

# Addendum to Provisional Findings

## 1. Introduction

- 1.1 On 8 February 2023, the CMA provisionally found<sup>1</sup> 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 each of console gaming services in the UK and cloud gaming services in the UK.
- 1.2 Information-gathering takes place throughout a phase 2 inquiry.<sup>2</sup> Since we published the Provisional Findings, we received new evidence relating to the provisional finding of an SLC in console gaming services in the UK, which we assessed together with other relevant evidence. In particular, the Parties and third parties submitted new data that was not available at Provisional Findings and additional observations on the financial model that we used to measure Microsoft's long-term financial incentives for making *CoD* exclusive to Xbox. This model uses the 'lifetime value' (**LTV**) of gamers who switch from PlayStation to Xbox following a total foreclosure strategy as an approximation of Microsoft's gains from that strategy and the foregone revenue from all PlayStation *CoD* gamers as an approximation of the losses. Our revised model now suggests that making *CoD* exclusive to Xbox would result in a significant financial loss for Microsoft post-Merger. Given the magnitude of these potential losses under all scenarios that we considered to be plausible, we now place significantly more weight on the LTV model than we did at the stage of our Provisional Findings.
- 1.3 Microsoft also made submissions on the nature of its past acquisitions of gaming studios and on its longer-term strategic objectives. In relation to its past acquisitions, Microsoft pointed to the similarities between *Minecraft* and *CoD*, noting Microsoft's decision to keep *Minecraft* available on all platforms post-acquisition (in addition to putting it on new platforms such as Nintendo).<sup>3</sup> In relation to its longer-term strategic objectives, Microsoft submitted that these are speculative and uncertain, and that they are already captured by the LTV model.<sup>4</sup>
- 1.4 Although this evidence does not differ materially from previous evidence that Microsoft submitted in relation to its previous acquisitions and longer-term

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<sup>1</sup>CMA, [Provisional Findings](#), 8 February 2023 (**Provisional Findings**). All defined terms used in this Provisional Findings Addendum have the same meaning as in the CMA's Provisional Findings dated 8 February 2023.

<sup>2</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, paragraph 11.6.

<sup>3</sup> [Microsoft response to the Provisional Findings](#), 2 March 2023, paragraph 2.118.

<sup>4</sup> [Microsoft response to the Provisional Findings](#), 2 March 2023, paragraph 2.109-2.110.

strategic objectives, our assessment of it (including the weight that we place on it) has changed in light of the significant losses that the LTV model suggests Microsoft would incur as a result of a total foreclosure strategy. We remain of the view that the acquisition of *CoD* differs significantly from any of Microsoft's past gaming studios acquisitions, but we now consider that previous acquisitions—many of which were more, in effect, acquisitions of talent for the purpose of making new exclusive content for Xbox—are of relatively less significance in providing insight into the strategy that Microsoft is likely to pursue in relation to *CoD*. We also consider that there is insufficient evidence to show that the less quantifiable long-term strategic benefits of a foreclosure strategy would outweigh the more tangible losses arising from a total foreclosure strategy indicated by the LTV model. As such, we now place less weight on Microsoft's past behaviour and long-term strategic benefits in our assessment of Microsoft's incentives to foreclose PlayStation than we did in the Provisional Findings.

- 1.5 As a result of the submissions that we received after Provisional Findings, which we have taken into account together with the evidence that we have received to date, we have now provisionally concluded that Microsoft would not have an incentive to engage in a total foreclosure strategy of PlayStation using *CoD*.
- 1.6 In our Provisional Findings, we explained that our assessment did not presuppose any specific foreclosure strategy, noting that the Merged Entity may focus first on partial foreclosure strategies and gradually shift to a total foreclosure strategy.<sup>5</sup> As a result of our revised provisional conclusion on Microsoft's incentive to engage in a total foreclosure strategy, we have reassessed whether Microsoft would have the ability and incentive to foreclose PlayStation through partial foreclosure strategies alone (ie, through one or more of the mechanisms that we identified in our Provisional Findings without culminating in total foreclosure).<sup>6</sup> We have provisionally concluded that, although such strategies could degrade PlayStation's offering to some extent, they would not materially affect its ability to compete. As such, we have provisionally found that Microsoft would not have the ability to foreclose PlayStation through partial foreclosure strategies using *CoD*.<sup>7</sup>

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<sup>5</sup> CMA, [Provisional Findings](#), 8 February 2023, paragraph 7.125.

