

Summary

Overview

1. The Competition and Markets Authority (**CMA**) has provisionally found that the anticipated acquisition (the **Merger**) of Activision Blizzard, Inc. (**Activision**) by Microsoft Corporation (**Microsoft**) (together, the **Parties**) may be expected to result in a substantial lessening of competition (**SLC**) in gaming consoles and cloud gaming services in the UK.
2. The report and its appendices, which will be published shortly after this summary, constitute the CMA's **Provisional Findings**. We invite any interested parties to make representations on these provisional findings by no later than **1 March 2023**. We will take all submissions received by this date into account in reaching our final decision. Interested parties should refer to the notice of provisional findings for details of how to do this.
3. As set out below, we provisionally found competition concerns in the markets for gaming consoles and cloud gaming services in the UK.
4. In relation to gaming consoles, we provisionally found that Xbox and PlayStation compete closely with each other, and that Activision's *Call of Duty* (**CoD**) is important to the competitive offering of each. The evidence suggests that, after the Merger, Microsoft would find it commercially beneficial to make *CoD* exclusive to Xbox or available on Xbox on materially better terms than on PlayStation. We provisionally found that this would substantially reduce competition in gaming consoles to the detriment of gamers—Xbox and PlayStation gamers alike—which could result in higher prices, reduced range, lower quality, worse service, and/or reduced innovation.
5. In relation to cloud gaming services, we provisionally found that Activision's titles (including *CoD* and certain PC titles such as *World of Warcraft*) will be important for the competitive offering of cloud gaming services as the market continues to grow and develop. We provisionally found that, after the Merger, Microsoft would find it commercially beneficial to make Activision's titles exclusive to its own cloud gaming service or available there on materially better terms than on rival cloud gaming services. Given we have provisionally found that Microsoft already has a strong position in this market through its ownership of Xbox, a global cloud computing service, and the leading PC operating system (**OS**), we are concerned that even a moderate increment to its strength may be expected to substantially reduce competition in this developing market to the detriment of current and future cloud gaming users.

6. In our Notice of possible remedies, published alongside our Provisional Findings, we have set out three options to remedy the provisional SLC: prohibition of the merger, divestiture of a part of Activision's business, or behavioural commitments by the Parties. We also invite submissions from interested parties on these initial views by **22 February 2023**.

About the gaming industry

The same three companies have been the only major suppliers in the console gaming market for the past 20 years

7. The gaming industry is the UK's largest revenue-generating form of entertainment. It is bigger than pay TV, home video (including streaming), cinema, music, or books. In 2022, it generated around £5 billion in revenue in the UK.
8. For the past twenty years, the same three companies have been the only significant suppliers of console gaming – Microsoft (Xbox), Sony (PlayStation) and Nintendo (Switch being the current generation console), with little or no entry from new rivals.
9. Part of the difficulty in entering and expanding in the console gaming market is the existence of strong network effects. Console providers such as Microsoft compete to attract users who want to play high-quality games, as well as high-quality content from game developers. Consoles with a large user base attract more users, especially those who want to play multi-player games with their friends and other users (ie, direct network effects). Consoles with a lot of users attract better content, which in turn attracts more gamers to that console, which in turn attract better content, and so on (ie, indirect network effects). This self-reinforcing mechanism makes it more difficult for new entrants without a large user base or good pre-existing gaming content to enter and grow in the market.
10. Gaming consoles compete against each other across a wide range of parameters, including price, quality, and game range. Price is determined by the console manufacturer, both for the console itself and for the console provider's own games on its console. Quality reflects mainly a console's technical specifications (eg, CPU, GPU, RAM, storage, video output, audio output, connectivity, networking features, etc). These can affect the range of games that can run on the console and the quality of gameplay. Game range is determined by the titles available from the console manufacturer (first-party titles), together with the titles from other publishers (third-party titles) available on that console. In general, the console provider's first-party titles are less

likely to be available on other consoles, whilst third-party titles are more likely to be available across different consoles.

