

## THE MICROSOFT AND ACTIVISION MERGER INQUIRY ORDER 2023

### Notice of making a final order pursuant to section 84 of and Schedule 10 to 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. The CMA invited written representations on the proposed Order from any interested person or persons with a deadline of 19 June 2023.
5. In response to that notice, Microsoft made submissions to the CMA about developments since the publication of the Report. These submissions stated that there had been a material change of circumstances since the Report or that there were 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.
6. A non-confidential version of Microsoft's 25 July 2023 [submission](#) was published on the CMA's website on 31 July 2023. On the same date, the CMA published a [notice](#) inviting comments on Microsoft's submission with a deadline of 4 August 2023. The CMA received responses from interested parties in relation to Microsoft's submission, which it has carefully considered.
7. The Inquiry Group has decided, under [section 41\(3\)](#) of the Act, that there has been no material change of circumstances since the preparation of the Report, and that the CMA has no special reasons for deciding differently. As a result, the CMA's decision under [section 41\(2\)](#) of the Act must be consistent with the decisions included in the Report. The full reasons for the Inquiry Group's decision regarding material change of circumstances or special reasons under [section 41\(3\)](#) of the Act will be separately published on the CMA's case page in due course.
8. The CMA also received submissions from Microsoft and one other interested person in response to its initial consultation on the proposed Order:
  - (a) Microsoft submitted that the terms of the proposed Order were disproportionate in relation to the SLC identified due to its duration and that it extends to all subsidiaries of Microsoft and Activision. On the question of duration, the Report explained that the competition concerns identified were not time limited, and that the Inquiry Group found no compelling reason to depart from the Merger Remedies Guidance in this case by seeking a shorter (or indeed longer) prohibition period.<sup>1</sup> Excluding particular subsidiaries could create a circumvention risk, and

---

<sup>1</sup> CMA, [Final Report](#), 26 April 2023, paragraphs 11.114 and 11.310.

the Order in any event enables prior written consent of the CMA to be sought (see paragraphs 12 and 13 of the Order), which the Inquiry Group does not consider would create an unnecessary regulatory burden on the parties in the circumstances. Further, we found in the Report that a number of composition and purchaser risks would be associated with a partial divestiture and substantial additional evidence would be required from the Parties to enable us to assess whether it would be an effective remedy. The Parties did not provide any such evidence and there is no basis for reconsidering this issue at this stage of the process.<sup>2</sup> The Inquiry Group is satisfied that the proposed Order is consistent with its decision on remedies as set out in the Report and that the terms of the proposed Order are necessary to implement an effective prohibition of the Merger. The Inquiry Group does not therefore consider it necessary or appropriate to change any of the terms of the proposed Order.

(b) Another interested person (an academic) submitted that the CMA should reverse the decisions in the Report for a variety of reasons. This submission sought to re-argue points that were decided in the Report. The Inquiry Group considers these to be criticisms of the Report as it stands, which are not based on changes or developments that have taken place since the Report was published, nor are they specific to the appropriateness of the proposed Order more generally. As such, the Inquiry Group did not consider this submission relevant to this stage of its inquiry.

9. The CMA now gives notice of the making of its Final Order 'The Microsoft and Activision Merger Inquiry Final Order 2023'. The Final Order comes into force on 22 August 2023. The Final Order may be varied or revoked by the CMA under [sections 84\(3\)](#) or [162](#) of the Act.
10. This notice and the Final Order have today been published on the CMA's case page, along with an explanatory note.
11. On the making of the Final Order on 22 August 2023, the reference is finally determined as at that date pursuant to sections [79\(1\)\(e\)](#) and [79\(2\)\(e\)](#) of the Act.

Martin Coleman  
*Group Chair*  
22 August 2023

---

<sup>2</sup> CMA, [Final Report](#), 26 April 2023, paragraph 11.42.