<sup>6</sup> CMA, [Provisional Findings](#), 8 February 2023, paragraph 7.124.

<sup>7</sup> We recognise that partial foreclosure strategies can be incremental and, depending on their type and severity, can potentially have a similar impact as a total foreclosure strategy. We consider that partial foreclosure strategies which, alone or in combination, amount to something similar to a total foreclosure strategy can be assessed under the total foreclosure framework set out in our Provisional Findings and these Revised Provisional Findings. Our discussion of partial foreclosure strategies here relates to the types of strategies described in our Provisional Findings, to the extent they fall short of a total foreclosure strategy.

- 1.7 On the basis of this evidence, together with the evidence set out in our Provisional Findings, we have now provisionally concluded that the Merger may not be expected to result in a substantial lessening of competition in the market for the supply of console gaming services in the UK. For the avoidance of doubt, nothing in this Addendum represents a change in our Provisional Findings insofar as they relate to cloud gaming services.
- 1.8 Any interested person is invited to provide the Inquiry Group with their reasons in writing as to why the addendum provisional findings in relation to console gaming in the UK should not become final.
- 1.9 In addition, any interested person is invited to provide the Inquiry Group with their views in writing as to the impact of these addendum provisional findings on the appropriateness of the remedies proposed in the [Notice of Possible Remedies published on the case page on 8 February 2023](#).

## 2. Parties' submissions

### *LTV model*

- 2.1 In our Provisional Findings, we explained that we had carried out two separate quantitative analyses to assess the Parties' incentives to foreclose. First, we used users' LTVs and our survey results to estimate gains and losses from a potential total foreclosure strategy over a five-year horizon. Second, we used 2021 data from Microsoft, Activision, and SIE, as well as our survey results, to estimate the gains and losses that would result from a total foreclosure strategy on a one-year basis.<sup>8</sup>
- 2.2 Our LTV model compared losses from the foregone sales of *CoD* on PlayStation against margins recouped from gamers who switched from PlayStation to Xbox following a total foreclosure strategy. We calculated losses by multiplying the number of *CoD* Monthly Active Users (**MAUs**) on PlayStation in 2021, [REDACTED], by an estimate of the average yearly gross profit per *CoD* gamer that Activision makes on PlayStation, \$[REDACTED]. We calculated the gains based on a combination of the results from the consumer survey that we ran among PlayStation *CoD* Gamers and the Xbox LTV of a *CoD* gamer who switches from playing on PlayStation to playing on either an Xbox or a PC. Our gains calculations included evidence from Microsoft's internal documents, based on which the Parties estimated the LTV for new Xbox customers to amount to \$[REDACTED] (**Base LTV**). We also considered the Parties'

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<sup>8</sup> CMA, [Provisional Findings](#), 8 February 2023, paragraph 7.328 onwards.

'curated' LTV estimate of \$[REDACTED] (**Parties LTV**),<sup>9</sup> and we used these and other figures to create a range of potential gains for Xbox of engaging in a total foreclosure strategy.

2.3 In response to our Provisional Findings, Microsoft explained the following:

(a) In terms of losses, the \$[REDACTED] used in the Provisional Findings expresses an estimate of the average yearly gross profit per *CoD* gamer that Activision makes on PlayStation; it does not estimate the lifetime value that this gamer would generate for Microsoft by playing *CoD* on a PlayStation (or a PC or an Xbox already owned) over time. This implies that there is a mismatch in the relevant reference period for the incentive analysis. Gains are computed based on 5 years of anticipated gross margin from a new Xbox gamer. Losses are computed based on a single year of foregone gross margin on content sold to a *CoD* gamer on PlayStation.<sup>10</sup>

(b) In terms of gains, the Base LTV was based on a snapshot estimate that Microsoft prepared in March 2022. The data is from purchasers who purchased an Xbox [REDACTED]. Microsoft explained that the Xbox LTV [REDACTED] when using more recent LTV data.<sup>11</sup>

2.4 Microsoft submitted that, when using more recent Xbox LTV data, and when taking into account five years of potential losses on PlayStation, the LTV model shows that Microsoft would not profit from a total foreclosure strategy.<sup>12</sup>

