

# alfaview's Statement on Microsoft's Influence on OpenAI and the Integration of Copilot into Microsoft's digital Ecosystem

March 11, 2024

alfaview explicitly welcomes the opportunity to submit a statement to the Commission in the field of Artificial Intelligence ("AI"). As a German developer and provider of the eponymous video conferencing software alfaview<sup>1</sup>, which prioritizes data protection and secure data encryption<sup>2</sup>, we recognize the transformative power of AI for the economy and society. Therefore, we also leverage AI, offering features such as AI-based live transcriptions and translations of video conferences in real-time in various languages.

Our statement aims to highlight the importance of fair competitive conditions to ensure that the benefits of AI technology are shared widely and equitably. As a technology of utmost importance for the future, AI is crucial for the transformation of numerous economic sectors. Hence, it is essential that the right course is set now so that not only a few large companies, but all market participants can benefit from the advantages of AI. It is particularly important to us that the application and integration of AI into products occur within antitrust regulatory frameworks to ensure fair competition for the benefit of the general public.

In our statement, we specifically address the antitrust implications of Microsoft's integration of Copilot into its product landscape and its exclusive "partnership" with OpenAI. Our analysis primarily focuses on the **fourth** and **ninth** questions from the Commission's questionnaire on generative AI.<sup>3</sup> Using Microsoft as a specific example, the antitrust concerns arising from the integration of generative AI are demonstrated. Furthermore, the statement outlines the risks posed by large companies (Microsoft) investing in or acquiring smaller AI model providers (OpenAI).

From alfaview's point of view, the following aspects of Microsoft and OpenAI's collaboration, as well as the integration of Copilot in Microsoft's digital ecosystem, pose significant competition law concerns:

- **Lack of merger control clearance.** Microsoft's substantial investments in OpenAI, the close personnel ties and the possibilities of exerting influence suggest a takeover of OpenAI without prior notification of a merger to the Commission.
- **Exclusivity agreements prevent collaboration with other companies.** Microsoft secures exclusivity regarding OpenAI's business activities, thereby preventing collaboration with other

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<sup>1</sup> <https://alfaview.com/en/>.

<sup>2</sup> <https://alfaview.com/en/dataprotection/>.

<sup>3</sup> [https://competition-policy.ec.europa.eu/system/files/2024-01/20240109\\_call-for-contributions\\_virtual-worlds\\_and\\_generative-AI.pdf](https://competition-policy.ec.europa.eu/system/files/2024-01/20240109_call-for-contributions_virtual-worlds_and_generative-AI.pdf).

companies and thus also competition. This exclusivity agreement also indicates a takeover of OpenAI by Microsoft.

- **Technical tying in violation of antitrust law.** Microsoft's technical tying of ChatGPT technology through Copilot into (i) Microsoft's **desktop operating system Windows 11**, (ii) into its **productivity software in Microsoft 365** and (iii) into its **video conferencing service Teams** distorts competition.
- **Privileged access to (training) data.** Microsoft provides OpenAI with privileged access to data that is denied to other providers of AI-based language models. As a result, Microsoft is hindering innovation competition among AI-based language models.
- **Provision of hyperscale infrastructure below market price.** Microsoft grants OpenAI access to its hyperscale infrastructure Azure at below-market prices, thereby disadvantaging competing providers of AI-based language models.
- **Cross-subsidisation of Copilot.** Microsoft provides ChatGPT technology via Copilot for free within certain versions of Microsoft 365 and cross-finances it via other subscription models where Copilot incurs an additional cost. Overall – across all versions of Microsoft 365 – Microsoft does not offer Copilot on a cost-covering basis, which raises antitrust concerns.

## Microsoft's dominant influence on OpenAI

The multinational technology company Microsoft has invested a total of nearly 13 billion dollars in OpenAI to date.<sup>4</sup> Following investments of over 1 billion dollars in both 2019 and 2021, the most recent investment of 10 billion US dollars underscores Microsoft's significant influence on OpenAI. Since 2020, as the leading investor, Microsoft has had the privilege of using OpenAI's AI models, especially the GPT series, for commercial purposes. The AI chatbot utilizes OpenAI's GPT-4 language model, as well as other AI applications marketed under Microsoft's new Copilot brand.

