

# Microsoft Corporation's partnership with OpenAI, Inc.

## Decision on relevant merger situation

**ME/7084/23**

The Competition and Markets Authority (**CMA**)'s decision on relevant merger situation under section 22(1) of the Enterprise Act 2002 (the **Act**) given on 5 March 2025. Full text of the decision published on 15 April 2025.

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

## SUMMARY

### 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.<sup>1</sup>

- (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 (**AGI**). Both Parties may independently commercialise OpenAI's IP, subject to several restrictions, [§]. 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

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

reveal that any change in control had resulted, or might be expected to result, in a substantial lessening of competition (**SLC**) in the UK.<sup>2</sup>

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 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 was evolving), not just the formal terms of the arrangement. In doing so, the CMA has considered

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

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.

# ASSESSMENT

## 1. PARTIES

17. Microsoft is a global technology company founded in 1975 and headquartered in Redmond, USA. Microsoft is publicly listed on NASDAQ.<sup>1</sup> Microsoft's revenue in financial year 2024 was approximately \$245 billion worldwide, of which over \$[>] billion was generated in the UK.
18. Microsoft has activities across a range of AI related areas. Microsoft is active in the development of FMs, having developed the Turing family of models and smaller FMs such as Florence and Phi. In March 2024, Microsoft also acquired certain assets of Inflection AI, Inc., a developer of FMs and the AI chatbot Pi.<sup>3</sup> Microsoft is a provider of cloud compute services, through Azure. Azure is used for training FMs and provides a managed platform for the distribution of FMs (via Azure Marketplace, Azure AI studio, and Azure Machine Learning Studio). Microsoft also provides a wide range of related downstream software, where it has integrated AI features, including AI chatbots under the Copilot brand. Copilot has been integrated into Microsoft's search engine (Bing), productivity suites (Microsoft 365) and PC operating system (Windows), amongst other Microsoft services.
19. OpenAI Nonprofit is a non-profit AI research and deployment company founded in 2015 and headquartered in San Francisco, USA. OpenAI Nonprofit's mission is to ensure that 'artificial general intelligence benefits all of humanity'.<sup>4</sup> In March 2019, OpenAI Nonprofit established a for-profit subsidiary, OpenAI.<sup>5</sup> OpenAI is the developer of several leading FMs, including its GPT family of models, o-series of reasoning models,<sup>6</sup> as well as FM-based services, including its AI chatbot, ChatGPT, first released in November 2022, with further iterations released since then. On 27 December 2024, OpenAI Nonprofit announced that it is considering restructuring OpenAI as a public benefit company (**PBC**) under Delaware law.<sup>7</sup> OpenAI's revenue in 2024 was approximately \$3.5 billion worldwide, of which approximately £[>] was generated in the UK.

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<sup>3</sup>See [Microsoft Corporation's hiring of certain former employees of Inflection and its entry into associated arrangements with Inflection](#), [ME/7103/24] (**Microsoft/Inflection**), paragraphs 29–30.

<sup>4</sup> Microsoft's response to the CMA's Enquiry Letter, 8 December 2023, paragraph 12.2; [OpenAI Charter](#).

<sup>5</sup> OpenAI was originally established as a limited partnership (OpenAI, L.P.). In 2023, OpenAI was re-established as a limited liability corporation (OpenAI OpCo, LLC). [>] newly formed holding entity named OpenAI Global, LLC, which functions as the holding company of OpenAI.

<sup>6</sup> OpenAI o1 was released on 5 December 2024, with preview versions (o1-preview and o1-mini) released on 12 September 2024. [Introducing OpenAI o1](#).

<sup>7</sup> [Why OpenAI's structure must evolve to advance our mission](#).

## 2. BACKGROUND

### 2.1 Partnership agreements 2019-2023

20. Microsoft has been in a partnership with OpenAI Nonprofit and OpenAI since 2019, involving a multi-year, multi-billion dollar investment and agreement to collaborate across AI supercomputing and research (the **Partnership**). The Partnership has been governed by successive contractual arrangements that have been updated over time as Microsoft has increased its investment in OpenAI and the scope of the Parties' collaborations has expanded. In particular:

- (a) In July 2019, Microsoft invested \$1 billion in OpenAI. Microsoft and OpenAI entered into a Joint Development and Commercialisation Agreement, and a Limited Partnership Agreement (the **2019 Agreements**).
- (b) In March 2021, Microsoft invested a further \$[X] billion in OpenAI. The 2019 Agreements were superseded by an amended and restated Joint Development and Commercialisation Agreement, and an amended and restated Limited Partnership Agreement (the **2021 Agreements**).
- (c) In January 2023, Microsoft invested a further \$10 billion in OpenAI. Microsoft and OpenAI entered into a further amended and restated Joint Development and Commercialisation Agreement and Limited Liability Corporation Agreement (respectively, the **2023 JDCA**, the **2023 LLC Agreement**, together the **2023 Agreements**).<sup>8</sup> The 2023 JDCA has an approximately eight-year term, ending [X] 2030.

21. The key features of the Partnership under these agreements are as follows:

- (a) **Investment and governance:** Microsoft's investments pursuant to the above agreements (totalling \$13 billion) have made Microsoft the largest investor in OpenAI. As OpenAI is a capped-profit company, Microsoft's (and other investors') economic interests are capped based on a multiple of their investment if OpenAI is financially successful, with any returns exceeding the cap going to OpenAI Nonprofit. Under the terms of the 2023 LLC Agreement, members' voting rights are restricted to matters related to typical financial investor protections.<sup>9</sup> This agreement sets out that the strategic direction, management, and day-to-day operation of OpenAI is controlled by OpenAI GP LLC, as the Manager of OpenAI, which is in turn wholly-owned and controlled by OpenAI Nonprofit. Microsoft does not have a right to appoint a

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<sup>8</sup> As noted below, the 2023 JDCA and 2023 LLC Agreement were [X].