2.5 More generally, Microsoft submitted that it has no incentive to withhold *CoD* from PlayStation because this would involve immediately foregoing future revenues from *CoD* on PlayStation, which account (in present value terms) for approximately [REDACTED]% of the overall value of the deal with Activision. Microsoft noted that this [REDACTED] and would [REDACTED].<sup>13</sup>

## **Past Acquisitions**

2.6 In relation to past acquisitions, Microsoft explained that *Minecraft* remains the closest analogue to *CoD*, and that it has remained on all platforms post-acquisition, in addition to being made available on many new platforms, including Nintendo.<sup>14</sup> Microsoft explained that *Minecraft*, like *CoD*, is a globally popular multi-player franchise with a strong player community and

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<sup>9</sup> Microsoft, site visit

<sup>10</sup> Microsoft response to Provisional Findings

<sup>11</sup> Microsoft response to the Provisional Findings

<sup>12</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraphs 2.86 and 2.92.

<sup>13</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.76.

<sup>14</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.118.

social element that was available on multiple platforms when Microsoft acquired it. The Parties explained that, similar to *Minecraft*, *CoD* monetises its content through: (i) subscription payments for multi-player functionality (seasonal battle passes); (ii) merchandise (from its dedicated online *CoD* Shop); and (iii) game enhancing features (such as player skins and map packs).<sup>15</sup>

### **Longer-term strategic objectives**

2.7 Microsoft submitted long-term strategic benefits are, by their nature, speculative and uncertain. They submitted that there would need to be particularly clear evidence on strategic benefits to counterweight more certain evidence suggesting no incentive to foreclose.<sup>16</sup>

2.8 Microsoft also submitted that the LTV model already takes account of the key issues raised as potential long-term strategic benefits. Specifically, Microsoft said that, given the multi-year timeframe of the LTV calculations, these calculations account for any longer-term benefits from a foreclosure strategy, including:<sup>17</sup>

- (a) New loyal customers: Microsoft observed that the LTV covers a period over five years so, to the extent that Activision content can be used for this strategic benefit, it is already being captured into the medium term in the LTV calculation.<sup>18</sup>
- (b) Growing Game Pass: Microsoft submitted that, given the five-year period captured by the LTV, any incremental growth of Game Pass is being captured in the LTV calculation.<sup>19</sup>
- (c) Reputational benefits: Microsoft stated that, as withholding *CoD* would directly contradict Microsoft's public statements, the effect would be likely to be very negative given the significant gamer backlash that would inevitably occur following such a reversal. Also, Microsoft submitted that, insofar as the suggestion is that those reputational harms would be outweighed by having *CoD* on Xbox, there is no good evidential basis for that conclusion. However, Microsoft conceded that, to the extent that *CoD* causes switching, the five-year horizon in the LTV again likely means that any reputational benefits are captured in the calculation.<sup>20</sup>

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<sup>15</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.119.

<sup>16</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.109.

<sup>17</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.110.

<sup>18</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.110(a).

<sup>19</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.110(b).

<sup>20</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.110(c).

### 3. Third parties' views

- 3.1 A competitor in the console gaming market [REDACTED] submitted that, given the use of LTVs to measure gains, it would be inappropriate to take the losses for one year and multiply them by five to get a five-year LTV. According to this competitor, individual gamers tend to reduce their spending over time, so this approach for estimating losses would overstate Microsoft's losses through lost sales on [REDACTED], and thereby understate Microsoft's incentives to foreclose.<sup>21</sup> This competitor suggested that taking the losses for one year and multiplying them by the expected number of game purchases over five years would better reflect actual purchasing patterns, but that this approach would omit spending on add-ons, including add-ons on free-to-play releases like *CoD Warzone*, and thereby may not capture all lost sales on [REDACTED].<sup>22</sup> This competitor therefore suggested that the most consistent approach would be to track a given cohort's actual *CoD* spending on [REDACTED] over the course of five years to calculate *CoD* LTVs that are analogous to the LTVs used to measure gains.<sup>23</sup> According to this competitor, Microsoft will have the incentive to withhold *CoD* from [REDACTED] post-Merger.<sup>24</sup>
- 3.2 A competitor in the console gaming market [REDACTED] agreed with the CMA's conclusion in the Provisional Findings that the Merger would result in an SLC in consoles. In relation to Microsoft's previous acquisitions, this competitor submitted that *Minecraft* is not a close analogue to *CoD*, including because (i) it is a single-release title that was published in 2011, (ii) it is based on a legacy monetisation model of a one-time fee, after which users receive lifetime updates and content, (iii) it is not graphically intensive and offers a visual experience that relies on blocky and pixelated visuals, and (iv) it does not drive anything close to the level of gameplay, engagement, or purchasing decisions as *CoD*, having fewer players, fewer MAU, lower engagement levels, less than a third of *CoD* gameplay hours, and limited impact on console purchasing decisions.<sup>25</sup> According to this competitor, the closest analogue to the current transaction is Microsoft's acquisition of ZeniMax.<sup>26</sup>

