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By hand and by email

**MICROSOFT CORPORATION / ACTIVISION BLIZZARD, INC. MERGER INQUIRY**

***Response to the CMA's Issues Statement***

**[Redacted]**

Dear Sirs / Madam,

We hope this submission is well received.

We write to you in our capacity as **[Redacted]**.

***Introductory thoughts***

Before sharing our remarks, we want to thank you for allowing members of the public to provide their views on the proposed transaction. We believe it is important that the CMA closely considers the impact that this transaction will have on consumers and ensures that they are prioritised. We also hope that you will engage attentively with experts in the video gaming industry given the benefits that the inquiry panel would likely receive from furthering their understanding of this dynamic market.

The purpose of our submission is not to evaluate each theory of harm as presented by the CMA, but to engage in a discussion around the unique opportunity that this transaction presents the CMA to set the standard for regulators and companies globally when approaching M&A transactions in the video and cloud gaming markets. We believe the CMA should use its power to help shape this dynamic industry as it evolves and provide a mandate for the Digital Markets Unit (“DMU”) to be at the forefront of regulation as we move to an increasingly digitised world. Our view is that this transaction is inherently positive for consumers and that it will result in more choice, at lower prices without compromising quality versus the current status quo.

## Submission overview

We break our submission down into five sections:

- 1. The CMA's role as a consumer champion:** undertaking a review of significant transactions that received much scrutiny, why we supported the CMA's approach in these and how the creation of the DMU should set the standard in future digital markets policy among global regulators.
- 2. Increasing digitisation that results in greater choice and innovation is welcomed:** drawing parallels to other streaming platforms and digital ecosystems, how the increase in subscription and cloud-based platforms has been positive for consumers and the increase in content, investment, and choice in these markets has been pro-consumer.
- 3. Increasing digitisation of the video gaming industry moving forwards is inherently positive:** discussing that the video gaming market is moving towards a subscription and cloud-based gaming model, how this transaction does not negatively impact the future of cloud gaming and how it will stimulate innovation and competition in this market moving forwards.
- 4. The proposed transaction is inherently pro-consumer:** analysing how this transaction brings many benefits to consumers, most notably by providing wider access to quality content at low cost, and why Microsoft has no incentive to pursue a strategy of input foreclosure towards rivals.
- 5. This transaction is an opportunity for the CMA to strengthen policy in digital markets:** the CMA, through the DMU, should set the standard in digital markets policy through this transaction and the commitments offered by Microsoft should be monitored by the DMU to adequately preserve the many benefits consumers get as a result of this deal.

## Submission

- 1. The CMA's role as a consumer champion**
  - As a leading competition authority that reviews transactions involving global companies for their potential impact on consumers in the UK, we commend the CMA for its scrutiny and detailed evaluation that is done in an open and transparent manner. When a transaction of this size is undertaken in such dynamic and changing markets, it is only right that the CMA takes due time and consideration to assess the case for the benefit of consumers. The CMA has acted with prudence and caution throughout its history, which we are sure will continue to happen going forward.  
  
***The CMA has remained firm in the face of resistance from parties***
  - Over the past few years, the CMA has built a strong reputation for protecting consumers by choosing to take certain actions to prohibit deals which would not be in the consumer interest, such as in *J Sainsbury PLC / Asda Group Ltd*. We felt at the time that the competitive constraint from the limited assorted discounters was not sufficient to prevent upwards pricing pressure to customers. In the face of strong backlash from the parties during its Phase 2 investigation, we applauded the robustness of the CMA in protecting consumers and its decision to block this merger.

***The CMA has remained principled despite diverging views from regulators***

- c. The CMA's willingness to block the Cargotec Corporation / Konecranes Plc transaction despite the European Commission's conditional clearance following an agreed divestment remedy package also underlines the commitment the CMA has in setting the standard among global regulators. While the European Commission suggested that customers in Europe would continue to benefit from competitive prices and sufficient choice following such remedy, the CMA viewed that the divestitures would not enable the buyers to compete as strongly as the businesses do at present, with such loss of competition potentially having detrimental consequences to customers. We believe such examples as these demonstrate the strength of the CMA and its unwavering commitment in ensuring consumers are prioritised when evaluating prospective mergers, regardless of how other regulators may approach the situation.