<sup>9</sup> [X].

director to the board of OpenAI, OpenAI GP LLC, or OpenAI Nonprofit<sup>10</sup>, nor does Microsoft have any membership interests in relation to OpenAI Nonprofit.<sup>11</sup> Under [REDACTED] the 2023 LLC Agreement, Microsoft does however enjoy a right [REDACTED].<sup>12</sup>

- (b) **Compute and supercomputer capacity:** OpenAI is required to [REDACTED] purchase dedicated supercomputer capacity from Microsoft.<sup>13</sup> Under the terms of the 2023 JDCA, Microsoft is required to develop and deliver a series of supercomputers which OpenAI is required to purchase, including a [REDACTED] supercomputer, with an intended delivery date by [REDACTED]. By 2024, however, all of [REDACTED].<sup>14</sup> This necessitated the Parties entering into additional compute agreements (as discussed further at paragraph 36 below). Microsoft was also OpenAI's exclusive cloud provider for all other sources of compute, including for commercial and API workloads. However, as Microsoft announced in January 2025, the Parties have since amended Microsoft's exclusivity terms, moving to a right of first refusal model in relation to new compute capacity (other than for OpenAI API workloads), as discussed further at paragraph 36(b) below.
- (c) **IP and commercialisation:** Microsoft benefits from an exclusive licence to OpenAI's IP, save for identical rights retained by OpenAI, and for certain IP that is carved out including in relation to AGI in relation to which OpenAI retains exclusive rights. Microsoft also benefits from disclosure obligations, which inter alia require OpenAI to disclose [REDACTED]. Both Parties also benefit from mutual revenue-sharing provisions from the commercial use of OpenAI's IP. Both Parties may independently commercialise OpenAI's IP, although this is subject to several restrictions.<sup>15</sup> Neither Party can make OpenAI's models [REDACTED]. Any use of OpenAI's IP [REDACTED].<sup>16</sup> In addition, further to Microsoft acting as OpenAI's exclusive cloud provider, OpenAI is required to host all its models and services solely on Microsoft Azure. OpenAI is also restricted from [REDACTED].<sup>17</sup>

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<sup>10</sup> As discussed further at paragraph 33 below, Microsoft briefly held a right to appoint a non-voting observer to the OpenAI Nonprofit board.

<sup>11</sup> Under the 2019 and 2021 Agreements, Microsoft had a right to appoint a director to OpenAI Nonprofit but this right was never exercised. No right to appoint a director was included in the 2023 Agreements.

<sup>12</sup> Microsoft's Internal Document, Annex 31 to the CMA's Enquiry Letter, '[REDACTED]', 23 January 2023, section 4.

<sup>13</sup> It is not feasible to train and run FMs on conventional computer chips (such as central processing units (**CPUs**)), due to the size of the models and the amount of training data required. Cloud providers, like Microsoft, provide accelerated compute to FM developers. The provision of accelerated compute requires access to a large number of AI accelerator chips. These chips are networked together in data centres of supercomputers such that they can be used in parallel to perform the large computations involved in FM development.

<sup>14</sup> OpenAI's response to the CMA's section 109 Notice, 17 October 2024, paragraph 10.4.

<sup>15</sup> Initially, under the 2019 Agreements, Microsoft was solely responsible for commercialising new AI technologies resulting from the Partnership. Under the 2021 Agreements, OpenAI was permitted to commercialise [REDACTED].

<sup>16</sup> [REDACTED].

<sup>17</sup> Under the [REDACTED].



- (d) **Collaboration and development:** OpenAI is responsible for developing new AI technologies. It decides which models to develop and what research to pursue. Collaboration arrangements exist to help Microsoft integrate newly developed AI technologies into its suite of software services. Under these arrangements, [3<]. Arrangements also exist for regular contact between senior decision-makers at OpenAI and Microsoft.<sup>18</sup> The Parties have also collaborated on jointly building AI supercomputing technologies.

## 2.2 The CMA's decision to launch an investigation

22. The CMA's mergers intelligence function identified the Partnership as warranting an investigation, with the investigation opening on 8 December 2023. On the basis of the information available at that time, the CMA considered that there was a reasonable chance that the test for a reference to an in-depth phase 2 investigation would be met, ie a reasonable chance that an investigation would reveal that it is or may be the case that a relevant merger situation has been created, and the creation of that situation has resulted, or may be expected to result, in an SLC.<sup>19</sup>
23. The CMA considered whether the Partnership may have resulted in a relevant merger situation in view of developments in the governance of OpenAI in November 2023 and whether any increased level of control over OpenAI by Microsoft could have potential implications for competition.<sup>20</sup>
24. At the start of November 2023, the board of OpenAI Nonprofit comprised six members. Three of these members held senior positions in OpenAI: Sam Altman (CEO), Greg Brockman (President), Ilya Sutskever (Chief Scientist). Three members were independent of OpenAI: Helen Toner, Tasha McCauly, and Adam D'Angelo. The following events then took place during mid- to late- November:
- (a) On 17 November 2023, the board of OpenAI Nonprofit dismissed Sam Altman from his role as CEO of OpenAI and his role as a director of OpenAI Nonprofit. The board also removed Greg Brockman from his role as a director of OpenAI Nonprofit.<sup>21</sup> This action was taken without prior notice to Microsoft.

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<sup>18</sup> [3<].

<sup>19</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#), 2 January 2025 (**CMA2**), paragraph 6.4.

<sup>20</sup> The CMA's mergers intelligence function did not consider that Microsoft's investment in OpenAI merited investigation in 2019 given that the AI sector was at a much earlier stage of development and OpenAI was not commercialising any products or services in the UK at the time. The CMA is no longer able to establish jurisdiction on the basis of the acquisition of material influence due to the elapse of time. Microsoft submitted a briefing note to the CMA's mergers intelligence function on 1 February 2023, when it entered into the 2023 JDCA. The CMA decided not to investigate the partnership at that stage on the basis that Microsoft had likely held the ability to materially influence OpenAI's commercial policy since July 2019 and that the position had not changed through the 2023 Agreements.

<sup>21</sup> [OpenAI announces leadership transition](#).