Moreover, Microsoft acts as the exclusive cloud provider for OpenAI: through its Azure data centers, Microsoft not only provides the servers necessary for training the AI models but also the computing power required for using applications like ChatGPT. Additionally, Microsoft has already introduced processors developed in close collaboration with OpenAI.<sup>5</sup>

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<sup>4</sup> <https://blogs.microsoft.com/blog/2023/01/23/microsoftandopenaiextendpartnership/>.

<sup>5</sup> <https://www.zeit.de/digital/internet/2023-11/entlassung-sam-altman-openai-microsoft-satya-nadella-chatgpt/seite-2>.

## Personnel entanglements and significant influence on decisions of OpenAI

During the leadership crisis at OpenAI, Microsoft CEO Satya Nadella offered not just Sam Altman, but the entire OpenAI staff positions at Microsoft. The proposal to hire the entire OpenAI workforce was, in effect, tantamount to an acquisition offer of OpenAI.<sup>6</sup> Microsoft thus exerted considerable pressure on OpenAI's board in advance to facilitate Altman's reappointment. As a result, Microsoft secured a non-voting observer seat on OpenAI's board and a reorganized (Microsoft-friendly) board.<sup>7</sup> This development grants Microsoft insight into the activities of OpenAI's non-profit half. These events highlight that despite OpenAI's proclaimed independence, Microsoft ultimately wields decisive influence on strategic business decisions.<sup>8</sup>

With its observer seat on OpenAI's board, Microsoft gains exclusive access to knowledge and information from OpenAI. From alfaview's perspective, this grants Microsoft a significant competitive advantage.

## Exclusivity agreements

As the exclusive cloud provider for OpenAI, Microsoft also has the possibility to prevent its cloud competitors from conducting business with OpenAI. On 22 September 2020 Microsoft announced that it had "exclusively licensed GPT-3".<sup>9</sup> The contracts between Microsoft and OpenAI also prohibit OpenAI from hosting its technologies on the platforms of competing cloud providers.<sup>10</sup>

From alfaview's perspective, it would be necessary for the Commission to clarify (i) the specifics of this exclusive relationship, (ii) the duration of the exclusivity commitment, and (iii) which product lines Microsoft has exclusively licensed from OpenAI. Depending on the specific terms of the exclusivity contracts, these could also provide important indications of a possible takeover of OpenAI by Microsoft.

Given Microsoft's billion-dollar investments in OpenAI, the close personnel entanglements, the existing exclusivity agreements and the extensive provision of material resources<sup>11</sup>, the question arises whether this is (still) merely a partnership or whether Microsoft has (already) taken over OpenAI. If it were a takeover, it would have had to be notified to the Commission in advance. However, no such

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<sup>6</sup> <https://www.thenation.com/article/economy/the-antitrust-lessons-of-the-openai-saga/>.

<sup>7</sup> <https://www.heise.de/news/Investition-oder-Uebernahme-EU-prueft-Partnerschaft-von-Microsoft-und-OpenAI-9592751.html>.

<sup>8</sup> <https://www.golem.de/news/rueckkehr-von-sam-altman-microsoft-rueckt-in-den-vorstand-von-openai-auf-2311-179889.html>.

<sup>9</sup> <https://blogs.microsoft.com/blog/2020/09/22/microsoft-teams-up-withopenai-to-exclusively-license-gpt-3-language-model/>.

<sup>10</sup> <https://www.thenation.com/article/economy/the-antitrust-lessons-of-the-openai-saga/>.

<sup>11</sup> See below at *Computing capacity / infrastructure*.

notification has occurred, making a merger potentially in violation of antitrust laws. Against this backdrop, alfaview expressly welcomes the Commission's current merger control investigations.

## Technical tying of Copilot

Microsoft has announced its intention to integrate OpenAI's ChatGPT technology across its entire product range.<sup>12</sup>

### 1. Technical tying into Bing

Initially, in early 2023, Microsoft bundled ChatGPT within its search engine Bing. This was a significant step concerning the training of OpenAI's AI model, as ChatGPT was originally trained only with data up to 2021 – with the Bing integration, the AI can now also access the most current data. Data of this magnitude is exclusively available to large tech companies like Microsoft. Smaller AI model providers do not have the capability to independently access data of this kind.

