition, not every firm ‘in’ a market will be equal, and the CMA will assess how closely the transacting parties compete, and the constraint posed by firms ‘outside’ the market will also be carefully considered.²⁰¹

¹⁹⁸ [CMA129](#), paragraph 9.1.

¹⁹⁹ [CMA129](#), paragraph 9.2.

²⁰⁰ [CMA129](#), paragraph 9.2.

²⁰¹ [CMA129](#), paragraph 9.4.

144. Product market definition starts with the relevant overlapping products of the merger firms.²⁰² The relevant product market is identified primarily by reference to demand-side substitution.²⁰³
145. In this case, Microsoft and the Target Enterprise overlap in the development and supply of (i) FMs and (ii) AI-powered chatbots.²⁰⁴ The CMA has considered whether these products should be considered as part of the same product market and whether there is substitutability between consumer- and enterprise-facing products.

7.1.1.1 *Parties' submissions*

146. While Microsoft did not make submissions directly on market definition, it provided an assessment of the overlaps between Microsoft and Inflection with reference to (i) the development of FMs and (ii) consumer AI chatbots.²⁰⁵ Microsoft internal documents also indicate that it considers FMs and chatbots are at different layers of the supply chain [redacted].²⁰⁶
147. [redacted] did not provide submissions on market definition, however [redacted] submitted that [redacted] team recognised a distinction between consumer and enterprise AI products.²⁰⁷ This distinction materialised in the different potential use cases for Inflection's products. [redacted].
148. Microsoft and Inflection internal documents also [redacted].²⁰⁸ This distinction between customer type is apparent in Microsoft's organisational structure, in which 'Microsoft AI' has been established as 'a new organisation focused on advancing Copilot and [Microsoft's] other consumer AI products and research'.²⁰⁹

7.1.1.2 *CMA Assessment*

149. With regard to the distinction between FMs and chatbots, the CMA considers that the evidence indicates that chatbots provided to end users are distinct products from FMs, as chatbots are one of a number of different use-cases of FMs, and serve a different purpose for customers. While FMs are an input into chatbots, they will often require development such as gathering fine-tuning data, fine-tuning

²⁰² [CMA129](#), paragraph 9.6.

²⁰³ [CMA129](#), paragraph 9.7.

²⁰⁴ The CMA recognises that there are various types of chatbots, including rule-based chatbots. The CMA has focused its review on AI-powered chatbots, being the relevant product overlap. The CMA has not received any evidence to suggest that non-AI-powered chatbots should be considered as part of the same product market.

²⁰⁵ Enquiry Letter response paragraph 44 to 52.

²⁰⁶ Microsoft's Internal Document, MSFT-INFIN-S109-0009464, [redacted], 12 March 2024, slide 4; Microsoft's Internal Document, MSFT-INFIN-S109-0006354, [redacted], 12 March 2024, slide 4.

²⁰⁷ [redacted] to the CMA dated 11 July 2024.

²⁰⁸ Microsoft's Internal Document, MSFT-INFIN-S109-0000768, [redacted], 29 March 2024, pages 2 to 7; Inflection's Internal Document, INFL-0005874, [redacted], 11 January 2024, pages 6, 7 and 13; Inflection's Internal Document, INFL-0001571, [redacted], 15 January, page 10.

²⁰⁹ Microsoft's Internal Document, MSFT-INFIN-S109-0002509, [redacted], 19 March 2024, page 1.

the model, introducing safeguards, and refining the model based on human evaluation depending on the use case of the chatbot.²¹⁰ Fine tuning also comprises a significant layer of developing chatbots for Inflection and Microsoft.²¹¹ As such, for many chatbot users – in particular consumers who are unlikely to undertake these additional development steps – FMs are not substitutes for chatbots.

150. With regard to the distinction between customer type:

- (a) As noted above, FMs (without further development) currently have limited consumer use-cases. FMs are predominantly supplied to enterprise customers either through the FM developers or via APIs and developed to suit their business needs.²¹² Having regard to this, and the nature of the overlap between Microsoft and the Target Enterprise (which concerns their respective models targeted at enterprise customers), the CMA has not considered it necessary to conclude whether there are separate product markets for consumer and enterprise FMs.
- (b) In contrast to FMs, the common use cases for chatbots include both consumer and enterprise applications. Having regard primarily to demand-side substitutability, the CMA notes that enterprise chatbots are likely to be made available to third-party customers at a cost (ie not available to consumers outside an organisation). While some users of freely available chatbots may use these for work-related purposes (eg as a productivity tool), the CMA considers this use case to be distinct from chatbots that have been developed to meet the specific business needs of an enterprise.

151. On the basis of the evidence received during its investigation, the CMA has considered separate markets for:

- (a) the development and supply of consumer chatbots, and
- (b) the development and supply of FMs.

152. The CMA notes that the market for FMs and chatbots may evolve further as further use cases become available and products differentiate further to meet the needs of various customer groups. However, the CMA did not have to conclude on the specific product frame of reference in order to conduct its competitive assessment, given no concerns arise on any plausible basis.

²¹⁰ Third Party Competitor questionnaire, question 4.

²¹¹ Inflection's Internal Document, INFL-0028397, [redacted], 8 November 2023, slides 3 to 11; Microsoft's Internal Document, MSFT-INFIN-S109-0001208, [redacted], 22 April 2024, pages 1 to 12.

²¹² Third Party Potential Customer questionnaire, question 3; Note of a call with a third party, June 2024.

7.1.2 Geographic market

153. Microsoft did not directly provide a view on the most appropriate geographic market definition, however it submitted that key competitive variables are flexed at the global level, with multiple competitors operating globally.²¹³ Microsoft makes its AI products and services available on a global basis.²¹⁴
154. Evidence received from competitors was consistent with the view that the geographic market is at least wider than the UK. Some competitors told the CMA that their products were supplied on a global basis.²¹⁵ Other competitors provided a description that included the UK within a generally global offering.²¹⁶ Of those that included the UK in a generally global offering, some competitors stated that their products are not available in areas embargoed by the USA, while others provided lists of countries that excluded those currently sanctioned by the USA.²¹⁷
155. The CMA considers the available evidence indicates the UK does not fall within a separate frame of reference to the rest of the world. On the basis of the evidence received during its investigation, the CMA has considered a global market definition for the product market definitions described above, notwithstanding the fact that the Parties' and their competitors' respective products may at least temporarily not be available in certain countries.
156. However, the CMA did not have to conclude on the specific geographic frames of reference in order to conduct its competitive assessment, given that no concerns arise on any plausible basis.

7.1.3 Conclusion on *market definition*

157. For the reasons set out above, the CMA has considered the impact of the Transaction in:
- (a) the development and supply of consumer chatbots globally; and
 - (b) the development and supply of FMs globally.

7.2 Theories of harm

158. The CMA has assessed the following two theories of harm:

²¹³ Enquiry Letter response, paragraph 63 to 64.

²¹⁴ Enquiry Letter response, paragraph 63 to 64.

²¹⁵ Third Party Competitor questionnaire, question 2.

²¹⁶ Third Party Competitor questionnaire, question 2.

²¹⁷ Third Party Competitor questionnaire, question 2. The CMA notes, that the global market may exclude providers, or activities from USA embargoed countries, where for geopolitical reasons, the competitive dynamics may differ, but the CMA considers the inclusion of these countries does not materially impact the competitive assessment.

