RESPONSE TO INVITATION TO COMMENT

CCIA response to CMA Invitation to Comment on Amazon's partnership with Anthropic

Summary

"Has the partnership resulted in the creation of a relevant merger situation under the Enterprise Act 2002?"

- There are multiple reasons to believe that the partnership as announced thus far will not enable Amazon to materially influence Anthropic's commercial strategy, or shape Anthropic's approach to competition in the sector: Amazon is taking a minority stake in the business, not attaining control of Anthropic as a result of its investment, and Anthropic will continue to exist as a separate entity. There is no exclusivity commitment in the deal, instead there is an active plan to make Anthropic available on a platform (Bedrock), alongside other foundation models, therefore providing customers with increased choice; Anthropic has entered other partnerships and does not appear to be precluded from entering more over time.
- The CMA's investigation reflects its concerns about a potential direction for the wider market, more than the likelihood that the Anthropic / Amazon partnership in itself would materially increase or decrease the scope for competition in the market.
- There are existing CMA and FTC investigations into the market that (if needed) would provide a more practical avenue to consider any market-wide issues and intervene if necessary rather than policing the large number of partnerships necessary for the sector to mature one by one via merger tools.
- Given that this reflects an investment in a relatively new business, developing services in a rapidly changing sector, the specific concerns that motivate the evidence standards required for conduct regulation (and sometimes still considered inadequate) are highly relevant:

  (a) the risk of false positives, where regulators impede pro-competitive behaviours - in this case a partnership that might support the growth of Anthropic as a competitor to other foundation models; and

  (b) potential to chill wider investment - in this case other investors in AI services and potentially wider technology business, as this can be seen as a generalised opposition to one class of investors in scaling technology companies (this concern has recently motivated policymakers to act cautiously in revising the UK's approach to merger policy).

- Even at the level of a candidate definition of supply, there are none in which the relevant firms have a 25% share and where there would be an identifiable increment in supply. The only area in which the parties appear to overlap is in the development of foundation models, where the CMA identified over 300 competitors, including multiple larger players, and it is implausible that the relevant firms have a share of 25% or more. There are also no credible reports that, absent the partnership under discussion, Anthropic might seek to compete with Amazon in any segment where its share is greater (e.g. cloud IT infrastructure).

"The impact that the partnership could have on competition in the UK"

- The AI market is nascent and highly dynamic which increases the risk that intervention will create lasting harms through premature or overly-broad restrictions; and makes it unlikely that any particular partnership will materially diminish competition, without eliciting a dynamic response as other market participants invest in similar capabilities.
- There is no theory of harm proposed in the ongoing investigation of the Cloud market that implies Amazon would not face a response from competitors in the Cloud market (or other alternatives, such as on-premises solutions) if it sought to leverage its market position to extract rents in newer markets. AI services, in particular, as a source of new demands for cloud services and likely to be associated with technically-sophisticated consumers is unlikely to be a market in which the theories of harm raised by Ofcom and currently being investigated by CMA are most relevant.
- While the future of the AI market is obviously uncertain, in either of the broad plausible scenarios the risks associated with obstacles to the partnership appear greater.
    - In a scenario with ongoing strong dynamic competition, merger control (particularly controls on partnerships) has significant downside risks, in that it could frustrate the process by which companies enter and gain the capabilities needed to establish new services. By contrast the upside is limited. Even if a partnership (or outright merger) allows an existing company to acquire a future successful firm, any attempt to exploit that outcome by worsening the quality-adjusted price for customers will encourage new entrants to the market (either outright new businesses, or extension from other markets including potentially other parts of the AI market).
    - In a "tipping points" scenario where one or more players enjoyed market power, there would be a regulatory framework under which that could be managed (recently extended with the DMCC). While this would clearly be more challenging from a competition policy perspective than the dynamically-competitive scenario it is not one that can be avoided through merger control (particularly given that there are multiple vertically-integrated market participants already) and analysis can therefore focus on scenarios in which the potential for dynamic competition remains.
- To the extent that they believe the final market distribution is uncertain, and particularly where there are not any incumbents, firms with important businesses in adjacent sectors might have a strategic incentive to invest in partnerships. The more diverse and competitive an AI market they can support, the larger and healthier the market will be for adjacent services. These investments in turn will support market entry and the ongoing health of the AI services sector.
- The direct effect of delays to the partnership would be a reduction in the funding immediately available to Anthropic. Given the high pace of innovation in the sector, this would have consequences:

    - A short- to medium-term reduction in the diversity and quality of AI services available to customers.
    - A longer-term reduction in the potential for Anthropic to continue to establish itself as a competitor to other foundation model developers. Even in a case where the merger was approved, a lengthy investigation at a point in which innovation is particularly fast-moving could have irreversible impacts on Anthropic's role in the market.
- Firms looking to raise capital to finance investment in innovative AI services (and potentially other innovative businesses) will have fewer potential investors, increasing the risk that an expensive fundraising process fails with wider consequences for their business (e.g. reputational impacts). The longer and more challenging the process the greater the resulting chilling effect is likely to be.
- In the event of permanent obstacles to partnerships, the immediate impact would be less efficient development of AI and other innovations, and narrowing of the competitive field to existing well-capitalised companies, to the extent it means smaller providers are not able to access the resources of more established companies and those more established companies have fewer routes to improve services on offer to consumers using their digital ecosystems.