### 2. Technical tying with Microsoft's productivity software, the desktop operating system Windows 11 and the video conferencing service Teams

With its latest product Copilot – based on ChatGPT – Microsoft aims to revolutionise its productivity software and has integrated Copilot into Microsoft 365<sup>13</sup>, Windows 11<sup>14</sup>, and Teams<sup>15</sup>. Copilot is an AI-powered digital assistant that accesses ChatGPT within Microsoft 365, among other things. Microsoft states, "*Embedded in the Microsoft 365 apps you use every day, such as Word, Excel, PowerPoint, Outlook, Teams, and more, Copilot helps you unleash your creativity, boost your productivity, and enhance your skills*"<sup>16</sup>. Copilot also aims to assist users in controlling their PC functions via voice commands.<sup>17</sup> According to recent figures, Copilot is regularly used by more than 400 million people within Microsoft 365.<sup>18</sup>

### 3. Technical tying as a "common" practice of Microsoft already in the past

The technical tying of ChatGPT-4 with Bing (i), of Copilot with the Microsoft 365 productivity software (ii), with the desktop operating system Windows 11 (iii), and with the video conferencing service Teams

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<sup>12</sup> <https://www.faz.net/aktuell/wirtschaft/chatgpt-microsoft-bringt-open-ai-in-word-outlook-und-powerpoint-18754133.html>.

<sup>13</sup> <https://support.microsoft.com/de-de/windows/willkommen-bei-copilot-in-windows-675708af-8c16-4675-afeb-85a5a476ccb0>.

<sup>14</sup> <https://www.spiegel.de/netzwelt/web/microsoft-baut-kuenstliche-intelligenz-in-windows-ein-a-0727b71d-b34e-4e59-ab72-239dabf9b555>.

<sup>15</sup> [https://www.itmagazine.ch/artikel/81553/Neue\\_Funktionen\\_fuer\\_Copilot\\_in\\_Teams.html](https://www.itmagazine.ch/artikel/81553/Neue_Funktionen_fuer_Copilot_in_Teams.html).

<sup>16</sup> <https://support.microsoft.com/de-de/topic/chatgpt-und-microsoft-copilot-was-ist-der-unterschied-8fdec864-72b1-46e1-afcb-8c12280d712f> sowie <https://support.microsoft.com/de-de/topic/wo-erhalte-ich-microsoft-copilot-40a622db-6d25-4266-b008-4bbcb55cf52f>.

<sup>17</sup> <https://www.spiegel.de/netzwelt/web/microsoft-baut-kuenstliche-intelligenz-in-windows-ein-a-0727b71d-b34e-4e59-ab72-239dabf9b555>.

<sup>18</sup> [https://rickysutton.substack.com/p/theres-a-timebomb-at-the-heart-of?r=2j0ft3&utm\\_campaign=post&utm\\_medium=web&open=false](https://rickysutton.substack.com/p/theres-a-timebomb-at-the-heart-of?r=2j0ft3&utm_campaign=post&utm_medium=web&open=false).

(iv) are in line with previous cases of technical tying by Microsoft in the past. The Commission concluded in 2004 and 2009 that the technical tying of the Windows Media Player<sup>19</sup> and Internet Explorer<sup>20</sup> into the Windows desktop operating system was in violation of antitrust laws. The technical tying of the video conferencing service Teams into Microsoft's productivity software has also raised antitrust concerns and is currently subject to ongoing investigations by the Commission.<sup>21</sup>

Nevertheless, the decisions and investigations of the Commission and other competition authorities seem unable to prevent Microsoft from repeating technical tying. Currently, Microsoft appears unimpressed and does not shy away from the technical integration of ChatGPT and Copilot.

#### **4. Latest technical tying of Copilot also in violation of antitrust law**

**Abuse of a dominant position through technical tying.** At least the integration of Copilot into Microsoft's productivity software, the desktop operating system Windows 11 and the video conferencing software Teams are viewed by *alfaview* as highly problematic from an antitrust perspective. Microsoft abuses its dominant position in the market for productivity software<sup>22</sup>, the market for desktop operating systems<sup>23</sup> and the market for enterprise communication services<sup>24</sup> to extend its market power into the separate market for AI-based language models and virtual assistants.