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<sup>21</sup> [REDACTED] submission to the CMA

<sup>22</sup> [REDACTED] submission to the CMA

<sup>23</sup> [REDACTED] submission to the CMA

<sup>24</sup> [REDACTED] submission to the CMA

<sup>25</sup> [REDACTED] submission to the CMA

<sup>26</sup> [REDACTED]

## 4. Our assessment on incentives to engage in total foreclosure of PlayStation

### *Revised LTV model*

- 4.1 We have considered the Parties' and third parties' submissions on our LTV model and modified the inputs where appropriate. Based on our updated results, our quantitative modelling indicates a total foreclosure strategy would lead to a significant net financial loss for the Parties under all scenarios that we considered plausible.
- 4.2 In the Provisional Findings, we used the Base LTV and the Parties LTV, together with our survey results, to estimate the Microsoft's potential gains from a total foreclosure strategy across a five-year period. We calculated losses by multiplying the average number of *CoD* MAU on PlayStation in 2021 by an estimate of the average yearly gross profit per *CoD* gamer that Activision makes on PlayStation.
- 4.3 Our analysis indicated a net profit between of \$[X] billion and \$[X] billion.<sup>27</sup> Using the Parties LTV, our results indicated a net loss ranging from \$[X] million to \$[X] million. We considered that the LTV model was, therefore, consistent with a total foreclosure strategy being profitable.
- 4.4 In response to the Provisional Findings, the Parties provided additional data and proposed some changes to our LTV model.
- 4.5 First, Microsoft submitted new and more recent figures to calculate the Xbox LTV.<sup>28</sup> These figures were lower than the LTV figures that we used in our model for two reasons:
- (a) Our LTV was based on early data from Microsoft of a cohort of users who bought an Xbox [X]. More recent figures show that [X], meaning that [X].
  - (b) Given that the Xbox Series X|S was launched in November 2020, [X]. Microsoft explained that [X]. Microsoft's internal data suggests [X].<sup>29</sup>
- 4.6 We consider that using Microsoft's most recent LTV data for the user cohort that we originally measured is likely to produce more accurate results, given

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<sup>27</sup> The range is due to the assumption made on the switching rate of *CoD* users not sampled from our survey. Our survey sampled [X]% of *CoD* users. For the remaining [X]%, we assumed that either they switch at the same rate as sampled *CoD* users, or they do not switch at all.

<sup>28</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.92-2.93.

<sup>29</sup> Microsoft response to the Provisional Findings. Microsoft response to the Provisional Findings.

Microsoft's submission that it contains more robust data on the spending patterns of this cohort. As such, we updated our LTV model on that basis, which yielded an updated Xbox LTV figure of \$[REDACTED].