- (a) horizontal unilateral effects arising from the loss of competition in the development and supply of consumer chatbots; and
- (b) horizontal unilateral effects arising from a loss of competition in the development and supply of FMs.

159. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering. Non-price aspects of a competitive offering may include quality, range, service and innovation which may be taken into account by the CMA in assessing the impact of a merger and whether it may be expected to give rise to an SLC.²¹⁸ Accordingly, a horizontal unilateral effects theory of harm may relate to both competition on parameters related to current product offerings and in relation to product development and innovation. Horizontal unilateral effects are more likely when the parties to a merger are close competitors.²¹⁹
160. In some sectors, such as the ones relevant in this case, an important aspect of how firms compete involves efforts or investments aimed at protecting or expanding their profits in the future. This includes efforts that may give firms the ability to compete more effectively in areas where they are already active (ie to expand).²²⁰ To the extent that merger parties are developing products that may compete closely in the future, the CMA does not need to show that new, closely competing product developments would have been likely or indeed successful in order to establish an SLC in relation to product development and innovation.²²¹ Uncertainty about the outcome of such dynamic competitive processes does not preclude the CMA from assessing the impact of the merger on that dynamic process.
161. The CMA assessed whether it is or may be the case that the Transaction has resulted, or may be expected to result, in an SLC for each theory of harm. In particular, the CMA has assessed:
- (a) the Parties' submissions;
 - (b) shares of supply;
 - (c) internal documents; and
 - (d) third-party evidence, including evidence from Inflection.

²¹⁸ [CMA129](#), paragraph 4.1.

²¹⁹ [CMA129](#), paragraph 4.8.

²²⁰ [CMA129](#), paragraph 5.17.

²²¹ [CMA129](#), paragraph 5.23.

7.2.1 Theory of Harm 1: horizontal unilateral effects arising from the loss of competition in the development and supply of consumer chatbots

162. For the purposes of theory of harm 1, the CMA's assessment has focussed on the Target Enterprise's business that was developing Pi, and the loss of competition that may result from the Transaction in relation to the development of chatbots.
163. The CMA has considered evidence related to (i) shares of supply, (ii) closeness of competition between the Target Enterprise and Microsoft [§<], as well as the competitive landscape, (iii) the strengths and weaknesses of the Target Enterprise, and (iv) the Target Enterprise's plans and product development pipeline.

7.2.1.1 Microsoft's submissions

7.2.1.1.1 Shares of supply

164. Microsoft submitted that shares of supply for the development of FMs and downstream FM services (such as chatbots) in the UK are not readily available and are extremely difficult to estimate, as data on revenues, usage and the number of users is not systematically tracked.²²² Microsoft submitted that on the basis of Acumen Research on the Generative AI²²³ Software industry, which estimates the total revenue of these services in the UK in 2022 to be USD[§<], Microsoft would have a share of approximately [§<]%, based on its AI-related revenues of USD[§<], which would have increased to [§<]% in 2023.²²⁴ Microsoft submitted it believed that Inflection had not yet monetised its products, and as such did not provide an estimated share for Inflection.²²⁵
165. In relation to the CMA's potential use of SimilarWeb data for total web visits for chatbots, Microsoft submitted that any attempt to use this data to estimate shares of supply would not be accurate or meaningful.²²⁶ Microsoft submitted that most generative AI applications use 'chat' as a user-interface, without being a chatbot, whilst AI assistants cater to several different use-cases, such that shares of supply analysis focussing on an artificial market for chatbots would ignore a broader competitive landscape which FM-powered solutions are seeking to disrupt.²²⁷

²²² Enquiry Letter response, paragraph 68.

²²³ Generative AI refers to AI models and systems which are designed to generate content such as text, images, audio, video or code, for example, in response to user queries or prompts.

²²⁴ Enquiry Letter response, paragraph 69 and 70.

²²⁵ Enquiry Letter response, paragraph 71.

²²⁶ Microsoft's response to CMA Request for Information dated 3 June 2024, paragraphs 47 to 55.

²²⁷ Microsoft's response to CMA Request for Information dated 3 June 2024, paragraphs 48 to 50.

166. Regarding the SimilarWeb data itself, Microsoft submitted that it has numerous technical limitations, as discussed in paragraph 123 above. Microsoft stated that SimilarWeb only tracks web-based domain visits and fails to capture:
- (a) user interactions via the AI chatbot's dedicated mobile application;
 - (b) how users interact with these features when they are integrated into other applications (Copilot for M365, for example);
 - (c) where a chatbot may have multiple domains, SimilarWeb will not be a sensible approximation of usage, as it only tracks chatbots with dedicated domains; and
 - (d) the usage of any chat experiences which are built on top of existing AI assistants.²²⁸
167. Microsoft provided SimilarWeb data requested by the CMA, but submitted that the chatbots for which web visits data was provided were selected on an ad-hoc best-efforts basis to assist the CMA with its enquiry.²²⁹ Whilst those selected best reflected the concept of chatbot /AI conversation tools at the time of original submission, Microsoft submitted they are not an exhaustive list nor are representative of the full spectrum of AI assistant functionality.²³⁰
168. Beyond the technical and methodological limitations of the SimilarWeb data, Microsoft also submitted that static shares of supply, in capturing current conditions, would paint a biased and unrepresentative picture of the competitive pressures felt by active market participants, and that, due to the nascent and rapidly developing nature of the industry, they are a poor indicator of the future.²³¹
169. Whilst noting the limitations of the data, Microsoft submitted that Copilot accounts for approximately [0-5%] of all web visits to chatbots in the UK, whilst Inflection's Pi accounts for less than [0-5%].²³² Microsoft did not address its investment in OpenAI in its submissions regarding its share of supply.

7.2.1.1.2 *Competitive landscape*

170. Microsoft submitted that Pi had a small user base and was far behind not only ChatGPT and Google Gemini, but also Character.ai, Anthropic's Claude and Poe.²³³ Microsoft submitted that Google in particular is well positioned to capture

²²⁸ Microsoft's response to CMA Request for Information dated 3 June 2024, paragraph 53; Microsoft's response to the CMA's s.109 Notice dated 16 July, paragraph 10(b).

²²⁹ Microsoft's response to CMA s.109 Notice dated 16 July 2024, paragraph 9.

²³⁰ Microsoft's response to CMA s.109 Notice dated 16 July 2024, paragraph 10.

²³¹ Microsoft's response to CMA Request for Information dated 3 June 2024, paragraph 51; Microsoft's response to the CMA's s.109 Notice dated 16 July 2024, paragraph 10(e).

²³² Microsoft's response to CMA Request for Information dated 3 June 2024, paragraph 55.