1. "Has the partnership resulted in the creation of a relevant merger situation under the Enterprise Act 2002?"

1.1 How should we understand partnerships and their contribution to consumer value

Foundation models are part of technologically-sophisticated supply chains, they are the foundations upon which other AI services are built and are themselves built on a rich underlying information services ecosystem. Many foundation models (and there are, at the time of writing, more than 300) have been developed by specialists who operate only at this level of the AI supply chain, and as such have limited (if any) provision on their own account of key services such as compute and lack access to commercially sophisticated deployment platforms. This means that there will often be the need for agreements and specific investments in order to connect them with other services. Upstream inputs and downstream distribution can occur in one of three ways:

1. Through open market exchange. To the extent that foundation models are complex, however, this is likely to require supporting tools and services. This kind of infrastructure has been developed for cloud IT, through approaches such as containerization and systems integrators (often independent consultancies with their own commercial relationships with cloud providers). Numerous options for compute are commercially available, for example including, in addition to AWS, Microsoft Azure, Google Cloud, IBM, Dell, Oracle, DigitalOcean, gridscale, IONOS, Fuga Cloud, Scaleway,

Exoscale, Alibaba Cloud, HPE, Akamai, Vultr, and JarvisLabs.ai, as well as newer entrants responding to the opportunities created by generative AI, including CoreWeave, Lambda Labs, Denvr Dataworks, G42, Crusoe, Cirrascale, TensorWave, and RunPod. Bedrock represents an early attempt to build an infrastructure for customer choices in AI. Open market exchanges will be most common where there is less need for risky co-investments, which might mean those markets are less technically complex or more mature.
2. Through vertical integration. This is common and will often be pro-competitive to the extent that it allows companies to establish the resources required to enter or maintain themselves as competitors in a market. It has the potential to be anti-competitive only to the extent that it represents a material loss of competitors.
3. Through partnerships. This will reflect a diverse range of agreements by which companies can obtain commitments that give them the confidence to invest in new services. This can again be common and the implications for market structure will depend on characteristics of the parties (e.g. does either or both have market power) and the nature of the deal (deals including exclusivity will often have much greater implications for market structure, for better or for worse).

Those commercial relationships, whether open market exchanges, vertical integrations or partnerships, can allow for the sharing of a wide range of capabilities, including but by no means limited to:

- Investors
- Providers of technical resources
- Providers of data
- Distributors, including those integrating AI services in various products or platforms

Partnerships do not become functionally equivalent to mergers because they include a financial investment. Financial investments may play a range of roles in wider partnerships including aligning incentives or supporting a partner with more limited financial resources to fulfil its role in the partnership. There is no reason a priori to assume that financial investments tend to be greatly more to the benefit of one party than another.

Insofar as financial investments differ in ways that are relevant to merger investigation it will be to the extent those investments result in a change in corporate control. To the extent that an investor does not attain material influence over the commercial strategy of the firm in which the investment is made, a financial investment will not generally be akin to a merger.

AI developers can partner with specialists, such as venture capital companies investing, media groups agreeing partnerships to provide companies with data or sector specialists that can support distribution. They can also partner with companies that have more than one of those roles, including companies like Amazon that operate in multiple more-or-less relevant sectors. This diversity means there are more potential partners for AI developers, a more competitive market for partnerships that contributes to mitigating many of the concerns outlined in the CMA's foundational model reports. Differing kinds of partnerships can be an important source of diversity.

Given all of this, there are several reasons to believe that the competition implications of the Amazon-Anthropic deal might be limited, as reports suggest:

- Amazon is taking a minority stake in the business, not attaining control of Anthropic as a result of its investment, and Anthropic will continue to exist as a separate entity.
- There is no exclusivity commitment in the deal, instead there is an active plan to make Anthropic's models available on a platform (Bedrock) alongside other first and third party foundation models, to provide customers with additional choice.
- Anthropic has entered other partnerships and is not precluded from entering more over time.

1.2 How are partnerships regulated

Integrations between firms, formal and informal, have a powerful and important role to play in pro-competitive research, knowledge exchange, and commercialisation activities. They also facilitate the creation of more viable challengers to established market players, facilitating new entry and facilitating the creation of specialist niche players that provide disruptive competition in important market segments. Economic literature has long recognised this important role,[1] and detailed legal tests have emerged to evaluate - and distinguish - the pro- and anti-competitive potential of inter-firm interaction.

