

Microsoft Corporation's partnership with Mistral AI

Decision on relevant merger situation

ME/7102/24

The Competition and Markets Authority (**CMA**)'s decision on relevant merger situation under section 22(1) of the Enterprise Act 2002 given on 17 May 2024. Full text of the decision published on 21 May 2024.

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

PARTIES

1. Microsoft Corporation (**Microsoft**) is a global technology company headquartered in Redmond, Washington, USA. Microsoft offers a wide range of products and services to customers through three main operating segments: (i) Productivity and Business Processes; (ii) Intelligent Cloud; and (iii) More Personal Computing.¹
2. Among other things, Microsoft is active in the development of artificial intelligence (**AI**) foundation models (**FMs**),² the supply of cloud compute infrastructure to FM developers³ and the distribution of FMs via its Azure cloud platform.
3. Mistral AI (**Mistral**) is a France-based FM developer founded in April 2023.⁴ Mistral has released several open and closed source FMs, including Mistral 7B, Mixtral 8x7B and Mistral Large.⁵ On 26 February 2024, Mistral announced the release of

¹ Microsoft's supplementary response dated 17 April 2024 to the CMA's enquiry letter dated 28 March 2024 (**Supplementary Enquiry Letter response**), paragraph 11.1.

² Microsoft has integrated FMs into several of its products, such as Microsoft Copilot (formerly Bingchat). Supplementary Enquiry Letter response, paragraph 11.8.

³ Supplementary Enquiry Letter response, paragraph 11.10.

⁴ Supplementary Enquiry Letter response, paragraph 11.2.

⁵ Supplementary Enquiry Letter response, paragraph 11.2. See also Mistral, [Technology | Mistral AI | Frontier AI in your hands](#).

its latest and most advanced language model, Mistral Large, then available via its own inferencing platform, La Plateforme, and Azure, its first distribution partner.⁶

TRANSACTION

4. Microsoft has entered into a partnership with Mistral (the **Partnership**) comprising:⁷
 - (a) a commitment by Mistral to [X] on Azure infrastructure⁸ and an associated [X] on Azure infrastructure over [X] years (the **compute commitment**);⁹
 - (b) a commitment by Mistral to make its [X] flagship commercial models and model variants available on Microsoft's Azure platform for [X] years (the **distribution agreement**);¹⁰
 - (c) an investment of €15 million by Microsoft in convertible bonds issued by Mistral which will convert to an equity interest in the event of a future funding round in Mistral;¹¹ and
 - (d) the possibility of future collaboration on research and development, including on training industry-specific models for selected customers and support for European public sector workloads.¹²

JURISDICTION

5. 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.
6. For the purposes of the Enterprise Act 2002 (the **Act**), one of the criteria that needs to be met for a transaction or arrangement to constitute a relevant merger situation is that either (i) two or more enterprises have ceased to be distinct or (ii) there are arrangements in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct.¹³

⁶ [Au Large | Mistral AI | Frontier AI in your hands](#). Mistral Large was subsequently made available on AWS Bedrock and Snowflake ([Technology | Mistral AI | Frontier AI in your hands](#), accessed on 13 May 2024).

⁷ In addition to the elements set out in [X], the Partnership envisages that [X].

⁸ [X]. See also [Introducing Mistral-Large on Azure in partnership with Mistral AI | Microsoft Azure Blog](#), 26 February 2024.

⁹ See [Introducing Mistral-Large on Azure in partnership with Mistral AI | Microsoft Azure Blog](#), 26 February 2024.

¹⁰ [X]. See also [Introducing Mistral-Large on Azure in partnership with Mistral AI | Microsoft Azure Blog](#), 26 February 2024.

¹¹ [X]. Microsoft response dated 10 April 2024 to the CMA's enquiry letter dated 28 March 2024, paragraph 4.4.

¹² [X]. See also [Introducing Mistral-Large on Azure in partnership with Mistral AI | Microsoft Azure Blog](#), 26 February 2024.