²³³ Enquiry Letter response, paragraph 52.

the consumer AI chatbot space, given its role in search and mobile platform channels.²³⁴ Microsoft submitted that [redacted].²³⁵

171. [redacted] submitted that there are numerous competitors, including [redacted].²³⁶ [redacted] noted that Pi's user numbers [redacted].²³⁷ [redacted] submitted that Inflection had [redacted].²³⁸

172. Microsoft also submitted that the market for FMs (which are the foundation that chatbots are built on) is still in its very early stages and rapidly changing, with FM developers facing ever increasing competitive constraints from new entrants.²³⁹ Microsoft identified several examples of the successful movement of teams with AI expertise between existing players and new start-ups that have gone on to grow into strong competitors and submitted that the 'size of the teams which make these moves is likely to increase in the future as the number of AI researchers and executives continues to grow'.²⁴⁰

173. Microsoft submitted there were similarities and differences between its, OpenAI's and Inflection's products. Microsoft submitted that Pi is differentiated from both Copilot and ChatGPT (among other chatbots) as a result of its EQ.²⁴¹ Microsoft submitted that both Copilot and Pi are general purpose consumer AI chatbots, however Pi is designed to be a companion, offering conversations and advice in a concise and natural style, while Copilot (formerly Bing Chat) is viewed more as a means for users to interface with the content on the web using natural language, [redacted].²⁴² Microsoft submitted that OpenAI's ChatGPT, which is currently the market leading AI chatbot,²⁴³ is designed to hold a conversation with a user [redacted].²⁴⁴

174. [redacted] submitted that [redacted].²⁴⁵

7.2.1.1.3 *Strengths and weaknesses of Inflection's pre-Transaction offering*

175. [redacted] submitted that Inflection's differentiation for Pi was the fine-tuning behind its EQ and conversational style, [redacted].²⁴⁶ [redacted] submitted that Pi was arguably the first conversational chatbot to incorporate both IQ and EQ.²⁴⁷ [redacted] submitted that

²³⁴ Enquiry Letter response, paragraph 52.

²³⁵ Enquiry Letter response, paragraph 49.

²³⁶ [redacted] to the CMA dated 11 July 2024.

²³⁷ [redacted] to the CMA dated 11 July 2024.

²³⁸ [redacted] to the CMA dated 11 July 2024.

²³⁹ Enquiry Letter response, paragraph 72.

²⁴⁰ Microsoft's response to CMA Request for Information dated 2 May 2024, Q4.

²⁴¹ Microsoft's response to CMA Request for Information dated 2 May 2024, paragraph 56.

²⁴² Enquiry Letter response, paragraph 60.

²⁴³ Enquiry Letter response, paragraph 49.

²⁴⁴ Microsoft's response to CMA Request for Information dated 2 May 2024, paragraph 55.

²⁴⁵ [redacted] response to CMA Request for Information dated 2 May 2024, Q1.

²⁴⁶ [redacted] response to CMA Request for Information dated 2 May 2024, Q3(a).

²⁴⁷ [redacted] response to CMA Request for Information dated 2 May 2024, Q3(a).

Inflection had introduced a 'Call Pi' feature, which allowed users to speak to Pi hands free.²⁴⁸

176. [X] submitted that Pi performed well in its EQ function, providing succinct, reflective and supportive answers that were adapted to the user's context, despite struggling with functions such as [X].²⁴⁹ [X] submitted, however, that it [X].²⁵⁰ [X] submitted that over time [X].²⁵¹
177. Microsoft and [X] both outlined the technical performance of Pi and the underlying Inflection 2.5 FM as being comparable to many competitors based on various benchmarks commonly used throughout the industry,²⁵² while having lower training and inferencing costs than some leading competitors.²⁵³
178. Microsoft submitted that [X].²⁵⁴

7.2.1.1.4 *Inflection's plans and product development pipeline*

179. [X] confirmed that pre-Transaction, Inflection's next steps for the fine-tuning of Pi included [X].²⁵⁵ [X].²⁵⁶
180. [X] submitted that Inflection's product development was likely to [X].
181. [X] submitted that [X].²⁵⁷ [X] submitted [X].²⁵⁸ [X] also cited Inflection's focus on EQ as a differentiator [X],²⁵⁹ and Microsoft submitted that subscription channels were unlikely to raise sufficient income to fund Inflection's FM development, which would support its future consumer products, due to Pi's small user base.²⁶⁰
182. [X] submitted that Inflection faced difficulties in [X].²⁶¹ [X] also submitted that Inflection was [X].²⁶²
183. [X] submitted that in order to deal with [X], it decided to [X].²⁶³ [X].²⁶⁴

²⁴⁸ [X] response to CMA Request for Information dated 2 May 2024, Q2(b).

²⁴⁹ [X] to the CMA dated 11 July 2024.

²⁵⁰ [X] to the CMA dated 11 July 2024.

²⁵¹ [X] to the CMA dated 11 July 2024.

²⁵² Microsoft's response to CMA Request for Information dated 3 June 2024, paragraph 46; [X] response to CMA Request for Information dated 2 May 2024, Q5.

²⁵³ [X] response to CMA Request for Information dated 2 May 2024, Q5; Enquiry Letter response, paragraph 45.

²⁵⁴ Microsoft's response to CMA Request for Information dated 2 May 2024, Q5.

²⁵⁵ [X] response to CMA Request for Information dated 30 May 2024, Q5.

²⁵⁶ [X] response to CMA Request for Information dated 30 May 2024, Q5.

²⁵⁷ [X] response to CMA Request for Information dated 2 May 2024, Q1.

²⁵⁸ [X] response to CMA Request for Information dated 2 May 2024, Q1.

²⁵⁹ [X] to the CMA dated 11 July 2024.

²⁶⁰ Enquiry Letter response, paragraph 50.

²⁶¹ [X] response to CMA Request for Information dated 2 May 2024, Q3(b).

²⁶² [X] to the CMA dated 11 July 2024.

²⁶³ [X] response to CMA Request for Information dated 2 May 2024, Q1.

²⁶⁴ [X] response to CMA Request for Information dated 30 May 2024, Q5.

184. [X] submitted that given how highly competitive the market is, [X].²⁶⁵

7.2.1.2 *Competitive assessment*

7.2.1.2.1 *Shares of supply*

185. Shares of supply can be useful evidence when assessing closeness of competition, particularly when there is persuasive evidence as to which potential substitutes should be included or excluded or when the degree of differentiation between firms is more limited. In such circumstances, a firm with a higher share of supply is more likely to be a close competitor to its rivals.²⁶⁶

186. In other cases, such as where the boundaries of the market are not as clear-cut or where there is a high degree of differentiation, the CMA may rely to a greater extent on other sources of evidence. Where products are more differentiated or customer preferences are more diverse, shares of supply may not provide evidence on the closest alternatives available to the merger firms' customers as these may be different from the products that achieve the greatest sales across a wider body of customers.²⁶⁷

187. In the present case, the CMA considers that shares of supply as a static measure are unlikely to fully capture the dynamics of this market in which competitors are constantly developing and launching new products with differentiated features. In this context, the CMA considers that shares of supply evidence has material limitations. Nonetheless, domain visits and active users provide an indication of the current size of Inflection relative to its competitors and how this has changed over time, and supported by other evidence discussed in this decision.

188. The CMA has considered possible means of estimating shares of supply to understand the relative market positions globally and within the UK of different chatbot providers (rather than putting particular weight on the precise figures). To this end, the CMA has considered SimilarWeb UK domain visits data to estimate shares of supply, as well as monthly active users (**MAUs**), however there was insufficient market coverage to estimate shares of supply.

7.2.1.2.2 *Shares based on SimilarWeb data*

189. The CMA obtained UK domain visits data from SimilarWeb via Microsoft, for the period January-May 2024, as a means to estimate shares of supply (see Table 1 below).²⁶⁸ The SimilarWeb data tracks the number of web-based visits made to the relevant domains for each of the 14 selected chatbots which Microsoft included in

²⁶⁵ [X] to the CMA dated 11 July 2024.

