

ANTICIPATED ACQUISITION BY NORTONLIFELOCK INC. OF AVAST PLC

Issues statement

5 May 2022

The reference

1. On 25 March 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition (the **Merger**) by NortonLifeLock Inc. (**NortonLifeLock**), through its wholly owned subsidiary, Nitro Bidco Limited, of Avast plc (**Avast**) (together, the **Parties** or, for statements referring to the future, the **Merged Entity**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) Whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
3. In answering these two questions, the CMA will apply a 'balance of probabilities' threshold to its analysis. That is, it will decide whether it is more likely than not that the Merger will result in an SLC.¹

Purpose of this issues statement

4. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\) \(MAGs\)](#), paragraphs 2.31 and 2.36.

5. The CMA's phase 1 decision² contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.
6. This statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.
7. We intend to use evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on these and any other issues which may be identified during the course of the investigation.

Background

The Parties

8. NortonLifeLock is a global provider of consumer cyber safety (**CCS**) solutions under the Norton, Avira, BullGuard and LifeLock brands across the following three broad cyber safety categories.³
 - (a) Security: NortonLifeLock supplies software to provide real-time protection for PCs and other devices against malware, viruses, adware, ransomware and other online threats.
 - (b) Online privacy: NortonLifeLock supplies privacy solutions that provide enhanced security and online privacy through an encrypted data tunnel or VPN products. NortonLifeLock has recently launched an anti-track product in the UK.
 - (c) Identity protection: NortonLifeLock offers software to monitor, alert and restore services to protect users against, for example, identity theft. In the UK, this is limited to dark web monitoring,⁴ whereas in the US NortonLifeLock offers a more comprehensive identity protection product.
9. NortonLifeLock is primarily a paid-for (or 'premium') CCS solution provider. In the UK, NortonLifeLock under the Norton brand had approximately [X] paid users in 2021, the Avira brand had approximately [X] paid users and approximately [X] 'freemium' users⁵ and the BullGuard brand had approximately [X] paid users.

² Phase 1 decision will be published on case page [NortonLifeLock Inc. / Avast plc merger inquiry](#)

³ Avira and BullGuard focus on endpoint security and LifeLock focuses on identity protection.

⁴ Dark web monitoring is a solution which seeks to detect personal information of the user on the dark web.

⁵ Freemium users are users which are offered a base product free of charge with the view to subsequently monetising such users through up-selling or cross-selling other products or services.

10. The turnover of NortonLifeLock in the last financial year was approximately £2billion worldwide and approximately £[X] in the UK.
11. Avast is a global provider of CCS solutions which it supplies under the Avast, AVG, CCleaner and HMA brands⁶ and across the following three broad cyber safety categories:⁷
 - (a) Security: endpoint security software, which seeks to protect consumers from malware, viruses, adware, ransomware and other online threats.⁸
 - (b) Online privacy: a number of VPN and anti-track products, which allows users to avoid their unique online identifiers from being tracked online.
 - (c) Identity protection: dark web monitoring solutions as part of its BreachGuard product. Avast also offers an identity theft protection service. Avast launched this service in North America and has rolled it out more widely, including in the UK, as of December 2021.
12. Avast mainly supplies freemium CCS solutions to consumers. It has over 435 million users globally, including approximately [X] users in the UK.
13. Avast's turnover in the last financial year was approximately £684.3 million worldwide and approximately £ [X] in the UK.

The transaction

14. NortonLifeLock, through its wholly owned subsidiary, Nitro Bidco Limited, has agreed to acquire the entire issued and to be issued ordinary share capital of Avast. The Merger was announced on 10 August 2021 and its completion is conditional on clearance by the CMA.
15. The Parties have told the CMA that the transaction rationale is to:
 - (a) Increase the scale and reach, in terms of geographies and product offerings, of the Parties, providing access to a larger global user base;
 - (b) combine complementary NortonLifeLock identity protection and Avast privacy solutions to improve the position of the Parties in facing increasing

⁶ AVG focusses on endpoint security, CCleaner focusses on device optimisation, HMA focusses on online privacy (VPN).

⁷ Avast's CCS offering also comprises connected home security solutions and performance (PC optimisation) solutions. In particular, Avast supplies Avast Omni, an all-in-one protection product for smart homes and families in the US, and Avast supplies PC utility software tools which offer regular updating and clean up tasks to improve system performance.

⁸ Antivirus software refers to software which is designed to detect and remove computer viruses. Endpoint security refers to software which is designed to protect the endpoint (eg the customer device) from a wider range of security threats, including but not limited to computer viruses.

competition from operating system providers, notably Microsoft, Apple and Google;

- (c) enable greater geographical diversification globally, through combining the regional expertise of the Parties to reinvest in product and marketing to target new growth segments and regions; and
- (d) enable approximately USD 280 million (c. £218 million) of annual gross cost synergies.