In principle, partnership activities may be relevant to competition law powers to review mergers, to assess agreements, and to review market performance. However, these powers use different tests to capture different contexts. The main concerns about blurring the lines between the tests relate to (1) spillover effects chilling pro-competitive capital formation and thereby innovation; (2) risks to the free flow of investment; (3) de facto displacement of important features of agreements and market study regimes, and (4) procedural efficiency concerns.

1.2.1 Spillover effects of overly broad merger control investigation

Merger control has the potential to spill over into increased costs across a wide variety of transactions. This results from a fundamental procedural difference:

- In conduct cases and market studies, investigation narrows the focus to conduct likely to raise concerns. Although there are still false positive risks (i.e. the risk that the frameworks treat as damaging conduct that is actually innocent or pro-competitive), those risks are partly mitigated by this process.

[1] Important contributions include R H Coase, "The Nature of the Firm" 4 (16) *Economica* 386-05 (1937); B. Klein et al. "Vertical Integration, Appropriable Rents and the Competitive Contracting Process" 21(2) *Journal of Law and Economics* 297-326 (1978); A Diamantopoulos, "Vertical Quasi-Integration Revisited: The Role of Power." 8(3) *Managerial and Decision Economics* 185-94 (1987).

- In merger cases, reviews encompass equivocal and even pro-competitive activities. Parties may abandon consolidation based on legal process risk alone, or move activities elsewhere, especially in a competitive international market for capital.

Whereas the conduct and market study powers zero in on a business practice whose merits are then debated, merger law therefore risks significantly altering incentives to create capital in a much more general sense.

For this reason, care is needed to avoid unduly chilling investment and innovation unrelated to any true competition law concern. A classic UK competition policy history emphasises the need to "pick out the few bad apples"[2] – and, by implication, not to impede the gathering of the good apples. Even at the introduction of the UK merger review powers in the 1960s, there were already concerns that, if review strayed from true competition concerns, increased costs from undue reviews would, at the margin, prevent pro-competitive expansion.

Significantly, the concern voiced was specifically to avoid prejudice from investigative costs that could undermine helpful scale economies, and to investigate only if there was a valid competition concern besides just scale. The Parliamentary process emphasised international competition for capital as a concern pointing away from unduly increasing costs via unmerited investigation.[3]

There are also limitations to the evidence base in merger cases, as they can also affect investment; often, for products which have yet to be created. Therefore, particular risks arise relating to "unseen" future products whose dynamics are as yet unknown.[4] This does not usually arise for ex post conduct or market study powers which instead address existing products and business practices and for which there is thus a much more complete evidence base. There is a highly plausible scenario in which diffuse harm to innovation in *other* transactions outweighs gains from a particular review, unless care is taken to ensure that reviews are tight, transparent and evidence-based to avoid spillover chilling of innovation.

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[2] A classic history of British competition policy similarly empahsises market effects as opposed to mere lost rivalry in the emergence of the original MMC merger powers: "mergers were on the whole desirable and not to be discouraged… ministers and officials simply wanted to pick out the few bad apples." S Wilks, *In the Public Interest* 197 (Manchester UP, 1999).

[3] Wilks noted that the Board of Trade Paper giving rise to UK merger review powers had, as early as 1963, identified that mergers "bringing about desirable economies of scale" without competitive harm "should be free even from investigation." BT258/1653 (Board of Trade Meeting Note, 30 May 1963). There were particular concerns that lost scale economies would impede international competition by British firms if undue investigation of pro-competitive transactions were to emerge.

[4] Edmund Phelps noted: "Innovations… are not determinate from current knowledge, thus are not foreseeable. Being new, they could not have been known before." *Mass Flourishing* 32 (Princeton UP, 2006)

1.2.2 The breadth of the material influence test

For there to be a "relevant merger situation" within the meaning of the Enterprise Act 2002, a transaction must result in the acquisition of "control or material influence [over] ... policy." It is essential that a bright line is maintained here between (1) true acquisitions of influence and (2) minority non-controlling investments. This is because subjecting minority investments to merger control would significantly diminish important pro-competitive investments.

If there is a concern about minority investment, it should instead be pursued via the conduct and market study regimes. Otherwise, there is a significant risk that capital formation will be impaired even in cases where the investment is simply funding. This would impair the functioning of UK capital markets which are already less deep than their US counterparts.

In the event that a merger investigation is triggered over an investment not showing objective signs of influence, such as a majority of equity, board seats, or veto rights, not only would there be a lack of clarity for any non-controlling investment, but the CMA would depart from its own Guidance.[5] It is unlikely that large investors would tolerate a scenario in which the CMA had, in contravention of its own Guidance, effectively rewritten the law on minority investment just because large companies are involved. From a broader policy perspective, it can also be noted that most investment comes from large firms and that this is usually overwhelmingly positive.

1.2.3 De facto displacement of conduct and market study rules

Merger review is a market-wide precautionary regime. It is supposed to prevent significant lessening of competition rather than attempting to regulate this later. By contrast, conduct rules and market studies respond to concerns about market outcomes.[6] Significant differences follow from the distinction.

