

## ANTICIPATED ACQUISITION OF FIGMA, INC. BY ADOBE INC.

### Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups<sup>1</sup>

#### Introduction

1. On 13 July 2023, 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 of Figma, Inc. (**Figma**) by Adobe Inc. (**Adobe**) (the **Merger**), for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. In its provisional findings on the reference notified to Adobe and Figma (the **Parties**) on **28 November 2023** (the **Provisional Findings Report**), the Inquiry Group, among other things, provisionally concluded that the Merger would result in the creation of a relevant merger situation, and that the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in each of the markets for:
  - (a) the global supply of all-in-one product design software for professional users;
  - (b) the global supply of vector editing software; and
  - (c) the global supply of raster editing software.
3. The CMA's analysis provisionally indicates that the SLCs provisionally identified may be expected to result in adverse effects, for example in the form of reduced choice, increased price, lower quality and/or reduced innovation compared to what would otherwise be the case absent the Merger.
4. This notice sets out the actions which the Inquiry Group considers it might take for the purpose of remedying the SLCs and/or any resulting adverse effects identified in the Provisional Findings Report.<sup>2</sup> This notice of possible remedies is intended as a starting point for discussion with the Parties and

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<sup>1</sup> CMA rules of procedure for merger, market and special reference groups (**CMA17**), 2014.

<sup>2</sup> See: [Adobe/Figma case page](#).

third parties, including customers and competitors.<sup>3</sup> A remedies working paper, containing a detailed assessment of the different remedies options and setting out the Inquiry Group's provisional decision on remedies, will be sent to the Parties for comment (but not published) at a later date in the investigation.<sup>4</sup>

5. The CMA invites comments on possible remedies by **17:00 hours (UK time) on Tuesday 12 December 2023**.

### **Criteria**

6. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>5</sup>
7. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
8. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>6</sup>

### **The Provisional SLCs**

9. We have provisionally identified three SLCs in relation to this merger:
  - (a) the global supply of all-in-one product design software for professional users;
  - (b) the global supply of vector editing software; and
  - (c) the global supply of raster editing software.
10. For the global supply of all-in-one product design software for professional users, we have provisionally found that the Merger would remove a close competitor and an important competitive constraint on Figma both in relation to current products and in relation to product development and innovation, in a market where Figma is already the strongest player by far and there are few other competitive constraints.

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<sup>3</sup> [Merger Remedies \(CMA87\)](#), December 2018, paragraph 4.56.

<sup>4</sup> [CMA87](#), paragraph 4.64.

<sup>5</sup> [Section 36\(3\)](#) of the Act.

<sup>6</sup> [CMA87](#), paragraphs 3.3 and 3.4.

11. We have provisionally found that Figma's current functionality is limited in vector editing software and very limited in raster editing software, although this functionality is enhanced by third-party extensions. However, Figma's strength in adjacent markets and its ability and incentive to develop its vector and raster editing functionality makes it a particularly credible dynamic competitor to Adobe, and this threat is already strong for product design and related digital use cases.
12. Further detail on the provisional SLCs is set out within the Provisional Findings Report.

### **Possible remedies on which views are sought**

13. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
14. As set out in published remedies guidance, in merger inquiries the CMA prefers structural remedies, such as divestiture or prohibition, over behavioural remedies, because:
  - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry that would be lost as a result of the Merger;
  - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
  - (c) structural remedies rarely require monitoring and enforcement once implemented.<sup>7</sup>
15. Our current view is that behavioural remedies are very unlikely to be an effective remedy to the provisional SLCs or any resulting adverse effects that we have provisionally identified. However, we will consider any behavioural remedies put forward as part of this consultation.
16. We will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. We will evaluate the impact of any

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<sup>7</sup> [CMA87](#), paragraph 3.46.

such combination of measures on the provisional SLCs or any resulting adverse effects.

17. At this stage, we are considering the following possible structural remedies:
  - (a) Prohibition of the Merger; and
  - (b) Divestiture of overlapping operations to eliminate the SLC in each of the markets in which we have provisionally identified an SLC.
18. Our initial view is that the scope of any divestiture must provide a comprehensive solution to the loss of both current and dynamic future competition that we have found in our provisional SLCs, replicating the conditions of competition absent the Merger.
19. The CMA normally has a preference for all the assets in a divestiture to be provided by one of the merger parties unless it can be demonstrated to the CMA's satisfaction that a mixture of assets from both parties (a so-called 'mix-and-match' approach) does not lead to a significant increase in risk.<sup>8</sup>
20. We consider in further detail below each of the possible remedies, on which views are sought. More generally, we will consider any other practicable remedies that the Parties, or any interested third parties, may propose that could be effective in addressing the provisional SLCs and/or any resulting adverse effects.