11. The most important games for a console are typically referred to as 'AAA', which is a loosely defined term to denote the most popular, costly and/or graphically intensive games in the industry. Although there are thousands of games available on console and PC, only a handful of AAA games, including *CoD*, account for the majority of gametime and revenues on Xbox and PlayStation.
12. In recent years, gaming consoles have also started to compete on the basis of their multi-game subscription offerings. Unlike the traditional buy-to-play model, where users pay an up-front fee for lifetime access to a game, these services allow gamers to access a catalogue of games for a fixed, often monthly, fee. Although some multi-game subscription services have extensive gaming catalogues, several AAA games (such as *CoD*) are either not currently available on these services or only available in older versions. While most of the revenue in the industry continues to be generated from the purchase of individual games, multi-game subscription services are expected to grow over the next few years.
13. In addition to consoles, people play games on PCs and mobile devices. Consoles and PCs designed for gaming can usually process more complex and technically demanding games (such as *CoD*). Mobile devices currently lack the technical capabilities to run most console games locally, and people can use them to play more casual games specifically designed for mobile devices (such as *Candy Crush* or *Call of Duty Mobile*).

Cloud gaming services are growing as a potential alternative to consoles

14. In recent years, cloud gaming has started to emerge as an alternative to gaming consoles and PCs. Unlike consoles and PCs, where gamers typically download and run games locally on their device, cloud gaming services allow complex games to be accessed on remote servers and streamed directly to a range of devices.
15. The evidence we have seen suggests that cloud gaming may be an important disruptive force in the gaming industry. Since games are executed remotely, gamers can play using devices that can be less powerful, and are often cheaper, than consoles or gaming PCs (such as mobile phones, smart TVs, less powerful PCs, or tablets). This widens the pool of potential customers—including those not willing or able to buy a gaming console or PC—and introduces new ways to compete that could facilitate new entry. Besides Microsoft, recent new entrants into cloud gaming include Amazon Luna,

NVIDIA GeForce Now, Shadow, Google Stadia (now shut down), as well as publishers like Ubisoft. Several industry experts predict that cloud gaming will continue to grow significantly in the coming years.

16. The evidence we have seen suggests that, to succeed, cloud gaming providers will need to offer a strong gaming catalogue. For new entrants without an existing gaming console (including its games and operating system), we have found that this catalogue is most likely to come from games that are currently available on PC OS, as these can be streamed from any cloud gaming service that runs that OS (provided that adequate licensing arrangements are in place). As such, cloud gaming service providers will also need an OS license—such as for Windows, the OS for which most PC games are designed—and access to cloud infrastructure.

Who are the businesses and what services do they provide?

Microsoft has a strong gaming ecosystem

17. Microsoft is a global technology company offering a wide range of products and services, with a global turnover of around £150 billion in FY2022. Since 2001, it has released several generations of Xbox gaming consoles. Gamers typically download digital copies of the games they want to play on Xbox from Microsoft's Xbox Store. They can also pay a monthly fee to gain access to a library of downloadable and cloud-based content via Xbox Game Pass, Microsoft's multi-game subscription service.
18. Microsoft is also a game publisher and currently owns 24 game development studios, several of which it acquired in recent years. These studios make games such as *Minecraft*, *Forza*, *Elder Scrolls*, and *Halo* for Xbox and other consoles, PC, and mobile devices. Many of Microsoft's first-party titles are available exclusively on Xbox and some are licensed to rival console providers.
19. Microsoft has other business areas that are important to gaming. One is Xbox Cloud Gaming, Microsoft's current cloud gaming service, which is powered by custom Xbox Series X hardware. Another is Azure, a leading cloud platform (ie a network of data centres and cloud computing infrastructure) that offers a wide range of services across several industries, including gaming. Another is Windows, the leading PC OS. Many people play games on a PC rather than a console, and most of them use Windows OS. Because of its popularity, game developers generally make PC games that are designed and optimised for Windows OS.

Activision creates some of the most popular gaming content

20. Activision is a game developer and publisher with global turnover of £6.1 billion in FY2022. It develops gaming content for consoles, PC, and mobile. Activision's three most popular franchises—*CoD*, *World of Warcraft* and *Candy Crush*—account for most of its revenue. It publishes these games through three separate business divisions, ie, Activision, Blizzard, and King, respectively.
21. *CoD*, in particular, is widely regarded as one of the most successful gaming franchises of all time. For more than a decade, its releases have ranked in the top games available on console. The latest game in the franchise, *CoD Modern Warfare II*, was released in November 2022 to what Activision described as the #1 top-selling opening weekend ever in the franchise.

Our Assessment

Why are we looking at this merger?

22. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so.
23. Microsoft announced in January 2022 that it had agreed to acquire Activision for a purchase price of USD 68.7 billion. The Merger is conditional on receiving merger control clearance from several global competition agencies, including the CMA.
24. While both Microsoft and Activision are US-based entities, the question for the CMA is whether the Merger may have an impact on competition in the UK. This link to the UK can be established based on the turnover of the business being acquired in the UK. In this case, we have provisionally concluded that the CMA has jurisdiction to review this Merger because Activision generated more than £70 million turnover in the UK in FY2021.

How have we examined this merger?

25. In deciding whether a merger may be expected to result in an SLC, the question we are required to answer is whether there is an expectation—a more than 50% chance—that the merger will result in an SLC within any market or markets in the UK.
26. To determine whether this is the case, we have gathered information from a wide variety of sources, using our statutory powers to ensure that we have as

complete a picture as possible under the constraints of the statutory timetable to understand the implications of this Merger on competition.

27. We have focused on two ways, or ‘theories of harm’, in which the Merger could give rise to an SLC:
 - (a) The first considers whether Microsoft would be able to harm gaming console rivals now or in future, to the detriment of consumers, by making *CoD* exclusive to Xbox (or by only making it available to rivals on worse terms), whether it would be commercially beneficial to do so, and what the impact would be on competition in the market for gaming consoles.
 - (b) The second considers whether Microsoft would be able to harm cloud gaming rivals now or in future, to the detriment of consumers, by making *CoD* and other Activision PC games, such as *World of Warcraft*, exclusive to its cloud gaming offering (or by not making them available on equal terms), whether it would be commercially beneficial to do so, and what the impact would be on competition in the market for cloud gaming services.
28. We provisionally concluded that the Merger is likely to give rise to an SLC both in gaming consoles and in cloud gaming services in the UK. This is discussed in further detail below.

What evidence have we looked at?

29. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our provisional decision. The evidence we have gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.
30. We received a significant volume of evidence from the Parties. In response to targeted information requests, we received over 3 million internal business documents from Microsoft and Activision, including key strategy documents and email communications among senior staff. These documents which, for the most part, were created in the ordinary course of business, set out the Parties’ views of the console and cloud gaming markets, as well as their future commercial strategy.
31. The Parties also had several opportunities to make submissions and comment on our emerging thinking throughout the investigation. In October 2022, the Parties submitted a response to our phase 1 decision. They subsequently submitted a response to our Issues Statement, where we set out the theories

of harm on which we planned to focus our phase 2 investigation. We held a site visit with each of the Parties, where their senior business staff gave us several presentations on the nature of their businesses, the rationale for the Merger, and answered our questions relating to our investigation. We then produced working papers and an annotated Issues Statement with our emerging thinking, and the Parties submitted their views on that material. We held formal hearings with each of the Parties, in which we spoke to the Parties' senior management about topics that we were exploring in our investigation. In addition, the Parties made a number of other submissions setting out their views on our theories of harm and evidence base at different points in our investigation.

32. We gathered evidence from other gaming console providers, game publishers, and cloud gaming service providers. We sent out over 50 requests for information, held several calls and meetings, and gathered hundreds of internal documents from these third parties. In our calls, we spoke to senior staff and business experts across the industry to have a better understanding of the competitive landscape and likely future developments in these markets.
33. We sought views from the public. In response to our Issues Statement of 14 October 2022, we received and reviewed over 2,100 emails containing views on the transaction. We considered those views and published a summary of these responses on 21 December 2022.
34. We engaged an independent market research company to conduct an online survey. The survey polled a random sample of PlayStation *CoD* gamers—defined for the purposes of the survey as those who played at least 10 hours or spent at least \$100 on the game between July 2021 and June 2022—to get a sense of how important this game franchise is to them, and what they might do if it became partially or totally exclusive to Xbox after the Merger.
35. While there are no pre-defined measures for assessing whether a merger may be expected to result in an SLC, market shares are a commonly used measure in merger control cases. There is a high degree of product differentiation in some of the markets in which Microsoft and Activision operate, which means that market shares may not be the best indicator, in this case, of how closely businesses compete with each other. As such, when assessing the impact of the Merger on competition, we have considered the evidence on market shares alongside other evidence on how closely the Parties compete with rivals (either currently or in the future). As well as the Parties' market shares, our assessment has taken account of the type of games that Activision offers, of the technical specifications of different consoles (and the types of games that users play on them), and of Microsoft's potential strengths in cloud gaming arising from its broader multi-product

ecosystem. We have also taken account of the strength of competitive constraints on the Parties, and the extent of past entry and exit from the relevant markets.