¹³ Section 23 of the Act. The other criteria to be satisfied include: (i) that either the UK turnover associated with the enterprise which is being acquired exceeds £70 million (the turnover test), or the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of

7. Each of Microsoft and Mistral is an enterprise. The CMA has considered whether as a result of the Partnership, these enterprises have ceased to be distinct. Two or more enterprises cease to be distinct if they are brought under common ownership or control.¹⁴ Control is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control, including material influence, de facto control and a controlling interest.¹⁵
8. The ability to exercise material influence is the lowest level of control that may give rise to a relevant merger situation. When making its assessment, the CMA focuses on the acquirer's ability to influence materially policy relevant to the behaviour of the target entity in the marketplace. The policy of the target in this context means the management of its business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives.¹⁶
9. The assessment of material influence requires a case-by-case analysis of the overall relationship between the acquirer and the target, having regard to all the circumstances of the case.¹⁷ The variety of commercial arrangements entered into by firms makes it difficult to state categorically what will (or will not) constitute material influence.¹⁸ Potential sources of influence – that may individually or collectively confer material influence – include: the ability to influence the target's policy through exercising votes at shareholders' meetings, whether because it has the right to block special resolutions or because, given other factors, it is able to do so in practice;¹⁹ the ability to influence the board of the target through board representation;²⁰ or other arrangements, such as customer/supplier relationships between the acquirer and the target, the provision of consultancy services to the target or, in certain circumstances, financial dependency of the target on the acquirer.²¹ However this list is not exhaustive.²²

all those particular goods or services of that kind supplied in the UK or in a substantial part of it, and the merger results in an increment to the share of supply (the share of supply test) (see section 23 of the Act); and (ii) the merger must not yet have taken place, or the date of the merger must be no more than four months before the day the reference is made, unless the merger took place without having been made public and without the CMA being informed of it (see section 24 of the Act) (subject to extensions of the four-month deadline in certain circumstances). Mergers guidance on the CMA's jurisdiction and procedure, 25 April 2024 ([CMA2](#)), paragraph 4.3.

¹⁴ Section 26 of the Act; [CMA2](#), paragraph 4.5.

¹⁵ Section 26 of the Act; [CMA2](#), paragraph 4.16.

¹⁶ [CMA2](#), paragraph 4.17.

¹⁷ [CMA2](#), paragraph 4.18.

¹⁸ [CMA2](#), paragraph 4.20.

¹⁹ For example, where: the distribution of remaining shares mean that the acquirer is the largest shareholder or where patterns of attendance and voting at recent shareholders' meetings mean that a shareholding of less than 25% would be able to block special resolutions in practice; the acquirer's minority shareholding affords special voting or veto rights over relevant policy or strategic matters sufficient to confer material influence; or the status and expertise of the acquirer enables it to influence materially policy formulation, for example, through meetings without other shareholders. The CMA may also consider as additional relevant factor whether a company's appetite for pursuing certain strategies would be reduced because of a perception that such strategies would be likely to cause conflict with the acquirer. [CMA2](#), paragraphs 4.19 – 4.20 and 4.24 – 4.27.

²⁰ [CMA2](#), paragraphs 4.19 – 4.20 and 4.28 – 4.30.

²¹ Specifically, where such dependency results in the acquirer gaining material influence over the target's commercial policy, eg because it could threaten to withdraw loan facilities if a particular policy is not pursued. [CMA2](#), paragraphs 4.19 – 4.20 and 4.31 – 4.32.

²² [CMA2](#), paragraph 4.20.

10. Based on the available information, the CMA does not believe that Microsoft has acquired material influence over Mistral as a result of the Partnership. In its assessment, the CMA considered Microsoft's ability to influence Mistral's policy through the following potential sources of influence, considered in the round:
- (a) exercising votes at shareholders' meetings or through otherwise influencing the Mistral board;
 - (b) the compute commitment;
 - (c) the distribution agreement; and
 - (d) the possibility of future collaboration on research and development.