²⁶⁶ [CMA129](#), paragraph 4.14.

²⁶⁷ [CMA129](#), paragraph 4.15.

²⁶⁸ Microsoft's response to CMA Request for Information dated 3 June 2024, paragraph 53.

their submission (the methodology for the selection of the 14 chatbots and conversational AI tools is discussed in paragraph 167). The CMA’s share estimates for the supply of chatbots and conversational AI tools in the UK by total UK domain visits are set out in Table 1.

190. The shares of supply in Table 1 show, as of February 2024 (one month pre-Transaction), the Target Enterprise’s Pi accounted for [0-5]% of all UK domain visits for chatbots and conversational AI tools. Pi’s domain visit share is low relative to the market, placing Inflection as the 10th largest chatbot supplier within the subset of 14 suppliers. Microsoft, OpenAI and Inflection’s combined share of supply is [60-70]%.
191. Assessing the month-on-month trend of the SimilarWeb data between January and April 2024, there has been small but insignificant growth in visits and a broadly stable share of total visits amongst the selected chatbots. Meanwhile, the total visits of many of Pi’s competitors showed material growth during this same period.

Table 1: Total visits by domain for selected chatbots and conversational AI tools – UK, January to April 2024

Chatbot Domains	Total Visits in UK in 2024			
	Jan-24 % of Total Visits	Febr-24 % of Total Visits	March-24 % of Total Visits	Apr-24 % of Total Visits
ChatGPT	[60-70]%	[60-70]%	[50-60]%	[50-60]%
Microsoft Copilot	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pi	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Parties combined	[60-70]%	[60-70]%	[60-70]%	[60-70]%
Gemini/Bard	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Character.ai	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Claude	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Perplexity Chat	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Poe	[0-5]%	[0-5]%	[0-5]%	[0-5]%
DeepAI chat	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Janitor AI	[0-5]%	[0-5]%	[0-5]%	[0-5]%
NovelAI	[0-5]%	[0-5]%	[0-5]%	[0-5]%
YouChat	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Grok	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Le Chat	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100.0	100.0	100.0	100.0

Source: CMA analysis of SimilarWeb data

7.2.1.2.3 MAUs data

192. The CMA obtained both UK and global MAUs data for chatbots from Microsoft and Inflection and several third parties to compare the trends. This data was missing some key third parties, so it could not be used to estimate shares of supply.²⁶⁹ However, the MAU data showed [redacted].

²⁶⁹ Microsoft submitted it defined an active user as [redacted]. Microsoft’s response to CMA Request for Information dated 25 June 2024, paragraph 29.

7.2.1.2.4 Conclusion on share of supply

193. The CMA considers that, despite their respective limitations, the two measures of relative market performance set out above show that Inflection makes up a small share of the market and has not been growing over the period relative to other competitors.

7.2.1.3 Internal documents

7.2.1.3.1 Inflection's offering

194. Inflection's internal documents indicate that it considered it [REDACTED]. Internal documents show Inflection considered [REDACTED].²⁷⁰ However, internal documents also show Inflection was aware of [REDACTED].²⁷¹

195. Inflection was focussed on [REDACTED].²⁷² [REDACTED].²⁷³ [REDACTED].²⁷⁴ Internal documents also show that [REDACTED],²⁷⁵ [REDACTED],²⁷⁶ [REDACTED].²⁷⁷

196. Internal documents cite the [REDACTED].²⁷⁸

197. The leadership acumen and experience of Inflection's co-founders is frequently cited in Microsoft's internal documents, with one document [REDACTED].²⁷⁹

198. In relation to the Target Enterprise's plans, [REDACTED]:

(a) [REDACTED].²⁸⁰ [REDACTED].²⁸¹

²⁷⁰ Inflection's Internal Document, INFL-0043207, [REDACTED], 28 September 2022, page 6; Inflection's Internal Document, INFL-0000706, [REDACTED], 7 March 2024, page 9.

²⁷¹ Inflection's Internal Document, INFL-0043207, [REDACTED], 28 September 2022, page 6; Inflection's Internal Document, INFL-0049918, [REDACTED] page 19 & 61.

²⁷² Inflection's Internal Document, INFL-0007744, [REDACTED], 8 December 2023, slide 5; Inflection's Internal Document, INFL-0026681, [REDACTED], 28 September 2023, page 3; Inflection's Internal Document, INFL-0016658, [REDACTED], 31 August 2023, page 4; Inflection's Internal Document, INFL-0005874, [REDACTED], 11 January 2024, page 8; Inflection's Internal Document, INFL-0026393, [REDACTED], 23 January 2024, slide 57.

²⁷³ Inflection's Internal Document, INFL-0026337, [REDACTED], 23 January 2024, slide 57.

²⁷⁴ Inflection's Internal Document, INFL-0026337, [REDACTED], 23 January 2024, slide 57.

²⁷⁵ Inflection's Internal Document, INFL-0001102, [REDACTED], 5 March 2024, page 1; Inflection's Internal Document, INFL-0050385, [REDACTED], 28 March 2024, pages 7, 13 and 20; Inflection's Internal Document, Transcript of Inflection event dated 19 March 2024, page 7; Inflection's Internal Document, INFL-0001102, [REDACTED], 5 March 2024, page 1; Inflection's Internal Document, INFL-0005874, [REDACTED], 11 January 2024, page 8.

²⁷⁶ Inflection's Internal Document, INFL-0001921, [REDACTED], 28 November 2023, page 1.

²⁷⁷ Inflection's Internal Document, INFL-0001921, [REDACTED], 28 November 2023, page 1.

²⁷⁸ Inflection's Internal Document, INFL-0007044, [REDACTED], 1 February 2024, pages 3 and 4.

²⁷⁹ Microsoft's Internal Document, MSFT-INFIN-S109-0002509, [REDACTED], 19 March 2024, page 1.

²⁸⁰ Inflection's Internal Document, INFL-0050385, [REDACTED], 28 March 2024, pages 20-21 ; Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, page 13; Inflection's Internal Document, INFL-0005874, [REDACTED], 11 January 2024, page 9.

²⁸¹ Transcript of Inflection event dated 19 March 2024, page 7; Inflection's Internal Document, INFL-0000706, [REDACTED], 7 March 2024, page 48.

(b) [REDACTED].²⁸²

(c) [REDACTED].²⁸³

7.2.1.3.2 *Inflection's competitor monitoring*

199. The CMA considers that Inflection's internal documents indicate that it monitored a range of competitors, including [REDACTED]. In particular, Inflection's internal documents showed:

(a) At an event held on 19 March 2024 when Mr Suleyman announced the Transaction to the Inflection employees, he commented that Inflection's primary competitors were [REDACTED].²⁸⁴

(b) In Inflection's [REDACTED], Inflection identified [REDACTED]. Inflection considered that [REDACTED].²⁸⁵ [REDACTED].²⁸⁶

(c) One internal document noted that while [REDACTED].²⁸⁷

(d) Inflection also conducted [REDACTED].²⁸⁸

(e) In Inflection's [REDACTED], the main competitors Inflection compared itself to were [REDACTED]. When comparing the level of compute required for future Inflection, it assessed [REDACTED].²⁸⁹

(f) In a document titled [REDACTED], Inflection monitored [REDACTED].²⁹⁰

200. The CMA considers the documents above are relevant to chatbots, given that FM suppliers monitored by Inflection are indicative of rivals' strength of competitive position in the supply of chatbots, as the underlying FM used by chatbots is essential to the quality of chatbot.

