

ANTICIPATED ACQUISITION BY MICROSOFT CORPORATION OF ACTIVISION BLIZZARD, INC.

Notice inviting comments on submission received on material change of circumstances and/or special reason within the meaning of section 41(3) of the Enterprise Act 2002

Introduction

1. On 15 September 2022 the Competition and Markets Authority (**CMA**), in exercise of its duties under [section 33](#) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Microsoft Corporation (**Microsoft**) of Activision Blizzard, Inc. (**Activision**) (the **Merger**) for further investigation and report by a group of CMA panel members.
2. The CMA published '[Anticipated acquisition by Microsoft of Activision Blizzard, Inc. Final report](#)' (the **Report**) on 26 April 2023. In the Report, the CMA decided, in accordance with [section 36](#) of the Act, that:
 - (a) the anticipated acquisition of Activision by Microsoft constitutes arrangements in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) in the supply of cloud gaming services in the UK, due to vertical effects resulting from input foreclosure;
 - (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC; and
 - (d) the prohibition of the Merger would be the only effective and proportionate remedy to the SLC and any adverse effects which have resulted from, or may be expected to result from, the SLC.
3. Pursuant to section 41(3) of the Act, the remedial action taken by the CMA must be consistent with the Report unless there has been a material change

of circumstances since the preparation of the Report or the CMA otherwise has a special reason for deciding differently.

4. On 19 May 2023, in accordance with paragraph 2(1)(a) of [Schedule 10](#) to the Act, the CMA gave notice of the proposed Order to remedy, mitigate or prevent the SLC and any resulting adverse effect, which it identified in the Report. The [Notice](#) and the [proposed Order](#) were published on the CMA website.

Invitation to comment on Microsoft's submission on material change of circumstance/special reasons

5. In response to that notice, Microsoft has made a series of submissions to the CMA about developments since the publication of the Report, including the acceptance by the European Commission of commitments offered by Microsoft and the agreement recently entered into between Microsoft and Sony. These submissions state that there has been a material change of circumstances since the Report or that there are otherwise special reasons for reaching a different decision on the remedies question. Microsoft provided its final and consolidated submission on these matters on 25 July 2023. A non-confidential version of this submission has been published on our website today.
6. Submissions under section 41(3) of the Act regarding material change of circumstance or special reasons are very rare. It is not a usual part of the CMA's process during a remedies implementation period to consult on submissions received in response to a consultation on a proposed undertaking or order. However, in light of the guidance provided by the Competition Appeal Tribunal on this specific case, the Inquiry Group has decided it is appropriate to do so in this case.
7. Any person wishing to comment on Microsoft's submissions is now invited to do so. In particular, the CMA welcomes submissions on whether or not there has been a material change of circumstances since the preparation of the Report and/or that there is a special reason for the CMA to take remedial action other than as proposed in the Report (and as set out in the proposed Order previously consulted upon), on the bases set out in Microsoft's submission.
8. Representations made in response to this Notice should reach the CMA by the end of **4 August 2023**. Representations should be made in writing and should be sent by email to: Microsoft.Activision@cma.gov.uk.

9. The Inquiry Group will have regard to any such representations received by the deadline stated above in making its final decision on remedial action. The statutory period for the CMA either to accept final Undertakings or make a final Order ends on 29 August 2023.

Signed by authority of the CMA

Martin Coleman
Group Chair
31 July 2023