

May 9, 2024

Ms. Lavinia de Havilland and Ms. Georgia Cummings
Competition and Markets Authority
The Cabot, 25 Cabot Square
London, E14 4QZ
United Kingdom

Ms. de Havilland and Ms. Cummings,

On behalf of the Information Technology and Innovation Foundation (ITIF), thank you for the opportunity to provide comments to the Competition and Markets Authority (CMA) on the Microsoft-Mistral AI partnership.¹

ITIF is an independent, nonprofit, nonpartisan research and educational institute that has been recognized repeatedly as the world's leading think tank for science and technology policy. ITIF's mission is to formulate and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's Center for Data Innovation focuses on the intersection of data, technology, and public policy.

These comments make three points. First, the Microsoft-Mistral AI partnership does not meet the criteria set for a "relevant merger situation" as set forth in the Enterprise Act 2002, and thus the CMA should not intervene. Second, even if the CMA believes that the partnership reaches the threshold to create a relevant merger situation, the partnership does not have a negative impact on competition. Third, any potentially negative impacts on competition would be justified by the pro-competitive impact of this partnership.

THE CMA SHOULD NOT INTERVENE IN THE MICROSOFT-MISTRAL AI PARTNERSHIP

The first question CMA is considering is "whether it is or may be the case that the Partnership, or any changes thereto, have resulted in the creation of a relevant merger situation under the merger provisions of the Enterprise Act 2002."² The Enterprise Act 2002 plainly states that "a relevant merger situation has been

¹ "Microsoft Corporation's Partnership With Mistral AI," Competition and Markets Authority, n.d., https://assets.publishing.service.gov.uk/media/6627c058d29479e036a7e68c/A_Microsoft_Mistral_ITC.pdf.

² Ibid.

created if...two or more enterprises have ceased to be distinct enterprises...”³ In the Microsoft-Mistral AI partnership, this criterion is clearly unmet as Microsoft does not have corporate control over Mistral AI (or vice versa). Both organizations continue to operate independently, maintaining distinct governance and operational structures. The partnership functions as a strategic collaboration, not as an integration of business operations, which stands at the heart of the concept of a merger. The publicly reported financial details of this partnership fully support this conclusion. Microsoft invested €15 million in Mistral AI in 2024. To put this in perspective, Mistral AI recently raised €385 million in funding as part of its Series A investment round, and Microsoft will have less than a 1 percent equity stake in the company (when it converts in the next round of funding).⁴ Such a *de minimis* stake is highly unlikely to raise antitrust concerns.

THE MICROSOFT-MISTRAL AI PARTNERSHIP DOES NOT HARM COMPETITION

The partnership between Microsoft and Mistral AI has not had a negative impact on competition in the UK (or elsewhere) in terms of reduced innovation, consumer welfare, or choice. First, the transaction involves no actual or potential reduction in horizontal competition between Microsoft and Mistral AI. Microsoft continues to develop its own LLMs and has invested billions in AI innovation.⁵ As such, its partnership with Mistral AI has not stalled its efforts to build competing products.

The partnership between Microsoft and Mistral AI has not, and will not, prevent competitors from using Mistral AI’s models or Microsoft’s cloud services. First, the partnership does not give Microsoft exclusive access to Mistral AI’s large language models (LLMs). Indeed, Mistral AI has three models (Mistral 7B, Mixtral 8x7B, and Mixtral 8x22B) which it makes available under an Apache 2.0 open-source license, which means anyone can use these models without restrictions. Mistral AI makes these open-source AI models available via multiple cloud partners, including Google Cloud Platform (GCP), Amazon Web Services (AWS), Microsoft Azure, Snowflake, and NVIDIA.⁶ Mistral AI also makes its proprietary models, including its flagship LLM Mistral Large, available on multiple cloud platforms, including Azure AI Studio, AWS Bedrock and Snowflake.⁷ Developers can choose which cloud platform best fits their needs. For example, using Microsoft’s Azure OpenAI Service offers developers additional integrations with Microsoft cloud services and features,

³ “Enterprise Act 2002, Section 23,” The National Archives, n.d., <https://www.legislation.gov.uk/ukpga/2002/40/section/23> (accessed December 14, 2023).

⁴ “Microsoft made a \$16M investment in Mistral AI,” *TechCrunch*, February 27, 2024, <https://techcrunch.com/2024/02/27/microsoft-made-a-16-million-investment-in-mistral-ai/>.