- 4.7 We do not consider, however, that it is necessary to adopt a weighted average LTV of Xbox users that includes later adopters. We consider that the users likely to switch from PlayStation to Xbox in response to a foreclosure strategy are more likely to have spending patterns that resemble early adopters than later adopters. We have not, therefore, revised our Xbox LTV estimate downwards to account for later adopters.
- 4.8 Second, the Parties submitted that in calculating the 'gains' to Microsoft of a withholding strategy, our model used a five-year gross profit figure. In calculating the 'losses', however, it used a single year of losses on PlayStation. The Parties proposed extending the calculation of losses to include a five-year *CoD* LTV on PlayStation.<sup>30</sup> Microsoft submitted that its telemetry data shows that, on average, over a five-year period, *CoD* gamers purchase between [REDACTED] and [REDACTED] *CoD* titles.<sup>31</sup> The Parties suggested a number of different ways of calculating the LTV of a *CoD* gamer, including as the net present value of \$[REDACTED] per year for [REDACTED] years, which they calculate to be \$[REDACTED].<sup>32</sup>
- 4.9 Although we recognise that gains and losses from a total foreclosure strategy should be calculated over a similar timeframe, we consider that this Parties' proposed calculation remains inaccurate; in particular, the suggestion to multiply average margin per *CoD* MAU by [REDACTED] games purchased over 5 years does not seem to be a sufficiently accurate proxy for losses during that period, since gamers not only spend on *CoD* by buying games, but also through in-game purchases (which can be a significant proportion of overall spend, especially in free-to-play games such as *CoD Warzone*). Similarly, we do not agree with the approach of calculating losses proposed by the third-party competitor (ie, to estimate losses by tracking a cohort's actual *CoD* spending on PlayStation over the course of five years) because we consider that the opportunity cost of withholding *CoD* from PlayStation amounts to all relevant profits that would be lost from this strategy, not just the lost profits on a single cohort of gamers. As such, we consider that it is more appropriate to account for five years of foregone profits from *CoD* on PlayStation.<sup>33</sup>

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<sup>30</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.86.

<sup>31</sup> Microsoft response to the RFI 16.

<sup>32</sup> Microsoft response to the Provisional Findings.

<sup>33</sup> Microsoft submitted this is the most immediately obvious way to generate a 5-year *CoD* LTV on PlayStation that would account for the fact that Xbox would forego the full 5 years of margin from *CoD* content on PlayStation. Microsoft response to the CMA's follow-up questions.



- 4.10 Third, the Parties submitted that the LTV model wrongly assumes that non-surveyed *CoD* gamers are equally likely to divert to another console as *CoD* gamers that were captured by our survey.<sup>34</sup> The Parties noted that our survey targeted gamers with >10 hours of gametime on *CoD* or >\$100 spend on *CoD* on PlayStation, which according to data submitted by SIE captured around [REDACTED]% of PlayStation gamers who played *CoD* during the relevant period. Since our survey did not capture the behaviour of approximately [REDACTED]% of PlayStation *CoD* gamers, the Parties submitted that we should include an assumption that these non-surveyed *CoD* gamers do not switch consoles at all.<sup>35</sup>
- 4.11 We do not have sufficient evidence to precisely estimate the switching rate of non-surveyed PlayStation *CoD* gamers. In our Provisional Findings, we assessed different scenarios, one in which non-surveyed gamers did not switch to PlayStation at all, and one in which they switched at the same rate as surveyed *CoD* gamers. We considered these scenarios to represent two extremes of a possible range of switching rates for this group and presented both possible outcomes. Since these gamers would have played *CoD* for a more limited time and/or spent less money on it than surveyed gamers, we now consider it appropriate to focus on an outcome in which these gamers would not switch consoles in response to a total foreclosure.
- 4.12 Fourth, in our Provisional Findings, we weighted our survey results by spend and gametime on *CoD* to reflect that gamers spend different amounts of time and money on *CoD*. We now recognise that LTVs already reflect the value of gamers (including the value of gamers who would switch from Xbox to PlayStation in response to a total foreclosure strategy). As such, it is not necessary to adopt a further weighting to approximate that value more closely.
- 4.13 Finally, since our Provisional Findings, we have (in considering the Parties' submissions) also reconsidered the most appropriate way to estimate the annual profit per user for *CoD* that Activision makes on PlayStation. In our Provisional Findings we adopted the methodology used by the Parties: they used MAU data [REDACTED] as the basis to compute the annual profit per user that Activision makes for *CoD* on PlayStation.<sup>36</sup> We consider that this figure, which is based on the MAUs of a single month in a single year, may not be representative of *CoD* gamers as a whole.

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<sup>34</sup> Microsoft [response to the Provisional Findings](#), dated 2 March 2023, paragraph 2.98.

<sup>35</sup> Microsoft response to the Provisional Findings.

<sup>36</sup> The Parties submitted that [REDACTED] was used as a base to compute the average annual profit as Microsoft's Financial Year 2021 ended in June 2021.