First, important safeguards relating to possible false positives are present in the conduct and market study regimes, but are significantly weaker or absent in the mergers regime. Conduct cases contain strong safeguards to distinguish the false identification of parallelism as a competition concern.[7] There is a need for evidence of artificial transparency, and the mere fact

[5] CMA2, *Mergers: Guidance on the CMA's Jurisdiction and Procedure* (25 April 2024) (defining material influence at 4.20 as "the acquirer's ability materially to influence 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.") To the extent this was arguably departed from in case ME/6836/19 *Amazon/Deliveroo*, the point was not at that time tested in court.
[6] E.g., D Martin, *Mergers and the Clayton Act*, Univ. Calif. Press (1959), 311 (emphasising underlying concern as lost competition in a market and noting early difficulties in conceptualisation of market-wide analysis).
[7] Cases 48/69 etc. *ICI v Commission* [1972] ECR 619 ("Dyestuffs"); Cases C-89 etc. *Ahlstrom Oy v Commission (Wood Pulp II)* [1993] ECR I-1307.

of parallel conduct is not itself a problem for the very good rationale that parallel actions are often pro-competitive (e.g., meeting competition). Market studies also permit the development of sophisticated economic analysis to distinguish pro- from anti-competitive conduct.

Practically, there is much less scope to develop detailed evidence in the time-pressured and truncated evidence base of a merger case. While it is possible to undertake this detailed analysis in a phase two merger review, the evidence may never emerge simply because increased costs deter transactions. If transactions are foregone because of the increased costs of unduly broad merger review, there will never be an evidence base by which to assess the transactions. It follows that using expansive merger review, rather than the conduct and market study powers, amounts to a bare assertion that the safeguards in the other pathways are incorrect without stating why.

While it may be said that a degree of ex ante analysis can be efficient, in line with the concerns about delay in expert reviews such as the Furman Review, it is significant that none of the reviews has advocated a wholesale abandonment of the existing frameworks of conduct and market study cases. None of these reviews suggested *displacing* these other frameworks: the proposal was to speed them up or otherwise optimise them. Care is needed before inadvertently departing from these expert recommendations if that is the result of using the merger powers as a “flexible friend.”

The concern is particularly strong in relation to new AI services. There is potential for irreversible impacts with early intervention in a dynamically-competitive market such as AI services, and there is a significant false positive risk from not allowing markets to develop. The conduct and market study regimes allow this evidence to be collected and considered. Merger review for future products does not.

1.2.4 Enforcement considerations

There is also an important boundary with market study powers. The CMA has noted over 90 partnerships relevant to foundation models.[8] The correct tool for assessment of complex partnerships is the market-wide market study regime, which is already applied to the matter in the CMA’s cloud computing market investigation (which explicitly includes consideration of AI) and its wider work on foundation models. There is also the section 6(b) investigation underway at the US Federal Trade Commission to consider. These are likely to be much more apt tools than the snapshot of a single transaction in a single merger review.

Significant procedural implications flow from this:

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[8] Competition and Markets Authority, AI Foundation Models: Update Paper 11 (April 2024) Fig 7 and 5.16.

- Merger cases come and go based on the capital market. While some remedies can be highly relevant, they are ultimately case-specific. It follows that the regulator would need to keep on bringing the same case, over and over, securing conditions against each transaction.
- Conduct cases can be used to set precedents by demarcating the boundaries of permissible conduct well beyond the instant case. This wider impact is unlikely to arise in a merger review.

Indeed, as there are 90+ partnerships at issue, it would prove very difficult to run 90 merger clearance cases to address them. The CMA might risk distorting the market and picking winners and losers based on which partnerships it chooses to investigate. It would be much better to use the concurrent market study, especially as this paves the way for equivalent treatment of concerns, whether or not a transaction is involved.

The fundamental difference crystallises in the observation that merger reviews are - ideally - structural in character whereas conduct cases are necessarily behavioural. It is notoriously difficult to implement and monitor behavioural remedies in mergers. In the case of AI services, the CMA's concerns as expressed in its research thus far seem to be motivated more by a scenario ("tipping" or "winner takes all") in the market, more than by a specific transaction that could plausibly reshape that market.

It is also important to consider the boundary with the new DMCC regime. The essential idea there is to use rulebook conduct regulation and pro-competitive interventions to address concerns. This allows targeting of intervention on an evidence-based approach. There are also specific new powers in relation to minority investments. That is, Parliament has chosen to provide special new powers to harness sector-specific expertise, rather than to amend the Enterprise Act. Using these tailored powers is particularly helpful if it enables the realisation of scale benefits and other pro-consumer aspects of large firm activity. Using the Enterprise Act to effectively deter investment by large companies, before the analysis of designation has even started, significantly cuts across this new regime.