**Leverage of market power.** By leveraging its market power into the adjacent market for AI-based language models and virtual assistants, Microsoft gives ChatGPT and Copilot, an unjustified distribution advantage that violates antitrust laws. This advantage is irreplicable for competing AI-based language models and can no longer be caught up by way of competition on the merits. As a result, Microsoft effectively forecloses competition in the market and stifles innovation in the long term. Other providers of AI-based language models and virtual assistants are harmed, as their applications are increasingly underutilized.

**Restriction of the technical development of AI models.** By setting ChatGPT as the foundation for Copilot across all its products, and thereby automatically for its entire user community, Microsoft triggers negative impacts on dynamic efficiency and the technical development of other AI models. Competing AI models face significant challenges in attracting users and encouraging them to switch due to the integration of the ChatGPT model via Copilot into Microsoft's product range.

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<sup>19</sup> Commission decision of 24 May 2004, Case COMP/C-3/37.792 — *Microsoft*.

<sup>20</sup> Commission decision of 16 December 2009, Sache COMP/39.530 — *Microsoft (tying)*.

<sup>21</sup> <https://alfaview.com/en/alfaview-welcomes-european-commission-competition-proceedings-over-microsofts-bundling-of-teams-and-office/>.

<sup>22</sup> Cf. on Microsoft's strong market position for productivity software *Andreas Mundt*:

[https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/28\\_03\\_2023\\_Microsoft.html?nn=55030](https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/28_03_2023_Microsoft.html?nn=55030).

<sup>23</sup> <https://de.statista.com/statistik/daten/studie/157902/umfrage/marktanteil-der-genutzten-betriebssysteme-weltweit-seit-2009/>.

<sup>24</sup> <https://de.statista.com/statistik/daten/studie/1228015/umfrage/marktanteile-der-fuehrenden-unternehmen-fuer-video-und-audiokonferenzsysteme/>.

Additionally, "self-learning effects" from Copilot could pose a barrier to switching.<sup>25</sup> It is reasonable to assume that, through a "self-learning function", Copilot progressively customizes generated content, adapting it based on previous interactions to the needs, preferences, stylistic habits and available data of the user.<sup>26</sup> If the resulting "training status" cannot be effectively transferred to other AI models, this constitutes a barrier to switching.<sup>27</sup>

Beyond the switching barriers for users, the restricted access to user data is likely one of the main reasons for the weakening of innovation competition.<sup>28</sup> Competing AI models do not have the same access to user data (data within Microsoft's applications, including cloud servers, as well as data within the operating system). Accordingly, competitors are less able to further develop their AI model and are also less able to tailor it to the individual needs of each user.

**Further lock-in effect in Microsoft's digital ecosystem.** Furthermore, Copilot has the potential to further link individual Microsoft applications into a closed digital ecosystem.<sup>29</sup> This could lead to even greater user lock-in effects. In addition to the path dependencies and reduced data access opportunities described above, there may be direct and indirect network effects that favour switching to Microsoft's ecosystem.<sup>30</sup>

The Commission should urgently initiate further investigations and intervene against the technical tying to prevent the continued disadvantage of competing AI models and the obstruction of innovations.

## Data access as a competitive edge

Microsoft offers OpenAI a vast user base essential for training its AI. In the realm of AI, data is fundamental. Companies with extensive datasets to train a base AI model possess a significant competitive advantage. User queries continually contribute to a model's improvement. Globally, only the major US tech companies can maintain such data. Without adequate access to suitable data, market entry is, in effect, impossible.

As the provider of the world's largest user-oriented applications and platforms, such as Office, LinkedIn, Bing, or GitHub, Microsoft has unparalleled access to data. OpenAI relies on Microsoft's data sources to train its models. This means that Microsoft owns and controls the data required for developing and deploying AI at OpenAI. For example, accessible programming code on Microsoft's GitHub platform was used to train the OpenAI technology, GitHub Copilot.<sup>31</sup>

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<sup>25</sup> *Picht*, NZKart 2024, 510, 512.

<sup>26</sup> *Picht*, NZKart 2024, 510, 512.

<sup>27</sup> *Picht*, NZKart 2024, 510, 512.

<sup>28</sup> *Picht*, NZKart 2024, 510, 512.

<sup>29</sup> *Picht*, NZKart 2024, 510, 513.

<sup>30</sup> *Picht*, NZKart 2024, 510, 513.