⁵ “Meet MAI-1: Microsoft Readies New AI Model to Compete with Google, OpenAI,” *The Information*, May 6, 2024, <https://www.theinformation.com/articles/meet-mai-1-microsoft-readies-new-ai-model-to-compete-with-google-openai>.

⁶ “Mistral technology,” Mistral AI, n.d., <https://mistral.ai/technology/#deployment>.

⁷ *Ibid.*

such as Microsoft's security and access control tools, enterprise training and support, and enterprise-level service level agreements.⁸

Similarly, Mistral AI does not have exclusive access to Microsoft's cloud services for its LLM. Microsoft's Azure AI Studio offers a catalog of leading AI models, including competitors to Mistral such as GPT-4 (OpenAI), Llama (Meta), Command (Cohere), and Dolly (DataBricks).⁹ In addition, many companies compete with Microsoft's Azure AI platform, including major cloud providers such as AWS, GCP, and IBM Watson. For example, developers can use AWS SageMaker and IBM Watson Labs to build, train, and deploy AI models either directly on these platforms or through development platforms like HuggingFace.¹⁰

THE MICROSOFT-MISTRAL AI PARTNERSHIP HAS HAD PRO-COMPETITIVE EFFECTS

Far from reducing competition, the partnership between Microsoft and Mistral AI will likely prove to be pro-competitive and bring additional consumer benefits going forward. Microsoft's partnership with Mistral AI creates more competition between different AI models because developers can easily experiment with different models from different providers within the Azure platform. Given Microsoft's global footprint for its cloud services, this partnership allows Mistral AI, a smaller company compared to rivals such as OpenAI, an opportunity to compete worldwide. It also creates more competition between cloud providers, as Microsoft must compete with other cloud services to provide an optimal computing environment for its customers. For example, customers may choose cloud providers for deploying AI based not only on cost, but also speed, reliability, security, and other factors. Finally, this partnership will also lead to innovation. For example, the two companies announced that they would collaborate on training models for specific purposes, such as for the European public sector.¹¹ Without this type of partnership, a smaller company like Mistral might not have the resources to move quickly into these markets, potentially stalling adoption and deployment of AI.

⁸ Natalie Mickey, "Explore the Benefits of Azure OpenAI Service with Microsoft Learn," *Microsoft Azure Blog*, June 28, 2023, <https://azure.microsoft.com/en-us/blog/explore-the-benefits-of-azure-openai-service-with-microsoft-learn/>.

⁹ "Azure AI Studio," Microsoft, n.d., <https://ai.azure.com/explore/models>.

¹⁰ Amazon Web Services, Inc., "Machine Learning Service - Amazon SageMaker - AWS," accessed December 14, 2023, <https://aws.amazon.com/sagemaker/>; "Hugging Face and AWS Partner to Make AI More Accessible," accessed December 14, 2023, <https://huggingface.co/blog/aws-partnership>.

¹¹ "Microsoft and Mistral AI announce new partnership to accelerate AI innovation and introduce Mistral Large first on Azure," Microsoft, February 26, 2024, <https://azure.microsoft.com/en-us/blog/microsoft-and-mistral-ai-announce-new-partnership-to-accelerate-ai-innovation-and-introduce-mistral-large-first-on-azure/>.

CONCLUSION

Given that the Microsoft-Mistral AI partnership does not create a relevant merger situation, does not harm competition, and has a pro-competitive impact on the market, the CMA should not intervene. Intervention would have a deleterious impact on digital innovation not only in the AI sector but the information technology sector more broadly by discouraging partnerships. Many tech companies both provide a technology platform (i.e., a technology used as a foundation for building and running other applications, processes, or technologies) and use other technology platforms. Partnerships between tech companies are common because of the rich integrations and interdependencies between different technologies. For example, a payment provider may use a list of technology platforms, including a cloud provider, a network security provider, and an ad network to deliver its services, while those services may in turn use the payment provider to process payments on their platforms. As discussed previously, these partnerships can be advantageous for all parties.

Moreover, given that this partnership involves two non-UK-based companies, the CMA should be cautious when considering extraterritorial enforcement of its authority, especially in hotly contested emerging markets like AI, because intervening could create the impression that the UK is attempting to stifle foreign competition by sabotaging successful technological partnerships (in this case, a U.S. company and a French company). Instead, in the absence of evidence of harm and any clear impact on the UK market, the CMA should defer to U.S. or French regulators to consider whether to investigate any antitrust concerns arising from this partnership.

Thank you for taking this analysis into account in your review.

Sincerely,

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