16. In addition, the Parties stated that the combined company will be better placed than either Party on its own to advance the quality and range of its product offerings. The ability to access a larger user base combined with synergies will enable the Merged Entity to deploy more resources on innovation and growth.

Our inquiry

17. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

Assessment of the competitive effects of the Merger

Jurisdiction

18. In its phase 1 decision, the CMA found that each of NortonLifeLock and Avast should be considered an enterprise and that these enterprises will cease to be distinct as a result of the Merger.
19. In its phase 1 decision, the CMA found that the Parties have a combined share of supply of more than 25% with an increment of more than [~~x~~] % either by revenue or volume in some CCS solution segments. Therefore, the CMA found that the share of supply test in section 23 of the Act is met.
20. The CMA therefore believes that it is or may be the case that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Counterfactual

21. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an

analytical tool used in answering the question of whether a merger gives rise to an SLC.⁹

22. For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. In its phase 1 decision, the CMA found no evidence supporting a different counterfactual.
23. We currently intend to adopt the prevailing conditions of competition as the most likely counterfactual to the Merger, but welcome any evidence on this part of our assessment.

Theories of harm

24. Theories of harm describe the possible ways in which an SLC may be expected to result from a merger and provide the framework for analysis of the competitive effects of a merger.
25. In its phase 1 decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of CCS solutions in the UK. We intend to focus our competitive assessment on this theory of harm at phase 2.
26. We may revise our theories of harm as the inquiry progresses and the identification of a theory of harm does not preclude an SLC being identified on another basis following further work, or our receipt of additional evidence.

Horizontal unilateral effects

27. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end consumers.¹⁰
28. In order to investigate this theory of harm, we will consider the strength of constraints on the Merged Entity from the following categories of CCS solution providers identified in the CMA's phase 1 decision, as well as any others we identify in our investigation:

⁹ MAGs, paragraph 3.1.

¹⁰ MAGs, paragraph 4.1.

- (a) Independent CCS solution providers that have endpoint security solutions as their core offering (whether provided on a bundled or standalone basis) (**independent providers of endpoint security solutions**);
- (b) **pure play** providers who specialise in one or more CCS solutions but which do not include endpoint security as a core feature; and
- (c) operating system (**OS**) providers who also offer their customers certain forms of built-in security with their platforms. These include Microsoft Defender, but also those provided by Apple and Google.

29. In our assessment we will consider:

- (a) The closeness of competition between the Parties including, for example, by reference to their respective portfolios of products, how successfully they compete for different types of customer, their business models, and how these may change over time absent the Merger.
- (b) The closeness of competition between the Parties and other providers of CCS solutions, for example the similarity of product offerings, how successfully they compete for different types of customer, their business models and the extent to which customers may switch to them if the Merged Entity worsened its relative offering following the Merger. In particular, we will consider the extent to which the Parties' customers may:
 - (i) Consider Microsoft Defender and/or other CCS solutions offered by OS providers to be an alternative; and/or
 - (ii) choose one or more standalone CCS solutions from other providers as an alternative to the Parties' standalone and/or bundled CCS solutions.
- (c) Any significant differences in the competitor set for different customer sub-segments, for example for customers using different operating systems.
- (d) Any likely changes to the provision of CCS solutions, including competitors' plans to enter or expand, for example by offering products which are closer alternatives to those of the Parties.

30. Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

Market definition

31. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.¹¹ The CMA is therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.¹²
32. In its phase 1 decision, the CMA considered the impact of the Merger on the supply of CCS solutions in the UK. We will use this frame of reference as a starting point for our analysis. Our view of market definition will be largely drawn from the findings of our competitive assessment. Where relevant, we will consider out-of-market constraints and any differences in the degree of competitive constraints on the Merged Entity from different suppliers (overall and, if appropriate, in relation to specific customer segments).
33. In the CMA’s phase 1 decision, the UK was considered to be the appropriate geographic frame of reference. We will consider the Parties’ and other submissions and evidence on this point but we do not expect it to be determinative in the outcome of our assessment.

Countervailing factors

34. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
35. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.¹³
36. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger may not be expected to result in an SLC.

¹¹ [Section 36\(1\)\(b\)](#), the Act.

¹² [MAGs](#), paragraph 9.1.

¹³ [MAGs](#), paragraphs 8.28–8.43.

Possible remedies and relevant customer benefits

37. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
38. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.¹⁴

Responses to this issues statement

39. Any party wishing to respond to this issues statement should do so in writing, no later than **midnight, BST on Thursday 19 May 2022** by emailing Norton.Avast@cma.gov.uk.

¹⁴ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.