Response to the CMA's Invitation to Comment: Strategic Market Status Investigation into Microsoft's Business Software Ecosystem

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Introductory Note

This response is submitted in an academic capacity and addresses all six questions set out in the Invitation to Comment (ITC) of 14 May 2026. It focuses primarily on the legal dimensions of the investigation, including the scope of the candidate digital activities, the SMS assessment framework under the Digital Markets, Competition and Consumers Act 2024 (DMCCA), and the design of potential interventions. The response draws on comparative analysis of the EU Digital Markets Act (DMA), the Bundeskartellamt's section 19a GWB decision concerning Microsoft, the findings of the CMA's Cloud Services Market Investigation (Cloud MI), and academic literature on software licensing and FRAND access obligations in digital markets.

Part 1: Scope of the Investigation and SMS Assessment

Q1: The proposed scope of the investigation and the candidate description of Microsoft's business software ecosystem

We welcome the CMA's decision to initiate an SMS investigation into Microsoft's business software ecosystem. The decision to treat each of the Productivity Software Suite, PC Operating System, Server Operating System, Relational Database Management System (RDBMS) and Security Software as a digital activity under section 3(1) of the DMCCA is appropriate given how fundamental Microsoft's business software has become to companies and public sector organisations across the UK.[1]

The CMA's further proposal to treat these activities as a single grouped digital activity under section 3(3) is a logical and defensible step. The five constituent activities are not merely commercially bundled: they are technically integrated through shared identity infrastructure (Entra ID and Active Directory), data flows (Microsoft Graph), and common licensing structures such as Enterprise Agreements and Microsoft 365 E3/E5 tiers. The combination fulfils a specific organisational purpose within the meaning of section 3(3)(b), namely the provision of a software environment enabling organisations to perform work tasks effectively, securely, and at scale.

The CMA has correctly noted that the emergence of AI assistants and the predicted shift to agentic AI will lead to further reliance on business software ecosystems, in particular Microsoft's, given its position as the leading provider of business software.[2] Bringing Microsoft's business software under the scope of the DMCCA regime by way of an SMS designation will enable the CMA to undertake tailored action in the form of Conduct Requirements (CRs), Pro-Competition Interventions (PCIs), or voluntary commitments, in line with the approach adopted in the mobile operating systems investigations.

The CMA may nonetheless wish to consider whether the consolidation of all five activities into a single grouped designation risks obscuring distinct competitive conditions at the remedial

[1] CMA, SMS Investigation Notice (14 May 2026) para 7.

[2] CMA, Strategic Market Status Investigation into Microsoft's business software ecosystem, Invitation to Comment (14 May 2026) (ITC) paras 2-4.

stage. An alternative approach, treating each of the five as a separate digital activity and addressing ecosystem effects through the position of strategic significance (POSS) conditions under section 6 and through targeted CRs, might offer greater precision in tailoring interventions layer by layer. For digital ecosystems, leveraging power between services through integration and cross-linking is a serious risk to competition both within and across markets. Acknowledging the distinct nature of services helps to better assess anti-competitive forms of tying and technical integration, which in turn helps to keep the ecosystem open for competitive entry through various channels.[3] The Bundeskartellamt's section 19a GWB decision provides a useful comparator in this regard as it designated Microsoft as having paramount significance across markets (PSCAM) rather than within a single defined activity, thereby preserving the ability to target conduct at each layer of the ecosystem while capturing cross-market effects.[4]

An SMS designation is the necessary first step towards any future regulatory action. It is of vital importance that this investigation is pursued diligently and concluded within the statutory nine-month period.