### ***Prohibition***

21. Prohibition of the Merger would prevent the provisional SLCs from arising in any relevant market. We therefore take the provisional view that prohibition would represent a comprehensive solution to all aspects of the SLCs we have provisionally found (and consequently any resulting adverse effects) and that the risks in terms of its effectiveness are very low.

### ***Divestiture***

22. In evaluating possible divestitures as a remedy to the provisional SLCs it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies (which are considered in the following sections):

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<sup>8</sup> [CMA87](#), paragraph 5.16.

- (a) the scope of the divestiture package;
  - (b) identification of a suitable purchaser; and
  - (c) the effectiveness of the divestiture process.
23. In this case, the Merger is anticipated which means that we would expect any divestiture to be substantially completed prior to completion of the Merger.

*The scope of the divestiture package*

24. To be effective in remedying the provisional SLCs, any partial divestiture package would need to be appropriately configured to address all the provisional SLCs, to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor and restore the competitive constraint that would be lost under the Merger.
25. In defining the scope of a divestiture package that will address any SLCs, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.<sup>9</sup> The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.<sup>10</sup>
26. To ensure that the remedy is comprehensive, the divestiture package would need to be capable of competing effectively, including the dynamic competition we have identified in the Provisional Findings report, under separate ownership. We would therefore need to be confident that the divestiture package contained all the assets, staff and capabilities necessary to be able to continue to compete effectively, and that the process of separating these assets from each Party's business would not risk materially impairing the competitive capabilities of the divested business.

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<sup>9</sup> CMA87, paragraph 5.7.

<sup>10</sup> Purchaser risk refers to the risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; composition risk refers to the risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market; CMA87, paragraphs 5.3 and 5.12.

*Provisional SLC in product design software for professional users*

27. We have provisionally found that substantially all of Figma’s business is currently carried out in the all-in-one product design software market. In our initial view, this would make any partial divestiture involving Figma operations substantially similar to prohibition of the Merger, but with additional composition, purchaser, and asset risks.
28. We have also provisionally found that, as a result of the cancellation of Project Spice<sup>11</sup> and certain actions and statements by Adobe in relation to Adobe XD being in maintenance mode,<sup>12</sup> Adobe’s product offerings in relation to all-in-one product design software are currently very limited. We have provisionally found that Adobe, absent the Merger, would have continued to compete and innovate, whether through Adobe XD, Project Spice, or in other organic or inorganic ways. Absent the Merger, Adobe would continue to be a strong competitor in all-in-one product design for professional users and has a relatively strong position in adjacent markets, giving it additional capability to compete that may not be present in any potential purchaser of an Adobe divestiture business. Our initial view is that a divestiture package would need to have sufficient assets and capabilities (including engineers, source code, and a customer base) to be able to compete effectively and restore the conditions of competition that would have prevailed absent the Merger.
29. We are therefore of the initial view that any partial divestiture packages involving Adobe assets may not be sufficiently configured to restore the conditions of competition that would have prevailed absent the Merger. In addition, there may be significant risks relating to identification, allocation and transfer of assets arising from the carve-out of the divestiture package. These factors may present an unacceptably high level of composition risk. We invite the Parties, if putting forward such a divestiture, to provide evidence on how this risk may be adequately mitigated.
30. We invite views on whether a structural divestiture short of prohibition would be effective, including consideration of:
  - (a) The scope and configuration of the package of assets to be divested. This scope must be sufficient to address the provisional SLCs and any adverse effects. In addition, the divested business must be configured so that customers and suppliers do not bear significant risks that the remedy

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<sup>11</sup> Project Spice is an internal project, Adobe commenced during the months of May and June 2020, to develop its next generation web-based software (an infinite canvas) for mixed-media asset ideation and creation. Adobe submitted that it was intended to be a complementary offering to Adobe’s ‘Creative Cloud’ applications, Parties’, Submission to the CMA.

<sup>12</sup> These are discussed in the Provisional Findings.

does not achieve its desired effect. This may involve inclusion of additional assets in the divestiture package. We invite views on the appropriateness of each potential partial divestiture package, whether divestiture of additional assets or staff would be necessary, and how risks concerning identification, allocation, and transfer of suitable assets to a divestiture package could be managed.

