



VMO2 response to the interim report of Ofcom's cloud services market study

We welcome the opportunity to respond to Ofcom's interim report and its consultation on a proposal to refer this market to the CMA for a market investigation. It is timely that this market is assessed and considered for potential regulatory intervention.

Well-functioning cloud markets require that users can switch supplier or multi-cloud

Cloud markets have delivered substantial benefits over the past years allowing users to reduce costs and to improve their operations and services. The importance of these markets will only grow as new users go into the cloud and existing users intensify and vary their demand for cloud services.

It is thus vital that cloud markets work well for all users allowing them to access the services they need at low prices.¹ It would be harmful if users were hindered from switching suppliers or using multi-cloud architecture by financial, technical or other barriers; that could harm competition both directly and indirectly. The direct effect is to limit options available to users, as moving away from existing supplier will be costlier or more complex. The indirect effect is to give rise to higher barriers for entry and expansion. Jointly, these effects risk reducing competition in cloud markets and, in turn, deteriorating outcomes available to users.

As it is undesirable for cloud markets to be impaired by market features that give rise to barriers to switching or multi-clouding, we support initiatives at industry, user or regulatory level aimed at reducing such barriers. It is critical that users are not unduly constrained in terms of how and from whom they consume cloud services.

The concerns identified merit a more in-depth investigation

Whilst we have not yet experienced the concerns identified, this could be because we have had no need to switch supplier or multi-cloud. Our cloud requirements are developing, and being able to switch or multi-cloud will be important for us to take advantage of cloudification going forward. Given the evidence it gathered, it is appropriate for Ofcom to assess the concerns it identified in more detail and to consider how concerns can be best addressed. As the CMA has the power and expertise to review competition in cloud markets and decide on which – if any – remedies can improve how these markets deliver for its users, we support Ofcom proposal to refer cloud markets to the CMA for a market investigation.

¹ VMO2 uses a mix of private and public cloud services to meet its various needs and we anticipate that our demand from (but also collaboration with suppliers) will develop as a function of our changing requirements, and technological and market developments.

Interoperability and portability are key principles for digital markets

Barriers to switching and multi-clouding relate to the principles of interoperability and portability which are critical to the functioning of digital markets (including cloud). When users are hindered in their ability to work across differing systems and software (interoperability) or their ability to transfer data from one system to another (portability), this limits their ability to switch supplier or to work across platforms or suppliers.

When market features are present that hinder interoperability or portability, mitigating the extent to which these restrict the use of digital services can improve functioning of digital markets and the outcomes they can deliver. Hindrances can arise from supply and demand side (or interaction between them) and identifying the nature of hindrances is required to determine how to best mitigate them. For instance, we note that it does not have to be that hindrances originate from supplier practices aimed to limit competition or consumer choice. We envisage that regulators and competition authorities will have to focus on interoperability and portability as these are key principles for digital markets to function well.

Ofcom may want to hand over to the new regulator of digital markets

Once it has its proposed powers², the DMU is well positioned to review competition in markets characterised by the presence of large digital gatekeepers and to decide (where appropriate) on *ex ante* regulation. It seems plausible that the cloud suppliers identified by Ofcom meet the SMS criteria of the proposed regime, in which case the DMU would have the powers to regulate cloud markets. Depending on when the DMU gets its powers, Ofcom should explore the option of handing review of the cloud market over to the DMU instead of referring to the CMA.

As VMO2 has expressed previously, we support the proposed regime for digital markets. By protecting competition in digital markets and where appropriate seeking to improve conditions for competition, this regime will allow to improve outcomes in digital and other markets and to level the playing field between digital and adjacent markets (including telecom). In contrast to *ex post* competition law, the DMU will be able to review holistically how a range of markets function and it is able to draw from its tool kit comprising of code of conduct and pro-competitive interventions to decide which remedies are needed to address concerns and to improve conditions for competition longer term (whether in relation to individual suppliers or more broadly). The DMU must ensure that any intervention it decides on is effective in meeting its objectives (which will vary case by case) without disproportionately affecting (individual) suppliers or competition as that could harm the competitive dynamics that spurred digital markets to date.

² This requires parliamentary clearance of the Digital Markets, Competition and Consumers Bill.

We plan to contribute to the development of this new regime by drawing from our experience of *ex ante* telecoms regulation. Decades of *ex ante* regulation in telecoms have shown that it is possible for a regulatory regime, when appropriately designed and implemented, to preserve forces of competition whilst preventing inappropriate use of market power and addressing barriers to competition. This must mean that valuable lessons can be drawn from telecoms in terms of how regulation of digital markets can be further developed and implemented.