

Microsoft Corporation's partnership with OpenAI, Inc.

Decision on relevant merger situation

SUMMARY

Please note that [X] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

Overview

1. Microsoft Corporation (**Microsoft**) has entered into a partnership with OpenAI, Inc. (**OpenAI Nonprofit**), a non-profit organisation, and its for-profit subsidiary OpenAI OpCo LLC (**OpenAI**), which has resulted in Microsoft acquiring certain rights with respect to OpenAI (the **Partnership**). Microsoft and OpenAI are together referred to as the **Parties**. The terms of the Partnership have evolved as Microsoft has increased its investment in OpenAI and the scope of the Parties' collaborations have expanded. The relationship between Microsoft and OpenAI is complex and has continued to evolve during the course of the CMA's investigation. This decision takes into account recent developments in that relationship.
2. On the basis of the available evidence, as further described below, the CMA does not believe that it is or may be the case that the Partnership, in its current form, gives rise to a relevant merger situation. In particular the CMA does not consider there has been a change of control by Microsoft from material influence to de facto control over OpenAI. Therefore the Partnership will not be referred under section 22 of the Enterprise Act 2002 (the **Act**).

Who are the Parties and what do they do?

3. Microsoft is a global technology company. The cloud compute services that Microsoft supplies through Azure are used for training foundation models (**FMs**) and also as a platform for downstream customers to access FMs. In addition, Microsoft is active in developing its own FMs. Microsoft also provides a wide range

of software that integrates AI features, including Copilot chatbots that are integrated into Bing, Microsoft 365 and Windows.

4. OpenAI Nonprofit is a non-profit AI research and deployment company, whose stated aim is to ensure that ‘artificial general intelligence benefits all of humanity’. In 2019, OpenAI Nonprofit established OpenAI, a capped-profit company. OpenAI develops and supplies several leading FMs, as well as FM-based services, including ChatGPT.

What is the Partnership between the Parties?

5. Microsoft and OpenAI entered into the Partnership in 2019. The Partnership involves a multi-year, multi-billion dollar investment and agreement to collaborate across AI supercomputing and research. The terms of the Partnership have evolved as Microsoft has increased its investment in OpenAI and the scope of the Parties’ collaborations have expanded. The key features of the Partnership currently include the following:
 - (a) Microsoft is the largest investor in OpenAI, having invested over \$13 billion, including \$1 billion in July 2019, \$[X] billion in March 2021, \$10 billion in January 2023, and a further substantial sum (\$[X]) in October 2024.
 - (b) Microsoft’s formal governance rights in OpenAI are generally limited to typical financial investor protections and Microsoft does not have a right to appoint a director to OpenAI’s board. Instead, day-to-day management of OpenAI is controlled by OpenAI Nonprofit. Microsoft also does not have any governance or director appointment rights in relation to OpenAI Nonprofit. Microsoft does however enjoy a right [X].
 - (c) Microsoft has been the exclusive supplier of compute infrastructure to OpenAI for all OpenAI workloads across research, products and Application Programming Interface (**API**) services. In January 2025, however, Microsoft announced that the Parties have renegotiated elements of Microsoft’s exclusivity, including moving to a model whereby for new compute capacity Microsoft will have a right of first refusal (other than for OpenAI API workloads, which remain exclusive to Microsoft). Microsoft has also granted waivers to enable OpenAI to build additional capacity, primarily for research and training of models, which has enabled OpenAI to pursue the ‘Stargate Project’, a joint venture with SoftBank, Oracle and MGX with an initial investment of \$100 billion to develop AI infrastructure for OpenAI in the USA.¹
 - (d) Microsoft benefits from an exclusive licence to OpenAI’s IP, other than for certain IP that is carved out, including in relation to artificial general intelligence

¹ See <https://openai.com/index/announcing-the-stargate-project/>.

(AGI). Both Parties may independently commercialise OpenAI's IP, subject to several restrictions, [X]. Both Parties also benefit from mutual revenue-sharing provisions from the commercial use of OpenAI's IP.

- (e) The Parties have also committed to collaboration arrangements, including regular contact between senior decision-makers at OpenAI and Microsoft, and collaboration on jointly building AI supercomputing technologies.

Why did the CMA investigate the Partnership?