7.2.1.3.3 *Microsoft's monitoring of Inflection*

201. Microsoft internal documents indicate it does not appear to consider Inflection to be a significant competitor, as only a small number of Microsoft internal documents refer to Inflection. One document which was prepared in relation to the

²⁸² Inflection's Internal Document, INFL-0050385, [REDACTED], 28 March, page 20; Transcript of Inflection event dated 19 March 2024, page 7; Inflection's Internal Document, INFL-0000706, [REDACTED], 7 March 2024, page 48; Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, pages 6 to 10; Inflection Internal Document, INFL-0005874, [REDACTED], 11 January 2024, page 8.

²⁸³ Inflection's Internal Document, INFL-0001424, 26 February 2024, [REDACTED], slide 33 to 34.

²⁸⁴ Transcript of Inflection event dated 19 March 2024, page 1.

²⁸⁵ Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, slide 14.

²⁸⁶ Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, slide 14.

²⁸⁷ Inflection's Internal Document, INFL-0009554, [REDACTED], 13 April 2023, page 96

²⁸⁸ Inflection's Internal Document, INFL-0001424, [REDACTED], 26 February 2024, slides 53 to 64.

²⁸⁹ Inflection's Internal Document, INFL-0001424, [REDACTED], 26 February 2024, slides 40 to 70

²⁹⁰ Inflection's Internal Document, INFL-0005874, [REDACTED], 11 January 2024, page 6.

Transaction [X].²⁹¹ Another document from July 2022 mentioned that [X],²⁹² however later documents, particularly after the release of Pi and announcements about the capabilities of Inflection's FM [X].

202. [X] internal documents largely mention Inflection alongside other rivals (Adept, Anthropic, Character.ai, Midjourney, Stability).²⁹³ These internal documents do not evidence regular monitoring of Inflection. While there were a limited number of references to Inflection being a potential competitor in Artificial General Intelligence (AGI) from late-2022 to mid-2023, later documents tended to highlight the differences between [X] and Inflection or discuss Inflection's potential cloud arrangements [X].²⁹⁴
203. Based on the documents reviewed by the CMA, [X] internal documents generally refer to [X].²⁹⁵
204. Microsoft's internal documents provide limited examples of it monitoring Inflection, and no evidence that Microsoft [X] was responding to future developments of Inflection, which indicates that Inflection was not exerting a strong constraint.

7.2.1.4 Microsoft's competitor monitoring

205. The CMA considers that Microsoft's internal documents indicate that it regularly monitors a range of other competitors, in contrast to its approach to Inflection. In particular, Microsoft's internal documents regularly refer to benchmarking against and monitoring of [X] (both in relation to chatbots and performance of the underlying FM).²⁹⁶ Other internal documents indicate that additional competitors including [X] are also monitored.²⁹⁷
206. Similarly, [X] internal documents contain regular references to other chatbot suppliers as competitors, most notably [X].

²⁹¹ Microsoft's Internal Document, MSFT-INFIN-S109-0009464, [X], 12 March 2024, slide 4.

²⁹² Microsoft's Internal Document, MSFT-OARFI-S109-0093076, [X], 28 July 2022, page 4.

²⁹³ [X].

²⁹⁴ [X].

²⁹⁵ The CMA notes that a Microsoft document MSFT-INFIN-S109-0004977 [X].

²⁹⁶ See, for example, Microsoft's Internal Document, MSFT-INFIN-S109-0008091, [X], 12 April 2024, page 8 to 16; Microsoft's Internal Document, MSFT-INFIN-S109-0004013, [X], 4 January 2024, page 1; Microsoft's Internal Document, MSFT-INFIN-S109-0019110, [X], 23 April 2024, slide 7; Microsoft's Internal Document, MSFT-INFIN-S109-0008178, [X], 12 March 2024, page 1; Microsoft's Internal Document, MSFT-INFIN-S109-0009464, [X], 12 March 2024, slide 4.

²⁹⁷ Microsoft's Internal Document, MSFT-INFIN-S109-0000671, [X], 8 April 2024, page 3, 4, & 7; Microsoft's Internal Document, MSFT-INFIN-S109-0019110, [X], 24 April 2024, page 11; Microsoft's Internal Document, MSFT-INFIN-S109-0008178, [X], 12 March 2024, page 1 to 2.

7.2.1.5 *Third-party evidence*

7.2.1.5.1 *Inflection's submissions*

7.2.1.5.1.1 *Competitive landscape and position of Inflection*

207. Inflection submitted that there were a broad range of competitors in the supply of FMs and chatbots. Inflection submitted that pre-Transaction, it considered its closest competitors were [X].²⁹⁸
208. Inflection submitted that there were several key similarities between [X], Inflection's models achieved comparable performance with its competitors on many of the common benchmarks for measuring LLM performance, including MMLU and Hellaswag, and Inflection's models have been [X].²⁹⁹ [X] also noted that pre-Transaction Inflection was reaching the standard of [X].³⁰⁰
209. On the other hand [X],³⁰¹ submitted that key differences between Inflection and its competitors were that Inflection's models were trained with the primary objective of developing a personal AI with a high level of emotional intelligence to communicate conversationally with users, [X].³⁰² Inflection submitted that some of these competitors could have EQ capabilities, for instance [X].³⁰³ Inflection's models have also been designed to optimise performance with a lower level of compute needed for training.³⁰⁴
210. [X] noted that while the former Inflection team had a strong reputation, it was not the only group of people with the capability to develop Inflection's products and identified [X] other teams [X] to be as strong.³⁰⁵

7.2.1.5.1.2 *Inflection's plans and product development pipeline*

211. [X] submitted that Inflection had experienced some [X].³⁰⁶ In particular, [X] submitted that Inflection found that [X].³⁰⁷

²⁹⁸ Inflection response to the CMA's Request for Information dated 30 May 2024, paragraph 2.1.

²⁹⁹ Inflection response to the CMA's Request for Information dated 30 May 2024, paragraph 2.1.

³⁰⁰ Note of a call with [X], 21 June 2024.

³⁰¹ [X].

³⁰² Note of a call with [X], 21 June 2024.

³⁰³ Inflection response to the CMA's Request for Information dated 30 May 2024, paragraph 3.1.

³⁰⁴ See [Inflection-2.5: meet the world's best personal AI](#).

³⁰⁵ Note of a call with [X], 21 June 2024.

³⁰⁶ Note of a call with [X], 21 June 2024.

³⁰⁷ Note of a call with [X], 21 June 2024.

212. Inflection submitted that one of the [X].³⁰⁸ In 2024, [X] submitted that Inflection considered it needed to [X].³⁰⁹ [X] submitted that Inflection was also considering [X].³¹⁰

213. [X] submitted that [X].³¹¹ [X] submitted that the product was becoming [X].³¹²

7.2.1.5.2 Competitors

7.2.1.5.2.1 Strength of Inflection

214. The CMA sought evidence from competing FM and chatbot developers and suppliers on the strength of Inflection and Pi pre-Transaction. The CMA asked competitors to provide their views on whether pre-Transaction Inflection was a leading competitor in the development and supply of FMs and/or chatbots. Some competitors submitted that Inflection was just one of many competitors in AI,³¹³ while others did not provide a view on Inflection at all, given they were either unfamiliar with Inflection or had not assessed the competitiveness of Inflection.³¹⁴ Overall, the evidence received from competitors on the strength of Inflection and its capabilities points to Inflection being a peripheral competitor that was not considered by other competitors to have any material competitive strengths.

