

## **PROPOSED ACQUISITION OF ARM LTD BY NVIDIA CORPORATION: CONSULTATION ON PHASE 2 REFERENCE**

1. Further to my letter of Friday 1st October setting out that the Secretary of State for Digital, Culture, Media and Sport was minded to make a reference to the Competition and Markets Authority in relation to the proposed acquisition of Arm Ltd by the NVIDIA Corporation, I can now confirm, for the reasons set out below, that the Secretary of State has decided to make a reference under section 45(4) of the Enterprise Act 2002 (the 2002 Act). In doing so, the Secretary of State has considered carefully your response of 15 October 2021.
2. The Secretary of State believes that it is or may be the case that:
  - a. arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. Having considered the Competition and Markets Authority report, and in accordance with section 46(2) of the 2002 Act, the Secretary of State accepts the decision of the Competition and Markets Authority on this issue;
  - b. the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services. Having considered the Competition and Markets Authority report, and in accordance with section 46(2) of the 2002 Act, the Secretary of State accepts the decision of the Competition and Markets Authority on this issue;
  - c. the public interest consideration mentioned in the intervention notice issued on 19 April 2021 (the interests of national security) is relevant to a consideration of the relevant merger situation concerned;
  - d. taking account only of the substantial lessening of competition and the relevant public interest consideration concerned, the creation of the relevant merger situation may be expected to operate against the public interest.
3. The Secretary of State has today issued the enclosed letter and reference to the CMA.

### **Relevant merger situation**

4. The Competition and Markets Authority believes that NVIDIA and Arm Ltd are enterprises that would cease to be distinct as a result of the acquisition, and that the turnover test under section 23(1)(b)(i) of the 2002 Act is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
5. In accordance with section 46(2) of the 2002 Act, the Secretary of State must accept the decision of the Competition and Markets Authority on this point.

### **Substantial lessening of competition**

6. The Competition and Markets Authority has concluded that the proposed acquisition gives rise to a realistic prospect of a substantial lessening of competition within a market or markets in the United Kingdom and that the test for reference is met on competition

grounds. The Competition and Markets Authority found a substantial lessening of competition in each of:

- a. the supply of central processing units for datacentre servers globally;
- b. the supply of enhanced network-interface controllers enabling the transfer of data in datacentres globally;
- c. the supply of graphics processing units for datacentre servers globally;
- d. the supply of systems-on-chips for high performance internet-of-things applications globally;
- e. the supply of system-on-chips for automotive applications globally, in respect of:
  - i. advanced driver assistance systems applications; and
  - ii. information and entertainment applications; and
- f. the supply of system-on-chips for gaming consoles globally.

7. In accordance with section 46(2) of the 2002 Act, the Secretary of State must accept the decision of the Competition and Markets Authority on this issue.

**The interests of national security**

8. The Secretary of State notes the advice provided by the National Cyber Security Centre on 4 August 2021. The NCSC has identified a number of potential risks to national security arising from the proposed acquisition.

9. The Secretary of State notes the third-party views provided to the Competition and Markets Authority set out in their report and further information from other government departments and a small number of third parties.

10. The Secretary of State notes the information you have provided in response to our requests for information, the discussions with you on 9 and 15 July 2021 as well as your two letters of 23 July 2021. The Secretary of State has also considered carefully your response of 15 October 2021. [REDACTED]

[REDACTED] However, she did not consider that the arguments presented fundamentally altered her assessment that national security concerns remain a relevant consideration of the transaction.

11. Taking into account this information, the Secretary of State believes that the ubiquity of Arm technology makes the accessibility and reliability of Arm IP necessary for national security. As such, she believes that the following risks to national security may be generated by the transaction:

- a. Market effects (generated by substantial lessening of competition) that may lead to reduced product security, through lower incentive to innovate or a reduction in diversity;
- b. Market effects that may impact the secure development of alternative Instruction Set Architectures;

- c. Market effects that may reduce neutrality in the market and further decrease the economic motivation to prioritise security, leading to de-prioritisation of security critical markets;
  - d. Exposure to regulatory processes that could alter current governance structures of Arm subsidiaries and generate concerns about the provenance and therefore security of Arm IP; and
  - e. Potential reduction of the UK's autonomy to develop, operate or support defence and security systems that utilise Arm IP.
12. The Secretary of State therefore continues to believe that it is or may be the case that the interests of national security are relevant to a consideration of the proposed acquisition.

**Operate against the public interest**

13. In considering whether the acquisition may be expected to operate against the public interest, the Secretary of State may only take into account the substantial lessening of competition and the interests of national security. In doing so, the Secretary of State must treat any anti-competitive outcome (e.g. a realistic prospect of a substantial lessening of competition) as being adverse to the public interest unless it is justified by the interests of national security - see section 45(6) of the 2002 Act.
14. Therefore, given the decision made by the Competition and Markets Authority that the proposed acquisition gives rise to a realistic prospect of a substantial lessening of competition, the Secretary of State must conclude that the proposed acquisition may be expected to operate against the public interest on competition grounds unless this anti-competitive outcome is justified by the interests of national security.
15. Having taken into account the information mentioned in paragraphs 7 to 11 above, the Secretary of State believes that it is or may be the case that the proposed acquisition may operate against the public interest on national security grounds and, in any event, the Secretary of State is satisfied that the interests of national security do not justify the potential anti-competitive outcome identified by the Competition and Markets Authority.
16. Therefore, the Secretary of State believes that it is or may be the case that the proposed acquisition may be expected to operate against the public interest.

**Undertakings in lieu**

17. The Secretary of State notes that the Competition and Markets Authority concluded that it would not be appropriate to deal with the competition concerns identified by way of undertakings in lieu of a reference to a Phase 2 investigation. The Secretary of State must accept the decision of the Competition and Markets Authority on this point in accordance with section 46(2) of the 2002 Act. The Secretary of State further notes that, given this decision, she is not able to accept undertakings in lieu that seek to remedy the national security concerns alone.

18. Nevertheless, for completeness, the Secretary of State has considered the commitments proposed. She does not believe, agreeing with the NCSC, the undertakings proposed to the Competition and Markets Authority, insofar as they address the national security concerns, would sufficiently mitigate those concerns.
19. The Secretary of State notes that while your response of 15 October 2021 refers to existing commitments you have proposed, you have not offered any undertakings in lieu for the purposes of paragraph 3 of Schedule 7 to the 2002 Act in relation to the national security concerns arising from the proposed acquisition.
20. I am copying this letter to Jonathan Parker, Latham & Watkins for NVIDIA, and Tom McQuail, Morrison & Foerster, for Arm and SoftBank Group.