1.2.5 Summary

Given all of this, there are several reasons to believe that the Amazon-Anthropic deal should not be regulated through merger control:

- The CMA's concerns reflect its concerns about a potential direction for the wider market, more than the likelihood that the Anthropic / Amazon partnership in itself would materially increase or decrease the scope for competition.
- There are existing CMA and FTC investigations into the market that (if needed) would provide a more practical avenue to consider any wider market issues and intervene if

necessary than policing the large number of partnerships necessary for the sector to mature.

- Given that this reflects an investment in a relatively new business, developing services in a rapidly changing sector, there specific concerns that motivate the evidence standards required for conduct regulation (and sometimes still considered inadequate) are highly relevant:

    (a) the risk of false positives, where regulators impede pro-competitive behaviours - in this case a partnership that might support the growth of Anthropic as a competitor to other foundation models; and

    (b) potential to chill wider investment - in this case other investors in AI services and potentially wider technology business, as this can be seen as a generalised opposition to one class of investors in scaling technology companies (this concern has recently motivated policymakers to act cautiously in revising the UK's approach to merger policy).

1.3 Partnerships will often not be functionally equivalent to mergers

The CMA itself, in its AI report[9], recognises that "*not all…partnerships and investments will fall within the scope of merger control rules*".[10] As noted above, a key test in considering whether a partnership should indeed be treated as a merger is whether that partnership gives at least one firm material influence over the commercial strategy of the other partner. The most straightforward case of this would be where the partnership involves one partner taking a controlling equity stake in the other firm. Other possibilities arise when the partnership enables policy influence by other means, commonly taken to mean veto rights, materially influential board seats, and other corporate governance mechanisms by which the investor would meaningfully influence commercial strategy.[11]

Partnerships will be more similar to mergers from a regulatory perspective to the extent that they have a similar result, that one party to the partnership is in whole or in part no longer independently participating in the market - it "ceases to be distinct", in the language of the Enterprise Act 2002. In research for CCIA, Copenhagen Economics describe how this should be based on an analysis of the specifics of the agreement and, in particular "that partnerships are less likely to create competition concerns if there are a) no/limited exclusivity conditions,

[9] *Ibid.*
[10] *Ibid* para 5.19
[11] This also comports with EU best practices, as well: EU Commission, Consolidated Jurisdictional Notice, B.II.1.

either in supply or distribution, and b) limited privileged access to the startup's valuable technological assets."[12]

Thus, a partnership is unlikely to be equivalent to a merger if it: (a) involves only a minority stake; (b) is non-exclusive (with at least one other significant player having a similar partnership such that influence is not material); (c) involves no change in the provision of technology or resources required by other partners; and (d) provides an additional route to market access rather than reducing market access routes.

1.4 How should we understand the share of supply for AI businesses?

As a member of the OECD, in 2005 the UK adhered to the still-current OECD Recommendation of the Council on Merger Review (23 March 2005). The document remains relevant. Recommendation A.1.2.2 is that Member Countries "should... Use clear and objective criteria to determine ... whether and when a merger will qualify for review." Relevant ICN Guidance states: "the definition of qualifying "merger" transactions ... is a critical issue from an enforcement policy perspective and it is fundamental to the transparency of the merger review process."[13]

While past cases have supported the position that "supply" definitions can differ from those of formal "markets" in the substantive review,[14] merger control authorities should still set out a concrete basis on which the share of supply test (if relevant) is seen to have been met. While a provisional view of "supply" may not need to be as detailed, concrete and evidenced or reasoned as a relevant market, the 25% test exists in the framework for a reason. It is intended to be able to bind, and as such to require the CMA to have some reasonable and plausible, albeit provisional, view about "supply" that suggests that the merger involves parties that collectively, after the merger, will constitute a sufficiently significant portion of some relevant market that more detailed consideration could reveal there to be a competition concern.

Recent cases have consistently adopted definitions indicating a material overlap:

- Amazon/Deliveroo:[15] Supply of restaurant delivery platforms.
- Sabre/Farelogix:[16] The supply of non-core Passenger Service System (PSS) merchandising modules. Non-core PSS merchandising modules sit within an airline's

[12] Copenhagen Economics, Generative Artificial Intelligence: The Competitive Landscape https://copenhageneconomics.com/publication/generative-artificial-intelligence-competition/
[13] International Competition Network, *Defining "Merger" Transactions for Purposes of Merger Review* (2007) (p.1).
[14] *R v. Monopolies and Mergers Commission, ex parte South Yorkshire Transport Ltd* [1993] 1 WLR 23
[15] Case ME/6836/19 *Amazon/Deliveroo*
[16] Case ME/6806/19 *Sabre/Farelogix*

overall IT system and allow it to create travel offers for corporations and end consumers.
- Facebook/Giphy:[17] (1) The supply of apps and/or websites that allow UK users to search for GIFs; and (2) The supply of searchable libraries of animated stickers direct to users in the UK

While there has been much debate about some of these definitions, the basic principle remains that the merger involved some material increment in market share. For it to be plausible that more detailed analysis will indeed reveal that there is such a material increment, there should be an identifiable increment in whatever the candidate "supply" definition is that is offered.