- (b) On the evening of 19 November 2023, Microsoft announced that it had hired Sam Altman to lead a new 'AI Research Lab', which would be a subsidiary of Microsoft.<sup>22</sup>
  - (c) On 20 November 2023, via a public petition addressed to the board of OpenAI Nonprofit, a large majority of OpenAI's staff threatened to resign from their positions and take up employment at Microsoft if the board did not reinstate Sam Altman as CEO and resign.<sup>23</sup> On the morning of 21 November 2023, via a tweet, Microsoft publicly confirmed that it would hire any OpenAI staff member wishing to join its new AI Research Lab.<sup>24</sup>
  - (d) In the evening of 21 November 2023, the management of OpenAI announced that Sam Altman would be reinstated as its CEO and that the board of OpenAI Nonprofit would be largely replaced (Helen Toner and Tasha Macaulay would resign and Bret Taylor and Larry Summers would be appointed).<sup>25</sup> These changes were implemented on 29 November 2023.<sup>26</sup>
25. Given Microsoft's actions in the November 2023 events, in particular, its potentially important role in securing Sam Altman's return to his role as CEO of OpenAI, the CMA considered that there was a reasonable chance that it is or may be the case that the Partnership, or changes to it, had resulted in a relevant merger situation being created, as a result of a potential increase in Microsoft's control over OpenAI.
  26. The CMA also considered that it was important to investigate whether this potential change in the level of control might result in negative impacts on competition in FM development and markets in the FM value chain.
  27. 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.
  28. The CMA's AI Foundation Models reports identified both opportunities and risks for competition from the rapid evolution of FM markets, including in relation to the widespread emergence of partnerships between cloud providers and FM developers. Such partnerships can bring significant benefits to the parties involved and lead to increased innovation and efficiencies, eg allowing FM developers to access scarce FM inputs and bring their models to market faster and on a broader

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<sup>22</sup> [Post on 'X' - Satya Nadella at 11:53pm \(PST\) on 19 November 2023.](#)

<sup>23</sup> The petition was subsequently published by the New York Times on 20 November 2023: [The Employee Letter to OpenAI's Board.](#)

<sup>24</sup> [Post on 'X' - Kevin Scott at 6:31am \(PST\) on 21 November 2023.](#)

<sup>25</sup> [Post on 'X' - OpenAI at 10:03pm \(PST\) on 21 November 2023.](#)

<sup>26</sup> [Sam Altman returns as CEO, OpenAI has a new initial board.](#)

basis. But they can also pose risks to competition, particularly where incumbent firms use partnerships to quash competitive threats.<sup>27</sup>

29. In view of these risks, the CMA established a set of principles to guide FM development and deployment markets towards positive market outcomes, including in relation to ready access to inputs, diversity of business models and FM types, and sufficient choice for businesses and consumers in how they use FMs.<sup>28</sup>
30. In this context, the CMA was concerned that the Partnership could give rise to potential competition concerns, including the risk that Microsoft's rivals across the FM value chain could be foreclosed if they suffer restricted access to OpenAI's models. Underlying these potential foreclosure concerns were the following factors:
- (a) While the market for the development and supply of FMs is evolving rapidly, OpenAI has widely been regarded as a leading FM developer with the best FMs currently available.<sup>29</sup>
  - (b) While markets for the deployment of FMs are similarly in flux, accessing FMs is increasingly becoming important to a range of markets, including markets where Microsoft already holds strong market positions. This includes the supply of cloud services, where Microsoft is a leading provider in highly concentrated markets.<sup>30</sup> Cloud providers' managed platforms have increasingly become a key route to market for FM developers.<sup>31</sup> In turn, the ability for cloud providers to offer leading FMs to their customers could potentially become a driver of customer choice for cloud services.<sup>32</sup> Microsoft also has strong positions in a range of downstream software markets, including in relation to productivity software and desktop operating systems.<sup>33</sup> Microsoft has rapidly integrated FM-based features into these products through its Microsoft Copilot chatbot service.
  - (c) Potential competition concerns could therefore arise if Microsoft were in a position to restrict access to OpenAI's models to rival cloud providers and

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<sup>27</sup> [AI Foundation Models: Technical update report \(Technical Update Report\)](#), 16 April 2024, paragraphs 2.55 and 2.60.

<sup>28</sup> [AI Foundation Models: Update paper](#), 11 April 2024, page 11, Figure 3.

<sup>29</sup> [Technical Update Report](#), paragraph 2.6, and [Cloud infrastructure services: Provisional Decision Report \(Cloud PDR\)](#), 28 January 2025, paragraph 3.482, in which the CMA noted that customers surveyed considered OpenAI's FMs as the best FMs currently available.

<sup>30</sup> [Cloud PDR](#), in which the CMA provisionally found that Microsoft is one of the largest providers of cloud services in the UK, alongside AWS, both in relation to infrastructure as a service (**IaaS**) and platform as a service (**PaaS**). IaaS includes services such as compute, networking and storage, while PaaS includes platforms based on this infrastructure which enable customers to develop and run applications in the cloud. The CMA also provisionally found that Microsoft, AWS and Google have strong positions in the supply of accelerated compute, used for FM training and inference workloads.

<sup>31</sup> [Cloud PDR](#), paragraph 3.380.

<sup>32</sup> [Cloud PDR](#), paragraph 3.509, in which the CMA noted that providing access to FMs has emerged as a potential future driver of customers' choice of cloud service provider, although currently it has not acted as a strong driver of customer choice and its future role is uncertain.

<sup>33</sup> [Cloud PDR](#), paragraph 6.236.

downstream rivals, with the risk of hampering competition in markets where accessing FMs is important.

31. Given OpenAI's leading status as an FM developer and Microsoft's strong position in the supply of accelerated compute, the CMA considered it important to assess whether the Partnership could affect competition in cloud markets, in particular in the evolving market for the supply of accelerated compute.<sup>34</sup> The CMA was also concerned that the Parties' horizontal overlaps in the development of FMs, the distribution of FMs, and the supply of FM-based services, such as chatbots, could negatively affect competition in these markets.