Q2: Avenues of investigation and additional issues

Microsoft's approach to software licensing in cloud services has become progressively more restrictive since 2019, when it introduced the category of Listed Providers, comprising Amazon, Google, Alibaba, and Microsoft itself, and curtailed customers' ability to bring their own previously purchased licences to those providers' cloud infrastructure.[5]

The primary route for Listed Providers to deploy Microsoft software became the Services Provider Licensing Agreement (SPLA) programme, but several key products, including Windows 10/11 and Microsoft 365, are not available under SPLA to Google or AWS at all. Meanwhile, Microsoft's Azure Hybrid Benefit allows customers to migrate on-premises licences for Windows Server and SQL Server to Azure at a discount, giving Microsoft's own cloud a structural pricing advantage. The CMA's Cloud MI found that these practices amount to partial foreclosure of rival cloud providers in the downstream cloud services market, by raising rivals' costs and restricting their access to software inputs that customers require, in circumstances where Microsoft is itself a vertically integrated competitor in that same market.[6]

It has also been noted that Google and AWS are charged a higher input price for both Windows Server and SQL Server than Microsoft's own customer-facing price, which reflects a clear intent to raise costs for these specific cloud competitors.[7]

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[3] J van den Boom, *Regulating Competition in the Digital Network Industry* (Cambridge University Press 2026), Ch. 8.

[4] Bundeskartellamt, Case Summary, 'Microsoft found to be of paramount significance for competition across markets' B6-26/23 (27 September 2024).

[5] Peter Whelan, 'Software licensing and the UK's cloud services market investigation: a missed opportunity to remedy anticompetitive practices?' (2025) 24(3) Competition Law Journal 95.

[6] CMA, Cloud Infrastructure Services, Final Decision Report (31 July 2025) paras 7.44-7.52.

[7] Ibid para 7.597; Whelan 99.

Two additional avenues merit explicit attention beyond those identified in the ITC. First, the role of data concentration across the ecosystem deserves treatment as a structural barrier to entry in its own right. Microsoft's access to organisational data across productivity, identity, security, and device management layers creates a feedback loop that competitors cannot easily replicate. The concern is not simply that more users make the product more valuable, but that the cumulative behavioural and organisational data generated across the ecosystem confers a structural advantage in training and deploying AI models, particularly Copilot. The CMA's forward-looking SEMP assessment under section 5(4) of the DMCCA should address this explicitly.

Second, the POSS assessment under section 6 should engage closely with Microsoft's dual role as both platform operator and application competitor. Microsoft controls the technical infrastructure (operating systems, identity layers, APIs) while also competing in the application layer, with Teams competing against Slack and Zoom, Defender against CrowdStrike, and Azure against AWS and Google Cloud. The full implications of this dual role for the POSS analysis, in particular section 6(d) on the ability to determine or substantially influence how other undertakings conduct themselves, merit deeper examination than the ITC presently signals.

Q3: How business software may evolve, including as a result of AI and increased cloud adoption

Microsoft has long been the entrenched dominant player in productivity software and desktop operating systems. Without regulatory intervention, the business software market is likely to remain constrained by significant switching-cost barriers. Microsoft's dominance dates back to the 1980s with MS-DOS[8] and subsequently the Windows operating system, which has held the dominant position in desktop operating systems for decades.[9] Currently, Windows desktop operating systems hold a market share of roughly 57.48% in the UK, a strong lead ahead of Apple's macOS.[10]

The CMA's Cloud MI found that between 2019 and 2023, Microsoft's share of the global market for desktop operating systems ranged between 80-90% and 90-100%, with its share in 2023 at 90-100%, far ahead of the next-closest competitor, Google, at 5-10%.[11] Similarly, all measures illustrate that Microsoft has held an 80-90% share of supply in the global market for productivity suites across the relevant period.[12] Customers are highly unlikely to switch: almost all customers contacted by the CMA who use Microsoft 365 indicated they were unlikely to do

[8] Britannica Editors, 'MS-DOS' (Encyclopaedia Britannica, 30 January 2026) <https://www.britannica.com/technology/MS-DOS> accessed 31 May 2026.

[9] StatCounter, 'Desktop Operating System Market Share Worldwide Jan 2009-Apr 2026' <https://gs.statcounter.com/os-market-share/desktop/worldwide/#monthly-200901-202604> accessed 31 May 2026.

[10] StatCounter, 'Desktop Operating System Market Share United Kingdom Apr 2025-Apr 2026' <https://gs.statcounter.com/os-market-share/desktop/united-kingdom> accessed 31 May 2026.

[11] CMA, Cloud Infrastructure Services, para 7.166.