***While also ensuring fair competition and consumer interest is the priority***

- d. Equally, we admired the CMA's detailed inquiry in Tesco PLC / Booker Group plc that ultimately led to its clearance. We understood the prevalence and importance of Tesco to the British consumer and agreed with the CMA that the merged entity would not have a material incentive to worsen wholesale prices given the presence of alternative wholesalers that retailers would likely utilise, rather than suffer a worsened service. Such clearance has since resulted in benefits to consumers through increased choice and value, which is at the heart of what the CMA seeks to facilitate through transactions it approves.

***And ensuring flexibility towards behavioural remedies where necessary***

- e. While we acknowledge that structural remedies in the form of divestitures are generally preferable to the CMA, we appreciate there are situations where such structural action may not be feasible or behavioural measures will preserve substantial benefits to consumers that would be largely removed by structural measures. In areas such as digital markets, tech ecosystems and media this can be particularly prevalent. The flexibility that the CMA adopted in Bauer Media Group is one such example where the undertakings offered by the company were adopted as opposed to the potential divestment of the four radio businesses in question. Our view is that while the 10-year period to which these undertakings applied requires a robust monitoring and enforcement process, as the sophistication of the CMA increases through the creation of the DMU, in certain dynamic markets the CMA should afford greater openness towards solutions to preserve the substantial benefits to consumers.

***The DMU should set the global standard in future digital markets policy***

- f. The creation of the DMU was grounded in the belief that digital markets need a distinct regulatory approach given their fast-changing nature, scale and scope. Multiple other industries with their own peculiarities have specific regulatory agencies - which includes Ofcom, Ofgem and the Groceries Code Adjudicator - to promote competition, protect consumers, and protect businesses from unfair practices. We agree that digital markets are no exception and welcome the creation of the DMU within the CMA. Our hope is that the DMU is afforded a broader mandate through the adoption of the Digital Markets, Competition and Consumer Bill, which the government has committed to bring forward to Parliament in 2023, so that it can indeed regulate digital markets in the way it has been proposed.

- g. We believe the DMU can be the regulatory agency that leads the way in markets around the world when it comes to setting the standard for digital markets regulation. It has a significant role to play in shaping the policy landscape of a dynamic industry that flows through to the enjoyment of consumers each day. The CMA, given its mandate, has the utmost power of any global competition body to protect consumers and we believe the DMU should be at the forefront of regulation in an increasingly digitised world.

## **2. Increasing digitisation that results in greater choice and innovation is welcomed**

- a. There have been situations in transactions featuring 'Big Tech' historically where global competition authorities have not stepped in, and the result of such inaction has failed consumers significantly. As such, we believe it was right for the CMA to refer this transaction to a Phase 2 investigation and spend more time evaluating its effects closely. It is a significant transaction with wide implications for the future of the video gaming industry, particularly with respect to subscription services and cloud-based gaming models. This requires extensive diligence to ensure that it will not negatively impact the future of these models, negatively impact consumers, or inhibit the ability for any rivals to compete. Ultimately, digitisation is likely to continue as consumers become more accustomed to subscription and cloud-based platforms which result in wider choice at accessible prices, stimulating innovation and competition.