6. The CMA can review acquisitions of different levels of control in a company: an acquisition of material influence (ie the ability to materially influence that company's policy), an acquisition of *de facto* control (ie the ability to control that company's policy), or an acquisition of full legal control of that company. The CMA can also review a transaction where the acquirer moves from a lower level of control to a higher level of control.
7. The CMA will have jurisdiction to review acquisitions of control where either the target company has a UK turnover exceeding the applicable threshold or where the parties have a combined share of supply of products or services exceeding 25%.
8. The CMA believes that Microsoft acquired material influence over OpenAI in 2019. Microsoft has acknowledged during the course of our investigation that it has held the ability to materially influence OpenAI's policy since 2019.
9. The focus of the current investigation was on whether Microsoft has increased its control over OpenAI from material influence to *de facto* control. The CMA opened its investigation on 8 December 2023 following the dismissal of Sam Altman as CEO of OpenAI on 17 November 2023 by the then current board of OpenAI Nonprofit and his re-appointment on 21 November 2023. In view of Microsoft's potentially important role in securing Sam Altman's re-appointment, the CMA believed there was a reasonable chance that an investigation would reveal that Microsoft had increased its control over OpenAI's commercial policy. Further, the CMA considered there was a reasonable chance that an investigation would reveal that any change in control had resulted, or might be expected to result, in a substantial lessening of competition (**SLC**) in the UK.²
10. FMs have evolved rapidly in recent years and have emerged as a transformative technology, with the potential to impact many sectors of the economy, boost productivity and growth, drive innovation in existing markets and allow for entirely new products and services to be created. The rapid evolution of FM markets, including the widespread emergence of partnerships between cloud providers and

² CMA's mergers intelligence function, 23 December 2020, ([CMA56](#)), paragraph 1.2.

FM developers presents both opportunities and risks for competition. Partnerships can bring significant benefits to the parties involved and lead to increased innovation and efficiencies. But they can also pose risks to competition where incumbent firms use partnerships to quash competitive threats. In view of these risks, the CMA's aim was to determine whether a potential increase in Microsoft's control over OpenAI gave rise to an SLC and could thereby undermine the principles set out in the CMA's [AI Foundation Models Report](#), which aim to ensure consumer protection and healthy competition remain at the core of responsible development and use of FMs.

11. In this context, the CMA was concerned that an increase in Microsoft's control over OpenAI could give rise to potential competition concerns if Microsoft was able to restrict rivals' access to OpenAI's leading models in markets where access to FMs is likely to be important and where Microsoft already holds strong market positions. This includes in the supply of cloud compute services and in downstream markets, such as the supply of productivity software. The CMA was also concerned that the Partnership could potentially impact competition in the emerging market for the supply of accelerated compute, given OpenAI's potential to act as an important customer in this market. The Partnership could also potentially impact competition in markets where the Parties overlap, including in the development of FMs, the distribution of FMs, and the supply of FM-based services, such as chatbots.

Why has the CMA found that the Partnership does not qualify as a relevant merger situation?

12. The CMA's investigation into whether there has been a change in the level of Microsoft's control over OpenAI has been complex. The AI sector is still rapidly evolving. Material aspects of the Partnership have been changing over the course of the investigation. Furthermore, there is no 'bright line' between factors which might give rise to material influence and those giving rise to de facto control. This has required the CMA to carefully consider the commercial realities of the relationship between the Parties (at a time when that relationship has been changing), not just the formal terms of the arrangement. In doing so, the CMA has considered a wide range of evidence, including submissions and responses to information requests from Microsoft and OpenAI, and reviewed internal documents regarding not just the developments in OpenAI's governance in November 2023 but how the Partnership has operated in practice over time.
13. Overall, taking into account all of the available evidence, particularly in light of recent developments in the Partnership which reduce OpenAI's reliance on Microsoft for compute, the CMA does not believe that Microsoft currently controls OpenAI's commercial policy, and instead exerts a high level of material influence over that policy. In other words there is no change of control giving rise to a

relevant merger situation. In reaching this conclusion the CMA has considered three main potential sources of influence and/or control: (i) Microsoft's investment and involvement in OpenAI's corporate governance; (ii) Microsoft's supply of compute; and (iii) Microsoft's IP and commercialisation rights.

The CMA's Decision

14. Accordingly, the CMA has concluded that no relevant merger situation has been created, and that it does not have jurisdiction to review the Partnership in its current form.
15. In light of this, the CMA has not had to conclude on whether the other criteria for establishing a relevant merger situation are met. The CMA has also not had to conclude on whether the Partnership has resulted, or may be expected to result, in an SLC in the UK. A finding that the Partnership does not give rise to a relevant merger situation does not constitute a finding that no competition concerns arise from its operation.
16. The Partnership will therefore **not be referred** under section 22 of the Act.