36. Finally, as well as looking at how competition works currently (and the Parties' current market positions), we recognise that markets, and in particular markets for digital products and services such as those offered by the Parties, change over time. Our assessment is therefore forward-looking and considers how markets are evolving and the Parties' plans for their businesses in future.

What would have happened absent the merger?

37. To determine the impact that the Merger may have on competition, we have considered what is likely to happen absent the Merger. This is known as the counterfactual.
38. For an anticipated merger such as this, the counterfactual may consist of the prevailing conditions of competition or conditions involving stronger or weaker competition than under the prevailing conditions. In this case, based on the evidence we gathered, our provisional conclusion is that the counterfactual is the prevailing conditions of competition.
39. We recognise that, as part of the prevailing conditions of competition, markets may continue to evolve and develop. In this case, our provisional view is that the market is likely to develop in important ways absent the Merger in the near future (ie, within the next five years): in relation to gaming consoles, we consider the evidence shows that multi-game subscription services would continue to grow but would be unlikely to offer Activision's most valuable games on the date of their release (we note that several AAA games currently make most of their sales in the first 12 months after release). In relation to cloud gaming services, we consider that the evidence shows that the market would continue to grow but, unlike multi-game subscription services, we believe that at least some of these cloud gaming providers—especially those with a buy-to-play or bring-your-own-game offering—would have Activision's most valuable games available on their platforms on the date of their release. We explain the relevance of these findings in our assessment below.

What did the evidence tell us?

...about the importance of Activision's gaming catalogue

40. We have gathered substantial evidence from Microsoft, Activision, and third parties to assess the significance of Activision's gaming portfolio. This evidence consistently points towards Activision's content, especially *CoD*, as

being important and capable of making a material difference to the competitiveness of rivals' gaming platforms. Activision invests significant time and capital in creating regular *CoD* releases, which consistently rank as some of the most popular games. These titles require thousands of game developers and several years to complete, and there are very few other games of similar popularity. Moreover, *CoD*'s popularity has been consistent over time and is continuing. For example, Activision reported that the release of *CoD Modern Warfare II* on October 28, 2022 was the franchise's best-ever opening weekend, delivering more than \$800 million worldwide in the first three days from its release.

41. Activision also offers PC games and mobile games. Through its Blizzard division, its most popular release is *World of Warcraft*, a massively multiplayer online role-playing PC game. Through its King division, it offers *Candy Crush*, a free-to-play casual game available on mobile and PC. Although these games are not relevant to our assessment of the impact of the transaction on gaming consoles, we have provisionally found that some Activision PC titles, such as *World of Warcraft*, are popular PC games that may be important for cloud gaming services, thereby adding to Activision's already strong catalogue in this market.

...about the impact of the Merger on gaming consoles

42. Our assessment under this theory of harm is focussing on whether Microsoft would have the ability and incentive to limit access to *CoD*, and whether this 'foreclosure' would have an effect on the ability of rivals to compete with Microsoft in gaming consoles. In terms of 'ability', we consider whether limiting access to *CoD* would harm the competitiveness of Xbox's rivals. In terms of 'incentive', we consider whether Microsoft stands to gain from this strategy. And in terms of 'effect', we consider how this would impact overall competition in the market for gaming consoles.
43. *CoD* is currently available on two gaming consoles – Xbox and PlayStation. We have provisionally found that these consoles compete closely with each other in terms of content, target audience, and console technology. We have provisionally found that Nintendo's consoles compete less closely with either of Xbox or PlayStation, generally offering consoles with different technical specifications, and with its most popular titles tending to be more family- and child-friendly. Nintendo does not currently offer *CoD*, and we have seen no evidence to suggest that its consoles would be technically capable of doing so with a similar quality of gameplay as Xbox or PlayStation in the near future.
44. The evidence we gathered shows that the *CoD* franchise is important to PlayStation.