### ***Parallels to satellite television and streaming platforms - 'The Content Wars'***

- b. We see a clear parallel between the move towards cloud-based gaming and access to satellite television. As was historically the case, to access satellite television through Sky in the UK consumers would pay a monthly fee (the minimum currently being £26.00 a month) on a long-dated contract (a minimum of 18-months) and require the installation of a sky satellite dish to receive access (up until October 2021).<sup>1</sup> By comparison, consumers now have the option of streaming services from the likes of NOW TV at a cost of £9.99 a month, without the need for a long-dated contract (typically it is rolling monthly) and without the need for additional hardware installed.<sup>2</sup> Other comparable services include Amazon Prime and BT Sport which each offer access to live television and don't require the additional friction or capital outlay that comes with the installation of a satellite dish. The parallels here to the video console market are uncanny and we believe the benefits of cloud gaming – that removes the expensive need for console hardware – makes it more accessible for consumers.
- c. There is also a clear parallel between the adoption of subscription service platforms within video gaming and the increasing uptake of subscription platforms more generally. In the content-streaming market, Disney+ (including Hulu and ESPN+) was able to achieve the same level of subscribers as Netflix within three-years of launch, despite Netflix being the clear market leader at the time.<sup>3</sup> Consumers are not forced to subscribe to Disney+, they do so out of choice and likely based on the quality of content that was on offer on the Disney+ platform. We have since seen a promulgation of original content created by these platforms given the fierce competition to grow their subscriber base and compete for consumers' engagement, rather than having a captive audience given the previous barrier to film and television

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<sup>1</sup> As per Sky's UK website: <https://www.sky.com/deals/tv>

<sup>2</sup> As per NOW TV's UK website: <https://www.nowtv.com/membership>

<sup>3</sup> 'Disney overtakes Netflix in race for subscribers', Sky News, 12 August 2022: <https://news.sky.com/story/disney-overtakes-netflix-in-race-for-subscribers-12670533>

shows that was present. This is inherently positive as it provides consumers with more options to consume content, stimulates innovation to produce quality content and ensures such content is offered at accessible prices. Again, the parallel to multi-game subscriptions, such as Game Pass or PlayStation Plus, is clear to see with the low-cost subscription option offering a more accessible alternative to outright game purchases for consumers.

- d. It was reported by the Financial Times that the “top eight US media groups plan to spend at least \$115bn on new movies and television shows” in 2022.<sup>4</sup> The same theme has been shared by satellite TV operators in the UK with Sky making significant investments of \$1.4bn to generate original content in order to compete with streaming rivals such as Netflix, Amazon and Disney+.<sup>5</sup> Such vast investments are being made as part of the drive for premium content which is ultimately for the benefit of the end consumers and increased competition in the market. In addition, it is unlikely that this investment in content would have occurred to the same degree without the removal of the barriers to entry.

***Digital ecosystems relying on platform provided content are pro-consumer***

- e. One need only look to digital solutions being provided in other ecosystems to see the positive effects to consumers that increasing digitisation has brought. The entry of Uber, Deliveroo and Airbnb into their respective markets has undoubtedly brought many benefits to consumers in the UK, none more prevalent than the increase in choice and low cost. Deliveroo has meant that restaurants become more accessible to consumers and widens the choice available while offering such choice in an affordable manner. Uber has created a new low-cost means of taxi transport in UK cities, again offering wider choice for consumers in their options for getting around. While Airbnb has made the apartment and home holiday market more competitive, providing a cost-effective method for consumers to book a stay and increasing competition for hotel companies through this alternative option to consumers.
- f. There are of course pitfalls to each of these options that need to be regulated and managed – particularly on the power these platforms may have over their suppliers - but fundamentally these digital solutions have been hugely positive developments for consumers. As already mentioned, there are a number of regulators in the UK set up to monitor unfair business practices, with the Groceries Code Adjudicator being one such example of a regulator that we believe has helped suppliers managing inherent conflicts and ensured they are sufficiently protected from unfair practices by the large food retailers in the UK. We see the need for oversight and supervision by a regulator for digital and tech ecosystems in a similar vein to those mentioned, which is what we believe the DMU can and should fulfil as part of its mandate.
- g. We believe it is important that the CMA considers the types of ecosystems that are being created when evaluating whether these are a positive or negative for consumers. The examples mentioned are part of ecosystems that are reliant on content provided by the platform itself. These tend to be pro-competitive, with low barriers for disruption and are beneficial to consumers in the ways described. Alternatively, ecosystem’s which are dependent on the user for content – such as social networks – are difficult to disrupt and the network effects are extremely strong.

