

Overview of our conclusions

Introduction

We have concluded our investigation of Microsoft's planned acquisition of Activision. Our decision, including a summary of our findings, is available on the case page. This overview is not part of our decision but is intended to help explain our reasons to a wider audience.

Our decision

We have concluded that the merger would result in the most powerful operator in the fast-developing market for cloud gaming, with a current market share of 60-70%, acquiring a portfolio of world-leading games with the incentive to withhold those games from competitors and substantially weaken competition in this important growing market.

We had to consider how best to remedy these concerns. Preventing the merger would preserve the competitive dynamism and level of innovation that exists in the growing cloud gaming market. In contrast, Microsoft proposed a remedy that sought to compensate for the loss of competition with a set of obligations that would regulate its behaviour and how it did business for a period of ten years. Having carefully considered Microsoft's proposal, we found that it would not restore the competitive dynamism that would be lost as a result of the Merger. We decided, therefore, that a remedy that preserves competition, rather than one that imposes global regulatory oversight, is the only effective and proportionate way forward.

Gaming and games

Gaming is the UK's largest entertainment sector, generating around £5 billion in revenue in the UK in 2022 – more than TV streaming, music streaming, films and books. Until recently, to play graphically complex games, consumers had to purchase either a dedicated gaming console or a powerful gaming PC. The most popular gaming consoles are produced by Microsoft (Xbox), Sony (PlayStation) and Nintendo (Switch and others). Some games, including many of the most popular games, are published in versions compatible with multiple console brands, but each console manufacturer also has its own set of exclusive games that can only be played on its console. PC games can be acquired from an online store. Some stores are owned by game publishers and some by third parties who have the right to distribute the relevant games.

Some games are produced only for PC while others are published for both PCs and gaming consoles.

There are many complex games available but, as with other forms of entertainment, some are much more popular than others. The most desirable and popular games, reflecting large investment in development and marketing, are often described as 'AAA' games.

Significant developments in gaming

Recent developments in cloud gaming have started to change how people access and play games. Cloud gaming allows gamers to play without having to buy an expensive console or gaming PC. Instead, the game is stored and rendered in the cloud, and gamers can stream it via an internet connection to a range of devices including consoles, ordinary PCs, smart TVs, tablets, mobile phones, and other devices. Some console providers offer cloud gaming options, and new businesses have developed cloud hosted services, which gamers can use to play games on a variety of devices they own. While cloud gaming is still small compared to traditional console and PC gaming, we found that it is growing rapidly. The number of UK cloud gaming monthly average users (MAUs), more than tripled between 2021 and 2022. Nearly all industry commentators expect further growth. Projections suggest that the UK market for cloud gaming services could be worth over £1 billion by 2026. By comparison, the revenue from recorded music in the UK in 2021 was around £1 billion. So, even if smaller today, cloud gaming is a growing market that shows great promise and is attracting significant investment, and where it is important to ensure that the interests of UK consumers are protected.

What we had to decide

We are required to consider whether a proposed merger between Microsoft and Activision would substantially reduce competition in the UK. Microsoft owns one of the three main console platforms, the leading PC operating system, and one of the world's largest cloud computing platforms. It is already the market leader in cloud gaming by a considerable margin. Activision is a leading games publisher and produces a number of complex AAA games, such as Call of Duty, Overwatch and World of Warcraft that we expect would be important to cloud gaming. We investigated whether Activision's games are important enough that, if the merger were to proceed and Microsoft were to withhold these games from rival consoles and cloud gaming services, this

would benefit Microsoft and substantially harm its rivals' ability to compete, potentially harming consumers in the UK. Consumers could be harmed in several ways, such as by reduced choice of games, less innovation in cloud gaming, or higher prices.

We focused our investigation on console gaming and cloud gaming services in the UK, two markets in which Microsoft is very active, and where we were concerned the merger could harm competition.

How we conducted our inquiry

Our investigation has been wide-ranging. During the course of our inquiry we received over three million internal business documents of Microsoft and Activision including key strategy documents and email communications among senior staff. We held hearings with senior executives of the businesses and other key industry players and received many detailed submissions from them. We received thousands of emails from the public. We shared our developing thinking and provisional conclusions in writing and received extensive representations on the documents. We also engaged an independent market research company to conduct an online survey.

We have also been conscious of the international context, and have consulted with other competition authorities, including in the EU and US.

What we were told

Microsoft and Activision did not consider that the merger would lead to substantial competition concerns in either the console market or the cloud gaming market. Further, to the extent that the CMA did consider that there were such concerns, the parties believed that they could be effectively and proportionately resolved by a remedy consisting of a set of obligations that would regulate Microsoft's behaviour and would, in their view, preserve important customer benefits. The views of third parties were mixed. Some major gaming businesses considered that the merger would seriously harm competition and that the behavioural remedy proposed by Microsoft was ineffective, inadequate, and/or would distort the market. Others were more supportive of the parties either in arguing that the merger would not substantially lessen competition or that the behavioural remedy would address the concerns. We gave serious consideration to all the evidence and views put to us while exercising appropriate judgement given that, as always with

inquiries of this kind, many of those making representations to us had commercial interests in the sector.

Our decision on console gaming

On console gaming, we found that Microsoft could damage its closest competitor (Sony) if it chose to withhold Activision's most popular game, Call of Duty, from PlayStation. But we found that it would be unlikely to do so. This is principally because PlayStation has a large and profitable user base that regularly buys Call of Duty. Taking Call of Duty away from those users would win Xbox some additional customers who would switch from PlayStation to Xbox to continue playing the game, but we found that these gains would be outweighed by the losses from reduced sales to PlayStation gamers who would not choose to switch. We recognised that Microsoft may have other strategic reasons for wanting to make Call of Duty exclusive to Xbox, but we found that the financial losses of doing so would be so high that they would outweigh these other strategic reasons.