For instance, in Facebook/Giphy the contention was that Giphy had significant market power in the supply of searchable GIF libraries whilst Facebook had significant market power in the supply of social media and of display advertising, and that absent the merger GIPHY had the potential to compete with Facebook in display advertising.[18]

It is not clear what the comparable similar activities are (or even could be) between Amazon and Anthropic. There are no credible reports that, absent the partnership under discussion, Anthropic might seek to compete with Amazon at any point in the AI supply chain outside Foundation Models (e.g. to compete with Amazon Web Services as a cloud IT services provider). There is thus no equivalent of the concern that future competition in a market in which the acquiring firm was already purportedly dominant might be prevented.

What, then, is the market or set of markets for which even a rough definition or quantitative indicators of the "supply" would involve Amazon or Anthropic (or their combination) having a 25% share and the partnership resulting in an identifiable increment thereof? While not all of this data is publicly available, it seems doubtful that Amazon's Titan or Anthropic's Claude (or their combination) constitute 25% (or close to 25%) of commercial revenues, compute or other inputs used, number of users or any other plausible rough candidate share of supply metric.

While Amazon (through AWS) might have more than 25% of a provision-of-public-cloud definition of supply, this is unlikely to constitute a concept of "supply" relevant to the Amazon-Anthropic partnership, for a number of reasons. For a start, it is intrinsically unlikely that public cloud provision would, upon further analysis, constitute a market, since such a market is likely to include other options considered by customers as an alternative (e.g.

[17] Case ME/6891-20 *Facebook/Giphy* https://www.gov.uk/cma-cases/facebook-inc-giphy-inc-merger-inquiry
[18] E.g. see paragraphs 17 to 20 and paragraph 23 of https://assets.publishing.service.gov.uk/media/634e6ce58fa8f53465d13a35/Facebook_GIPHY_-_Remittal_Summary_.pdf There was a further argument about the potential for GIPHY to be foreclose access to GIFs for social media rivals, but that again was premised on Facebook's share of supply.

on-premises solutions). The AWS share relevant to the AI market might also plausibly be less, reflecting that some successful models are either subject to partnerships with other cloud providers, or vertically-integrated (using the company's own IT infrastructure). At the same time, as noted above, Anthropic would not represent an increment on that share, and is not plausibly expected to become a cloud IT infrastructure provider.

2. "The impact that the partnership could have on competition in the UK"

2.1 Competition in segments of the AI supply chain

2.1.1 Status quo: Foundation AI models

The AI market is highly dynamic. Research for CCIA by Copenhagen Economics found that a third of more than 250 foundation models available according to a database kept by Stanford University had been launched after August 2023.[19] This competition includes:

- Models designed by existing technology companies, e.g. Google's Gemini or Meta's Llama.
- Models designed by newer AI specialist companies, e.g. OpenAI's ChatGPT, Mistral's eponymous models and Anthropic's Claude.

These foundation models support extensive creativity in terms of applications, including companies in specific sectors developing models for their own purposes (e.g. advertising groups). Partnerships are one mechanism through which dynamic competition evolves in this area.

The number of partnerships as shown in the CMA's Foundation Models research is high and many firms have multiple partnerships with different financial investors, partners that can distribute their services or providers of compute, data and other resources.

Given the dynamism of competition in the AI market and the development of foundation models:

- the risk that intervention will create lasting harms through premature or overly-broad restrictions is particularly high; and

[19] Copenhagen Economics, Generative Artificial Intelligence: The Competitive Landscape https://copenhageneconomics.com/publication/generative-artificial-intelligence-competition/

- it is particularly unlikely that any particular partnership will materially diminish competition, without eliciting a dynamic response as other market participants invest in similar capabilities.

2.1.2 Status quo: Cloud

Surveys of Cloud customers suggest that the sector is healthy overall, as often sophisticated existing Cloud customers and opportunities to attract customers coming into the sector create an incentive for cloud providers to compete with attractive prices, service quality and innovation.[20]

- 71% of businesses use two or more cloud infrastructure providers
- The most common reasons why businesses choose a certain cloud service provider were service quality (32%), value for money (29%), proposed level of security (24%)

To the extent that some customers still find it difficult to switch, problems are most likely where there are legacy constraints. The most important barrier to switching and multi-cloud is software licensing constraints artificially created by legacy providers, as assessed in Ofcom's cloud market study report.[21] These constraints result from customers' pre-existing relationships with enterprise software providers who push customers towards their own nascent cloud services through restrictive licensing practices. As a result these will reflect decision-making in (i) less-competitive enterprise software environments; where (ii) customer decisions are made without an awareness this would restrict their future choices as cloud customers.