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<sup>4</sup> ‘Streaming wars drive media groups to spend more than \$100bn on new content’, Financial Times, 29 December 2021: <https://www.ft.com/content/ae756fda-4c27-4732-89af-cb6903f2ab40>

<sup>5</sup> ‘Broadcaster Sky turns to original shows to fight Netflix, Amazon’, Bloomberg UK, 10 June 2021: <https://www.bloomberg.com/news/articles/2021-06-10/broadcaster-sky-turns-to-original-shows-to-fight-netflix-amazon>

We believe the latter types of ecosystems do not foster market-based competition and regulators should approach transactions in that space with caution. We see the ecosystem in question here as falling into the former category – where content is provided to the consumer by the platform – which is a positive ecosystem and one which we feel should be part of the DMU’s mandate to monitor to ensure that consumers are being fairly treated and protected.

**3. Increased digitisation of the video gaming industry moving forwards is inherently positive**

- a. Given the CMA’s role in championing consumer benefits, it should use this transaction as an opportunity towards facilitating the transition towards cloud gaming which is where the future of video games is headed to. The CMA should ensure it is focused on seeking the best outcome for consumers and not act as an impediment to greater choice, nor to the furtherment of innovation in developing markets such as cloud gaming. We feel that the direction of travel is inevitable, therefore the CMA should be at the forefront of this development to help set the agenda in a pro-consumer manner and not be an impediment to positive developments in this space which ultimately provide greater choice.
- b. While concerns have been raised by Sony in particular, ultimately the CMA’s priority is in protecting consumers and not to preserve the status quo of competitors. This industry is far from static and one that frequently has new entrants that have the ability to quickly capture market share, such as had happened with *Fortnite*. It is understandable that Sony is seeking to maintain its position, given it has invested a lot of capital, time and energy towards creating this. However, the landscape is changing given the wide adoption of subscription-based services and cloud-based platforms in other industries. These have reduced the barriers to entry and such innovation has allowed consumers to have new methods to pay for content, along with having access to a wider range of content without sacrificing quality.

***Increased competition promotes innovation and greater content quality for consumers***

- c. We believe Microsoft is seeking to propagate innovation and embrace the move towards subscription services and cloud gaming – it is unsurprising that a technology company can see where the direction of travel is headed. By contrast, it seems that Sony may be looking at this transaction through the lens of a hardware company and not with the future development of the industry in mind. There is no evidence to suggest that this deal would inhibit Sony or any other rival’s ability to compete in the multi-game subscription or cloud gaming markets. The barriers to entry are low, the market is extraordinarily dynamic and new competition can arise through innovation and original content – all of which would be positive for consumers.
- d. Ultimately, the CMA should continue its focused work in protecting consumers and not be dissuaded from facilitating the adoption towards subscription and cloud-based platforms in lieu of preserving the status quo that market leaders have sought to maintain. This transaction will accelerate the transition towards these options and increase the competition that comes with it, which will likely stimulate innovation and the production of quality content for consumers.

**4. The proposed transaction is inherently pro-consumer**

- a. Ultimately, we believe it is clear that the proposed transaction will overwhelmingly result in positive benefits to consumers. Microsoft has committed to democratise

access to ABK titles, including eventually *Call of Duty*, through adding these to Microsoft's Game Pass subscription service. This would allow access for Xbox consumers to a wider range of high-quality titles. Microsoft is seeking to widen access to these popular titles which is in the interest of consumers, while it has been confirmed that Sony has a contract with ABK that prohibits them from adding *Call of Duty* to Microsoft's Game Pass.<sup>6</sup> Wider choice and greater availability of content is an inherent positive to consumers.