Our decision on cloud gaming

On cloud gaming, our assessment is different. Microsoft already has strong advantages in this market. It owns Windows, which is by far the leading PC operating system, and the operating system on which most PC games run; it has significant cloud infrastructure and systems through Azure and Xcloud; and it has a strong gaming base through its Xbox ownership and a portfolio of leading games. No other cloud gaming operator has this combination of advantages. Some of these strengths are already reflected in Microsoft's current UK market share of cloud gaming of between 60-70%.

Activision games such as Call of Duty, Overwatch, and World of Warcraft are among the most popular content available on consoles and PCs. We found that Activision's games are likely to be important to cloud gaming services in the future. While Activision has so far not offered its games on a cloud gaming service, the evidence shows that it will have strong incentives to do so, particularly given the significant growth projections for cloud gaming. We concluded that, without the merger, Activision games would become available on cloud gaming services in the UK in the near future.

We have therefore concluded that combining Activision's strong portfolio of games with Microsoft's current multiple cloud gaming strengths would enable Microsoft to harm current and emerging cloud gaming competitors by

withholding Activision games from them and, unlike in the case of consoles, we have not found that there are any material reasons to stop it doing this.

Microsoft's proposed remedy

We carefully considered a proposed remedy to our concerns about cloud gaming put forward by Microsoft. The proposed remedy set out requirements governing what games must be offered by Microsoft to what platforms and on what conditions over a ten-year period. Such remedies are described as 'behavioural' because they seek to regulate the behaviour of parties to a merger, requiring the parties to behave in a way which may be contrary to their commercial incentives. This therefore takes the form of a type of ongoing regulation of the sector, replacing market forces with regulatory obligations ultimately overseen and enforced by the CMA. A difficulty with such remedies, particularly in a market like cloud gaming, which Microsoft has acknowledged is rapidly evolving, is that they attempt to regulate certain interactions in a market that could otherwise have developed in a range of different ways over time.

That said, we gave detailed consideration to the Microsoft proposal and discussed with them how it might be adjusted to meet some of our concerns. We eventually concluded that Microsoft's proposed remedy would not be effective:

- It was too limited in scope – for example it was confined to a model that gave gamers the right to stream Activision games on certain cloud gaming services, provided that gamers had acquired the right to play those games by purchasing them on certain stores or subscribing to certain services. It did not cover other business models, such as agreements between Microsoft and rival cloud gaming services to include Activision's games in these rivals' multi-game subscription services (multi-game subscription services offer users access to a range of games in return for a monthly payment).
- The proposed remedy was not sufficiently open to providers who might wish to offer versions of games on PC operating systems other than Windows.
- It would standardise the terms and conditions on which games are available, as opposed to them being determined by the dynamism and creativity of competition in the market, as would be expected in the absence of the merger.

We also found there were significant risks of disagreement and conflict between Microsoft and cloud gaming service providers, particularly as the market developed. While Microsoft had proposed a dispute resolution system to help manage this, ultimately some degree of regulatory oversight by the CMA would have been required. By contrast, preventing the merger would effectively allow market forces to continue to operate and shape the development of cloud gaming without this regulatory intervention.

Customer benefits from the merger

We considered whether the merger would give rise to customer benefits that might outweigh any damage to competition.

At a late stage in our process—over a year after the merger was announced and after competition authorities in Europe, the UK, and the US expressed concerns about the merger—Microsoft told us that it had entered into an agreement to offer Call of Duty on Nintendo consoles (it is currently only available on Xbox and PlayStation consoles) and that it had also entered into agreements with three cloud gaming platforms to make Activision games available through those platforms. We found that the merger itself did not increase—rather, it decreased—the incentive that Activision, owned by Microsoft, would have had to enter into these agreements compared to an independent Activision. We also found that the impact of these agreements was highly uncertain. Microsoft itself acknowledged in the context of its agreements with cloud gaming platforms that such a rapidly evolving market could give rise to unanticipated and unforeseeable future events over a ten-year period. We therefore consider that, even if there were benefits for consumers, they would be relatively small.

Microsoft also claimed that its plan to enter the mobile gaming market following the merger would benefit customers, but we found this was too uncertain and that there are other ways Microsoft could achieve this.

Microsoft said that it would add Activision's games on the date of their release to Game Pass, its multi-game subscription service. Activision's games are not currently available on multi-game subscription services. We concluded that this would be a customer benefit, but we considered that Microsoft had overstated the extent of this benefit. In particular, having Activision's content on Game Pass would be a different way to pay for the same content (and one

that would not necessarily benefit all consumers). We would also expect Microsoft to have the incentive to increase the price of Game Pass to reflect the addition of Activision's valuable games to it, and that would significantly reduce or eliminate any customer benefits.

We found that the scale of harm to consumers likely to arise from the merger would be substantial. The merger gives rise to a major, permanent structural change in the market. Harm is therefore likely to endure. Moreover, as demand for cloud gaming is growing rapidly in the UK, reflecting increasing global take-up, we would expect the harm to grow over time. So, while there would be benefits arising from including Activision games on Game Pass, these would not outweigh the extent of the harm caused by the merger.

Summary conclusion

Cloud gaming is fast-growing and potentially a major driver of change for gaming and gamers. The proposed merger would consolidate the power of Microsoft, the market leader, making it more difficult for emerging challengers to develop and for consumers to benefit from the innovation and choice that competition delivers. The remedy put forward by Microsoft would replace existing competitive processes that are driving these exciting changes in a rapidly evolving market with ten years of regulatory obligations. We took the view that the merger would be harmful to competition and that the best way to address this would be to allow existing drivers of competition to continue to deliver for the benefit of UK consumers.