<sup>31</sup> <https://githubcopilotlitigation.com/>.

Moreover, Microsoft has made ChatGPT accessible within its Bing search engine. Originally, ChatGPT was trained with data up to 2021 – with the integration into Bing, OpenAI's AI can now access and continue training with the latest Microsoft data.

By tying ChatGPT with Microsoft 365, Teams and Windows 11, OpenAI's AI is fed millions of user data, which ultimately no other competitor in the market can access. The mere ability to tap into billions of data points through technical tying creates a market advantage that competitors cannot match. This tying also leads to an incredibly rapid training of the models, as Microsoft's large user base produces a significant training effect and the data situation continuously improves with every Microsoft user.

## Network effects

Currently, 12 plug-ins for ChatGPT are available, facilitating access to various services. Chatbots like ChatGPT resemble an app store: individual plug-ins are used in a similar way to apps, whereby access is always via the specific chatbot. This leads to strong network effects: as the number of plug-ins increases, it becomes more attractive to access and offer services through a single interface like ChatGPT. The increased use of the same chatbot, due to the volume of data, leads to improved data quality. Microsoft has announced its intention to create an ecosystem for AI plug-ins in collaboration with OpenAI. These are intended to be usable in ChatGPT, as well as in Bing, Microsoft 365 and Windows 11.<sup>32</sup>

This situation shows a clear parallel to other digital markets, such as operating systems: the development or operation of a base model is characterized by strong scale and network effects. Therefore, it is expected that only a few AI providers with access to resources in the form of data and computing power will be able to establish themselves in the market.<sup>33</sup>

## Computing capacity / infrastructure

Microsoft Azure serves as the exclusive cloud provider for ChatGPT, with OpenAI utilizing Azure to train all its models.<sup>34</sup> This means Microsoft supplies OpenAI with vast computer and cloud infrastructures.<sup>35</sup> This computing power is essential for operating AI efficiently. Developing, training, and operating a competitive base model is extremely resource and data-intensive. Immense amounts of data are required, such as those only large tech corporations can maintain. The computing power necessary to process these data volumes can only be provided by hyperscalers like the cloud services of Microsoft Azure, Google Cloud, and Amazon Web Services.<sup>36</sup>

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<sup>32</sup> <https://dievolkswirtschaft.ch/de/2023/07/bedrohen-chatbots-den-wettbewerb/>.

<sup>33</sup> <https://dievolkswirtschaft.ch/de/2023/07/bedrohen-chatbots-den-wettbewerb/>.

<sup>34</sup> <https://www.forbes.com/sites/qai/2023/01/27/microsoft-confirms-its-10-billion-investment-into-chatgpt-changing-how-microsoft-competes-with-google-apple-and-other-tech-giants/>.

<sup>35</sup> <https://blogs.microsoft.com/blog/2023/01/23/microsoftandopenaiextendpartnership/>.

<sup>36</sup> <https://dievolkswirtschaft.ch/de/2023/07/bedrohen-chatbots-den-wettbewerb/>.

Smaller AI companies cannot afford such extensive computing resources on a cost-covering basis, nor do they have the opportunity to bundle their AI with other products that already have as large a user base as Microsoft does. Thus, AI companies are dependent on the infrastructure of tech giants. For smaller companies, operating AI in a cost-covering manner is almost impossible.

## Technical aspects and resource consumption

ChatGPT requires massive amounts of computing power to generate responses to user queries. Dylan Patel, Chief Analyst at the semiconductor research firm SemiAnalysis, has conducted a detailed cost estimate for operating ChatGPT. According to SemiAnalysis's calculations, the daily operating costs for GPT-3 can reach up to \$700,000 per day.<sup>37</sup> OpenAI needs ~3,617 HGX A100 servers (28,936 GPUs) to run ChatGPT. This equates to approximately 36 cents per query sent to the chatbot. The majority of the fixed costs are attributed to the hardware infrastructure necessary for running the AI systems.<sup>38</sup> It is expected that GPT-4 – the company's latest model – is even more expensive to operate.<sup>39</sup>

Based on this estimate, one would have to account for operating costs of more than 255 million dollar per year. It is expected that, due to the close partnership with Microsoft, OpenAI has to pay significantly less. The provision of such computing power can only be enabled by a hyperscaler like Microsoft. Almost no company has the capability to permanently provide so many A100 graphics cards on its own, especially considering that just one of these graphics cards costs over 10,000 EUR to acquire.<sup>40</sup> The scale of costs associated with the required computing power further highlights Microsoft's significant influence on OpenAI, as without Microsoft, the costs generated by ChatGPT would be unmanageable.