- (b) Whether there are risks that a suitable purchaser is not available or that the Parties will divest to a weak or otherwise inappropriate purchaser.
- (c) Whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture.
- (d) Any other elements that may be required.

*Provisional SLCs in vector and raster editing software*

- 31. In both vector and raster editing, Adobe's businesses are closely integrated with its other operations in creative design. Any divestiture would also be likely to encounter the issues relating to identification, allocation and transfer described in paragraph 29 above. In addition, Adobe's current vector and raster editing products, Illustrator and Photoshop, constitute a significant part of its total company value.
- 32. Figma currently has a limited presence in vector editing software and a very limited presence in raster editing software primarily through Figma Design, although this functionality is enhanced by third-party extensions. We have provisionally found that absent the Merger, Figma would have the ability and incentive to develop functionality available to customers on its platform in the future. Our initial view is that a remedy involving a divestiture from Figma would need to include Figma Design, and as set out in paragraph 27, this would be substantially similar to prohibition of the Merger but with additional risks.
- 33. We invite views on whether a structural divestiture short of prohibition would be effective, including consideration of:
  - (a) The scope and configuration of the package of assets to be divested. This scope must be sufficient to address the provisional SLCs and any adverse effects. In addition, the divested business must be configured so that customers and suppliers do not bear significant risks that the remedy does not achieve its desired effect. This may involve inclusion of additional assets in the divestiture package. We invite views on the appropriateness of each potential partial divestiture package, whether divestiture of additional assets or staff would be necessary, and how risks

concerning identification, allocation, and transfer of suitable assets to a divestiture package could be managed.

- (b) Whether there are risks that a suitable purchaser is not available or that the Parties will divest to a weak or otherwise inappropriate purchaser.
- (c) Whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture.
- (d) Any other elements that may be required.

#### *Identification of a suitable purchaser*

34. In line with CMA guidance, we would need to be satisfied that a prospective purchaser:
- (a) is independent of the Parties;
  - (b) has the necessary capability to compete, noting the points made in paragraph 28 concerning Adobe's capabilities in all-in-one product design software for professional users;
  - (c) is committed to competing in the relevant markets (as identified in paragraph 2); and
  - (d) will not create further competition concerns.<sup>13</sup>
35. We invite views on whether there are any specific factors to which we should pay particular regard in assessing purchaser suitability in this case.

#### *Effective divestiture process*

36. We invite views on the appropriate timescale for achieving a divestiture.
37. We will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
38. At this stage, given the nature of any potential partial divestiture and the potential for deterioration during any divestiture period, we expect that it would be necessary to require an up-front buyer. This means that a suitable purchaser would need to be identified and any divestiture would need to be substantially completed before the Merger is allowed to proceed.

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<sup>13</sup> [CMA87](#), paragraphs 5.20 and 5.21.



39. We invite views on whether a monitoring trustee should be required to oversee any divestiture and to ensure that competitive capability of the business to be divested is maintained during the divestiture process.
40. The CMA will also have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
  - (a) the Parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
  - (b) the CMA has reason to expect that the Parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
41. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. We invite views on whether the circumstances of this Merger necessitate such an approach.

### ***Behavioural remedy options***

42. Behavioural remedies seek to change aspects of business conduct from what might be expected after the Merger, based on the Parties' incentives and resources, to create a competitive environment similar to that expected in the absence of the Merger.
43. For a behavioural remedy to be effective, we would need to be confident that it would address the provisional SLCs comprehensively, both now and in the future as the market and competitive conditions change and develop. We would also need to be confident that the remedy was capable of effective implementation, monitoring and enforcement.
44. The design of behavioural remedies should seek to avoid four key risks in order to ensure they are as effective as possible:
  - (a) Specification risk: the risk that it may not be possible to specify the form of conduct required in sufficient detail and clarity. This is more likely in cases where the market is prone to change.
  - (b) Circumvention risk: the risk that other forms of adverse behaviour may arise if certain forms of behaviour are restricted. For example, where pricing is restricted, quality may be degraded.
  - (c) Distortion risk: the risk of market distortions arising from the remedy overriding market signals or encouraging circumvention behaviour.
  - (d) Monitoring and enforcement risk: the risk that behavioural remedies cannot be appropriately monitored or enforced, for example as a result of

volume and complexity of information required, information asymmetry, or ongoing changes in the market.<sup>14</sup>

