

ANTICIPATED ACQUISITION BY ADOBE INC. OF FIGMA, INC.

Issues statement

26 July 2023

The reference

1. On 13 July 2023, in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the **Act**), the Competition and Markets Authority (**CMA**) referred the anticipated acquisition by Adobe Inc. (**Adobe**) of Figma, Inc. (**Figma**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Adobe and Figma are together referred to as the **Parties** and, for statements referring to the future, as the **Merged Entity**.
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.

Purpose of this issues statement

3. In this issues statement, we set out the main issues that 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.
4. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation. As noted above, this issues statement sets out the main issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

5. We intend to continue from the CMA's phase 1 investigation. The CMA's phase 1 decision¹ (**Phase 1 Decision**) contains much of the detailed background to this issues statement and parties are encouraged to read this document in conjunction with the Phase 1 Decision. In phase 2, while we are not precluded from considering any other issues which may be identified, we currently intend to focus our investigation on the areas in which the Phase 1 Decision found that the Merger gives rise to a realistic prospect of an SLC – that is, as a result of:
 - (a) horizontal unilateral effects in the supply of all-in-one screen design software;² and
 - (b) horizontal unilateral effects in the supply of each of vector editing, raster editing, video editing and motion design software.³
6. We explain these software products later in this document. 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

7. On 15 September 2022, Adobe entered into an agreement with Figma, to acquire Figma's entire issued share capital, in exchange for approximately USD 10 billion in cash and approximately USD 10 billion in stock.⁴
8. Adobe and Figma had discussed a potential acquisition on at least two occasions since 2020. However, neither discussion progressed beyond initial engagement. Adobe started active contemplation of the Merger in its current form in April 2022, following Figma expressing an openness to an acquisition to Adobe on 20 April 2022. The Parties entered into a confidentiality agreement on 5 May 2022, and following negotiations and due diligence, signed the share purchase agreement on 15 September 2022.⁵
9. The Parties informed the CMA that the Merger is subject to ongoing review by other competition authorities in the European Union, the United States (DOJ), and Japan.⁶

¹ Phase 1 decision will be published on case page: [Adobe Inc. / Figma, Inc. merger inquiry](#).

² See further, paragraph 33-36, below.

³ See further, paragraph 37-41, below.

⁴ Phase 1 Decision, paragraph 23.

⁵ Phase 1 Decision, paragraph 25.

⁶ Phase 1 Decision, paragraph 24.

The Parties

10. Adobe is a software company that provides products enabling the creation and delivery of digital content. Adobe is a publicly traded company, listed on NASDAQ and with headquarters in California, USA. Adobe supplies software products, such as 'Photoshop', 'Illustrator', 'Adobe XD', and 'Premiere Pro', either as standalone products or as part of bundles (such as its Creative Cloud offering).
11. Figma is also a software company, and is also headquartered in California, USA. Figma offers two products, (i) 'Figma Design', a web-based software for screen design; and (ii) 'FigJam', its online whiteboarding tool.⁷

Our inquiry

12. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will also seek to assess how the industry operates, future market developments, the rationale for the Merger, and any other relevant issues that arise during the course of the inquiry.

Assessment of the competitive effects of the Merger

Jurisdiction

13. The CMA's Phase 1 Decision found that each of Adobe and Figma should be considered an enterprise and that these enterprises will cease to be distinct as a result of the Merger. The Phase 1 Decision also found that the share of supply test is met in relation to the supply of end-to-end interactive product design tools. The Merged Entity would have a combined share of supply of such tools of [30-40%] (with an increment of [0-5%]). These figures were provided by the Parties. On this basis, the CMA's Phase 1 Decision found that the Merger amounted to a relevant merger situation.
14. We shall consider the question of jurisdiction in our inquiry.

Counterfactual

15. We will compare the prospects for competition with 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

⁷ Phase 1 Decision, paragraph 22.

analytical tool used in answering the question of whether the merger gives rise to an SLC.⁸

16. The counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition. For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. The CMA's conclusion on the counterfactual does not seek to ossify the market at a particular point in time. For example, an assessment based on the prevailing conditions of competition might reflect that, absent the merger under review, a merger firm would have continued making investments in improvements, innovations, or new products.⁹
17. Uncertainty about future developments will not in itself lead the CMA to assume the prevailing situation to be the appropriate counterfactual. The CMA is likely to only focus on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹⁰
18. At phase 1, the Parties submitted that the relevant counterfactual was the prevailing conditions of competition, and that these conditions should exclude Adobe being active in screen design.¹¹
19. The CMA's Phase 1 Decision found that Adobe's screen design product (Adobe XD), while having been placed on 'maintenance mode', is still offered to customers. The CMA also found that, until recently, Adobe had a long-standing strategy to develop products for screen design, including a project to develop its next generation screen design product, which had gone through beta testing (Project Spice). While this project has now been discontinued, this decision was taken only a short time before the Merger was announced publicly, and may therefore have been related to the decision to enter into the Merger. On this basis, the Phase 1 Decision found that the prevailing conditions of competition (which formed the basis for the relevant counterfactual) should include Adobe continuing to develop products for screen design.
20. On the basis of the evidence submitted in phase 1, our starting point is that the prevailing conditions of competition are the most likely counterfactual to the Merger, noting that this would capture any efforts or investment the Parties are making towards product development. However, we will consider

⁸ [Merger Assessment Guidelines \(CMA129\) \(MAGs\)](#), paragraph 3.1.