4.14 Instead, we consider that it is more appropriate to use yearly active users (YAU) who spent at least 10 hours or \$100 in 2021 (in line with the criteria that we used on our survey sample).<sup>37</sup> We received two different estimates for these YAU, one from Activision and one from SIE. We used both figures and did not have to reconcile the difference between the two because using either of them led us to similar conclusions on the profitability of a total foreclosure strategy. The Parties submitted that using MAUs is more appropriate because (i) it accurately measures a game's level of user engagement and success over time, and (ii) it ensures consistency throughout the CMA calculation.<sup>38</sup> As a sensitivity, we also used the average number of MAUs in 2021.

4.15 Accounting for these changes, we find that the results of our updated LTV-based analysis lead to a net loss of more than \$[REDACTED] billion over a five-year time period under all scenarios. The detailed results are summarised in the table below.

**Table 1: Results of our LTV-based analysis**

	Over 5 years (\$m)	Approx annual loss (\$m)	2021 CoD profit per user that Activision makes on PlayStation (\$)	CoD LTV (\$)	Xbox LTV (\$)
Using Activision YAU estimate	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Using SIE YAU estimate	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Average MAUs in 2021	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis

4.16 In light of the magnitude of these potential losses under any plausible scenario, we now consider it appropriate to place more weight on the quantifiable losses for Microsoft of engaging in a total foreclosure strategy post-Merger.

### **Past acquisitions**

4.17 In light of the Parties' and third parties' submissions on Microsoft's past acquisitions, together with the context provided by the revised LTV model (which we believe provides important insight into the rationale to acquire Activision), we considered that it would be appropriate to revisit our interpretation and the weight that we place on Microsoft's broader strategic incentive to engage in a partial foreclosure strategy based on its past

<sup>37</sup> Our survey captured [REDACTED]% of CoD gamers' spend on PlayStation, so we believe the YAUs who spent at least 10 hours or \$100 is a good basis for our estimated annual profit per user for CoD that Activision makes on PlayStation.

<sup>38</sup> Microsoft, response to the CMA's questions.

behaviour. In our Provisional Findings, we noted that 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. We recognised that Activision is a bigger studio than any acquired by Microsoft before but concluded that this pattern of behaviour seems to be consistent with Microsoft's commercial strategy.<sup>39</sup>

- 4.18 In its response to our Provisional Findings, Microsoft did not dispute that most of the studios that it has acquired have been redeployed to make new games that are exclusive to Xbox. Microsoft submitted, however, that its acquisition of *Minecraft* is the closest analogue to this Merger. According to Microsoft, *Minecraft* is also a globally popular multi-player franchise with a strong player community and social element that was available on multiple platforms when Microsoft acquired it. Like *Minecraft*, *CoD* monetises its content through a variety of channels, including subscription payments for multi-player functionality, merchandise, and game-enhancing features.<sup>40</sup>
- 4.19 We recognise that *Minecraft* and *CoD* have certain similarities (eg, both are multi-player franchises available on different platforms), but we remain of the view that none of Microsoft's previous acquisitions are sufficiently similar to this Merger to provide dispositive evidence that Microsoft would not engage in a total foreclosure strategy using *CoD*.
- 4.20 In light of the significant change in the LTV model, we also reassessed the evidence of Microsoft's acquisition of other studios. We confirmed that most of these were, in effect, acquisitions of talent. The majority of studios that Microsoft has acquired (with some notable exceptions such as Bethesda) did not have regular releases of popular gaming franchises available on different platforms. As such, Microsoft did not have to decide whether to make multiplatform games with a large customer base exclusive to Xbox following these acquisitions; it acquired those studios with the specific purpose of making exclusive games for its platform.
- 4.21 We remain of the view that console providers, including Microsoft, place significant value in having exclusive content to differentiate their platform and attract more users. Most first-party Xbox and PlayStation games are exclusive to their respective platform, and almost every studio that Microsoft has bought now makes games exclusive to Xbox. Moreover, where Microsoft has seen value in making multiplatform third-party studio games exclusive to Xbox, it

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<sup>39</sup> CMA, [Provisional Findings](#), 8 February 2023, Summary, paragraph 49.

<sup>40</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraphs 2.118-2.119.

has done so (eg, the upcoming release in the Redfall franchise following the Bethesda acquisition).