## **2.3 Events following the launch of the CMA's investigation**

32. The CMA's investigation into whether there has been a change in the level of Microsoft's control over OpenAI was complex. There is no 'bright line' between factors which might give rise to material influence and those giving rise to de facto control (as discussed further at paragraphs 39 to 42 below) and the CMA's assessment required careful consideration of the commercial realities of the relationship, not just the formal terms of the arrangement. Furthermore, the AI sector is rapidly evolving and the relationship between Microsoft and OpenAI has been undergoing change, with material aspects of the Partnership relevant for the CMA's assessment changing over the course of the investigation and as recently as January 2025.
33. Following the launch of the CMA's investigation, several changes to OpenAI Nonprofit's board occurred. In December 2023, Microsoft acquired the right to appoint an observer to OpenAI Nonprofit's board, which was then relinquished in July 2024. In March 2024, Sam Altman was re-appointed to the board and three new independent board member appointments were announced.<sup>35</sup> Three further independent board member appointments were announced in June and August 2024 and January 2025, respectively.<sup>36</sup>
34. In October 2024, OpenAI announced that it raised additional capital totalling \$6.6 billion by issuing convertible interests to outside investors including Thrive Capital (which invested over \$1 billion), SoftBank and Nvidia, among others.<sup>37</sup> [§<]. Microsoft also participated in the funding round, investing a further substantial sum

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<sup>34</sup> [Cloud PDR](#), paragraph 3.42 in which the CMA provisionally defined a market for the supply of IaaS based on accelerated compute as distinct from IaaS based on standard compute. In paragraphs 3.447 and 3.507 the CMA also provisionally found that Microsoft, AWS and Google have strong positions in the supply of accelerated compute and that partnerships between cloud providers and FM developers may play an important role in shaping competitive conditions in this market.

<sup>35</sup> [OpenAI announces new members to board of directors](#).

<sup>36</sup> [OpenAI appoints Retired U.S. Army General Paul M. Nakasone to Board of Directors](#); [Zico Kolter Joins OpenAI's Board of Directors](#); and [Adebayo Ogunesi joins OpenAI's Board of Director](#).

<sup>37</sup> [OpenAI raises \\$6.6B and is now valued at \\$157B](#); [New funding to scale the benefits of AI](#); and OpenAI response to the CMA's section 109 notice, 17 October 2024, paragraphs 1.1 and 1.2. [§<].

(\$[REDACTED]) [REDACTED]. OpenAI also obtained a \$4.4 billion revolving credit facility from a consortium of banks,<sup>38</sup> [REDACTED].

35. On 27 December 2024, OpenAI Nonprofit's board announced plans to transform its existing for-profit entity (OpenAI) into a Delaware PBC with ordinary shares of stock and the public benefit interest as its corporate purpose.<sup>39</sup> OpenAI Nonprofit would retain a significant interest in OpenAI through the form of shares in the PBC.<sup>40</sup>
36. The Parties have also made changes to their compute arrangements in light of OpenAI's demand for compute [REDACTED]. In particular:
- (a) On 21 January 2025, Microsoft announced that OpenAI had made a new, material commitment in relation to Azure. This includes a commitment for the supply of additional compute [REDACTED] and to contract for Microsoft's supercomputers [REDACTED].<sup>41</sup>
  - (b) Microsoft also announced changes to its exclusivity for new compute capacity ([REDACTED]), moving to a model where Microsoft has a right of first refusal. This will involve [REDACTED].<sup>42</sup> In respect of any shortfall, OpenAI will be free to obtain compute from third parties, except that third-party compute may not be used for OpenAI API workloads, over which Microsoft will retain exclusivity.
  - (c) Microsoft has also agreed that OpenAI may build additional capacity (from third-party sources), primarily for research and training of models. This includes [REDACTED] of compute which must be used primarily for training.<sup>43</sup> This has enabled OpenAI to pursue the 'Stargate Project', which OpenAI also announced on 21 January 2025.<sup>44</sup> The Stargate Project is a new company that proposes investing \$100 billion initially to develop AI infrastructure for OpenAI in the USA, with initial equity funders (aside from OpenAI) including SoftBank, Oracle and MGX. [REDACTED].<sup>45</sup>

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<sup>38</sup> [New Credit Facility Enhances Financial Flexibility](#).

<sup>39</sup> [Why OpenAI's structure must evolve to advance our mission](#).

<sup>40</sup> OpenAI's response to the CMA's section 109 notice, 17 October 2024, paragraph 8.3.

<sup>41</sup> OpenAI's response to the CMA's section 109 notice, 17 October 2024, paragraphs 4.2–4.3.

<sup>42</sup> OpenAI's response to the CMA's section 109 notice, 17 October 2024, paragraphs 4.2–4.3; Microsoft's response to the CMA's section 109 notice, 15 October 2024, paragraphs 2.12–2.17.

<sup>43</sup> OpenAI's response to the CMA's section 109 notice, 17 October 2024, paragraphs 4.2–4.3; Microsoft's response to the CMA's section 109 notice, 15 October 2024, paragraph 2.27.

<sup>44</sup> [Announcing The Stargate Project](#).

<sup>45</sup> [REDACTED].

## 3. JURISDICTION

### 3.1 Introduction

37. The CMA has considered whether it is or may be the case that a relevant merger situation has been created as a result of the Partnership. 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.<sup>46</sup>
38. Each of Microsoft and OpenAI is an enterprise. The assessment below focuses on whether these enterprises have ceased to be distinct as a result of Microsoft obtaining de facto control over OpenAI.

### 3.2 Legal framework

39. Two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>47</sup> Control includes situations falling short of outright voting control. Three levels of control are recognised: a controlling interest (**de jure control**); the ability to control policy (**de facto control**); and the ability to materially influence policy (**material influence**). Policy in this context concerns the behaviour of the target entity in the marketplace, including the strategic direction of the company and its ability to define and achieve its commercial objectives.<sup>48</sup>
40. Two enterprises may be deemed to have ceased to be distinct when there is an increase in the level of control. This may occur if a person, being already able materially to influence the policy of an enterprise, becomes able to control that policy.<sup>49</sup> The key difference between de facto control and material influence is that, rather than merely having the ability to exert influence over a company's policy (eg by exercising governance or contractual rights to veto proposed policies), de facto control requires the ability to determine a company's policy.<sup>50</sup>
41. There is no 'bright line' between factors which might give rise to material influence and those giving rise to de facto control.<sup>51</sup> Assessing whether a person has acquired material influence or de facto control over an enterprise requires a case-by-case analysis of the overall relationship between the enterprises in the partnership, having regard to all the circumstances of the case.<sup>52</sup> Both material

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<sup>46</sup> Section 23 of the Act.