⁹ [Merger Assessment Guidelines \(CMA129\) \(MAGs\)](#), paragraph 3.3.

¹⁰ [Merger Assessment Guidelines \(CMA129\) \(MAGs\)](#), paragraph 3.9.

¹¹ Phase 1 Decision, paragraph 49.

this further in our phase 2 investigation. We welcome any evidence on this part of our assessment including any evidence that the counterfactual should reflect stronger or lesser competition between the Parties in the future.

Market definition

21. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.¹² The CMA is therefore required to identify the market or markets within which an SLC may arise. 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.¹³
22. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹⁴ Furthermore, we may not find it necessary to conclude on the precise boundaries of some relevant markets if they do not significantly impact the CMA’s competitive assessment.
23. In practice, the analysis of market definition and the competitive effects will often overlap, with many factors affecting market definition being relevant to the assessment of competitive effects and vice versa.¹⁵
24. In the Phase 1 Decision, the CMA considered the impact of the Merger in the supply of:
 - (a) **all-in-one screen design software**; and
 - (b) **creative design software**, consisting of four distinct frames of reference for:
 - (i) vector editing software;
 - (ii) raster editing software;
 - (iii) video editing software; and
 - (iv) motion design software.

¹² Section 36(1)(b) of the Act.

¹³ MAGs, paragraph 9.1.

¹⁴ MAGs, paragraph 9.4.

¹⁵ MAGs, paragraph 9.2.

25. In terms of geographic scope, the CMA assessed the impact of the Merger in these product frames of reference in a global context.
26. We will use the frames of reference adopted in the Phase 1 Decision as a starting point for our analysis, and our view of market definition will be largely drawn from the same evidence that informs our competitive assessment. We will also consider whether it may be appropriate to consider the creative design software listed above as one broader area where dynamic competition may develop. Where relevant, we will consider any differences in the degree of competitive constraints on the Merged Entity from different suppliers, out-of-market constraints, and future market developments. We will consider the Parties' and other submissions and evidence on market definition, but we do not expect it to be determinative in the outcome of our assessment.

Theories of harm

27. The term 'theory of harm' (**TOH**) describes the possible ways in which an SLC could arise as a result of a merger. Theories of harm provide the framework for our analysis of the competitive effects of a merger.¹⁶ Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or following further analysis. We welcome views on the theories of harm described below.
28. Subject to the evidence we obtain regarding market definition (described above), we intend to assess whether the Merger may be expected to result in an SLC as a result of either, or a combination of, the following effects:
 - (a) horizontal unilateral effects in the supply of all-in-one screen design software (**TOH1**); and
 - (b) horizontal unilateral effects in the supply of vector editing, raster editing, video editing, and motion design (**TOH2**).
29. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint. Through the merger, removing one party as a competitor might allow 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/or reduce innovation relative to what might occur in the counterfactual.
30. The CMA will consider whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong

¹⁶ [MAGs](#), paragraph 2.11.

constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.¹⁷

31. An important aspect of competition in this case is competition in innovation, specifically competition in product development between firms. This dynamic competition involves efforts or investments aimed at protecting or expanding a firm's market position and profits in the future. This includes efforts that may give firms the ability to compete in entirely new areas (ie to enter), or the ability to compete more effectively in areas where they are already active (ie to expand).
32. Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.
33. In the following sections we consider how the above theories of harm were assessed in the CMA's Phase 1 Decision, and how we propose to investigate them further in phase 2.

TOH 1: horizontal unilateral effects all-in-one screen design software

34. In the Phase 1 Decision, the CMA considered that Adobe and Figma are close competitors in all-in-one screen design, both with respect to their current offerings and also in product development. This competition would be lost as a result of the Merger, and the CMA found that there would be limited remaining competitive constraints imposed by rival screen design software providers.
35. The Phase 1 Decision found that Adobe is currently offering and developing products in all-in-one screen design and would continue to do so in the future, absent the Merger.
36. The Phase 1 Decision found that (when taking into account the relevant counterfactual, as described further above): (i) Adobe through Adobe XD continues to compete closely with Figma (despite that product being placed in maintenance mode); and (ii) the Parties are competing closely through a process of dynamic competition in the screen design market, in particular in product development, which involves significant innovation efforts and investment (eg Project Spice). The Phase 1 Decision found that Adobe's Project Spice strategy is representative of Adobe's wider plans to develop and innovate in screen design.
37. In phase 2 we intend to investigate the same theory of harm, namely the loss of competition in all-in-one screen design current offerings and product