**Wider choice for consumers at lower cost**

- b. Absent this transaction, consumers would only be able to play new releases of *Call of Duty* (such as the recently launched *Modern Warfare II*) by purchasing it outright for £59.99. However, following it, consumers would still have this option available while also having the alternative option of accessing it through Game Pass (upon expiry of Sony's contract that restricts this) or through cloud gaming, each at the cost of an inexpensive subscription. As seen in other industries already mentioned such as television, subscription models are pro-consumer as it lowers the cost for access to high-quality and wider ranging content than the alternative purchasing of hardware. Lower cost to access such popular titles is also an inherent positive to consumers.

**Removal of large upfront capital costs on hardware is positive for consumers**

- c. For many families in the UK the upfront cost of the latest generation of console is inaccessible as they range from £449.99 for an Xbox Series X, to £479.99 for a PlayStation 5. The removal of upfront capital costs, whether it be for a console or a game, is a welcome development that allows for greater consumer accessibility – this is particularly relevant in periods such as today where the UK is in a cost-of-living crisis. By contrast, a move towards greater adoption of subscription and cloud-based platforms should be welcomed as it allows consumers the ability to stream video games without the friction of large expenditure on hardware.
- d. While consoles are unlikely to be made redundant in the next five-years (the length of time the Competition Appeal Tribunal considered in *Meta / Giphy* that one should consider as to the future state of such relevant markets),<sup>7</sup> increasing the variety of content that is available on cloud gaming platforms will help increase its adoption, which is an inherent positive for consumers generally. We believe this transaction will further strengthen the adoption of cloud gaming and likely lead to greater innovation and competition in this market, without inhibiting the ability for any rivals to compete.

**No incentive for Microsoft to pursue input foreclosure strategies**

- e. With respect to *Call of Duty*, its key attraction is the strength of its community, with the game having a long-standing relationship with PlayStation. Denying the ability for PlayStation consumers to have access to *Call of Duty* given its history and prevalence would risk disenfranchising, disrupting, and diminishing its consumers. This is something Microsoft has shown it values as seen through its most comparable transaction, the acquisition of Mojang, where Microsoft continued to keep *Minecraft* available to all console platforms. There is a clear lack of incentive for Microsoft to make *Call of Duty* exclusive to Xbox. *Even if* Microsoft were to do so, the evidence submitted in the public domain suggests that PlayStation would still

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<sup>6</sup> Microsoft's response to the CMA's reference decision, 11 October 2022, p. 22

<sup>7</sup> *Meta Platforms, Inc. v Competition and Markets Authority*, 14 June 2022, CAT 26, p. 55

have a greater number of users than Xbox even if – in the unlikely scenario – the majority of *Call of Duty* players switched from PlayStation to Xbox.<sup>8</sup> Therefore, the effect of Microsoft pursuing an input foreclosure strategy with respect to *Call of Duty* is one that would not result in Sony's ability to compete being substantially limited.

- f. This point is underlined by Microsoft's understanding of this key attraction and pillar of *Call of Duty*, as demonstrated by Xbox Studios head, Matt Booty: *"If we acquire a game that comes with a big community across a number of platforms, the last thing we want to do is take something away. If anything, we feel that it's our job to be caretakers, to be shepherds, to continue to build and nurture that community, not to cut it up into pieces and try to take some of it away."*<sup>9</sup>

***The ability for swift changes in consumer sentiment highlights the fact that franchise-led market power does not exist***

- g. While *Call of Duty* has drawn significant attention, in a dynamic industry where games constantly fluctuate in popularity one must question whether significant market power can really be attributed to a particular franchise. As evidenced by ABK's 2022 10-Q, following the release of *Call of Duty Vanguard* average monthly active users across ABK "decreased by 47 million or 12%" with such decrease being "driven by the *Call of Duty* franchise".<sup>10</sup> It is clear that gamer sentiment can swiftly change based on the perceived quality of the content on offer and that new market leaders can emerge (as was widely seen with *Fortnite*), along with established titles fading – as has been the case with the once market leading *Halo* franchise.<sup>11</sup>
- h. These examples demonstrate that franchises do not have entrenched market power in the video games market and how *Call of Duty*, along with ABK's titles more generally, depend on consumer sentiment for their popularity – with no guarantees that this will continue. In such a rapidly changing industry where leading games can quickly fade while other competitors can emerge, it is difficult to attribute any market power to any one franchise.

