ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION
SCHUMPETER PROJECT ON COMPETITION POLICY

700 K Street NW. Suite 600
Washington, DC 20001

COMMENTS OF ITIF

Before the

Competition and Markets Authority

United Kingdom

In the Matter of Strategic Market Status Investigation into Microsoft's business software ecosystem Invitation to Comment	))))))))

June 4, 2026

CONTENTS

Introduction....2
Questions on Scope of the Investigation and SMS Assessment....3
2.1 Question 1....3
2.2 Question 2....3
2.3 Question 3....3
Questions on Potential Issues and Interventions....4
3.1 Question 4....4
3.2 Question 5....4
3.1 Question 6....4
Recommendations....5
Conclusion....5

INTRODUCTION AND SUMMARY

On May 14, 2026, the UK's Competition and Markets Authority (CMA) launched an initial investigation under Part 1 of its Digital Markets, Competition and Consumers (DMCC) Act 2024 to determine whether Microsoft has strategic market status (SMS) in its business software ecosystem.[1] That same day, the CMA issued an invitation to comment (ITC) on the investigation with respect to both the scope of the investigation and SMS assessment, as well as potential conduct issues and interventions it may ultimately consider.[2]

The Information Technology and Innovation Foundation's (ITIF) Schumpeter Project on Competition Policy appreciates the opportunity to comment on the ITC. While ITIF commends the CMA for its decision not to open an SMS investigation into the cloud services sector, it is concerned not only that the CMA appears interested in regulating a space that does not satisfy the criteria for SMS, but also that the CMA may unnecessarily use potential conduct requirements (CRs) and pro-competition interventions (PCIs) to police behavior well outside the scope of the business software markets that would be designated under the DMCC.

ITIF responds directly to the questions put forward in the ITC. First, ITIF provides responses to the questions on the scope of the investigation and SMS assessment and explains why Microsoft's business services should not receive an SMS designation. Second, ITIF addresses the questions in the ITC regarding potential issues and interventions, and especially why any competition concerns are better analyzed under the UK's regular antitrust law enforcement tools. Recommendations and a brief conclusion follow.

---

[1] Press Release, CMA launches strategic market status investigation into Microsoft's business software ecosystem, GOV UK (May 14, 2026), https://www.gov.uk/government/news/cma-launches-strategic-market-status-investigation-into-microsofts-business-software-ecosystem [hereinafter Press Release].

[2] Invitation to Comment, Strategic Market Status Investigation into Microsoft's business software ecosystem, CMA (May 14, 2026), https://connect.cma/gov.uk/consultations/microsoft-business-software-itc/supposing_documents/invitation-to-comment.pdf [hereinafter ITC].

QUESTIONS ON SCOPE OF THE INVESTIGATION AND SMS ASSESSMENT

2.1 Q1: Please give your views on the proposed scope of our investigation and candidate descriptions of Microsoft's business software ecosystem?

ITIF is concerned that the putative "business software" designation is overly broad. Specifically, the ITC makes clear that "business software" encompasses the Microsoft 365 suite, its Copilot artificial intelligence (AI) assistant, the Windows operating system, and other systems and software offered by the company.[3] In so doing, the CMA departs from the product-specific approach to SMS designations that it has largely undertaken with respect to search and mobile platforms and instead embraces a more company-focused approach mirroring the European Union's (EU) Digital Markets Act (DMA), where gatekeepers and covered product designations are divorced from any inquiry into a particular relevant market where competitive concerns exist. The risk is that regulation will be unnecessarily applied where no market failures occur, chilling procompetitive or competitively neutral practices that have no prospect of harming competition.

2.2 Q2: Please provide any submissions or evidence relevant to the avenues of investigation we have set out above. Are there other issues that the CMA should take into account, and if so, why?

There are very little grounds for finding that the various markets that would fall under the "business software" rubric embody "substantial and entrenched market power (SEMP) and a position of strategic significance (POSS)" so as to justify an SMS designation.[4] First, with respect to Copilot, any power Microsoft has in this space is clearly not substantial: rather, Microsoft's Copilot competes with a variety of AI assistants and chatbots, including Google's Gemini, OpenAI's ChatGPT, Anthropic's Claude, Perplexity, and others. Moreover, while the Microsoft 365 suite is popular with consumers, its position is hardly entrenched: rather, Microsoft competes head-to-head with Google's Workspace platform, which has long been gaining share. Finally, not only has Microsoft's Windows operating system long been an open platform, but it plainly doesn't enjoy the POSS it had thirty years ago due to the rise of many non-Microsoft platforms across personal computers (PCs), mobile phones, and tablets that are widely used by UK consumers.

2.3 Q3: What are your views on how business software may evolve in future, including as a result of AI and increased cloud adoption, and how Microsoft's business software ecosystem might be affected by these changes?

While concluding that Microsoft's business software ecosystem satisfies the SMS criteria is tenuous at best now, looking forward into the years during which the DMCC would be applied, an SMS designation is even less likely to make sense given the competitive dynamism created by AI. Specifically, not only is the AI space going to become even more competitive, but AI is poised to generate new means of content creation that disrupt the existing office software models, as evidenced not just by Google's own NotebookLM, but also by third-party offerings for key productivity tools like Lex and Type.ai (word processing), Quadratic and Meridian (spreadsheets), Gamma and Beautiful.ai (slides), and Fyxer and Serif (email).