45. Behavioural remedies can operate satisfactorily in limited circumstances, especially where the company operates in a regulated environment and where there are expert monitors. In general, one or more of the following conditions will normally apply in the limited circumstances where the CMA selects behavioural remedies as the primary source of remedial action in a merger investigation:
- (a) Divestiture and/or prohibition is not feasible, or the relevant costs of any feasible structural remedy far exceed the scale of the adverse effects of the SLC.
  - (b) The SLC is expected to have a relatively short duration (eg two to three years) due, for example, to the limited remaining term of a patent or exclusive contract.
  - (c) RCBs are likely to be substantial compared with the adverse effects of the merger, and these benefits would be largely preserved by behavioural remedies but not by structural remedies.<sup>15</sup>
46. Our initial view is that the circumstances in which the CMA might select a behavioural remedy as the primary source of remedial action are not present in this case. The three markets in which we have provisionally found SLCs are multi-faceted and continue to develop. The SLCs we have provisionally identified are expected to endure, and our initial view is that prohibition is a feasible remedy.
47. Our current view is that behavioural remedies are very unlikely to be an effective remedy to the provisional SLCs or any resulting adverse effects that we have provisionally identified. However, we will consider any behavioural remedies put forward as part of this consultation.

#### ***Other possible remedies to address the provisional SLCs***

48. We will consider any other practicable remedies – whether structural or behavioural in nature – that the Parties, or any interested third parties, may propose that could be effective in comprehensively addressing the provisional SLCs we have found in this case and any resulting adverse effects.

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<sup>14</sup> CMA87, paragraph 7.4.

<sup>15</sup> CMA87, paragraph 3.48.

49. Where the Parties propose remedy options for our consideration, engagement on remedies with limited prospect of being effective can reduce our ability to engage on remedies that have a greater prospect of being effective. Therefore, in keeping with the CMA's guidance on remedies, and in view of the statutory deadline for us to publish our final decision on any SLCs and remedies, we will not conduct a detailed consideration of the Parties' proposed remedies unless the Parties demonstrate that their proposed remedy options will address effectively all of the provisional SLCs and their resulting adverse effects identified in the Provisional Findings Report.<sup>16</sup>

### **Cost of remedies and proportionality**

50. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction.
51. When considering relevant costs, the CMA's considerations may include (but are not limited to):<sup>17</sup>
- (a) distortions in market outcomes;
  - (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
  - (c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.
52. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any RCBs in relation to the creation of the relevant merger situation concerned.<sup>18</sup>
53. RCBs are limited by the Act to benefits to customers in the form of:
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not in the market(s) in which the SLC has occurred or may occur); or

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<sup>16</sup> CMA87, paragraph 4.57.

<sup>17</sup> CMA87, paragraph 3.10.

<sup>18</sup> Section 36(4) of the Act; see also CMA87, paragraphs 3.15 and 3.16.

(b) greater innovation in relation to such goods or services'.<sup>19</sup>

54. The Act provides that a benefit is only an RCB if:

(a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period from the creation of the relevant merger situation and as a result of the creation of that situation; and

(b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.<sup>20</sup>

55. We invite views on what relevant costs are likely to arise (if any) in implementing the different possible remedy options we are considering, or any remedies you wish to put forward for our consideration. We also invite views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different possible remedy options we are considering, or any remedies you wish to put forward for our consideration.

### Next steps

56. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **17:00 (UK time) on Tuesday 12 December 2023** (see Note (i)). Comments should be made by email to [Adobe.Figma@cma.gov.uk](mailto:Adobe.Figma@cma.gov.uk).

57. A copy of this notice will be posted on the CMA [case page](#).

Margot Daly  
*Inquiry Group Chair*  
28 November 2023

*Note:* This notice of possible actions to remedy, mitigate or prevent the SLCs or any resulting adverse effects is made having regard to the Provisional Findings Report announced on 28 November 2023. The Parties have until 17:00 (UK time) on Tuesday 19 December 2023 to respond to the Provisional Findings Report. The CMA's findings may alter in response to comments it receives on its Provisional Findings Report, in which case the CMA may consider other possible remedies, if appropriate.

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<sup>19</sup> [Section 30\(1\)\(a\)](#) of the Act; see also [CMA87](#), paragraph 3.17.

<sup>20</sup> [Section 30\(3\)](#) of the Act; see also [CMA87](#), paragraph 3.19.