[12] Ibid para 7.182.

so, citing high switching costs relating to retraining, compatibility loss, and the desire to use the same solution as other companies.[13]

Microsoft's dominance in cloud computing largely stems from its market power in operating systems and productivity software. As Boutin and Boutin observe, Microsoft's competitive advantage in cloud stems from its strong position in cloud-infrastructure-adjacent markets and its ability to leverage that strength to drive customers to Azure. Microsoft holds approximately 72.17% share in client OS, 72.1% in server OS, and 89.2% in productivity suite markets, creating a bottleneck where Microsoft's control over licensing terms limits the options available to competitors.[14] This bundling relies on restrictive licensing practices, the all-in-one Microsoft 365 bundles, and the blurring of lines between software and SaaS.[15]

Regarding generative AI, there is cause for concern that Microsoft may be able to anticompetitively tie its Copilot programme with its dominant productivity software. The potential inclusion of Copilot in the designated activities reflects the CMA's ambition to prevent lock-in before it has fully cemented, recognising the unfair distribution advantage that dominant players enjoy in vertically integrating generative AI into dominant platforms. This reflects wider concerns that dominance in cloud often leads to dominance in AI due to the interdependence of AI infrastructure with the resources and investments of major technology companies.[16]

Some forward-looking dynamics warrant attention:

- AI-assisted workflows, once embedded, are likely to create stronger switching costs than traditional software dependencies, since AI tools learn organisational patterns over time and become more valuable the longer they are used.

-Microsoft's existing access to organisational data across the ecosystem may give Copilot a structural training advantage that rivals cannot easily overcome, even if the underlying model capability is comparable.

-The shift toward agentic AI may increase the significance of default settings and integration depth as vectors of competitive advantage, reinforcing the concerns identified at paragraph 53 of the ITC regarding defaults and design choices.

That said, current evidence on Copilot adoption suggests active use remains limited. Microsoft reported 20 million Copilot subscribers in its March 2026 earnings report, a small proportion of its 400 million Microsoft 365 customers. Reports indicate that less than 3% of paying users actively use Copilot, and Microsoft has reportedly been scaling back some Copilot integrations

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[13] Ibid para 7.188.

[14] Aleksandra Boutin and Xavier Boutin, 'Microsoft's Business Practices in the Cloud: A Competitive Analysis' (ThinkBRG, 2025) paras 87-88 <https://www.thinkbrg.com/insights/publications/microsofts-business-practices-in-the-cloud-a-competitive-analysis/> accessed 31 May 2026.

[15] Ibid para 108.

[16] Fernando Van Der Vlist and others, 'Big AI: Cloud Infrastructure Dependence and the Industrialisation of Artificial Intelligence' (2024) 11 Big Data & Society 1.

in response to user complaints. Market share data also suggests that Copilot is not yet a dominant AI tool. The forward-looking entrenchment risk is therefore one to monitor carefully rather than one that has yet crystallised.

Part 2: Issues and Possible Interventions

Q4: Whether the CMA is focusing on the right issues

The four issues identified in paragraphs 41(a) to 41(d) of the ITC, namely leveraging into cloud services, technical interoperability, commercial bundling, and defaults and design choices, are the right issues. They correspond closely to the theories of harm that informed the Cloud MI findings and the regulatory actions taken in other jurisdictions, and they are well-suited to the CR framework under sections 19 and 20 of the DMCCA.

One issue that merits more explicit treatment is the concept of technological rule-setting power. Analysis of digital platform ecosystems has identified that dominant firms exercise a distinctive form of power through the design of technical interfaces such as by controlling APIs, protocols, and integration requirements. This allows a platform operator to set the rules of access for dependent firms without any single anticompetitive act being identifiable in isolation. The CMA's Notice identifies this concern at paragraphs 20(b) and 20(c) in relation to switching costs and de facto standards, but does not engage with the structural dimension of interface control as a regulatory power in its own right. The DMCCA's conduct requirements under sections 19 and 20 are well-suited to addressing this concern through transparency and non-discrimination obligations governing changes to technical integration requirements.

