

Anticipated acquisition by Microsoft Corporation of Activision Blizzard (excluding Activision Blizzard's non-EEA cloud streaming rights)

SUMMARY OF PHASE 1 DECISION

1. Microsoft Corporation (**Microsoft**) has agreed to acquire Activision Blizzard, Inc (**Activision**) (the **Parties**), excluding Activision's cloud streaming rights outside of the European Economic Area (**EEA**) (the **Merger**). Immediately prior to the Merger, Activision's global cloud streaming rights (excluding the EEA) for all current and future Activision PC and console games released during the next 15 years (the **Activision Streaming Rights**) will be sold to Ubisoft Entertainment SA (**Ubisoft**).
2. The sale of the Activision Streaming Rights to Ubisoft will take place immediately before completion of the Merger as part of an agreement between Activision¹ and Ubisoft (the **Ubisoft Divestment Agreement**).² The terms of that transaction will allow Ubisoft to commercialise these rights to other cloud gaming services providers (including to Microsoft itself). Ubisoft will compensate Microsoft for the cloud streaming rights to Activision's games through a one-off payment and through a market-based wholesale pricing mechanism, including an option that supports pricing based on usage.
3. The CMA has recently investigated the anticipated acquisition by Microsoft of the whole of Activision (the **First Proposed Merger**). In its Final Report,³ the CMA found that cloud gaming is a developing market that could be transformative for the

¹ As part of the Merger, Microsoft will acquire Activision and be able to cause it to perform its obligations under the Ubisoft Divestment Agreement. Accordingly, this decision refers to Microsoft's obligations to Ubisoft under the Ubisoft Divestment Agreement, regardless of whether these are incurred by Microsoft or Activision.

² Ubisoft will also receive a non-exclusive licence to sell, distribute, and sublicense entitlements to play cloud streaming versions of Activision's games in the EEA. At the same time, Microsoft will receive a non-exclusive licence from Ubisoft for cloud streaming rights to the extent necessary for Microsoft to fulfil its obligations under its commitments to the European Commission and certain existing third-party cloud streaming agreements.

³ [Final Report on Anticipated acquisition by Microsoft of Activision Blizzard, Inc](#), 26 April 2023 (the **Final Report**).

gaming industry. The CMA found that Microsoft is already a strong cloud gaming service provider with a multi-product ecosystem that gives it considerable advantages in this market. The CMA found that Activision creates some of the most popular gaming content, which will be important for the competitive offering of cloud gaming services as the market develops. Given Microsoft's already strong position, the CMA found that, if the First Proposed Merger were to proceed, Microsoft would find it commercially beneficial to withhold Activision's games from rival cloud gaming service providers, which may be expected to substantially reduce competition in this developing market, to the detriment of consumers. On 22 August 2023, the CMA imposed a Final Order that prohibits Microsoft from acquiring an interest in Activision unless it obtains prior written consent to do so from the CMA.

4. The Parties have submitted that the Merger represents a new transaction that will prevent the concerns identified in the Final Report from arising. According to the Parties, the divestment of the Activision Streaming Rights comprehensively removes Microsoft's ability to withhold Activision's games from rival cloud gaming providers.
5. The CMA considers that the Merger is different to the First Proposed Merger on the basis that Microsoft will not acquire the Activision Streaming Rights. In this case, for the Merger to proceed, the Parties are also required to seek consent under the Final Order (which, as noted above, prohibits Microsoft from acquiring any interest in Activision without the prior written consent of the CMA). The Parties have requested consent under the Final Order, and the CMA is considering that request in parallel.
6. In light of the substantial overlap between the matters considered in the Final Report, the recent final decision on possible material change of circumstances or special reasons published on 25 August 2023,⁴ and the matters at issue in this investigation, the CMA has relied on and referred to the evidence and analysis undertaken for the purposes of those decisions as appropriate. The CMA has also conducted additional evidence gathering and analysis during this investigation and incorporated it into its assessment of the Merger.
7. The CMA found that, compared to the First Proposed Merger, the Merger would significantly change the way in which Activision's PC and console games are commercialised and distributed to cloud gaming services. Unlike the First Proposed Merger, Microsoft would not be in a position to unilaterally make Activision's games available only on its own cloud gaming service, or to withhold those games from

⁴ [Final Decision on possible material change of circumstances or special reasons for deciding differently under section 41\(3\) of the Enterprise Act 2002](#), 25 August 2023 (the **Final Decision on MCC/SR**).

rivals. Instead, the Merger aims to establish Ubisoft as a key supplier of content to cloud gaming services, to replicate the role that Activision would have played in the market absent the Merger. Ubisoft would have the right to license out the Activision Streaming Rights on a worldwide basis under any business model of its choosing, including buy-to-play, multi-game subscription services, or any other model that may arise. The key parameters of the sale of the Activision Streaming Rights to Ubisoft would be set up-front, and Ubisoft's ongoing interactions with Microsoft would be limited to the implementation of the transaction, rather than requiring ongoing negotiations to take place.

8. Some third parties raised concerns about Microsoft's ongoing relationship with Ubisoft post-Merger. These third parties submitted that Microsoft could, for example, seek an exclusive arrangement with Ubisoft to supply Activision's games only to Microsoft's own cloud gaming service, or otherwise give Microsoft preferential treatment. Microsoft could also set a wholesale price for Activision's games at a level that is unaffordable for Ubisoft or other cloud gaming providers seeking to license Activision's games from Ubisoft. Microsoft could also refuse to develop games for non-Windows operating systems, degrade the quality of the games or delay their release date to Ubisoft, or refuse technical support to Ubisoft and its sublicensees.
9. The divestiture of the Activision Streaming Rights to Ubisoft is intended to prevent such concerns from arising, and it includes certain provisions aimed at preventing Microsoft from engaging in strategies that could foreclose cloud gaming rivals. For example, the Ubisoft Divestiture Agreement provides that Ubisoft may not grant Microsoft an exclusive licence to Activision's games or offer Microsoft preferential terms. It also imposes limitations on the wholesale price that Microsoft can charge Ubisoft for Activision's games (ie, a price no higher than the PC or console wholesale price, whichever is lower), and allows Ubisoft, for a fee, to require Microsoft to adapt Activision's titles to operating systems other than Windows, such as Linux, or perform technical modifications to ensure that Activision's games support emulators like Proton. Parity clauses are also included in terms of quality and date of release between the streaming and non-streaming versions of Activision's games, as well as technical support obligations for Ubisoft and its sublicensees.
10. Notwithstanding the largely self-standing nature of the assets being transferred to Ubisoft and the arrangements outlined above, the CMA has limited residual concerns that competition could be substantially lessened as a result of Microsoft's ongoing relationship with Ubisoft. The CMA recognises that the divestiture of the

Activision Streaming Rights to Ubisoft aims to prevent Microsoft from having any ability to foreclose rival cloud gaming providers by placing these rights in the hands of an independent third party. However, there remains the possibility for certain provisions within the Ubisoft Divestment Agreement to be circumvented, terminated, or not enforced.⁵ Consequently, the CMA has limited residual concerns that Microsoft could still engage in the strategies set out above (either in isolation or in combination) in order to foreclose rival cloud gaming service providers.

11. The CMA therefore believes that the Merger may be expected to give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in cloud gaming services in the UK and is considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until **29 September 2023** to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

⁵ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 7.15.