45. First, the evidence shows that *CoD* accounts for a significant proportion of PlayStation's overall gametime, implying that making it totally or partially exclusive to Xbox would represent an important reduction in range of games offered on PlayStation.
46. Second, the large majority of our survey respondents (ie, *CoD* gamers as described above) indicated that the content available on a console is important to their choice of console, and around 24% of them said they would divert away from PlayStation if *CoD* were no longer available on that platform. The level of switching in this analysis, which indicates that a significant proportion of all PlayStation gamers would switch away from the platform, suggests that PlayStation gamers would be affected by not having access to *CoD*, notwithstanding the availability of other games on PlayStation.
47. Third, even *CoD* gamers who would remain on PlayStation could be harmed by the reduction in choice in that console. They would also likely spend less time and money on PlayStation than they did before, which the evidence suggests would have a material impact on PlayStation's revenue and ability to compete.
48. As to what Microsoft would do with *CoD*, we have provisionally found that it would have an incentive to make it either partially or totally exclusive to Xbox.
49. First, Microsoft's commercial strategy to date suggests that there are strategic benefits in limiting the availability of acquired gaming content. Microsoft has acquired a range of gaming studios over the past few years and, with very few exceptions, has made their future releases of games exclusive or redirected the efforts of those studios to produce exclusive Xbox games. Although we recognise that Activision is a bigger studio than any acquired by Microsoft before, this pattern of behaviour seems to be consistent with Microsoft's commercial strategy.
50. Second, the evidence suggests that making *CoD* partially or totally exclusive could bring Microsoft longer-term strategic benefits. These would include acquiring new loyal customers, growing the number of Game Pass subscribers, and strengthening Microsoft's reputation as having a console with attractive exclusive content. We recognise that Microsoft could face backlash from some gamers for adopting this approach, but we believe that this would not be enough to make these strategies commercially disadvantageous in the long run.
51. Third, we provisionally believe that making *CoD* exclusive to Xbox could be profitable for Microsoft. Although it is difficult to quantify Microsoft's financial gains and losses from making *CoD* partially or totally exclusive to Xbox, we

have tried to approximate these by using two different financial models. One model measured the direct financial gains over the course of one year of making *CoD* exclusive to Xbox. It is a straightforward comparison of the income that Microsoft would lose from not selling *CoD* on PlayStation against the additional income that it would earn from selling *CoD*, additional Xbox consoles, and other games to new customers who would switch—as estimated from our survey results—from PlayStation to Xbox. We provisionally found that this calculation on its own was broadly neutral in terms of profitability. The other model considered data used by Xbox in the ordinary course of business on the ‘lifetime value’ of new customers. This has the benefit of accounting for five years of spend on the Xbox platform and on *CoD*. This model, which we currently believe is a better way to estimate long-term financial incentives, suggests that making *CoD* exclusive to Xbox would be profitable for Microsoft.

52. On this basis, we provisionally believe that this combination of financial and broader strategic considerations would provide Microsoft with the incentive to make *CoD* either partially or totally exclusive to Xbox following the Merger.
53. We are concerned about the impact that these exclusivity strategies could have on competition between gaming consoles. Given that PlayStation is Xbox’s closest rival, we provisionally believe a strategy that makes it a less effective competitor would harm overall competition in gaming consoles.
54. In some cases, mergers generate efficiencies, for example by enabling a combined product offering that would not be available without the merger. These efficiencies can, where certain conditions are met, offset the anti-competitive effects of a merger, so that no SLC arises.
55. Microsoft has publicly stated that, if the Merger goes through, it intends to make Activision’s games available on Game Pass, something that we have provisionally found is unlikely to happen absent the Merger in relation to Activision’s newest releases. Except for game publishers’ own subscription services, most third-party games available today on multi-game subscription services tend to be added some time after their release date. In this sense, the Merger would generate an efficiency by enabling Activision’s games to become available on Game Pass on their release date.
56. We have provisionally found, however, that this efficiency is not enough to make up for the reduction in competition that would arise from the Merger. Xbox users can already access *CoD* on Xbox on a buy-to-play basis. Being able to access it on Game Pass would give them a new way to pay for the game, something that would increase choice and potentially encourage rival multi-game subscription services to offer more games on subscription to their

own users (whether this improvement in choice would amount to a cheaper way to access and play *CoD*, however, depends on a range of factors, including the future price of Game Pass and each individual user's gametime relative to the length of their subscription). Balanced against this would be (i) the reduction in range for PlayStation users, who would no longer be able to access *CoD* at all (or not on equal terms), and (ii) the reduction in competition between Xbox and PlayStation, which could lead to higher prices, reduced range, lower quality, and/or worse service for all console gamers. On balance, we provisionally believe that these would significantly outweigh the benefit to Xbox users of being able to pay for *CoD* in different ways through its availability on Game Pass and any potential improvements in the range of games available in multi-game subscription services more generally.