¹⁷ [MAGs](#), paragraph 4.3.

development. In making our assessment in phase 2, we expect to consider, among other matters:

- (a) the market structure and the market position of the Parties and their competitors;
- (b) how the Parties and their rivals monitor competition and perceive threats;
- (c) the Parties' growth strategies, including their innovations, investments in R&D, and product development;
- (d) the extent to which the Parties compete closely in relation to their current offerings and product development;
- (e) the extent to which Adobe would have the ability and incentive to expand its screen design offering;
- (f) the existence and strength of any competitive constraints on the Parties in relation to their current offerings and product development. This includes any evidence that indicates that the Parties' screen design product development is motivated by a need to respond to threats from these competitive constraints as well as third party product development plans.

TOH 2: horizontal unilateral effects in the supply of vector editing, raster editing, video editing, and motion design

- 38. In phase 1, the CMA considered competition between Adobe and Figma in creative design software in four separate frames of reference, namely vector editing, raster editing, video editing, and motion design.
- 39. In the Phase 1 Decision, the CMA considered that the Parties imposed limited competitive constraints on each other, based on their current respective offerings. However, as mentioned above, the CMA considered that investment into product development and innovation represents an important part of the competitive process in creative design software. Therefore, the CMA assessed the competitive interaction between the Parties in relation to their product development strategies.
- 40. The Phase 1 Decision found that Adobe has a strong market position in each of the creative design software products: vector editing, raster editing, video editing, and motion design.
- 41. In relation to Figma, the Phase 1 Decision found that Figma is making efforts to expand into creative design software and offer software that would encompass both screen design software and creative design software used for screen design. Adobe is also well positioned to innovate and develop a corresponding offering of its own. The Phase 1 Decision determined that this

competitive interaction in product development between the Parties would be lost as a result of the Merger, leading to a loss of dynamic competition.

42. Finally, the Phase 1 Decision found that third parties only impose a limited competitive constraint on the Parties in the supply of vector editing, raster editing, video editing, and motion design software for screen design use cases.
43. In phase 2 we intend to investigate the same theory of harm, namely the loss of competition in product development in creative design software for screen design use cases, including vector editing, raster editing, video editing, and motion design either considered separately or as a broader area where dynamic competition is developing. In making our assessment, we expect to consider, among other matters:
 - (a) the market structure and the market position of the Parties and their competitors;
 - (b) how the Parties and their rivals monitor competition and perceive threats;
 - (c) the Parties' growth strategies, including their innovations, investments in R&D and product development;
 - (d) the extent to which the Parties compete closely (in relation to product development); and
 - (e) the existence and strength of any competitive constraints on the Parties in product development, including any evidence that indicates that the Parties' creative design product development is motivated by a need to respond to threats from these competitive constraints as well as third party product development plans.
44. We will use a range of evidence in making our assessment, including documents relating to internal decision making and commercial strategy provided by the Parties and, where relevant, third parties, and the views of the Parties and third parties. At this stage, we are not proposing to conduct econometric analysis on usage of the Parties' products given that this analysis would be informative of the competitive constraints between the Parties' current offerings and is less likely to be relevant in the context of a theory of harm focusing on dynamic competition in terms of further product development. We are also not proposing to conduct a customer survey on the usage of the Parties' products for the same reasons, although we intend to consult widely with customers. We consider this a proportionate way in which to conduct our inquiry. To the extent that the Parties intend to provide any technical economic analysis to support their submissions, they should follow the CMA's suggested best practice guidelines for submission of technical

economic analysis.¹⁸ We invite parties to make any submissions on the types of evidence the CMA should take into account.

45. Finally, we note that the two theories of harm are closely interrelated, and we intend to consider the interaction between them in our assessment.

Countervailing factors

46. For all the theories of harm, we will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. We will also consider evidence to the extent relevant, in our competitive effects assessment, such as:
- (a) 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;¹⁹ and
 - (b) evidence in relation to any efficiencies arising from the Merger that will enhance rivalry.²⁰

Possible remedies and relevant customer benefits

47. 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.
48. 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.²¹

Responses to this issues statement

49. Any party wishing to respond to this issues statement should do so in writing, no later than **5pm BST on Wednesday 9 August 2023** by emailing Adobe.Figma@cma.gov.uk.

¹⁸ Suggested best practice for submissions of technical economic analysis from parties to the Competition Commission (publishing.service.gov.uk).

¹⁹ MAGs, paragraphs 8.28–8.43.

²⁰ MAGs, paragraphs 8.2–8.27.

²¹ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.