***Potential for a new mobile app store to compete with Apple and Google to enhance competition and break down their "effective duopoly"*<sup>12</sup>**

- i. One final area worth highlighting is Microsoft's development of a mobile gaming app store that is enshrined by its novel 'Open App Store Principles'. The CMA's recent study into mobile ecosystems suggested a 'duopoly' that Apple and Google hold, describing the various harms to consumers as a result of weak competition in the sector which acts as "a break on innovation".<sup>13</sup> Microsoft is focusing on building out its mobile gaming capability through this transaction and using it as a catalyst for innovation related to the development of its mobile game store. Such innovation is exactly what the CMA has identified as lacking in the mobile ecosystem. It is likely that this transaction could bring vital competition to Apple and Google in this market, help ensure consumers are prioritised and protected through enhanced governing principles and stimulate further innovation in the market to bring wider choice for consumers. This is inherently positive for consumers and for the industry.

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<sup>8</sup> Microsoft's response to the CMA's reference decision, 11 October 2022, p. 13

<sup>9</sup> Media briefing, Matt Booty – as reported on by IGN 'Microsoft's Activision Blizzard acquisition: Execs discuss exclusives and Game Pass', 9 June 2022: <https://www.ign.com/articles/microsoft-activision-blizzard-acquisition-game-pass-exclusives>

<sup>10</sup> ABK 10-Q, 30 June 2022, p.38-39

<sup>11</sup> 'Game On: *Halo Infinite's* popularity is already fading', The Spokesman-Review, 21 April 2022: <https://www.spokesman.com/stories/2022/apr/21/game-on-halo-infinities-popularity-is-already-fadin/>

<sup>12</sup> 'Mobile Ecosystems: Market study final report', CMA, published 10 June 2022, p. 79

<sup>13</sup> 'Mobile Ecosystems: Market study final report', CMA, published 10 June 2022, p. 255



## 5. This transaction is an opportunity for the CMA to strengthen policy in digital markets

### ***The CMA should engage in dialogue to extract workable concessions in digital markets***

- a. Given digital markets will continue their evolution and likely continue the increasing adoption of subscription and cloud-based services and platforms, including in the absence of this transaction, the CMA should look to consumers for ways to extract concessions from parties and set the standard for the industry moving forward. One way to achieve such standard is through greater openness towards access and behavioural remedies that the DMU can monitor the effectiveness of to facilitate guiding principles. While we understand the CMA's reluctance towards behavioural remedies, the creation of the DMU will allow for greater flexibility and solutions between parties that are acceptable in this dynamic landscape.

### ***Microsoft's public commitments preserve and enhance the benefits to consumers in this transaction***

- b. Microsoft has offered up several public commitments with respect to *Call of Duty* to alleviate concerns around input foreclosure:
  - i. *"Microsoft will continue to make Call of Duty and other popular Activision Blizzard titles available on PlayStation through the term of any existing agreement with Activision."*<sup>14</sup>
  - ii. *"We have committed to Sony that we will also make them available on PlayStation beyond the existing agreement and into the future so that Sony fans can continue to enjoy the games they love. We are also interested in taking similar steps to support Nintendo's successful platform."*<sup>15</sup>
  - iii. *"[regarding Sony] I confirmed our intent to honor all existing agreements upon acquisition of Activision Blizzard and our desire to keep Call of Duty on PlayStation."*<sup>16</sup>
  - iv. *"As long as there's a PlayStation out there to ship to, our intent is that we continue to ship Call of Duty on PlayStation."*<sup>17</sup>
  - v. *"Call of Duty specifically will be available on PlayStation. I'd love to see it on the Switch, I'd love to see the game playable on many different screens. Our intent is to treat Call of Duty like Minecraft."*<sup>18</sup>
  - vi. *"Call of Duty will stay native to PlayStation, will not be linked to carrying Game Pass, if they want a streaming version of Call of Duty, we can do that as well... Sony does not have to take Game Pass on their platform to make that happen."*<sup>19</sup>