57. During our investigation, Microsoft told us that it has offered to enter into new long-term agreements with Sony, Nintendo, and Steam to supply them with *CoD* post-Merger. Whether some form of supply or licensing agreement might satisfactorily remedy our concerns in gaming consoles is something that we will consider as part of our remedies process, rather than in our competitive assessment.
58. On this basis, we provisionally conclude that the Merger may be expected to result in an SLC in gaming consoles in the UK, as a result of vertical effects in the form of input foreclosure.

...about the future of cloud gaming

59. The evidence we found suggests that cloud gaming could be transformative for the gaming industry in the next few years, helping to reach new customers and improve choice for existing customers (potentially replacing consoles altogether for some of them).
60. Cloud gaming has historically faced some unique challenges relative to consoles. It requires users to have a fast and stable internet connection capable of streaming graphically complex games. It must overcome latency (ie, the time it takes for data to travel from a gaming device to a cloud server and back), which can introduce delays and affect gameplay. The computing, bandwidth, warehousing, and utilities costs associated with cloud gaming are high, and this has led some in the industry to question whether it can ever be profitable.
61. The evidence we have gathered so far suggests that cloud gaming service providers already have, or soon will, overcome these challenges. In terms of demand, the market is already sizeable and the evidence indicates it is poised to continue growing in the next few years. In terms of latency, some providers

noted that they have already successfully streamed graphically complex games, such as *CoD*, with good results in terms of gameplay. As for profitability, although providers have had mixed results and continue to explore different avenues to monetise their service and gaming content, the evidence suggests that costs will continue to fall as demand grows and providers are able to scale their offering. These expectations are backed up by considerable amounts of investment into this market by a range of market participants.

...about Microsoft's position in cloud gaming

62. Microsoft already holds a strong position in the gaming industry through its established Xbox console, which has a large user base, and a strong catalogue of gaming content. It has been steadily strengthening its gaming ecosystem in line with the evolution of the gaming industry, including by acquiring independent gaming studios (such as Bethesda in 2021), expanding Game Pass, and developing its cloud infrastructure to better support its gaming activities.
63. In relation to cloud gaming services, Microsoft has a combination of assets that we provisionally consider is difficult for other cloud gaming service providers to match. By owning Windows, the OS on which the vast majority of PC games are played, Microsoft could stream games from Windows servers without having to pay a Windows licensing fee or adapt games designed for Windows to an alternative OS. By having Xbox Cloud Gaming and Azure, Microsoft has both a short-term and a longer-term solution to host cloud gaming, leveraging its large and well distributed global cloud infrastructure to stream its games without having to pay a fee to third-party cloud platforms. And by having an existing console ecosystem, Microsoft has a range of popular games that it can offer. As such, we provisionally consider that Microsoft has a strong position in cloud gaming services and will remain an important competitor as the market expands and evolves.

...about the impact of the Merger on cloud gaming

64. Our assessment under this theory of harm focused on whether Microsoft would have the ability and incentive to limit access to Activision's titles, and whether this 'foreclosure' would have an effect on the ability of rivals to compete with Microsoft in cloud gaming services. In terms of 'ability', we consider whether limiting access to Activision's games would harm the competitiveness of Microsoft's cloud gaming rivals. In terms of 'incentive', we consider whether Microsoft stands to gain from this strategy. And in terms of

'effect', we consider how this would impact overall competition in the market for cloud gaming services.

