

THE MICROSOFT AND ACTIVISION MERGER INQUIRY ORDER 2023

Background

1. On 15 September 2022 the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) 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. On 5 May 2023, the CMA made an Interim Order pursuant to section 81 of the Act preventing each of Microsoft and Activision and all members of their Groups of Interconnected Bodies Corporate from acquiring in the other any interest conferring control within the meaning of [section 26](#) of the Act.
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, as well as in response to the initial consultation on the proposed Order, 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. The Inquiry Group does not consider it otherwise necessary or appropriate to make modifications to the proposed Order. Accordingly, CMA now makes this Order today, to give effect to the remedy decision in the Report.
8. On the making of this Order, the reference is finally determined.

THE ORDER

The CMA makes this Order in performance of its duty under [section 41](#) of the Act and in exercise of its powers under [section 84\(1\), \(2\) and \(3\)](#), [section 86\(1\), \(3\) and \(4\)](#), [section 87](#) of the Act and paragraphs 2, 12, 19, 21 and 22 of [Schedule 8](#) to the Act, for the purpose of remedying, mitigating or preventing the SLC specified in the Report and any adverse effects which may be expected to result from the SLC specified in the Report.

Title, Commencement, Application and Interpretation

1. This Order may be cited as ‘The Microsoft and Activision Merger Inquiry Order 2023’.
2. This Order comes into force on 22 August 2023.
3. This Order ceases to have effect at the end of the Prohibition Period.
4. This Order applies to Microsoft and Activision and all members of their Groups of Interconnected Bodies Corporate.
5. The purpose of this Order is to give effect to the Report and this Order is to be construed consistently with the Report and so as to give effect to its conclusions. In the event of conflict between this Order and the Report, this Order prevails.
6. Any words or expressions used in this Order or the recitals of this Order shall, unless otherwise defined or the context otherwise requires, have the same meaning as in the Act and the Report. In the event of conflict between the Order and the Report, the Order prevails; and in the event of conflict between the Order and the Act, the Act prevails.
7. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
8. References to recitals, paragraphs and subparagraphs are references to the recitals, paragraphs and subparagraphs of this Order.
9. In this Order, any reference to a government department or non-departmental public body or organisation or person includes a reference to its successor.

10. The Interpretation Act 1978 applies to this Order as it does to Acts of Parliament.

11. In this Order:

Act means the Enterprise Act 2002;

Activision means Activision Blizzard, Inc., a company incorporated under the State of Delaware and having its principal executive offices at 2701 Olympic Boulevard, Building B, Santa Monica, California;

CMA means the Competition and Markets Authority;

Group of Interconnected Bodies Corporate means a group consisting of two or more bodies corporate all of whom are interconnected with each other within the meaning of [section 129\(2\)](#) of the Act, where any two bodies corporate are interconnected if (a) one of them is a body corporate of which the other is a subsidiary; or (b) both of them are subsidiaries of one and the same body corporate.

Interest means any interest conferring control within the meaning of [section 26](#) of the Act which includes the ability, directly or indirectly, *de jure* or *de facto*, to control or materially influence the policy of a body corporate, or the policy of any person in carrying on an Enterprise but without having a controlling interest in that body corporate or that Enterprise;

Microsoft means Microsoft Corporation, a company incorporated under the State of Washington with registered number 600413485 and having its registered office at One Microsoft Way, Redmond, Washington 98052-6399;

Prohibition Period means the period starting on 22 August 2023 and ending on 22 August 2033;

Report means the report entitled 'Anticipated acquisition by Microsoft of Activision Blizzard, Inc., Final Report', published on 26 April 2023;

Subsidiary, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Prohibition

12. Except with the prior written consent of the CMA, for the duration of the Prohibition Period, Microsoft and all members of the Group of Interconnected Bodies Corporate to which it may belong must not:

- (1) acquire an Interest in Activision or any of its Subsidiaries;
- (2) acquire an Interest in an enterprise holding an Interest in Activision or carrying on the business of Activision from time to time; or
- (3) hold an option to acquire an Interest referred to in subparagraphs (1) and (2) above.

13. Except with the prior written consent of the CMA, for the duration of the Prohibition Period, Activision and all members of the Group of Interconnected Bodies Corporate to which it may belong must not:

- (1) acquire an Interest in Microsoft or any of its Subsidiaries;
- (2) acquire an Interest in an enterprise holding an Interest in Microsoft or carrying on the business of Microsoft from time to time; or
- (3) hold an option to acquire an Interest referred to in subparagraphs (1) and (2) above.

14. Each of Microsoft and Activision shall procure that each of their Subsidiaries complies with this Order.

Provision of information to the CMA

15. Any person to whom this Order applies must promptly provide to the CMA such information as the CMA may reasonably require for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order; to review the effectiveness of the operation of this Order, or any provision of this Order; or perform any of its functions under this Order or sections 84 and 92, 93 or 94 of the Act.

16. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

17. Any person to whom this Order applies who has any reason to suspect that this Order is likely to be, has, or might have, been breached must notify the CMA as

soon as practicable and in any case within three calendar days from the day the suspicion arose.

18. Subject always to [Part 9](#) of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Powers of direction

19. The CMA may give directions falling within this Order to:

- (1) A person specified in the directions; or
- (2) A holder for the time being of an office so specified in any body or person corporate or unincorporated.

20. Directions fall within Article 19 if they are written directions:

- (1) To take such steps as may be described in the directions for the purpose of, or being reasonably related to, carrying out or ensuring compliance with this Order; or
- (2) To do, or refrain from doing, anything so described which the person might be required by this Order to do or refrain from doing.

21. The CMA may vary or revoke any directions so given.

Severability

22. If any provision of this Order is or becomes contrary to law or invalid for any reason, Microsoft and Activision must continue to observe the remaining provisions.

Governing Law

23. This Order shall be governed and construed in all respects in accordance with English law.
24. Any dispute arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.
25. Any contractual obligations arising out of or in connection with this Order shall be governed and construed in all respects in accordance with English law.