<sup>47</sup> Section 26 of the Act.

<sup>48</sup> [CMA2](#), paragraph 4.17.

<sup>49</sup> Section 26(4)(b) of the Act.

<sup>50</sup> [CMA2](#), paragraphs 4.25 and 4.33.

<sup>51</sup> [CMA2](#), paragraph 4.33.

<sup>52</sup> [CMA2](#), paragraph 4.18.



influence and de facto control can exist on a spectrum. This means, for example, that the concept of material influence can encompass a variety of situations, ranging from situations in which an acquirer has a relatively low (yet still material) level of influence to situations in which an acquirer has a relatively high level of influence (yet still falling short of an ability to determine a target's policy). To determine whether there has been an acquisition of material influence or de facto control, it is necessary to examine the commercial reality of the transaction or arrangement, focusing on the substance rather than the legal form.<sup>53</sup> The following (non-exhaustive) list of factors may be relevant to such an assessment:

- (a) The ability to influence or control the target's policy through exercising votes at shareholders' meetings.<sup>54</sup>
- (b) The ability to influence or control the board of the target through board representation.<sup>55</sup>
- (c) Other sources of influence or control, such as relevant customer/supplier relationships, or financial arrangements conferring on the lender an ability to exercise rights over and above those necessary to protect its investment.<sup>56</sup>

42. In the context of cases in the AI sector, the CMA has previously identified compute commitments, distribution agreements, and the possibility of future collaboration and development opportunities as potential sources of influence or control. In each case, it is relevant to examine whether conditions are such that the arrangement creates a dependency on the relevant counterparty that enables that counterparty to influence materially or control the commercial policy of the FM developer.<sup>57</sup>

### 3.3 Parties' submissions

43. Microsoft acknowledged during the course of our investigation that it has held the ability to materially influence OpenAI's policy since 2019.<sup>58</sup>
44. However, Microsoft submitted that it has not gained de facto control through the November 2023 events or the operation of the Partnership in practice.<sup>59</sup> In particular, Microsoft stated that none of Microsoft's investments in OpenAI, nor the rights which Microsoft has pursuant to the agreements governing the Partnership, provided it with control over OpenAI. Microsoft also noted that it did not exercise

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<sup>53</sup> [CMA2](#), paragraph 4.24.

<sup>54</sup> [CMA2](#), paragraphs 4.21–4.27. In this regard, the CMA will examine the reality of the situation including whether a shareholder is able to exert influence or control as a practical matter.

<sup>55</sup> [CMA2](#), paragraphs 4.28–4.33.

<sup>56</sup> [CMA2](#), paragraphs 4.31–4.32.

<sup>57</sup> [Microsoft Corporation's partnership with Mistral AI \(Decision on relevant merger situation\)](#), [ME/7102-24] ([Microsoft/Mistral AI](#)), paragraphs 12–17.

<sup>58</sup> Microsoft's submission to the CMA, 7 May 2024, section 5.

<sup>59</sup> Microsoft's submission to the CMA, 7 May 2024, section 5.

de facto control through its supply of compute to OpenAI or industry expertise.<sup>60</sup> Microsoft further submitted that events that took place after November 2023, such as OpenAI entering a partnership with Apple, further demonstrate OpenAI's independence and that the evidence submitted to the CMA showed that OpenAI can and does act independently of Microsoft's interests.<sup>61</sup> Following the changes to the compute arrangements between the Parties announced in January 2025, Microsoft submitted that, as 'Microsoft is no longer OpenAI's exclusive compute supplier in practice, [X]'.<sup>62</sup>

45. OpenAI initially submitted to the CMA that Microsoft could exercise neither material influence nor de facto control over it. OpenAI emphasised that it solely determines what models it will develop and how it allocates resources between research and training, safety work, and its commercial offerings.<sup>63</sup>
46. In a subsequent submission to the CMA, OpenAI stated that Microsoft had '[X]' in relation to five critical inputs: '[X]'. In particular, OpenAI noted that: (i) [X]; (ii) Microsoft (at the time of the submission) had [X]; (iii) Microsoft had [X]; and (iv) Microsoft also had (at the time of the submission) [X]. OpenAI stated that it was strongly supportive of ensuring that [X], while still honouring and protecting the commercial benefit of the bargain that Microsoft struck when it originally invested in OpenAI.<sup>64</sup> OpenAI provided examples of how Microsoft used these potential levers, including in its responses to the CMA's requests for information.<sup>65</sup>

### 3.4 Assessment

47. Taking into account Microsoft's substantial investment in OpenAI, Microsoft's key role in supplying compute to OpenAI, and the close commercial and practical connections between the two companies, the CMA's starting point – in line with Microsoft's submissions – was that Microsoft has had the ability to materially influence OpenAI's policy since its initial investment in 2019.<sup>66</sup> As such, the Partnership would only be capable of giving rise to a relevant merger situation at this time if there has been an increase in Microsoft's level of control over OpenAI from material influence to de facto control. Accordingly, when considering the various means by which Microsoft can impact OpenAI's policy, the CMA assessed whether it is or may be the case that Microsoft currently exercises de facto control over OpenAI (as opposed to material influence).

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<sup>60</sup> Microsoft's submission to the CMA, 7 May 2024, paragraphs 5.11–16.

<sup>61</sup> Microsoft's submission to the CMA, 8 July 2024, paragraphs 10–12.

<sup>62</sup> Microsoft's submission to the CMA, 13 January 2025, paragraph 4.5.

<sup>63</sup> OpenAI's response to the CMA's section 109 notice, 20 December 2023, paragraphs 1.14 and 9.13; OpenAI's Briefing Paper, 24 May 2024, paragraph 4.11.

<sup>64</sup> OpenAI's submission to the CMA, 23 September 2024, paragraph 3.

<sup>65</sup> Examples are discussed below under the heading 'IP and commercialisation rights'.

<sup>66</sup> This is consistent with the CMA's finding in an earlier merger inquiry involving Microsoft. [Microsoft/Inflection](#), paragraph 66.