Influence at shareholder and board level

11. Microsoft's potential shareholding in Mistral is less than 1%²³ and other factors (even in combination) do not indicate that Microsoft is likely to have the ability to influence Mistral's policy through exercising votes at shareholders' meetings or through otherwise influencing the Mistral board. In particular:
- (a) In the event of Microsoft's investment converting to equity, Microsoft would remain a minority investor in Mistral, with no power to block special resolutions.²⁴ Others hold significantly more of the share capital (and associated voting rights) in Mistral. In particular, [X] hold the absolute majority in voting rights and, [X], hold more than [X]% of the share capital of Mistral on a fully diluted basis.²⁵ The next largest shareholders are [X], which holds just under [X]%, and [X] which holds [X]%.²⁶ Further, Microsoft's investment in Mistral via a subscription to €15 million of convertible bonds was part of a bond raise of €120 million, with other investors including NVIDIA, with an investment of €[X] million, more than [X] Microsoft.²⁷
 - (b) The CMA considered whether Microsoft has been given particular rights that would allow it to exercise substantially greater influence than might be

²³ Microsoft does not have a shareholding in Mistral. Based on Mistral's current valuation of approximately US\$2 billion following its most recent funding round in December 2023 (see, eg, [Microsoft made a \\$16M investment in Mistral AI | TechCrunch](#), 27 February 2024), if Microsoft's investment in convertible bonds converted to equity, Microsoft would own less than 1% of Mistral's shares.

²⁴ Microsoft supplementary submission on CMA jurisdiction dated 10 April 2024 (**Microsoft's submission on CMA jurisdiction**), paragraph 2.8; and [X].

²⁵ [X] together hold [X]% ([X]%) of the share capital on a fully diluted basis, however they have the absolute majority of voting rights [X]. Mistral's submission on CMA jurisdiction dated 11 April 2024 (**Mistral's submission on CMA jurisdiction**), page 3; Mistral's response to the CMA's request for information dated 9 April 2024 (**Mistral's RFI 1 response**), page 2; and Microsoft's submission on CMA jurisdiction, paragraph 2.7.

²⁶ Also on a fully diluted basis. Mistral's RFI 1 response, page 2; [X].

²⁷ Microsoft's submission on CMA jurisdiction, paragraph 2.11 and Microsoft's briefing paper dated 4 March 2024 submitted to the CMA in response to the Mergers Intelligence Committee's request of information dated 29 February 2024, paragraph 2.3 and Table 1.

suggested by its shareholding, including special voting or veto rights over relevant policy or strategic matters sufficient to confer material influence.²⁸ Microsoft does not have any such special voting or veto rights.²⁹

- (c) The CMA also considered Microsoft's ability to influence the board of directors through board representation. However, Microsoft does not have board representation and its €15 million investment in convertible bonds [redacted].³⁰

Influence through the compute commitment

12. Access to substantial compute remains critical for developing highly capable FMs.³¹ An agreement to provide compute infrastructure to an FM developer may in certain circumstances result in an acquisition of material influence. The CMA considers that this may occur where the conditions are such that the agreement creates a dependency on the compute supplier such that it enables it to influence materially the commercial policy of the FM developer. Relevant considerations may include whether the agreement requires exclusivity such that it 'locks in' the FM developer supply arrangements or includes other terms that compromise the commercial freedom of the FM developer, for example, through restricting its decisions regarding how it commercialises its intellectual property. In the particular circumstances of this case, the CMA does not believe that the compute commitment³² confers on Microsoft the ability to influence materially the commercial policy of Mistral. In particular:

- (a) The compute commitment accounts for a relatively modest proportion of Mistral's contracted compute for the duration of the agreement.³³ Mistral has historically used, [redacted], other cloud service providers (**CSPs**) to meet its compute requirements.³⁴
- (b) The terms of the compute commitment do not otherwise confer on Microsoft the ability to influence materially the commercial policy of Mistral (eg through requiring Microsoft's consent to a given course of action).

²⁸ [CMA2](#), paragraph 4.25.

²⁹ Microsoft's submission on CMA jurisdiction, paragraph 2.9. [redacted].

³⁰ Microsoft's submission on CMA jurisdiction, paragraph 2.13.

³¹ See the CMA's [AI Foundation Models Technical Update Report](#), 16 April 2024, paragraphs 2.28 and 2.29.

³² Being, as set out in paragraph 4 above, a commitment by Mistral to use Microsoft's Azure compute infrastructure for [redacted], and an associated [redacted] year [redacted] on Azure infrastructure.

³³ Microsoft is one of [redacted] CSPs supplying Mistral with compute infrastructure. Mistral currently sources and, based on current contracts, for the vast majority of the term of the compute commitment will continue to source, the majority of its compute from [redacted]. Specifically, under Mistral's current agreements with CSP suppliers of compute infrastructure, Mistral will have access to the following compute (in terms of [redacted]): [redacted]. Mistral's response to the CMA's request for information dated 30 April 2024 (**Mistral's RFI 2 response**), page 2.