Q5: Potential interventions: FRAND, unbundling, and interoperability

Given Microsoft's high market dominance and its demonstrated ability to leverage that dominance into adjacent markets, two principal remedies could be pursued to introduce meaningful competition and benefit UK users and consumers. The first concerns a FRAND-based licensing obligation. The second concerns unbundling.

This submission supports the imposition of a CR requiring Microsoft to ensure price parity for its products and their functionality across Azure and non-Azure cloud environments.[17] This would serve the fair dealing objective under the DMCCA. The CMA's own guidance describes fair dealing as requiring SMS firms to trade on fair and reasonable terms, including banning the differential application of terms, conditions, or policies to different users without objective justification.[18] The ITC itself identifies the possibility of obliging Microsoft to apply a fair, reasonable and non-discriminatory (FRAND) approach in relation to the pricing of its software products regardless of which cloud they are hosted on, with different fees and commercial terms permissible only where objectively justified.[19]

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[17] Whelan 103.

[18] CMA, 'Guidance on the digital markets competition regime set out in the Digital Markets, Competition and Consumers Act 2024' (24 May 2024) para 3.6.

[19] ITC para 43.

The concept of FRAND access obligations in digital markets is increasingly well-developed. Analysis of Article 6(11) DMA in the context of search data access identifies that FRAND in digital markets entails both procedural and substantive duties: access terms must be transparently negotiated, based on objective criteria, and avoid discriminatory treatment between similarly situated recipients.[20] The same principles are directly applicable to the DMCCA context in the case of Microsoft's business software.

A FRAND licensing obligation on Microsoft would need to specify, with sufficient precision, the criteria by which differential pricing could be objectively justified, so as to avoid the obligation being rendered hollow through broad exceptions.[21] Effective enforcement will require a forward-looking and principle-based interpretation, capable of preserving contestability and innovation, which the DMCCA's CR mechanism is structurally well-placed to deliver.[22]

The recommendation is that the CMA initiate a CR study simultaneously with this SMS investigation, so that a final CR can be adopted in a timely manner following designation. Based on the experience with the Google Search CR, timely adoption of CRs is vital in fast-moving industries. The CMA retains the ability to revoke or vary a CR under section 22 of the DMCCA should circumstances change.

This submission also supports the potential CR that would mandate Microsoft to permit the transfer of previously purchased software to competing cloud providers and to ensure that competing cloud providers can offer Microsoft's full software range.[23] This would be in line with the voluntary commitments made by Microsoft to the CMA to enable businesses to operate across multiple clouds,[24] but would provide the legal enforceability that voluntary commitments lack. It aligns with the CMA's own proposed interventions at paragraph 43 of the ITC, which contemplate restrictions on Microsoft's ability to favour Azure through unequal access to software products, and changes to contractual licensing practices to enable customers to deploy previously purchased products on the cloud of their choice.[25]

This submission further supports a CR requiring Microsoft to unbundle its productivity software offerings. The CMA has proposed potentially intervening to ensure that customers can make meaningful choices between bundled and unbundled offerings, or that commercial arrangements do not unduly foreclose rivals in adjacent markets.[26] As Boutin and Boutin observe, such restrictions prevent businesses from complementing their enterprise technology stack with third-party solutions, thereby preventing competitors from competing on the

[20] Jasper van den Boom, 'The Search for Meaningful Results: FRAND Access Conditions under Article 6(11) DMA' (2025) 9(4) European Competition and Regulatory Law Review 302.

[21] Ibid 308.

[22] Ibid 314-318.

[23] Whelan 103.

[24] CMA, Actions on Cloud and Business Software through the UK Digital Markets Competition Regime (31 March 2026) para 33.

[25] ITC para 43.

[26] ITC para 51.

merits.[27] Mandating unbundling would serve the open choices objective under the DMCCA, ensuring that consumers can switch freely between services and avoid being locked into a single ecosystem.[28]

Consideration should also be given to interoperability obligations under the open choices objective in section 19(3)(b), which could require Microsoft to make available, on transparent, non-discriminatory terms with advance notice of material changes, the APIs and technical protocols needed for rival products to integrate with the ecosystem. The DMA's interoperability obligations under Article 6(4)[29] and the BKA's findings regarding Microsoft's control over necessary technical interfaces provide comparative design templates, though the CMA will rightly calibrate these to the specific conditions of the UK market.

