

Acquisition by Microsoft Corporation of Nuance Communications, Inc.

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/6940/21

SUMMARY

1. The Competition and Markets Authority (**CMA**) has found that the anticipated acquisition by Microsoft Corporation (**Microsoft**) of Nuance Communications, Inc. (**Nuance**) does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in any market in the UK. Microsoft and Nuance are together referred to as the **Parties**, and the combination of Microsoft and Nuance is referred to as the **Merged Entity**.
2. Microsoft announced its agreement to acquire Nuance on 12 April 2021 (the **Merger**). The consideration for the Merger is approximately USD 19.7 billion (approximately £13.9 billion).
3. Microsoft is a publicly listed, US-headquartered, global technology company that offers a wide range of products and services to customers through three broad operating segments: (i) Productivity and Business Processes; (ii) Intelligent Cloud; and (iii) More Personal Computing.
4. Nuance is a publicly listed US-headquartered software company that principally offers voice recognition and transcription software. Nuance has two main business units, namely healthcare and enterprise.
5. The CMA has jurisdiction under the Enterprise Act 2002 (the **Act**) to review relevant merger situations. A relevant merger situation can arise where either: (a) the target company generates more than £70 million of turnover in the UK (the turnover test); or (b) the merger results in the Parties having a share of supply of goods or services of any description in the UK of 25% or more with an increment (the share of supply test). In this case, the CMA has concluded that the Parties have a combined share of more than 25% in the supply of software that enables users with accessibility needs to command and control their personal computer and its applications using

their voice (**C&C software**), and that the Merger results in an increment to the Parties' combined share of supply. Therefore, the CMA believes that the share of supply test in section 23 of the Act is met.

Counterfactual

6. The CMA reviewed a number of the Parties' internal documents and did not identify sufficient evidence to support a counterfactual different from the prevailing conditions of competition.

Competition assessment

7. The CMA focussed its investigation on the three theories of harm most likely to give rise to a realistic prospect of a substantial lessening of competition (**SLC**) based on the evidence it received:
 - (a) horizontal unilateral effects in the supply of healthcare transcription software;
 - (b) horizontal unilateral effects in the supply of C&C software; and
 - (c) conglomerate effects with patient administration tools, patient engagement tools and remote healthcare tools as the focal products and Nuance's healthcare transcription software as the adjacent product.

Horizontal unilateral effects in the supply of healthcare transcription software

8. Healthcare transcription software is used by healthcare professionals to dictate their medical notes about a patient into a device and have those notes transcribed directly into an electronic health record (**EHR**).
9. Nuance is active in the supply of healthcare transcription software primarily through its Dragon Medical range of software.
10. Microsoft is active in the supply of various products and services that include general purpose transcription functionality. This includes Microsoft's Azure Cognitive Services, Microsoft 365, Microsoft Teams and Windows operating system (**OS**) offerings.
11. The CMA found that Microsoft and Nuance do not compete closely in the supply of healthcare transcription software. In particular, the CMA considers that general-purpose transcription functionality does not compete closely with healthcare-specific transcription software.

12. Further, many third parties told the CMA that:
 - (a) Microsoft and Nuance are not close competitors in the supply of healthcare transcription software;
 - (b) Significant volumes of healthcare-specific speech data are required to develop an accurate healthcare transcription product; and
 - (c) Nuance competes most closely with 3M/M*Modal, rather than Microsoft.
13. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of healthcare transcription software in the UK.

Horizontal unilateral effects in the supply of C&C software

14. The Parties overlap in the supply of software C&C software. Microsoft's solution, Windows Speech Recognition, is built-in to its Windows OS, whereas Nuance's solution is a feature in its Dragon Professional on-premise software.
15. The CMA found that the Merged Entity will be the largest supplier of C&C software on PCs, with a significant combined share of supply. However, the CMA also found that the evidence, taken in the round, shows that the Parties are not close competitors in the supply of C&C software. In particular, the CMA found that (i) Microsoft competes primarily against other OS providers, not against Nuance, and (ii) the majority of third parties that engaged with the CMA did not view the Parties as close competitors.
16. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of C&C software in the UK.

Conglomerate effects with patient administration tools, patient engagement tools and remote healthcare tools as the focal products and Nuance's healthcare transcription software as the adjacent product

17. The CMA has considered whether the Merger may lead to the foreclosure of Microsoft's rivals in the supply of patient administration tools, patient engagement tools and remote healthcare tools (ie the 'focal' products) as a result of the Merged Entity bundling this software with Nuance's healthcare transcription software (ie the 'adjacent' product).
18. The CMA notes that Microsoft's does not supply specialised patient administration tools or patient engagement tools. However, Microsoft's Dynamics 365 software can

be adapted to function as patient administration and/or patient engagement tools through the use of Microsoft's Microsoft Cloud for Healthcare (**MCFH**) offering, third-party add-ons, or a customer's own adaptations. In relation to remote healthcare tools, the CMA notes that Microsoft's Teams software is currently used by some healthcare providers in the UK as a remote healthcare tool.

