

MICROSOFT/ACTIVISION BLIZZARD PHASE 2 MERGER INQUIRY

Summary of third party calls¹

Introduction

1. The Competition and Markets Authority (**CMA**) is investigating the anticipated acquisition by Microsoft Corporation (**Microsoft**) of Activision Blizzard, Inc. (**Activision**) (the **Merger**) under the merger control provisions of the Enterprise Act 2002.
2. In relation to the Merger, as part of its phase 2 investigation, the CMA held calls or meetings with six third parties during the period from October 2022 to January 2023. Each of these third parties is a competitor or a potential competitor with the merged entity in either console gaming services or cloud gaming services.
3. The primary purpose of the CMA's discussions with these third parties was to understand the following (albeit, depending on the identity of each third party, some of these topics were more relevant than others):
 - (a) The third party's relationship with Activision and any other game developers and publishers (and, if relevant, with Microsoft), and their views on game publishing more generally;
 - (b) The third party's views on competition in console gaming services (including both buy-to-play games and multi-game subscription services) and cloud gaming services;
 - (c) The third-party's views on the likely evolution of cloud gaming; and
 - (d) Whether the third party had tried or considered using an operating system other than Windows for providing cloud gaming services, and whether they considered this to be a viable approach to providing cloud gaming services.

¹ The CMA does not always publish a summary of third-party oral evidence gathered during its investigations but may, in some circumstances (for example, where a merger which has attracted significant public interest), consider that it is appropriate to publish a summary of third-party oral evidence on the CMA's website (CMA2, para. 11.23).

4. The third parties were also asked for their views about the Merger.
5. This document provides an overview of comments made by third parties relating to the key themes of the CMA's inquiry and to the Merger in general.
6. Views of market participants are an important source of evidence in CMA merger investigations but, as noted in Provisional Findings, the weight that should be given to such views is considered carefully. In particular, we recognise that the outcome of a merger investigation can have a direct financial or strategic impact on market participants, and we therefore consider the interests and incentives of market participants, as well as the extent to which such claims are consistent with other evidence, when assessing what weight to attach to those views.²

The competitive landscape in console gaming services

7. Some third parties referred to Microsoft Xbox, Sony PlayStation and Nintendo Switch as competitor platforms, though Nintendo was perceived as differentiated on several bases, including in having different technical specifications and content.
8. Two third parties identified the availability of attractive first- and third-party content as key to a platform's success, with one also emphasising overall consumer experience. One third party contended that quality of content library has been demonstrated to drive users' satisfaction with gaming consoles, while two commented that the loss of a major title would be harmful to a platform and its users.
9. One third party characterised Call of Duty as unique and a driver of console purchase decision-making given its fast development cycle and large, highly engaged audience. It noted that Call of Duty's annual releases are very expensive to develop, and that these development costs would be even higher for a competitor without the necessary existing infrastructure. It identified Call of Duty players as highly informed and sensitive to lower quality offerings, less accessible add-ons, delayed release dates and restrictions to cross-play on a particular platform.

² *Anticipated acquisition by Microsoft of Activision Blizzard, Inc.* Provisional Findings report, para. 5.15

10. One third party contended that Microsoft's recent acquisition behaviour, including its acquisition of Bethesda and subsequent platform-publishing policy, demonstrates a strategy aimed at foreclosing rival gaming platforms, which would harm consumers.
11. Some third parties commented that first-party exclusive games are a normal feature of competition in console gaming, while some distinguished between the incentives of independent publishers (to work with as many platforms as possible) and first-party publishers (to maximise their platform's profits). One third party noted that none of the independent AAA franchises have sought exclusivity with a particular platform, as this would have the effect of reducing their overall number of users.

Multi-game subscription services for console games

12. Some third parties described multi-game subscription services as increasingly popular within console gaming, while one expressed concern regarding the financial sustainability of the model.
13. One third party contended that Microsoft is already dominant in the multi-game subscription space and that the Merger would entrench that position, harming consumers and its competitors in console gaming and multi-game subscription services.

Cloud gaming services

14. The majority of third parties viewed cloud gaming as a nascent market. They suggested that its success will be dependent upon the resolution of a number of technical problems including latency, bandwidth and infrastructure. Some of these third parties expressed confidence that these problems will be solved, and that cloud gaming will become a meaningful market, while the others characterised cloud gaming as already technically viable and an existing market.
15. One third party stated that it considers all providers of entertainment on screens as its competitors in cloud gaming services and that multi-homing, or using more than one gaming service, is prevalent among some groups of users. However, it identified the lack of hardware required for cloud gaming as a value-add over consoles.

16. All but one of the third parties (and all of those active in cloud gaming services) identified content, particularly AAA content, as an important element in a successful cloud gaming offering, and noted that Activision controls a significant catalogue of AAA content. In addition, the majority of third parties identified a large consumer base as key to incentivising game developers to bring content to the platform.
17. Some third parties specifically highlighted the importance of Activision content, with two describing Activision content as a 'must have' and one contending that a new cloud gaming service would struggle without it.
18. Some third parties discussed Proton as a compatibility layer for Windows games to run on Linux-based operating systems, alternately expressing optimism regarding the use of Proton as an alternative and considering it sub-optimal due to legal and technical hurdles.

Microsoft's ecosystem

19. Two third parties commented on Microsoft's combined portfolio of Windows OS, the Azure cloud platform, its console strength, and its multi-game subscription business and expressed concerns about the impacts on competition of adding Activision's content and studio development capacity to this portfolio.

Views on the Merger

20. Two of the third parties did not express concerns about the Merger, while three contended that the Merger would have a negative impact on competition, including by affording Microsoft the ability and incentive to foreclose potential and existing rivals in the console buy-to-play, console multi-game subscription and cloud gaming spaces. One third party commented that it was too early to determine what the impact of the Merger would be.