RESPONSE TO PROVISIONAL REPORT

CCIA response to public cloud infrastructure services market investigation provisional decision report

Background

The Computer & Communications Industry Association (CCIA) is a not for profit international tech trade association, which has multiple members competing vigorously in the cloud sector. Those members have diverse views on the issues raised in the Cloud Services Market Investigation provisional report.

CCIA has provided earlier submissions responding to this market investigation, including submissions regarding:

- The issues statement and the market overall.
- Licensing practices and potential remedies.
- Technical barriers, standardisation and interoperability.

We believe those submissions still have value and we hope to engage further with other issues raised in the provisional report, but, at this stage and given the timeline, it seemed most helpful to focus on the principal recommendation of that report: should the CMA use its new digital markets powers and prioritise SMS designation investigations for AWS and Microsoft cloud services?

Cloud services designation

Our view is that for cloud services this is inappropriate given the nature of the findings; the risks given dynamics in the cloud services sector generally and in the nascent AI space in particular; and the potential for specific action.

Nature of the findings

A concern raised in Parliament during the passage of the DMCC was that a very broad range of services included a digital component and might become subject to the new competition policy framework over time. To some extent a new legislative framework responds to a sense that the nature of competition concerns has changed with technological progress and it is important to ask whether cloud services have the characteristics for which the DMCC was intended and is appropriate.

Many of the concerns that are purported to be distinctive in digital services (e.g. network effects in multi-sided markets) are not material in the cloud services market itself. The findings regarding the cloud market directly do not speak to such a distinctive competition concern. The alleged barriers to entry identified are conventional, including:

- Capital investment required and associated economies of scale of a sort that could apply to any business that makes material investments in fixed capital. The need for these kinds of investments also naturally raises a risk around creating prolonged uncertainty with firm-specific ex ante regimes, discussed later.
- Broad product portfolios, of a sort that are a commonplace consideration in all kinds of enterprise markets. Indeed, this kind of competition is so commonplace that the "Gartner Magic Quadrant" used in enterprise markets compares providers based on their ability to execute and completeness of vision, i.e. broadness of product portfolio.
- Obstacles for challengers in public procurement are a broadly-held concern and, as the provisional report rightly notes, the UK government should continue to monitor whether the public sector market is embracing innovative services and new providers to the extent it should.

Microsoft and AWS and Amazon more broadly are obviously businesses with heritage as successful businesses in the digital economy. However, this legacy should not in itself make services provided by those companies priorities for the distinctive regime created by the DMCC. This does not necessarily invalidate specific concerns, but the cloud sector does not seem a good fit for the DMCC in principle.

Risks given dynamics in the cloud and adjacent AI market

There are two imperatives relating to this sector to support both wider public policy goals (innovation and growth) and ongoing competition:

- Investment in digital infrastructure. The wider need for this has recently been recognised with digital infrastructure proposed to be included in the National Planning Policy Framework, for example. It is also pro-competitive as a means for Microsoft, AWS, Google and data centre providers, among others, to compete and improve their services. AWS announced plans to invest €8bn in the UK last year and recent reports of €109bn in planned AI investment in France illustrates the scale of the investment expected in which cloud providers are expected to play an important part.
- Innovation in AI. This has been identified by the Government as a priority with its AI Opportunities Action Plan, for example, and this will depend both on general improvements in UK digital infrastructure but also specific, risky investments to support AI markets.

SMS designation would mean a firm-specific ex ante regime which is by design subject to change over time. This creates significant uncertainty for regulated entities from the announcement of an SMS investigation.

If this takes place based on concerns about the level of profitability as an indicator for whether competition is effective, cloud service providers will have to account for the potential that regulation will be intended to confiscate the returns on risky investments. The CMA's approach to assessing profitability will generally struggle to distinguish between final profits on investments that have succeeded; and expected profits on risky investments that could fail.

The provisional report does not show specific harms for which SMS designation would be proportionate. That means there is limited upside to compensate for uncertainty that would diminish the case for investment in UK digital infrastructure. That obstacle to investment would in turn undermine the sophistication of the UK's digital infrastructure relative to its peers and the Government's aspirations to raise economic growth.

Alternative approach

A better approach would be either to take action on the specific issues identified in the report (e.g. software licensing) within the scope of the market investigation and/or to focus on the adjacent markets (e.g. legacy enterprise software) that seem to motivate many of the provisional report's concerns.

CCIA's earlier submission on restrictive software licensing covered practical changes including both principles that could be expected of the market and more specific regulatory interventions to address concerns described in the provisional report. Adopting these as part of the market investigation process would mean greater clarity for Microsoft and its commercial stakeholders, with remedies not delayed potentially until Summer 2026 or further.

The provisional report also includes a finding that Microsoft has significant market power in relation to each of Windows Server, SQL Server, Windows 10/11, Visual Studio and its productivity suites. This is the market power that is found to be extended into the cloud sector through licensing practices that harm its rivals in that sector. Whether or not that market power meets the threshold for SMS designation is beyond the scope of this submission, but these are services that are more akin to the platform services that have been investigated thus far. Any SMS investigation is likely to be justified as a priority (or not) based on a broader set of issues of which licensing practices are an example, not the dynamics in the cloud services sector.