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<sup>14</sup> 'Adapting ahead of regulation: a principled approach to app stores', Microsoft, 9 February 2022:

<https://blogs.microsoft.com/on-the-issues/2022/02/09/open-app-store-principles-activision-blizzard/>

<sup>15</sup> *Ibid.*

<sup>16</sup> Tweet from Phil Spencer, 20 January 2022: <https://twitter.com/XboxP3/status/1484273335139651585>

<sup>17</sup> 'Exclusive interview with Phil Spencer from Xbox!', Same Brain podcast, 30 October 2022

<sup>18</sup> *Ibid.*

<sup>19</sup> 'Phil Spencer really wants you to know that native Call of Duty will stay on PlayStation', The Verge, 15 November 2022:

<https://www.theverge.com/23459189/phil-spencer-microsoft-activision-call-of-duty-xbox-playstation-candy-crush-apple-fortnite-vr>

Such commitments can form the basis of undertakings that are provided by Microsoft to the CMA to alleviate the potential harm that it has been suggested may happen as a result of this transaction. While we believe that such undertakings should *not be required* given our belief that this transaction does not result in a substantial lessening of competition in any of the identified markets, these commitments would act to safeguard the many benefits to consumers that result from this transaction.

***Behavioural remedies would preserve the benefits to consumers in this transaction***

- c. Generally, where the benefits to consumers are substantial and such benefits will be conserved with a behavioural remedy, but lost through a divestment, such behavioural remedy should be accepted – that is the case in this transaction. A preferable outcome for parties that would allow for greater certainty in dealmaking in digital markets is allowing such commitments to be recognised and placed under the remit of the DMU to enforce. This will not always be appropriate, but where the evidence suggests such public commitments are being made in good faith and going to be honoured then the CMA should permit these.
- d. In permitting such public statements and behavioural remedies, this transaction would provide an opportunity to allow the CMA to alleviate any perceived issues through these concessions that it may seek from the parties. The many benefits that this transaction brings to consumers, such as greater accessibility and wider choice of games at low cost, would not be realised were this transaction to be prohibited. The development of the cloud gaming industry is fundamentally positive for consumers and this transaction will only help to accelerate the benefits associated with this. In doing so, the CMA can ensure that its priority of getting the right outcome for UK consumers is achieved, while also protecting competition and ensuring greater predictability for companies considering prospective mergers.

***Concluding remarks***

In evaluating the evidence presented during your Phase 2 investigation, the ultimate questions to answer are whether this transaction will lead to higher prices, less choice or worse quality for consumers. We believe it is clear that the answer to these questions is no.

This is a transaction grounded in its focus on community, cooperation and connection and it is inherently positive for consumers. It is clear that it will bring greater choice, at a lower cost without lowering quality for consumers, while also preserving competition and innovation in the digital gaming market.

In addition, this transaction is an opportunity for the CMA to lead the way in shaping digital markets policy and assisting with the transition towards increasing use of subscription and cloud-gaming platforms in the UK. By setting the standards for policy in this evolving industry the CMA can ensure such evolution is done with consumer priority in mind and for the betterment of the wider industry.

We trust that you will continue your dialogue with both sets of parties, Sony, other competitors in the video game industry and third parties with expertise in this sector.

Please let us know if you have any questions related to the above views. We would be very happy to discuss these further.

Thank you for taking our submission into consideration.