According to scientific estimates, it is additionally expected that OpenAI's energy consumption for training its model equates to that of nearly 100,000 average households in Europe per day.<sup>41</sup> By the end of March 2023, the electricity consumption for each question to ChatGPT was reported to be up to a thousand times higher than that of a Google search query. For every response from the chatbot, one could charge a smartphone up to 60 times.<sup>42</sup>

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<sup>37</sup> Estimating ChatGPT costs is a tricky proposition due to several unknown variables. We built a cost model indicating that ChatGPT costs \$694,444 per day to operate in computer hardware costs. OpenAI requires ~3,617 HGX A100 servers (28,936 GPUs) to serve Chat GPT. We estimate the cost per query to be 0.36 cents. Our model is built from the ground up on a per-inference basis, but it lines up with Sam Altman's tweet and an interview he did recently. We assume that OpenAI used a GPT-3 dense model architecture with a size of 175 billion parameters, hidden dimension of 16k, sequence length of 4k, average tokens per response of 2k, 15 responses per user, 13 million daily active users, FLOPS utilization rates 2x higher than FasterTransformer at <2000ms latency, int8 quantization, 50% hardware utilization rates due to purely idle time, and \$1 cost per GPU hour. <https://www.semianalysis.com/p/the-inference-cost-of-search-disruption>.

<sup>38</sup> <https://winfuture.de/news,135812.html>.

<sup>39</sup> <https://www.semianalysis.com/p/the-inference-cost-of-search-disruption>;  
<https://www.washingtonpost.com/technology/2023/06/05/chatgpt-hidden-cost-gpu-compute/>.

<sup>40</sup> <https://innfactory.de/artificial-intelligence/was-kostet-der-cloudbetrieb-von-chatgpt/>.

<sup>41</sup> <https://innfactory.de/artificial-intelligence/was-kostet-der-cloudbetrieb-von-chatgpt/>.

<sup>42</sup> <https://www.businessinsider.com/how-much-chatgpt-costs-openai-to-run-estimate-report-2023-4>.

Financial analysts estimate that Microsoft's Bing AI chatbot, powered by an OpenAI ChatGPT model, requires at least 4 billion dollars in infrastructure to provide answers to all Bing users.<sup>43</sup>

From alfaview's perspective, in this context, it would be essential for the Commission to clarify the rate at which OpenAI is offered computing power on Azure compared to existing market prices.

## Cross-subsidisation

By tying ChatGPT with Microsoft 365, the very high costs of the AI application are distributed across all Microsoft users. On 14 December 2023, Microsoft announced that it would provide Copilot with access to GPT-4 and DALL-E 3 for free in the education sector within Microsoft 365.<sup>44</sup> The costs incurred by using the AI are cross-subsidized through other subscription models of Microsoft 365, thus by other customers. Even in the business sector, Microsoft offers AI functionalities far below the actual costs.<sup>45</sup>

Currently, 345 million people use Microsoft 365 (paid subscriptions).<sup>46</sup> Windows 11 is used on over 400 million monthly active devices and it is expected that the mark of half a billion will be reached by 2024.<sup>47</sup> A ChatGPT/Copilot query costs a minimum of 36 cents.

Conservatively estimated, only 2 Copilot queries per month would result in additional costs of €248,400,000.00 for Microsoft 365 users (€0.72 \* 345,000,000 users). As well as €288,000,000.00 per month for 2 Copilot queries using Windows 11 (€0.72 \* 400,000,000 users) or €360,000,000.00 for a future half-billion users (€0.72 \* 500,000,000 users).

When millions of Microsoft users utilize the integrated AI features, the server load increases significantly. The more users are active at the same time and the more data is transmitted, the more server resources are needed to provide a fast and reliable service. This results in high server costs for Microsoft. The larger the user base and the more intensive the usage, the higher the costs for operating and maintaining the required server infrastructure become.