48. In conducting this assessment, the CMA has considered the Parties' submissions, the terms of the Partnership arrangements, and evidence on Microsoft's involvement in OpenAI's commercial policy in practice. This has involved reviewing contemporaneous internal documents held by the Parties, in particular in relation to the November 2023 events and further back in time relating to the negotiations leading up to, and the subsequent operation of, the 2023 Agreements. The CMA's assessment considers the following main potential sources of influence and/or control:
- (a) Investment and corporate governance.
  - (b) Compute supply.
  - (c) IP and commercialisation rights.

### **3.4.1 Investment and corporate governance**

49. Finance is an important input into AI technology businesses: the development of FMs requires substantial financial resources used to access state of the art infrastructure and to attract highly sought-after talent. Because of the importance of investment, and the risks involved in investing in a company, investors may receive formal corporate governance rights in return for their investment. For example, an investor may obtain voting rights and/or board representation rights. These rights may then enable the investor to exercise influence or control over the target enterprise's strategic decisions. Even where an investment does not confer formal governance rights on the investor, the recipient may in practice be so financially dependent on an investor that this dependency may confer on the investor the ability to influence materially or control the recipient's commercial policy.
50. Despite being OpenAI's largest investor, Microsoft enjoys relatively few formal governance rights over OpenAI's policy. As set out at paragraph 21(a) above, pursuant to the terms of the 2023 Agreements, Microsoft's veto rights generally concern typical financial investor protections; Microsoft does not currently enjoy board representation rights at OpenAI, OpenAI GP LLC (the Manager of OpenAI), or OpenAI Nonprofit.
51. However, the CMA's review of the Parties' internal documents revealed that in practice the Partnership has afforded Microsoft [REDACTED] regular engagement [REDACTED] with OpenAI senior management, [REDACTED]. In particular, [REDACTED].<sup>67</sup> The CMA has also seen instances where Microsoft has used its position as OpenAI's largest funder to

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<sup>67</sup> For example, [REDACTED] (OpenAI [REDACTED]) sharing with [REDACTED] (Microsoft [REDACTED]) [REDACTED]. OpenAI's Internal Document, OAI\_00000000\_04329, '[REDACTED]', 14 February 2023.

exert considerable influence over OpenAI's commercial policy, including in relation to [REDACTED]. For example:

- (a) Evidence from the period preceding the signing of the 2023 Agreements suggests that Microsoft [REDACTED].<sup>68</sup>
- (b) An internal Microsoft strategy document prepared by senior management at Microsoft in August 2023 considered [REDACTED].<sup>69</sup>

52. The CMA considers that this evidence is consistent with Microsoft exercising a high degree of influence over OpenAI to align the Parties' interests.

53. More recent events indicate that Microsoft's influence over OpenAI has limits, despite its position as its largest investor:

- (a) While Microsoft was granted a right to appoint a non-voting observer to the board of OpenAI Nonprofit in December 2023, this right was removed in July 2024. Furthermore, the board of OpenAI Nonprofit has significantly increased in size from four board members in December 2023 to ten by January 2025,<sup>70</sup> with the majority of the board composed of independent directors (only Sam Altman has a dual role as an executive of OpenAI). This may mean that decision-making of OpenAI Nonprofit is subject to more oversight than it has been historically.
- (b) OpenAI was successfully able to raise significant new third-party funding, including a material investment from Thrive Capital Partners,<sup>71</sup> as well as obtain a revolving credit facility from a consortium of banks. [REDACTED]. This has reduced the extent of OpenAI's financial dependency on Microsoft.

54. Furthermore, in December 2024, OpenAI Nonprofit announced that it intends to restructure OpenAI as a PBC, to enable OpenAI to raise further capital with more conventional terms.<sup>72</sup> It is uncertain when this restructuring will take place, or what the size of Microsoft's interest in the PBC and the rights attached thereto would be.<sup>73, 74</sup>

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<sup>68</sup> [REDACTED].

<sup>69</sup> The document, dated 25 August 2023, prepared by [REDACTED]. One option which is considered is '[REDACTED]' (Microsoft's Internal Document, MSFT-OARFI-S109-0606072, '[REDACTED]', 25 August 2023, page 2).

<sup>70</sup> See paragraph 33 above.

<sup>71</sup> OpenAI's response to the CMA's section 109 Notice, 17 October 2024, paragraph 1.6.

<sup>72</sup> [Why OpenAI's structure must evolve to advance our mission](#).

<sup>73</sup> OpenAI's submission, 23 September 2024, paragraph 3. OpenAI has submitted that Microsoft's current incentive is to leverage [REDACTED] over OpenAI's proposed restructure to enhance its influence on OpenAI in relation to [REDACTED] (OpenAI's response to section 109 notice, 17 October 2024, paragraph 7.10). The CMA notes that Microsoft's [REDACTED] is a type of financial investor protection. The way in which Microsoft may have used this right is consistent with a high degree of influence.

<sup>74</sup> It has been reported that OpenAI is in discussions in relation to a possible material investment from Softbank. See for example, [SoftBank in Talks to Invest Up to \\$25 Billion in OpenAI](#).

55. In relation to the November 2023 events specifically, as set out at paragraph 24, Sam Altman was removed as CEO of OpenAI by the board of OpenAI Nonprofit, and then – with Microsoft’s support – reinstated as CEO of OpenAI a few days later. The board of OpenAI Nonprofit was also substantially overhauled later the same month. Having examined the available evidence closely, the CMA considers that it suggests Microsoft was an influential actor, rather than a driver of these events. In particular:
- (a) The decision of the board of OpenAI Nonprofit to remove Sam Altman from the board of OpenAI Nonprofit and to dismiss him as CEO of OpenAI was unconnected with the Partnership with Microsoft or concerns relating to Microsoft.<sup>75</sup> Microsoft was not consulted on the board’s decision to dismiss Sam Altman, and it was given less than an hour’s notice before Sam Altman’s dismissal was announced publicly.
  - (b) After Sam Altman was dismissed, Microsoft had minimal direct communication with members of the board of OpenAI Nonprofit. Microsoft’s interactions were primarily with Sam Altman and other senior members of OpenAI.<sup>76</sup>
  - (c) Microsoft actively supported Sam Altman’s efforts to return to his role as CEO of OpenAI by temporarily hiring him and offering to employ OpenAI’s staff. Without Microsoft’s active support Sam Altman may not have been reinstated as CEO of OpenAI. However, Microsoft did not act alone in bringing about pressure on the board to reinstate Sam Altman. In particular, the petition calling for Sam Altman’s reinstatement was organised by staff and executives at OpenAI and was signed by a large majority of OpenAI staff, who threatened to resign from their positions. Accordingly, Sam Altman, the OpenAI executive team, and OpenAI staff each played an important contributing role in achieving Sam Altman’s reinstatement.
  - (d) Once the board of OpenAI Nonprofit agreed in principle to Sam Altman’s return as CEO, Microsoft was indirectly consulted (via Sam Altman) on the proposed make-up of the revised board of OpenAI Nonprofit. However, Microsoft’s role was not decisive. [REDACTED].<sup>77</sup>