³⁴ Mistral's RFI 2 response, page 2.

13. The CMA therefore considers it unlikely that the compute commitment, in the absence of other factors conferring influence, creates a dependency on Microsoft that would allow it to influence materially the commercial policy of Mistral.

Influence through the distribution agreement

14. Distribution via FM platforms provided by CSPs – such as Microsoft’s Azure Machine Learning Studio – could potentially be an important route to market for FM developers.³⁵ A distribution agreement between an FM developer and a CSP may in certain circumstances result in an acquisition of material influence. The CMA considers that this may occur where the conditions are such that the agreement creates a dependency on the CSP such that it enables it to influence materially the commercial policy of the FM developer.³⁶
15. In the particular circumstances of this case, the CMA does not believe that the commitment by Mistral to make its [X] flagship commercial models and model variants available on Microsoft’s Azure platform confers on Microsoft the ability to influence materially the commercial policy of Mistral. In particular:
 - (a) The distribution agreement is non-exclusive. Mistral’s FMs are currently available on Amazon Bedrock,³⁷ Snowflake,³⁸ Perplexity Pro,³⁹ and its own platform,⁴⁰ and may be available through other third parties in the future.⁴¹
 - (b) The agreement [X].⁴²
 - (c) The terms of the distribution agreement do not otherwise confer on Microsoft the ability to influence the commercial policy of Mistral (eg through requiring Microsoft’s consent to a given course of action).
16. The CMA therefore considers it unlikely that the distribution agreement, in the absence of other factors conferring influence, creates a dependency on Microsoft that would allow it to influence materially the commercial policy of Mistral.

³⁵ As noted in the CMA’s [AI Foundation Models Technical Update Report](#), 16 April 2024 (paragraph 5.10 and footnote 254), while FM platforms or marketplaces (which include Amazon’s Bedrock and Google’s Vertex AI) are still relatively nascent features of the market, it is possible that in future these are established as mechanisms of control over FM distribution for the firms operating the platforms.

³⁶ Similar to compute supply agreements, relevant considerations may include whether the agreement requires exclusivity such that it ‘locks in’ the FM developer supply arrangements or includes other terms that compromise the commercial freedom of the FM developer, for example, through restricting its decisions regarding how it commercialises its intellectual property.

³⁷ See [Mistral AI - Models in Amazon Bedrock - AWS](#).

³⁸ See [Snowflake - Snowflake Partners with Mistral AI to Bring Industry-Leading Language Models to Enterprises Through Snowflake Cortex](#), 2 March 2024.

³⁹ See [What is Perplexity Pro?](#)

⁴⁰ See [Au Large | Mistral AI | Frontier AI in your hands](#), 26 February 2024.

⁴¹ Microsoft’s submission on CMA jurisdiction, paragraph 2.16.

⁴² [X].

Influence through the possibility of future collaboration and development opportunities

17. The CMA considered whether the Partnership has conferred on Microsoft the ability to influence materially the commercial policy of Mistral through envisaged collaboration and development opportunities. Specifically, the relevant agreement underpinning the Partnership envisages the possibility of: collaboration on training-industry models for selected customers; [redacted] supporting [redacted] public sector workloads [redacted]; and [redacted]. However, any such initiatives are [redacted].⁴³ The CMA therefore considers that the collaboration and development opportunities as set out in the current agreement, in the absence of other factors conferring influence, are unlikely to enable Microsoft to influence materially the commercial policy of Mistral.

DECISION

18. On the basis of the findings above, the CMA does not believe that it is or may be the case that Microsoft and Mistral have ceased to be distinct within the meaning of section 26 of the Act.
19. The CMA therefore does not have jurisdiction to review the Partnership in its current form and it will therefore not be referred under section 22 of the Act.

Joel Bamford
Executive Director, Mergers
Competition and Markets Authority
17 May 2024

ⁱ With respect to paragraph 15(a), by way of clarification, Mistral has clarified that although Perplexity Pro uses Mistral's models, [redacted].

⁴³ [redacted].