There is an urgent need for transparency regarding the actual unit price of the application when booking Microsoft product offerings, as the costs of an AI application must be financed via the product itself. The high server costs incurred by AI technologies should not be transferred to other Microsoft products and passed on to Microsoft users.

**The general provision of AI technology within alfaview (such as our live transcription) would result in immense costs that cannot be financed by alfaview and would not be paid by customers in the**

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<sup>43</sup> <https://www.cnn.com/2023/03/13/chatgpt-and-generative-ai-are-booming-but-at-a-very-expensive-price.html>.

<sup>44</sup> <https://educationblog.microsoft.com/en-us/2023/12/expanding-microsoft-copilot-access-in-education>.

<sup>45</sup> <https://www.cbsnews.com/news/microsoft-chatgpt-powered-teams-pro-subscription/>.

<sup>46</sup> <https://www.usesignhouse.com/blog/microsoft-365-suite-stats>.

<sup>47</sup> <https://www.windowscentral.com/software-apps/windows-11/exclusive-windows-11-is-active-on-almost-half-a-billion-devices-ahead-of-microsofts-expectations>.

market. Cross-subsidization across all users is not feasible. Consequently, alfaview is significantly disadvantaged compared to large corporations like Microsoft.

The current pricing of Microsoft products reveals that the package prices of Microsoft 365 have remained unchanged and Copilot has been made available in the market within the Microsoft 365 product bundle without any additional surcharge.

Plan Name	Price (€/user/month)	Subscription Type
Microsoft 365 Business Basic	5,60 €	Annual subscription–auto renews <sup>1</sup>
Microsoft 365 Business Standard	11,70 €	Annual subscription–auto renews <sup>1</sup>
Microsoft 365 Business Premium	20,60 €	Annual subscription–auto renews <sup>1</sup>
Microsoft 365 Apps for business	9,80 €	Annual subscription–auto renews <sup>1</sup>

Figure: Pricing of Office 365 as of 10 July 2023, before the Copilot bundling.<sup>48</sup>

Plan Name	Price (€/Benutzer/Monat)	Subscription Type
Microsoft 365 Business Basic	5,60 €	Jahresabonnement mit automatischer Verlängerung <sup>1</sup>
Microsoft 365 Business Standard	11,70 €	Jahresabonnement mit automatischer Verlängerung <sup>1</sup>
Microsoft 365 Business Premium	20,60 €	Jahresabonnement mit automatischer Verlängerung <sup>1</sup>
Microsoft 365 Apps for Business	9,80 €	Jahresabonnement mit automatischer Verlängerung <sup>1</sup>

<sup>48</sup> <https://www.microsoft.com/en-us/microsoft-365/business/compare-all-microsoft-365-business-products?market=de>, accessed on 10 July 2023.

**Figure: Pricing of Office 365 as of 7 February 2024, with Copilot bundling in the 365 Business Standard and Business Premium packages.<sup>49</sup>**

Microsoft is able to make AI available across its product ecosystem solely because the corporation can cross-subsidize the costs across its extensive user base and across all products. The individual pricing of the bundled AI application should be set in such a way that the product is financially viable as a stand-alone product in the market.

As with the technical tying of Teams in Microsoft 365, a feature that is very costly is being provided for free. Users become accustomed to the added value of the product and will have little motivation to switch to an alternative program at a later stage due to subsequent pricing (known as "**status quo bias**").

The Commission should carefully monitor the pricing development and, considering the very high server costs for the use of ChatGPT and Copilot, examine whether cross-subsidization is permissible under antitrust law.

## alfaview's requests to the Commission

1. **Merger control of Microsoft's investments in OpenAI and the possibilities of exerting influence.** Considering antitrust aspects, it is crucial that the Commission carefully examines the impacts and extent of Microsoft's investment in OpenAI. If necessary, appropriate measures should be taken to protect competition and ensure the development of a fair and open market for AI technologies. In this context, alfaview expressly supports the investigation of a potential non-notified merger between Microsoft and OpenAI.

Within this in mind, alfaview also suggests a closer monitoring and investigation of the recently announced partnership between Microsoft and the French AI startup Mistral. According to Microsoft, it has invested 15 million euros in Mistral and, in return, will acquire shares in Mistral in a future financing round.<sup>50</sup> Through the deal, Mistral's language models will be available on Microsoft's Azure platform.