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<sup>75</sup> Helen Toner and Tasha McCauley (former board members of OpenAI Nonprofit) have also publicly described the concerns which motivated the decision to remove Sam Altman from OpenAI. See [AI firms mustn’t govern themselves, says ex-members of OpenAI’s board](#).

<sup>76</sup> Sam Altman and the OpenAI executive team held frequent direct discussions with the board of OpenAI Nonprofit. A very limited number of direct contacts took place between one Microsoft executive [REDACTED] and one of the board of directors of OpenAI Nonprofit [REDACTED]. Microsoft’s Internal Documents, MSFT-OARFI-S109-0587557–MSFT-OARFI-S109-0587559, ‘[REDACTED]’, 26 February 2024.

<sup>77</sup> [REDACTED]. Microsoft’s Internal Document, MSFT-OARFI-S109-0013386, ‘[REDACTED]’, 1 August 2024 ([REDACTED]).

### 3.4.2 Compute supply

56. Compute is an essential input for the development and distribution of FMs and FM-based services. An agreement to provide compute infrastructure to an FM developer could in certain circumstances result in an acquisition of material influence or control (or contribute towards such a finding), in particular where the provision of compute is exclusive.
57. As noted at paragraph 21(b) above, Microsoft has been the exclusive provider of compute to OpenAI for a number of years. In this context, it is relevant to note that OpenAI's demand for compute grew rapidly during the course of the Partnership and has at times [REDACTED].<sup>78</sup>
58. Documentary evidence (as well as submissions from OpenAI) suggests that Microsoft's control of the compute that OpenAI consumes provides it with a means to exert significant pressure on OpenAI, which may impact OpenAI's incentives to act independently. For example:
- (a) Microsoft internal documents have discussed [REDACTED] in the relationship with OpenAI due to [REDACTED].<sup>79</sup>
  - (b) Microsoft has [REDACTED]. This has impacted OpenAI's ability to commercialise its models and FM-based services, and has also impacted its ability to collaborate with certain downstream third parties that use non-Azure cloud services.<sup>80,81</sup>
  - (c) OpenAI has also submitted and provided evidence in relation to [REDACTED].<sup>82</sup> Additionally, OpenAI has submitted that [REDACTED],<sup>83</sup> [REDACTED],<sup>84</sup> and/or [REDACTED].<sup>85</sup> The CMA considers that these are each further means by which Microsoft can exert pressure on OpenAI.
59. The CMA notes that Microsoft's exclusive supply provisions have recently been modified (as set out at paragraph 36 above) pursuant to a revised compute agreement, allowing OpenAI to obtain compute from third parties directly in certain circumstances, particularly in relation to compute used for training and research. OpenAI submitted that [REDACTED].<sup>86</sup> The CMA notes that amendments to the exclusivity

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<sup>78</sup> OpenAI's response to the CMA's section 109 notice, 17 October 2024, paragraphs 13.1–13.3; OpenAI's submission, 27 September 2024, paragraph 13.

<sup>79</sup> For example, a Microsoft document, [REDACTED]. This indicates that Microsoft is in a position to [REDACTED] supply of compute to OpenAI (Microsoft's Internal Document, MSFT-OARFI-S109-0606072, '[REDACTED]', 25 August 2023).

<sup>80</sup> For example, [REDACTED]. Microsoft's Internal Document, MSFT-OARFI-S109-0091667, '[REDACTED]', 8 July 2023.

<sup>81</sup> The evidence suggests that Microsoft is [REDACTED]. This point is described as a '[REDACTED]' for Microsoft in an internal message between OpenAI executives dated 30 August 2024 (OpenAI's response to section 109 notice, 17 October 2024, Annex 27.5, page 2).

<sup>82</sup> OpenAI's response to the CMA section 109 notice, 17 October 2024, Annex 11.2, page 1.

<sup>83</sup> OpenAI's response to the CMA section 109 notice, 17 October 2024, paragraphs 12.1–12.2.

<sup>84</sup> OpenAI's response to the CMA section 109 notice, 17 October 2024, paragraphs 13.1–13.3.

<sup>85</sup> OpenAI's response to the CMA section 109 notice, 17 October 2024, paragraphs 15.1–15.3 and 16.1.

<sup>86</sup> OpenAI's response to the CMA section 109 notice, 17 October 2024, paragraph 4.2.

clause are subject to important limitations. For example, in relation to the right of first refusal for new compute capacity for contract years [X], the [X]. Microsoft will also remain the exclusive compute supplier for OpenAI API workloads, which represents [X]. Nonetheless, these changes do reduce OpenAI's overall reliance on Microsoft, which may reduce Microsoft's ability to use compute supply to exert pressure on OpenAI.

60. Overall, and taking into account the recent renegotiation to elements of Microsoft's compute exclusivity, the CMA considers that the available evidence points to Microsoft being able to use compute to exert a high degree of influence over OpenAI.