Ofcom found competition between cloud providers, that is "mainly focused on attracting new customers when they first move into the cloud".[22] This kind of competition will often be pronounced for AI foundation models, or customer-facing AI services, which are either outright new customers or new use cases that are likely to be subject to a similar degree of competition (particularly given that, by their nature, most AI developers are likely to be technically-sophisticated customers, and less likely to be subject to legacy constraints such as software licensing).[23] This might mean there is strong competition at the relevant margin.

[20] Survey by Public First for CCIA, the fieldwork for which ran from 25 May to 1 June 2023 and reached a sample of 1001 UK senior business decision makers with an online survey.
[21] Ofcom, Cloud Market Study, https://www.ofcom.org.uk/__data/assets/pdf_file/0027/269127/Cloud-services-market-study-final-report.pdf, Chapter 9
[22] Ofcom, Cloud Market Study, https://www.ofcom.org.uk/__data/assets/pdf_file/0027/269127/Cloud-services-market-study-final-report.pdf
[23] In a merger context, we note the focus on a margin of competition even in the context of a large market share in Montagu Private Equity LLP / ParentPay Holdings Limited and sale to Capita ESS Limited (ME/6921/20) (12 July 2021).

CCIA's submission to the Cloud review explores the theories of harm proposed by the CMA based on Ofcom's research in more detail.[24] It is important to note, however, that the review concerns frictions which might cause customers to overpay, there is no theory of harm being considered which would speak to most customers being unable to choose between multiple providers either now or in the foreseeable future (there is no allegation of a monopoly). This puts obvious limits on the credibility of a scenario in which Amazon would leverage its position in the Cloud market to the detriment of customers buying AI services (which would be particularly unlikely as a consequence of this partnership, which does not include an exclusivity requirement). An increasing static incentive for firms to overcome those frictions and the dynamic incentive for competitors in the Cloud market to support them in doing so (in order to access a more diverse set of AI cloud solutions) would pose a short- and medium-term risk to any business strategy based on exploiting that market position.

Given competition in the Cloud market and the scope of concerns raised thus far, there are implications for any investigation of Amazon / Anthropic:

- There is no theory of harm proposed here that would imply Amazon would not face a response from competitors in the Cloud market (or other alternatives, such as on-premises solutions) if it sought to leverage its market position to extract rents in newer markets.
- AI services, in particular, as a source of new demands for cloud services and likely to be associated with technically-sophisticated consumers is unlikely to be a market in which the theories of harm raised by Ofcom and currently being investigated by CMA are most relevant.

2.1.3 Forward-looking: dynamically-competitive scenarios

As matters stand, AI is a highly dynamic sector, with near-continuous new entry and rapid evolution in both the nature and scope of relevant markets and of market shares within those markets.

In such a dynamically-competitive scenario, one straightforward potential motivation for a Cloud IT player to enter into a partnership with a Foundation Model provider would be to raise the return on investments in Cloud IT infrastructure as a supporting service. A partnership might achieve this by enhancing the competitive viability of foundation models that use external Cloud IT services providers as vs foundation models that are part of vertically integrated AI supply-chains - e.g. if the current evolution of the market suggested that vertically integrated AI supply-chains would eventually constitute most of the relevant market, absent such partnerships. This would reflect a wider process by which a range of adjacent sectors respond to the increasing supply or demand associated with a valuable new market. Individual AI developers selling their services in the labour market; users of productivity

[24] CCIA, Response to CMA Cloud Issues Statement https://assets.publishing.service.gov.uk/media/656dff041104cf0013fa74b4/CCIA_response_to_CMA_cloud_issues_statement.pdf

software; and countless other affected actors would see similar returns rewarding investments to support AI services valued directly or indirectly by consumers. This would not in itself imply a leveraging of market power.

Crucially this is a scenario in which merger control (particularly controls on partnerships) has significant downside risks, in that it could frustrate the process by which companies enter and gain the capabilities needed to establish new services. By contrast the upside is limited. Even if a partnership (or outright merger) allows an existing company to acquire a future successful firm, any attempt to exploit that outcome by worsening the quality-adjusted price for customers will encourage new entrants to the market (either outright new businesses, or extension from other markets including potentially other parts of the AI market).

2.1.4 Forward-looking: "tipping" scenarios

In a scenario in which (even without anti-competitive conduct) markets, because of their intrinsic characteristics, tended toward "tipping", demand-side network effects and/or supply-side economies of scale would be sufficient that a competitive outcome was not practical without policy intervention. To put the point more plainly and generally, markets that are natural monopolies are efficient with one player and inefficient with more than one player. To reiterate this is not the AI market as it exists now and there is no reason to assume it is a necessary outcome.

However in this case it is important to note that attempting to frustrate that process through merger control would both likely fail, with market outcomes reached by other means (e.g. organic growth among incumbents) and create lasting inefficiencies to the extent it delayed that process. Given that the merger tool does not allow for a holistic review of market dynamics, the CMA might only end up effectively choosing which competitors succeed or fail.