19. The CMA considered whether the Merger may be expected to result in the foreclosure of Microsoft's rivals as a result of either:
 - (a) commercial bundling, such as offering healthcare providers a discount when purchasing the relevant Microsoft software (ie Dynamics 365, MCFH, and Microsoft Teams) with Nuance's healthcare transcription software; and/or
 - (b) technical bundling, such as totally or partially restricting the interoperability of software provided by Microsoft's rivals with Nuance's healthcare transcription software such that they could not be easily integrated by healthcare providers.
20. In assessing whether the Merged Entity would have the ability to foreclose rival suppliers of patient administration tools, patient engagement tools and remote healthcare tools, the CMA considered the following:
 - (a) the market power of Nuance in the supply of healthcare transcription software;
 - (b) the feasibility of bundling patient administration tools and patient engagement tools with healthcare transcription software; and
 - (c) the feasibility of bundling remote healthcare tools with healthcare transcription software.

Ability to foreclose Microsoft's rivals

- *Market power of Nuance*

21. In its assessment of Nuance's market power, the CMA considered: (i) the shares of supply for healthcare transcription software in the UK, (ii) the alternatives to Nuance available to healthcare providers, and (iii) barriers to entry and expansion in the supply of healthcare transcription software.
22. The CMA considers that the UK shares of supply in healthcare transcription software indicate that Nuance has a strong position. The CMA found that (i) healthcare providers do not have many effective actual or potential alternatives to

Nuance, with only 3M/M*Modal being seen as a credible alternative, and (ii) the barriers to entry and expansion are high, particularly for new market entrants.

23. Based on the available evidence, the CMA believes that Nuance holds a strong position in the supply of healthcare transcription software.
 - *Feasibility of bundling patient administration tools and patient engagement tools with healthcare transcription software*
24. The CMA found that the Parties' products were generally not seen as complementary by their rivals and healthcare providers. Most third parties considered that that it would not be important for healthcare transcription software to interoperate with patient administration or patient engagement tools, and that it would be more important for healthcare transcription software to integrate with an EHR system. The CMA believes that a technical bundling strategy would be unlikely to succeed, as rival patient administration and patient engagement software providers will continue to be able to interoperate with EHR software.
25. Most healthcare providers contacted by the CMA said that they would not consider procuring healthcare transcription software with patient administration or patient engagement tools in future. The evidence gathered by the CMA suggest that Microsoft and other general software suppliers are likely to find it difficult to compete with specialist suppliers of healthcare software.
26. The CMA found that the Merged Entity would only be able to offer a bundle to a minority of Nuance's customers. This is because the Merged Entity's ability to implement a bundling strategy would be significantly limited by the fact that healthcare providers typically procure healthcare transcription software through third parties, such as EHR suppliers, rather than directly from Nuance.
27. Based on the available evidence, the CMA believes that offering customers a commercial or technical bundle of patient administration tools, patient engagement tools, and healthcare transcription software is highly unlikely to be a feasible strategy for the Merged Entity.
 - *Feasibility of bundling remote healthcare tools with healthcare transcription software*
28. The CMA found that there is only limited complementarity between the Parties' products. Further, the CMA understands that there is limited benefit to integrating Microsoft Teams and Nuance's Dragon Medical software, as clinician calls are not typically transcribed for a patient's EHR. In addition, only a minority of healthcare

providers indicated that it is important for their healthcare transcription software to interoperate with their remote healthcare tools.

29. The vast majority of healthcare providers that engaged with the CMA's investigation said that they would not consider procuring healthcare transcription software together with remote healthcare tools, and that they tend to prefer specialist remote healthcare tools. Accordingly, the CMA believes that a bundled offering of Microsoft Teams and Nuance's DMO software is highly unlikely to be attractive to healthcare providers.
30. Finally, the CMA found the Merged Entity would only be able to offer a bundle to a minority of healthcare providers. This is because the Parties' products are procured by different customers through different processes in the NHS. There is currently a centralised procurement process and contract for Microsoft 365 in the NHS, which covers all NHS healthcare providers and includes Microsoft's productivity software (such as Word and Excel) as well as Teams. In contrast, healthcare transcription software is procured and contracted for by each individual NHS provider, partly because of the different requirements and technology solutions in different NHS Trusts.
31. Based on the available evidence, the CMA believes that offering customers a commercial or technical bundle of remote healthcare tools and healthcare transcription software is highly unlikely to be a feasible strategy for the Merged Entity.
 - *Conclusion on ability to foreclose Microsoft's rivals*
32. Based on the available evidence, the CMA does not believe that the Merged Entity would have the ability to foreclose Microsoft's rivals. In particular, the CMA considers that the Merged Entity would not be able to foreclose rivals by bundling patient administration tools, patient engagement tools, or remote healthcare tools with healthcare transcription software.
33. As the CMA has concluded that the Merged Entity would not have the ability to foreclose Microsoft's rivals, it is not necessary for the CMA to consider the Parties' incentives to engage in, or the effects of, any such strategy.
34. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the UK in relation to conglomerate effects with patient administration tools, patient engagement tools and remote healthcare tools as the

focal products and Nuance's healthcare transcription software as the adjacent product.

Decision

35. The CMA found that the Merger does not give rise to a realistic prospect of a SLC within a market or markets in the United Kingdom.
36. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002.