215. The CMA also asked competitors to comment on the importance of EQ, and how strong Inflection's EQ was at the time of the Transaction. While several competitors were unable to provide assessments in this regard, due to a lack of familiarity with Inflection or EQ, some competitors told the CMA that the relevance of EQ depended on the developer's goals and intended use case and audience.³¹⁵ For example, EQ would be more relevant for consumer facing applications such as customer service, rather than an application that produces data or code.³¹⁶ One competitor submitted that EQ is very important for chatbots, so that they can understand and respond appropriately to users' emotional cues.³¹⁷ On the other hand, multiple competitors told the CMA they were not focussing on EQ in their FM or chatbot development, or that it was one factor among others, such as accuracy, price, speed, safety and security.³¹⁸ One competitor submitted that while

³⁰⁸ Inflection response to the CMA's Request for Information dated 2 May 2024, paragraph 8.3.

³⁰⁹ Note of a call with [X], 21 June 2024.

³¹⁰ Note of a call with [X], 21 June 2024.

³¹¹ Note of a call with [X], 21 June 2024. Inflection's [X]. Inflection response to the CMA's Request for Information dated 2 May 2024, paragraph 8.1.

³¹² Note of a call with [X], 21 June 2024.

³¹³ Third Party Competitor questionnaire, question 7.

³¹⁴ Third Party Competitor questionnaire, question 7. We note that some competitors did not provide a view on Inflection as they were focused on other markets.

³¹⁵ Third Party Competitor questionnaire, question 5.

³¹⁶ Third Party Competitor questionnaire, question 5.

³¹⁷ Third Party Competitor questionnaire, question 5.

³¹⁸ Third Party Competitor questionnaire, question 5.

EQ and personality is a useful characteristic of chatbots, there are other equally or more important differentiators, such as price and speed of response.³¹⁹

216. Competitors provided views on the future role of EQ, with some competitors submitting that EQ will become an increasingly important factor, particularly as chatbots and assistants gain increasing capabilities and improve.³²⁰ One competitor submitted that both EQ and IQ are important and there is a high likelihood they will continue to be so.³²¹ On the other hand, one competitor submitted that the AI industry is at a very early stage and is experiencing different trends at a rapid pace, and as such it is unclear how the importance of EQ will develop over time.³²² Another competitor submitted that the importance of EQ is likely to increase for select use cases requiring higher empathy (eg online therapy), but for other use cases such as chatbots, it will continue to be a marginal differentiator, at best.³²³
217. Almost all competitors did not provide a view on the strength of Inflection's EQ capabilities,³²⁴ partly due to the absence of any way to objectively measure EQ,³²⁵ and partly because some third parties had not evaluated or were not familiar with Inflection.³²⁶ Comments provided on Inflection's EQ capabilities included:
- (a) two competitors submitted that Inflection had promoted EQ as a differentiator but did not comment on whether its offering was particularly strong;³²⁷
 - (b) one competitor submitted that Inflection is one of many players, and that while EQ is important for FMs and chatbots, Inflection is not unique in this respect³²⁸ and
 - (c) another competitor which considered that EQ was particularly important was unfamiliar with Inflection's EQ capabilities.³²⁹
218. In relation to Inflection's other capabilities, such as IQ, the CMA did not receive much feedback. One competitor noted that Inflection's self-reported benchmarking metrics put it close to leading chatbots, but that only a limited set of results were released and that models released since then have shown similar or superior performance.³³⁰

³¹⁹ Third Party Competitor questionnaire, question 5.

³²⁰ Third Party Competitor questionnaire, question 5.

³²¹ Third Party Competitor questionnaire, question 5.

³²² Third Party Competitor questionnaire, question 5.

³²³ Third Party Competitor questionnaire, question 5.

³²⁴ Third Party Competitor questionnaire, question 6.

³²⁵ Third Party Competitor questionnaire, question 6.

³²⁶ Third Party Competitor questionnaire, question 6.

³²⁷ Third Party Competitor questionnaire, question 5; Third Party Competitor questionnaires, question 10.

³²⁸ Third Party Competitor questionnaire, question 5.

³²⁹ Third Party Competitor questionnaire, question 8.

³³⁰ Third Party Competitor questionnaire, question 7.

219. Two competitors submitted that Inflection's key assets/advantages included its talented engineering team and management, being chief scientist Mr Simonyan and CEO Mr Suleyman,³³¹ one of which added its role as an independent player from the large ecosystems.³³²
220. In relation to Inflection's ability to compete strongly in the future, third parties did not provide any evidence on whether Inflection could have made Pi stronger or have become a stronger competitor.

7.2.1.5.2.2 *Competitive landscape*

221. In relation to competitive constraints, some third parties submitted that there is a wide range of innovative competitors in the nascent chatbot market, which they considered dynamic and highly competitive.³³³ The CMA asked competitors to rank the top 10 chatbots available in the UK and provide reasons for the scores. These competitors were prompted to provide rankings for OpenAI, Microsoft, and Inflection. Most third parties did not provide ranking scores which has not made it possible to average rankings, however the competitors most frequently mentioned alongside Microsoft and Inflection in relation to chatbots and or their underlying FMs were OpenAI, Google, Anthropic, Meta and Mistral.³³⁴ One competitor submitted that OpenAI and Google are the main competitors in FM and chatbot development and are likely to improve over time,³³⁵ while another submitted that the leading five competitors were OpenAI, Anthropic, Meta, Mistral and Google.³³⁶
222. Numerous competitors submitted there are several competitors with EQ capabilities and that Inflection is not unique in this respect.³³⁷ One competitor submitted that OpenAI's ChatGPT, Anthropic's Claude, Google's Gemini, Character.ai and others have good EQ in different respects,³³⁸ while another competitor added Mistral AI's Le Chat and Meta's Meta AI to this list.³³⁹ One competitor noted that its chatbot was able to recognise a user's emotional state and respond accordingly, adding that its chatbot's personality is a positive differentiator.³⁴⁰ Some third parties also submitted that they are currently developing agentic capabilities for their products (such as online bookings) [X].³⁴¹

³³¹ Third Party Competitor questionnaire, question 7.

³³² Third Party Competitor questionnaire, question 7.

³³³ Third Party Competitor questionnaire, question 7.

³³⁴ The CMA asked competitors to separately list the top 10 (i) chatbots and (ii) FM developers in the UK, alongside Microsoft and Inflection.

³³⁵ Third Party Competitor questionnaire, question 9.

³³⁶ Third Party Competitor questionnaire, question 9. The CMA understands that Meta's Meta AI is not currently available in the UK, but given that many competitors are based in the US it was mentioned as a competitor on a global basis.

³³⁷ Third Party Competitor questionnaire, question 8.

³³⁸ Third Party Competitor questionnaire, question 8.

³³⁹ Third Party Competitor questionnaire, question 8.

³⁴⁰ Third Party Competitor questionnaire, question 5.