---

[3] *Id.* ¶¶ 15-16.

[4] *Id.* ¶ 10.

QUESTIONS ON POTENTIAL ISSUES AND INTERVENTIONS

3.1 Q4: Please give your views on whether the issues outlined in this section are the right ones for the CMA to focus on, or whether there are others we should consider.

The ITC identifies several categories of behavior that it suggests may be the focus of future CRs or PCIs following a Microsoft business software SMS designation, including the "leveraging of market power into adjacent activities, such as cloud services," product design and restrictions of interoperability, "commercial arrangements like bundling," as well as self-preferencing related to "defaults, design and presentation choices."[5] However, these are—when properly defined—all well-known species of potentially anticompetitive (or procompetitive) practices that can be challenged under the UK's existing competition law enforcement powers making application of the DMCC unnecessary. What's more, neither the UK—nor the EU, pre-Brexit—has brought any significant unilateral conduct actions against Microsoft for decades, confirming there is little ground for concluding that enforcement of the UK's existing and robust *ex post* antitrust laws is insufficient to address concerns about potentially anticompetitive behavior.

3.2 Q5: Please give your views on whether there are potential interventions that are likely to be necessary and which may be effective, proportionate and have benefits for UK users and consumers.

In its press release announcing the SMS investigation, the CMA made clear that "[a]n SMS designation would also allow the CMA to consider whether to intervene on a key concern from its cloud market investigation – particularly Microsoft's use of software licensing which was found to be reducing competition in cloud services."[6] However, imposing CRs or PCIs to address issues about reduced competition in the cloud space plainly falls outside the scope of any SMS designation pertaining to Microsoft's business software, which is focused on promoting competition in the underlying operating systems, office software, and AI assistant markets—not the separate, dynamic, and thriving cloud market that the CMA has rightly decided does not warrant any SMS investigation.

3.3 Q6: What are the key lessons the CMA should draw from measures imposed on Microsoft, in respect of its business software ecosystem in other jurisdictions?

Ironically, the experience of the EU—whose DMA is, by virtue of its *per se* rules and lack of any market power threshold, more likely to chill procompetitive behavior than the DMCC—strongly counsels against an SMS designation of Microsoft's business software ecosystem. First, the EU has only designated Microsoft's Windows PC operating system as a core platform service—not the office software and AI markets that are included in the CMA's own putative "business software" SMS designation. Moreover, with respect to any CRs and PCIs that could be imposed through the DMCC, the EU's Teams remedy makes clear that concerns about anticompetitive behavior like tying can be addressed through the enforcement of *ex post* competition law frameworks. At bottom, there is no basis for the CMA to abandon its more measured approach to regulation relative to the DMA by going even further than the EU when it comes to policing Microsoft.

---

[5] *Id.* ¶ 41.

[6] *See* Press Release.

RECOMMENDATIONS

For these reasons, ITIF respectfully offers the following recommendations for the CMA to consider:

- **"Business software" does not meet SMS designation criteria:** Not only does Microsoft's Copilot compete with many leading firms, but its 365 office suite is also subject to both intense competition from Google and AI disruption, and the days of the "Wintel duopoly" are long gone for purposes of assessing whether Windows enjoys a meaningful position of strategic significance.
- ***Ex post* enforcement suffices to address concerns:** While the CMA may have concerns about anticompetitive behavior, the practices included in the ITC all reflect well-known forms of conduct that can in principle be addressed through the UK's regular competition laws, which have not at all been shown to be inadequate in policing any potential anticompetitive behavior by Microsoft.

CONCLUSION

In its landmark Modern Industrial Strategy document issued by the Department for Business and Trade, the UK made clear that "[a]s an integral part of the growth mission, the Government will make it easier and simpler for companies to do business, giving them the stability to make long-term investments," including through policies that "[d]rive innovation."[7] Moreover, the Department for Business and Trade's report on refining the UK's competition regime doubled down on the CMA's 4Ps framework, which includes an emphasis on "proportionality by empowering the CMA to operate in a targeted and flexible way."[8] But the contemplated SMS designation of Microsoft's "business software" would be plainly inapposite to either end: Burdening leading technology companies with regulations will not only drive investment away from the UK, but also fail to represent a proportionate exercise of the CMA's authority, especially if the CMA out-regulates the EU by designating Microsoft's Copilot and Office suite to address practices that can readily be addressed using the UK's regular *ex post* competition laws.

Very truly yours,

Joseph V. Coniglio
Senior Counsel and Director, Schumpeter Project on Competition Policy
Information Technology and Innovation Foundation

[7] UK Government, The UK's Modern Industrial Strategy, CP 1451 at 12 (Nov. 2025), https://assets.publishing.service.gov.uk/media/69256e16367485ea116a56de/industrial_strategy_policy_paper.pdf.

[8] Department for Business and Trade, Refining Our Competition Regime, at 3 (Jan. 20, 2026), https://assets.publishing.service.gov.uk/media/696e4aa4bbcea094189e23b7/refining-our-competition-regime.pdf.