The current market concentration in cloud exists despite the presence of smaller firms, which can offer the opportunity for firms to multi-cloud, which is a security benefit as well as a strategic one. A UK-based data storage and management service company's CEO has said that businesses are actively trying to move away from relying on a single provider as a way to protect against 'geopolitical uncertainty' and a desire to have more control over their digital environment, but struggle due to licensing restrictions, integration hurdles, and long-standing vendor lock-in.[30]

Finally, this submission underlines the urgency of this investigation. Various submissions to the Cloud MI urged speedy enforcement. The Open Cloud Coalition cautioned that prolonged investigations risk allowing competitive harm to become irreversible before remedies are implemented.[31] While the CMA has shown willingness to accept voluntary commitments to expedite enforcement, this submission recommends that enforceable CRs be pursued, potentially using the interim measures power where harm is ongoing. The CMA should in any event initiate CR development in parallel with the SMS investigation, pursuant to the DMCCA's flexible architecture.

Q6: Lessons from other jurisdictions

Three lessons stand out from the international regulatory landscape.

The Bundeskartellamt's (BKA) 2024 decision that determined Microsoft as having PSCAM provides insights into the treatment of the ecosystem's technical architecture which the CMA can learn from and adopt. The decision emphasized on the the interlocking system prerequisites and API dependencies being the primary locus of competitive concern rather than as mere background context.[32] The BKA found that Microsoft's omnipresence across all layers

[27] Boutin and Boutin para 227.2.

[28] CMA, Guidance on the digital markets competition regime, para 3.6.

[29] Digital Markets Act (Regulation (EU) 2022/1925), art 6(4).

[30] Allan Davison, 'UK Organisations Moving Away from Single Cloud' IT-Online (04 August 2025), https://it-online.co.za/2025/08/04/uk-organisations-moving-away-from-single-cloud/.

[31] Open Cloud Coalition, 'Response to the CMA's Provisional Decision on the Cloud Services Market' (28 February 2025) 2.

[32] Bundeskartellamt *Microsoft* PSCAM, page 3.

of the technology stack, reinforced by strict and conditional system prerequisites, creates a form of market power that is qualitatively different from dominance in a single product market.[33] The DMCCA's grouped designation mechanism is capable of capturing this, but only if the SMS assessment and subsequent CRs are designed with the multi-layered architecture explicitly in mind.

The CMA should be alert to the limits of prescriptive, product-specific obligations in a rapidly evolving ecosystem. The DMA's designation of Microsoft only for its Windows PC OS, and not for the productivity suite or cloud infrastructure, has constrained the Commission's ability to address ecosystem-level conduct. The CMA's broader scope for the Business Software Ecosystem is therefore a regulatory advantage that should be preserved and built upon. At the same time, the DMA's experience with compliance monitoring suggests that interoperability obligations require robust technical monitoring and enforcement mechanisms from the outset.

The decision to defer remedies to the DMCCA regime rather than impose them under the market investigation framework has created a timing gap during which the harms identified by the inquiry group continue to operate. The CMA should treat the Cloud MI findings as establishing a strong evidential presumption in favour of the cloud licensing interventions described above, and should prioritise these as early CRs, taking advantage of the DMCCA's flexibility to develop CRs in parallel with or immediately following the SMS investigation. The European Commission's Teams remedy in Cases AT.40721 and AT.40873, while not legally enforceable in the UK,[34] provides a further design template for CRs addressing bundling and default settings, which could be adapted and made more durable through the DMCCA's enforcement architecture.

Disclosure

This response may be published in non-confidential form in its entirety. The respondents have no objection to the CMA referring to it in future publications.

[33] Bundeskartellamt *Microsoft* PSCAM, pages 4-5.

[34] Cases AT.40721 and AT.40873, *Microsoft Teams*; European Commission decision of 5 September 2023.