³⁴¹ Third Party Competitor questionnaire, question 3; Third Party Competitor questionnaire, question 2.

7.2.1.6 Conclusion on Theory of Harm 1

223. Based on the available evidence, the CMA considers that Inflection was not a close competitor to Microsoft and was unlikely to become one in the future.
224. Inflection had a very small share of chatbot visits prior to the Transaction. While it was the 10th largest of the chatbots the CMA assessed, it was substantially smaller even than the 9th largest chatbot, and its share had not been increasing. As noted in paragraph 191192193, Inflection had achieved limited growth in Pi user numbers in 2024 and had been unable to win market share from its competitors, while many other competitors showed material growth over this period.
225. The evidence shows that Inflection considered its EQ capabilities to be a competitive differentiator and invested significantly in those capabilities. In addition, Inflection considered that it had a leading position in EQ. Evidence from Microsoft [redacted] internal documents, and from other industry participants, however, did not suggest that Inflection's EQ abilities were providing a material constraint on other competitors. Evidence from competitors demonstrated that most competitors were not closely familiar with Inflection's overall offering, and competitors generally suggested there was limited value in developing EQ in the form that the Target Enterprise had pursued.
226. There is evidence from [redacted] Microsoft's internal documents, competitors and [redacted] that indicates that Inflection had an advantage given its talented engineering team and management, particularly Mr Suleyman and Mr Simonyan.
227. While Inflection had a talented team and had plans for the future development of its business, [redacted] other competitors have begun to commercialise assistant functionality.³⁴²
228. In making its assessment, the CMA has considered the evidence outlining Inflection's ambitions but has also found compelling evidence of the challenges of realising those ambitions in practice. The CMA has considered whether notwithstanding Inflection's current small size it could have developed to provide a more significant competitive constraint in future. The CMA considers that the weight of evidence suggests that Inflection did not have any strong innovation capabilities compared to its competitors and it would be likely to continue to encounter challenges in this regard and, therefore, was unlikely [redacted] constraint on Microsoft.
229. The CMA's assessment of internal documents suggests that [redacted] likely exerted an asymmetric constraint on Inflection pre-Transaction, which appears reasonable

³⁴² The CMA notes this is in contrast to some competitors, such as Google, which announced on 13 August 2024 that it has developed a 'Gemini assistant' for users of Android and iOS mobile phones. See [Gemini AI: Updates to Android and Pixel at Made by Google 2024 \(blog.google\)](#).

given that [X] was widely recognised as a [X] competitor throughout the CMA's investigation. While [X] was a constraint on Inflection, the evidence also shows the Inflection faced constraints from a range of other competitors, including Google, Anthropic, Character.ai, and Mistral.

230. Despite some similarity between Microsoft and the Target Enterprise's product offerings, the internal documents of Microsoft [X] provide no evidence that [X] engaged in significant monitoring of Inflection pre-Transaction or were reacting to Inflection's innovation capabilities.
231. Accordingly, the CMA found that the Transaction does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects arising from the loss of competition in the development and supply of consumer chatbots.

7.2.2 Theory of Harm 2: horizontal unilateral effects arising from the loss of competition in the development and supply of FMs

232. As noted in paragraph 24, pre-Transaction the Target Enterprise was in the initial stages of launching an AI studio for enterprise customers. The CMA understands that the core Inflection B2B offering, in whatever form it would have ultimately been supplied, involved the development and supply of an FM (for example by providing access through API or licensing arrangements) fine-tuned to meet the use-case requirements of enterprise customers. Accordingly, while, as discussed below, there are various descriptions of the precise nature of pre-Transaction Inflection's enterprise offering, for the purpose of theory of harm 2, the CMA has assessed the Target Enterprise's development and supply of its FMs fine-tuned to meet the needs of the enterprise customer.
233. Given that the underlying technology for the Inflection B2B offering was largely aligned with the development of Pi – in that Pi would be built on Inflection's FMs and would utilise the FM fine-tuning techniques developed by the former Inflection team – much of the CMA's assessment of the strength of the Target Enterprise's consumer chatbot offering under theory of harm 1 is relevant to the assessment of the Target Enterprise's B2B offering. In particular, the CMA has had regard to the strength of the Target Enterprise's FMs and its ability to fine-tune the FM to generate, among other characteristics, strong EQ and/or personalities.

7.2.2.1 Parties' submissions

234. Microsoft submitted that [X] employ generative AI in enterprise software, including applications within Microsoft's existing enterprise product range, [X].³⁴³ [X].³⁴⁴

³⁴³ Microsoft's response to CMA Request for Information dated 2 May 2024, Q1(c).

³⁴⁴ Microsoft's response to CMA Request for Information dated 2 May 2024, Q3.

235. [REDACTED] submitted that when it was founded, Inflection's [REDACTED].³⁴⁵ [REDACTED].³⁴⁶ [REDACTED] also noted that [REDACTED].³⁴⁷ [REDACTED] confirmed that [REDACTED] paragraph 241).³⁴⁸
236. However, notwithstanding the evidence above regarding the primacy of Inflection's personal AI objective, [REDACTED] also submitted the [REDACTED].³⁴⁹
237. [REDACTED] submitted that prior to the Transaction, the Target Enterprise had [REDACTED],³⁵⁰ though in separate submissions described [REDACTED].³⁵¹ [REDACTED].
238. [REDACTED] submitted Inflection's engagement [REDACTED].³⁵² [REDACTED] submitted that [REDACTED].³⁵³

7.2.2.2 Internal documents

239. Microsoft [REDACTED] have well-established enterprise offerings with a significant volume of internal documents dedicated to [REDACTED] Microsoft's [REDACTED] internal documents suggest that Inflection was viewed as a close or credible competitor in the supply of FMs to enterprise customers. Despite Inflection having announced its intended expansion through its website offering a waitlist for a 'B2B conversational API', there is no indication from the internal documents that [REDACTED] Microsoft [REDACTED] were responding to this, either through the marketing or innovation of [REDACTED] offerings. Whereas competitors such as [REDACTED] are routinely monitored throughout Microsoft [REDACTED] internal documents in the context of the supply of FMs to enterprise customers, Inflection is not.³⁵⁴
240. Inflection's internal documents show that its focus was on [REDACTED]. However, the CMA did see references in a handful of pre-Transaction internal documents from 2024 to [REDACTED].³⁵⁵ Inflection's internal documents do not evidence extensive consideration of [REDACTED]:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED]; and

³⁴⁵ [REDACTED] response to CMA Request for Information dated 2 May 2024, Q1.

³⁴⁶ [REDACTED] response to CMA Request for Information dated 2 May 2024, Q1.

³⁴⁷ [REDACTED] response to CMA Request for Information dated 2 May 2024, Q2(b)(ii).

³⁴⁸ [REDACTED] response to CMA Request for Information dated 2 May 2024, Q2(b)(ii) and (c).

³⁴⁹ [REDACTED] response to CMA Request for Information dated 2 May 2024, Q1.

³⁵⁰ [REDACTED] response to CMA Request for Information dated 2 May 2024, Q2(b)(ii).

³⁵¹ [REDACTED] response to CMA Request for Information dated 30 May 2024, Q1.

³⁵² [REDACTED] response to CMA Request for Information dated 30 May 2024, Q1.

³⁵³ [REDACTED] response to CMA Request for Information dated 30 May 2024, Q1.