2. **Investigation of all technical tying of Copilot.** Furthermore, alfaview deems it exceptionally important that the Commission investigates the technical tying of Chat-GPT technology through Copilot (i) into **Microsoft's productivity software**, (ii) into the **desktop operating system Windows 11** and (iii) into the **Teams video conferencing service**.
3. **Investigation of the exclusivity agreements between Microsoft and OpenAI.** The Commission should closely examine the terms and duration of the exclusivity agreements between Microsoft and OpenAI. These may disproportionately prevent OpenAI's collaboration with

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<sup>49</sup> [https://www.microsoft.com/de-de/microsoft-365/business/compare-all-microsoft-365-business-products-b?ef\\_id=\\_k\\_EAlaIQobChMI84mC2cSZhAMVbJiDBx0ETw4yEAAYASAAEgIfzFD\\_BwE\\_k\\_&OCID=AIDcmm4yxt04k5\\_SEM\\_\\_k\\_EAlaIQobChMI84mC2cSZhAMVbJiDBx0ETw4yEAAYASAAEgIfzFD\\_BwE\\_k\\_&gad\\_source=1&market=de](https://www.microsoft.com/de-de/microsoft-365/business/compare-all-microsoft-365-business-products-b?ef_id=_k_EAlaIQobChMI84mC2cSZhAMVbJiDBx0ETw4yEAAYASAAEgIfzFD_BwE_k_&OCID=AIDcmm4yxt04k5_SEM__k_EAlaIQobChMI84mC2cSZhAMVbJiDBx0ETw4yEAAYASAAEgIfzFD_BwE_k_&gad_source=1&market=de)

<sup>50</sup> <https://techcrunch.com/2024/02/27/microsoft-made-a-16-million-investment-in-mistral-ai/>.

other companies, thereby restricting competition. At the same time, they may also indicate a takeover by Microsoft.

- 4. Investigation and monitoring of Microsoft's pricing strategy following the technical tying of Copilot into Microsoft 365.** The Commission should closely monitor the pricing development of the various subscriptions of Microsoft 365. Currently, Microsoft offers Copilot within certain versions of Microsoft 365 at no additional cost. However, given the enormous costs associated with training and using Copilot, it is only a matter of time before Microsoft starts pricing all versions of Microsoft 365 additionally or increases prices in general. The Commission should closely examine this pricing strategy for an abuse of market power under Article 102 TFEU in the form of so-called "predatory pricing".
- 5. Investigation of OpenAI's privileged access to training data.** In the interest of fair competition, the Commission should investigate whether there are ways to compel Microsoft to grant all AI language model providers equal access to training data. This is the only way to ensure that all AI language model providers can train their models to the same extent, that they remain competitive with ChatGPT and that innovation competition is not jeopardised.
- 6. Examination of Copilot's classification as a "core platform service" under Art. 2(2)(h), para. 12 of the DMA.** The Commission should assess whether Copilot qualifies as a core platform service. The number of monthly active users, amounting to 45 million in the Union, is likely already surpassed. The Commission could review the gatekeeper status under **Art. 4(2) sentence 1 of the DMA** and add Copilot to the list of Microsoft's core platform services. In any case, the Commission should initiate a "market investigation concerning new services and practices" under **Art. 19(1) of the DMA** to gain a better understanding and overview of the market for AI-based language models and virtual assistants and to be able to make a better competition law assessment.

Designating Copilot as a core platform service would provide competitors of AI-based language models greater opportunities to offer their developed virtual assistants to Microsoft users within Microsoft's ecosystem. For instance, Microsoft would be obliged under **Art. 5(5)** and **Arts. 6(4), (6), (7) of the DMA** to ensure access, installation, interoperability, setting options for setting third-party applications as standard and switching options. Furthermore, under **Art. 5(8) of the DMA**, the tying of two core platform services would be prohibited.

alfaview considers it essential that the Commission acts proactive to ensure that the AI market continues to be characterised by diversity, competition and innovation, rather than tipping in favour of only one company. Therefore, we call for a thorough investigation into Microsoft's investment in ChatGPT and the implementation of effective measures to ensure fair competition and facilitate access to innovative AI solutions for all market participants. In this regard, particular attention should be paid to the technical tying of Microsoft's Copilot.