Of course this scenario might mean a situation in which one or more players enjoyed market power but, in the event of abuse of market power, there would be a regulatory framework under which that could be managed (e.g. CMA's ongoing market-level review of foundation models and ultimately the powers it is being granted under the DMCC). While this would clearly be more challenging from a competition policy perspective than the dynamically-competitive scenario it is not one that can be avoided through merger control and analysis can therefore focus on scenarios in which the potential for dynamic competition remains.

2.2 Impact of Amazon-Anthropic-like partnerships

The presence of partnerships in a sector such as AI is most naturally interpreted as being part of a pro-competitive process rather than a process liable to undermine competition. Indeed, if there were few partnerships in a technically-complex ecosystem of this sort, that might reflect a strong position among incumbents, who did not feel a need to partner, or a market in which few firms feel confident that they might be able to enter the market and succeed.

By contrast, the large number of partnerships seen in the AI market suggests that barriers to entry are relatively low, that those new entrants (including those like Anthropic that were formed relatively recently and with limited tangible assets) are credible medium-term competitors and that there is a strong desire among at least some existing technology companies (who might prefer a competitive environment over a market that comes to be dominated by one of their rivals in other markets) to work with them and help them to compete. Bedrock is an example of this trend to the extent that it reflects a medium-term investment in facilitating competition among foundation models.

To the extent that they believe the final market distribution is uncertain, and particularly where they are not an incumbent, firms with important businesses in adjacent sectors might have a strategic incentive to invest in partnerships. The more diverse and competitive an AI market they can support, the larger and healthier the market will be for adjacent services. These investments in turn will support market entry and the ongoing health of the AI services sector.

2.3 Impact of temporary delays to partnerships

The direct effect of delays to the partnership would be a reduction in the funding immediately available to Anthropic. This impact would be non-trivial given with Copenhagen Economics reporting worldwide investment in generative AI around $20bn in 2023, around a fifth of that would be a meaningful reduction in access to capital, potentially creating a problem for newer businesses that the CMA has expressed concerns about in its foundation model review.[25]

Given the high pace of innovation in the sector, this would have consequences:

(1) A short- to medium-term reduction in the diversity and quality of AI services available to customers.
(2) A longer-term reduction in the potential for Anthropic to continue to establish itself as a competitor to other foundation model developers. Even in a case where the merger was approved, a lengthy investigation at a point in which innovation is particularly fast-moving could have irreversible impacts on Anthropic's role in the market.

There would then be a wider chilling effect, which is likely to already be occurring, as a novel application of merger control powers leads to uncertainty over other potential investments. Firms looking to raise capital to finance investment in innovative AI services (and potentially other innovative businesses) will have fewer potential investors, increasing the risk that an expensive fundraising process fails with wider consequences for their business (e.g. reputational impacts). The longer and more challenging the process the greater this chilling effect is likely to be. This concern was raised by the Startup Coalition,[26] among others, in the passage of the DMCC.

[25] Copenhagen Economics, Figure 5. https://copenhageneconomics.com/wp-content/uploads/2024/03/Copenhagen-Economics-Generative-Artificial-Intelligence-The-Competitive-Landscape.pdf
[26] The Startup Coalition—written evidence (DCC0020), https://committees.parliament.uk/writtenevidence/121996/pdf/

Research for CCIA studied the potential cost of regulatory delays in digital services and found a £55bn to £160bn net present value impact on consumer welfare under plausible assumptions for the scale of the delays and the ex ante progress in improvements to digital services.[27] Given the expected importance and rapid innovation in AI costs are likely to be particularly high.

2.4 Impact of permanent obstacles to partnerships

In the event of permanent obstacles to partnerships, the immediate impact would be less efficient development of AI and other innovations, to the extent it means smaller providers are not able to access the resources of more established companies and those more established companies have fewer routes to improve services on offer to consumers using their digital ecosystems. This might in turn mean competition overall in the market takes a different form, as it would tend to be based more on peer-to-peer rivalry between relatively large firms, with relatively less competitive threat from new small entrants.

The converse of this would be that established companies would need to focus more on developing internal tools to the extent that they want to participate in these markets. This might have its own hard to predict impacts on market structure and regulators might be concerned that they would need to do more to oversee the extent to which there are barriers to entry created by a lack of access to capabilities firms might otherwise access through partnerships.

In the longer-run, alongside other recent decisions, the decision would raise questions about how companies are expected to engage with UK competition policy. In part because it would imply a significant increase in the range of potentially in-scope deals. At the same time, it would diminish means by which companies can manage the risks associated with competition policy enforcement as forward-looking decisions are inherently hard for companies to either evidence a case that a deal does not inhibit competition, they cannot share data on the state of the market in a hypothetical state, or offer remedies for competition impacts that have not yet arisen.

[27] DMCC: Economic Impact, https://ccianet.org/research/reports/dmcc-economic-impact/