³⁵⁴ See documents referenced at footnotes 296 and 297, as well as [REDACTED] and [REDACTED].

³⁵⁵ Inflection's Internal Document, INFL-0018259, [REDACTED], 1 February 2024, slide 29; [REDACTED] - March 13, 2024.pdf, slide 11; Inflection's Internal Document, INFL-0001424, [REDACTED], 26 February, slides 111 and 113; Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, page 10; Inflection's Internal Document, INFL-0048677, [REDACTED], 8 March 2024, pages 20 and 21.

(d) [REDACTED].³⁵⁶

241. While one of these documents [REDACTED]³⁵⁷ another noted that [REDACTED].³⁵⁸ In an [REDACTED].³⁵⁹ Overall, the CMA saw very few internal documents discussing Inflection's plans for an enterprise offering pre-Transaction; and those that did contemplated an offering that was secondary to, and in support of, its personal AI objectives.

242. In a post-Transaction Inflection internal document, [REDACTED].³⁶⁰

7.2.2.3 *Third party evidence*

7.2.2.3.1 *Inflection submissions*

243. Inflection submitted it had [REDACTED].³⁶¹ Inflection submitted that the Target Enterprise's engagement [REDACTED], though the Inflection website also passively invited leads.³⁶² Inflection described [REDACTED].³⁶³

244. Inflection submitted that, at the time the Transaction was agreed, [REDACTED].³⁶⁴

245. Inflection noted that it considered the closest competitors to the Target Enterprise for enterprise customers would have been [REDACTED].³⁶⁵

7.2.2.3.2 *Other third-party evidence*

246. Prior to the Transaction, Inflection had engaged in discussions [REDACTED]. The CMA contacted [REDACTED] potential customers to understand their views on Inflection's offering.

247. Due to the nascent state of Inflection's offering, the evidence from potential customers on the strength of its FM offering was limited. One potential customer told the CMA that it had considered testing Inflection, however Inflection's offering was seen to add [REDACTED] to its current providers, [REDACTED], and overall was seen to be [REDACTED] rivals continued to develop at a faster pace.³⁶⁶ This third party also submitted that competitors such as OpenAI, Anthropic, Meta and Google are able to provide comparable qualities, such as personality, to Inflection's products.³⁶⁷ When asked

³⁵⁶ Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, pages 10 and 11.

³⁵⁷ Inflection's Internal Document, [REDACTED], 13 March 2024, slide 9.

³⁵⁸ Inflection's Internal Document, INFL-0001571, [REDACTED], 15 January 2024, page 11.

³⁵⁹ Inflection's Internal Document, INFL-0005874, [REDACTED], page 13.

³⁶⁰ Inflection's Internal Document, INFL-0046798, [REDACTED], 19th April 2024, slide 18.

³⁶¹ Inflection Tranche 1 response to the CMA's s.109 Notice dated 24 April 2024, paragraph 7.2.1.

³⁶² Inflection Tranche 1 response to the CMA's s.109 Notice dated 24 April 2024, paragraph 7.2.1.

³⁶³ Inflection Tranche 1 response to the CMA's s.109 Notice dated 24 April 2024, paragraph 7.2.1.

³⁶⁴ Inflection response to the CMA's Request for Information dated 30 May 2024, paragraph 1.1.

³⁶⁵ Inflection response to the CMA's Request for Information dated 2 May 2024, paragraph 2.1.

³⁶⁶ Note of a call with a third party.

³⁶⁷ Note of a call with a third party.

to rank the strongest 10 FM developers in the UK, this potential customer ranked Inflection as less strong than [redacted].³⁶⁸

248. Another potential customer did not identify anything about Inflection that made it stand out against its competitors.³⁶⁹
249. The CMA has also considered the extent to which Inflection's offering in the supply of chatbots would translate to an advantage when offering enterprise customers FM products – specifically whether Pi had any characteristics that would make it a stronger constraint when used in an enterprise context. The CMA considers the available evidence (see paragraphs 164 to 222) provided no indication Inflection was a strong competitor pre-Transaction or would be a strong competitor [redacted].

7.2.2.4 Theory of Harm 2 conclusion

250. Based on the available evidence, the CMA does not consider that Inflection was [redacted] a strong constraint in the development and supply of FMs.
251. The evidence indicates that the Target Enterprise had taken some preliminary steps to expand its offering into B2B, [redacted]. The Target Enterprise had some engagement [redacted]. The Target Enterprise considered that [redacted] capitalise on Pi's EQ capabilities, in which it had considered itself a market leader, as discussed in theory of harm 1. Some third parties submitted that EQ may be more important for customer service, and as such products with these capabilities, such as Inflection's planned Pi-style offering to enterprises, could have become more attractive to potential customers.
252. However, the CMA considers that there is significant evidence which suggests that Inflection did not have a strong offering and was not a meaningful competitive constraint. In particular, as discussed in theory of harm 1, Inflection's EQ capabilities, which are derived from the fine-tuning of its model, had [redacted]. Potential customers noted that Inflection's offering did not stand out and did not offer any features that could not be provided by a competitor with a more established enterprise offering. This suggests that, as with consumer chatbots, Inflection [redacted] unlikely to exert a material competitive constraint in the supply of FMs to enterprises.
253. Inflection, unlike some of its largest competitors, had developed its underlying FM and product offering around its personal AI objective. Evidence from [redacted].
254. The CMA has considered whether despite the fact that the Target Enterprise's AI studio business was in its initial stages, it could have imposed a meaningful constraint through its ability to innovate. As such, the CMA has had particular

³⁶⁸ Third Party Potential Customer questionnaire, question 5.

³⁶⁹ Third Party Potential Customer questionnaire, question 4.

regard to evidence which would have demonstrated that Inflection had particular capabilities that would enable it to at least maintain, if not exceed, the pace with which its competitors are innovating to address the developing needs and preferences of enterprise customers. The CMA considers that the majority of evidence suggests that Inflection [X] encounter challenges in this regard, with a number of competitors actively developing, or are capable of developing similar features, and so [X] a stronger competitive constraint [X].

255. As such, the CMA found that the Transaction does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects arising from a loss of competition in the development and supply of FMs.

8. ENTRY AND EXPANSION

256. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. The CMA will consider entry and/or expansion plans of rivals who do so in direct response to the merger as a countervailing measure that could prevent an SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³⁷⁰
257. As the CMA has concluded that the merger does not give rise to competition concerns, it is not necessary to consider countervailing factors in this decision.

³⁷⁰ [CMA129](#), paragraph 8.31.

DECISION

258. Consequently, the CMA does not believe that it is or may be the case that the Transaction has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
259. The Transaction will therefore not be referred under section 22(1) of the Act.

Joel Bamford
Executive Director, Mergers
Competition and Markets Authority
4 September 2024

ⁱ This sentence should read '*...it is not a material competitive constraint on the consumer chatbots that have been developed directly by Microsoft (Copilot), by its partner OpenAI (ChatGPT), or other competitors.*'

ⁱⁱ This sentence should read '*Offers of employment to [X] Inflection employees by Microsoft.*'

ⁱⁱⁱ This sentence should read '*In this regard, Microsoft submitted that Mr Suleyman wanted to [X].*'

^{iv} This sentence should read '*... has, in the past, been the exclusive CSP for OpenAI...*'