65. We have provisionally found that Activision's games are important for the growing market for cloud gaming services. As explained above, *CoD* is already one of the most important games for consoles. Given that cloud gaming services aim to achieve a similar quality of gameplay as consoles, we would expect customers' preferences in consoles to be broadly similar to their preferences in cloud gaming. We have also seen evidence that *CoD* is a popular game in the PC market, and that it is consistently one of the most requested titles by current cloud gaming users. A range of the evidence that we gathered, including from multiple third parties, suggests that *CoD* could make a material difference to the success of a cloud gaming provider. And we found some evidence that Activision has some PC games, in particular *World of Warcraft*, that are popular and could also be relevant to cloud gaming. Overall, therefore, we provisionally found that Activision's titles are likely to be an important input for the success of cloud gaming services as they are for consoles.
66. As to what Microsoft would do with Activision's titles, we have provisionally found that it would have an incentive to make them either partially or totally exclusive to its cloud gaming service.
67. Cloud gaming is a relatively new market characterised by some elements of direct and/or indirect network effects. In this type of market, success is highly uncertain, and there's an opportunity (and strong incentive) for incumbents to develop a unique offering in a bid to gain market power. One way for Microsoft to achieve this would be to offer exclusive games on its cloud gaming service. The evidence suggests that this is already part of Microsoft's cloud gaming strategy – except for a few Bethesda titles, most of which were old or already available on rival cloud gaming services before Microsoft acquired Zenimax, Microsoft has not made its games available on rival cloud gaming platforms.
68. We are concerned that making Activision's titles exclusive to Microsoft's cloud gaming service would harm competition, particularly since our provisional view is that Microsoft already holds a strong position in this market by virtue of its unparalleled advantages through its ownership of Windows, its cloud infrastructure, and its catalogue of first party titles. There are a few emerging rivals with their own respective strengths, such as Amazon, Sony, and NVIDIA, but none seem to be as well positioned as Microsoft in this market. We consider that Google's recent decision to shut down its own cloud gaming service, Stadia, shows that merely having some strengths relevant to cloud gaming is not enough to guarantee a platform's success. The evidence also suggests that there are significant barriers to entry and expansion, including

the cost of cloud infrastructure, the cost of acquiring content, and the need for economies of scale in order to drive down costs. Since Microsoft already appears to face limited competitive constraints from current and potential rivals, we are concerned that making Activision's content exclusive to its cloud gaming platform is particularly likely to harm competition.

69. On this basis, we provisionally conclude that the Merger may be expected to result in an SLC in cloud gaming services in the UK, as a result of vertical effects in the form of input foreclosure.

...about the overall impact of the Merger on consumers

70. Our statutory duty is to assess whether the Merger may be expected to result in an SLC within any market or markets in the UK for goods or services. Any such reduction in competition can have a potential impact on consumers.
71. In this case, we are concerned that the Merger will ultimately harm current and future gamers, whether they are Xbox users, PlayStation users, or cloud gaming users.
72. First, PlayStation gamers could see a reduction in the range and/or quality of games that they would have enjoyed absent the Merger. Whether it happens immediately or over time, we provisionally believe that Microsoft would not make *CoD* available to them at all, or at least not on equal terms as to Xbox gamers.
73. Second, the weakening of PlayStation, both in terms of its range and revenue, could eventually harm all console gamers. Consumers currently benefit from the fact that Xbox and PlayStation compete closely with each other. Although we recognise that PlayStation is currently the market leader in consoles, PlayStation's strong competitive offering makes it necessary for Xbox to compete hard to attract users, including on price and through the quality of its console, games, and multi-game subscription offering. Weakening PlayStation by taking important content away from its platform would reduce, not increase, Microsoft's incentive and Sony's ability to compete in the console market. This could eventually lead to higher prices, reduced range, lower quality, worse service and/or reduced innovation in gaming consoles and their games for all gamers.
74. We recognise that having Activision's content available on Game Pass is an attractive prospect to some Xbox customers and something that, based on the emails that we received from the public during this investigation, seems to explain much of the support for this Merger by those in favour of it. We also recognise that this could prompt other providers to make more content

available on their own multi-game subscription services. But, on balance, we are provisionally of the view that having this new option to pay for content that is already available on a buy-to-play basis on Xbox, in circumstances where the content would no longer be available (or not available on equal terms) on rival consoles, would not outweigh the overall harm to competition (and, ultimately, consumers) arising from this Merger.

75. Finally, by stifling competition in the growing and dynamic market for cloud gaming services, the Merger could alter the future of gaming. The market for cloud gaming seems poised to grow and become an important conduit for playing games, both for new users who are unable or unwilling to buy an expensive console, and for existing gamers looking for an alternative to consoles. Absent the Merger, strong competition in this market could make cloud gaming better and more affordable for consumers. By contrast, we are of the provisional view that the Merger would make an already strong incumbent in this market even stronger, which could result in Microsoft retaining a big share of the market and facing limited competition from current and potential rivals. This reduction in competition could harm consumers in the long run.

Provisional conclusions

76. As a result of our investigation and our assessment, we have provisionally concluded that the anticipated acquisition by Microsoft of Activision would result in the creation of a relevant merger situation.
77. We have also provisionally concluded that the Merger may be expected to result in an SLC:
- (a) in the supply of console gaming in the UK due to vertical effects resulting from input foreclosure; and
 - (b) in the supply of cloud gaming services in the UK due to vertical effects resulting from input foreclosure.