### 3.4.3 IP and commercialisation rights

61. IP rights underpin the research and development efforts and product/services provided by FM developers. Agreements that confer IP rights to a counterparty (particularly where such rights are exclusive) can in certain circumstances result in an acquisition of material influence or control (or contribute towards such a finding). Other contractual provisions that provide a counterparty with consent rights over an FM developer's commercial activities can also operate to have a similar effect.
62. As noted at paragraph 21(c) above, pursuant to the 2023 JDCA, Microsoft has an exclusive licence to OpenAI's IP (other than for certain carve-outs including in relation to AGI), [X]. OpenAI also [X].
63. During the initial stage of the CMA's investigation, both Microsoft and OpenAI submitted that the consent provisions regarding [X].<sup>87</sup> However, the CMA's review of the Parties internal documents revealed numerous instances where [X]. The CMA has also seen evidence, including following subsequent submissions from OpenAI received at a later stage in the CMA's investigation,<sup>88</sup> [X]. In particular:
- (a) In the first half of 2023, OpenAI approached Microsoft to discuss its proposed collaboration with a third-party which developed software that competed with a rival Microsoft offering.<sup>89</sup> Ultimately, the proposed collaboration did not proceed and it appears that the third party in question instead developed its own product using the OpenAI API without collaborating with OpenAI.<sup>90</sup>

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<sup>87</sup> OpenAI's response to the CMA section 109 notice, 6 March 2024, paragraph 6.1. and Microsoft's response to the CMA section 109 notice, 6 March 2024, paragraph 5.2.

<sup>88</sup> OpenAI's response to the CMA section 109 notice, 17 October 2024, paragraphs 25.3 and 30.1, and OpenAI's submission, 23 September 2024, paragraph 6, in which [X].

<sup>89</sup> Specifically, [X]. Microsoft's Internal Document, MSFT-OARFI-S109-0538240, '[X]', 23 February 2023.

<sup>90</sup> OpenAI's response to the CMA's section 109 notice, 10 April 2024, paragraph 3.7.

(b) In the first half of 2023, OpenAI was approached by Apple to discuss a potential deal to integrate ChatGPT features into Apple devices. [REDACTED].<sup>91</sup> Ultimately, however, Microsoft seems to have been content for OpenAI to enter a bilateral deal with Apple.<sup>92</sup> [REDACTED].<sup>93</sup>

(c) In the second half of 2024, OpenAI decided not to pursue [REDACTED].<sup>94</sup>

64. Overall, the available evidence indicates that Microsoft has an ability to influence [REDACTED] OpenAI's ability to [REDACTED]. The CMA has also taken into account that it has seen evidence of various other examples of OpenAI engaging in commercialisation strategies independently of Microsoft and also independently developing its models.<sup>95</sup>

#### 3.4.4 Overall assessment

65. Taken in the round, the evidence above shows that Microsoft is able to exert considerable influence over OpenAI's commercial policy. Microsoft uses this influence to seek to align OpenAI's plans with its own commercial objectives. Microsoft is also able to exert pressure which may impact OpenAI's incentives [REDACTED] and can, in particular, affect OpenAI's ability to [REDACTED]. Taken together, these factors point to Microsoft being in a position to exert a high degree of material influence over OpenAI.

66. Nevertheless, the evidence does not go so far as to indicate that Microsoft is currently able to determine OpenAI's commercial policy. There are examples of OpenAI acting independently and in a way that was not aligned with Microsoft's interests, including in relation to the supply of compute, successfully seeking new investors, and pursuing commercial opportunities with third parties.

67. Taking into account all the available evidence in the round, the CMA does not believe that Microsoft currently controls OpenAI's commercial policy, though it is able to exert a high degree of material influence.

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<sup>91</sup> [REDACTED] (OpenAI's Internal Document, OAI\_00000000\_05538, '[REDACTED]', 6 January 2023).

<sup>92</sup> Microsoft's Internal Document, MSFT-OARFI-S109-0134672, '[REDACTED]', 5 March 2023 and Microsoft's Submission to the CMA, 23 July 2024, paragraph 17 ([REDACTED]: '[REDACTED]').

<sup>93</sup> OpenAI's response to the CMA's section 109 Notice, 17 October 2024, paragraph 25.3.

<sup>94</sup> Specifically, [REDACTED].

<sup>95</sup> Microsoft's submission to the CMA, 7 May 2024, paragraph 5.10; Microsoft's submission, 8 July 2024, paragraphs 13–15. For example, Microsoft submitted that in May 2024 OpenAI announced enhancements to ChatGPT that would add features to both Microsoft OneDrive and Google Drive, one of Microsoft's direct competitors ([Improvements to data analysis in ChatGPT](#)). Microsoft submitted that the decision to add features to Google products was made independently by OpenAI, noting [REDACTED]. Microsoft further submitted that OpenAI has actively launched new models, applications and features, independently of Microsoft. For example, OpenAI announced ChatGPT Enterprise in August 2023, which directly targeted Microsoft's existing enterprise customers ([Introducing ChatGPT Enterprise](#)).

### **3.5 Conclusion on whether enterprises have ceased to be distinct**

68. The CMA considers that Microsoft and OpenAI are both enterprises. Based on all of the available evidence discussed above, the CMA considers that while Microsoft has material influence over OpenAI's commercial policy (and has exercised such influence since the Partnership began in 2019), Microsoft does not currently exercise de facto control over OpenAI and, therefore, there has not been a change of control.
69. Accordingly, the CMA does not believe that two enterprises have ceased to be distinct at a time or in circumstances falling within section 24 of the Act. As such, a relevant merger situation has not been created.
70. As the first jurisdictional criterion is not met, the CMA did not have to conclude on whether: (i) either the UK turnover test or the share of supply test is met; or on whether (ii) a reference would have been made within four months from the later of the merger taking place or material facts being notified to the CMA.
71. Further, it has also not been necessary for the CMA to conclude on whether the Partnership has resulted, or may be expected to result, in an SLC within a market or markets in the UK. The conclusion that the CMA does not have jurisdiction to review the Partnership under the merger control provisions of the Act does not constitute a finding that no competition concerns arise from its operation.

## **4. DECISION**

72. On the basis of the findings above, the CMA does not believe that it is or may be the case that a relevant merger situation has been created. The CMA therefore does not have jurisdiction to review the Partnership in its current form. The Partnership, therefore, will not be referred under section 22 of the Act.

**Joel Bamford**  
**Executive Director, Mergers**  
**Competition and Markets Authority**  
**5 March 2025**