- 4.22 We consider, however, that the financial and strategic calculation of creating new exclusive games for Xbox may be different from that of making *CoD* exclusive to Xbox: making an existing multiplatform gaming franchise exclusive leads to quantifiable losses (ie, lost revenues from customers on other platforms), which have to be weighed against uncertain gains (ie, increased revenues from new Xbox customers). Moreover, in this case, at least part of *CoD*'s value comes from the size of its community of gamers, and that would be eroded by removing it from PlayStation. By contrast, making new gaming IP available on other platforms has some costs associated with it (eg, optimizing for a different OS and possible diversion of users to a rival console) and leads to uncertain gains. We consider that these differences could reasonably lead Microsoft to make a different strategic decision in relation to new releases of *CoD* than it has done in relation to entirely new games generated after previous acquisitions, especially in light of the significant quantifiable losses suggested by the revised LTV model.
- 4.23 Our view is that the evidence arising from Microsoft's past acquisitions alone is inconclusive. It suggests that exclusivity matters, that Microsoft strives to acquire and produce exclusive content, but that when it acquired *Minecraft*, it kept it on PlayStation and Nintendo. When assessed against the backdrop of the significant losses suggested by the revised LTV model, however, we consider that this evidence is not sufficient to show that Microsoft would have an incentive to foreclose PlayStation using *CoD* post-Merger.

### ***Longer-term strategic objectives***

- 4.24 In our Provisional Findings, we noted that there is a range of other potential gains and losses from a foreclosure strategy that are more difficult to quantify on a comparable basis. They include (i) furthering Microsoft's strategy of expanding Game Pass, (ii) any reputational impacts (good or bad), (iii) the strength of the Xbox brand and user loyalty, (iv) the impact of network effects (including for games that allow cross-play), and (v) the potential for entry, expansion, or repositioning by rivals to disincentivise foreclosure.<sup>41</sup> We found that these longer-term strategic considerations were difficult to quantify but, on balance, contributed to Microsoft's incentive to engage in foreclosure strategies.

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<sup>41</sup> CMA, [Provisional Findings](#), 8 February 2023, paragraph 7.294.

- 4.25 The Parties submitted that the LTV model already takes account of the key issues raised as potential long-term strategic benefits.<sup>42</sup> However, the Xbox LTV is based on [X]. The CoD LTV is based on [X]. As such, they do not account for unquantifiable considerations like customer loyalty, reputational impact, or strategic considerations related to the growth of Game Pass.
- 4.26 We remain of the view that these factors contribute to Microsoft's incentive to engage in a foreclosure strategy. In light of the magnitude of the potential losses that Microsoft would incur from a total foreclosure strategy (as suggested by the revised LTV model), however, we consider that these longer-term strategic incentives, together with all other available evidence, are not sufficient to show that Microsoft would have an incentive to make CoD exclusive to Xbox post-Merger.

## 5. Partial Foreclosure

- 5.1 In our Provisional Findings, we explained that our assessment does not presuppose any specific foreclosure strategy. We noted that the Merged Entity may focus first on partial foreclosure strategies with the expectation of shifting users to its platform over a period of time, gradually shifting to a total foreclosure strategy. We noted that our assessment does not assume any particular combination or order of foreclosure strategies but considers more generally whether the Merged Entity would have the ability and incentive to engage in these strategies, and how that would affect competition.<sup>43</sup>
- 5.2 In light of our provisional conclusion that Microsoft would have no incentive to make CoD exclusive to Xbox post-Merger, we have considered in greater detail whether Microsoft would have the ability and incentive to foreclose PlayStation post-Merger through partial foreclosure strategies alone (as detailed in our Provisional Findings).<sup>44</sup>

### ***Ability to foreclose***

- 5.3 The CMA's Merger Assessment Guidelines (**MAGs**) note that the CMA will typically focus on assessing market power upstream and the importance of the input when considering ability to foreclose, both of which were considered in the Provisional Findings. The MAGs also make it clear that in assessing the ability of the merged entity to foreclose its rivals, the CMA will go beyond examining simply whether it could supply its inputs to them on worse terms

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<sup>42</sup> Microsoft [response to the Provisional Findings](#), 2 March 2023, paragraph 2.110.

<sup>43</sup> CMA, [Provisional Findings](#), 8 February 2023, paragraph 7.125.

<sup>44</sup> CMA, [Provisional Findings](#), 8 February 2023, paragraph 7.124.

and will consider whether it would be able to harm their competitiveness by doing so.<sup>45</sup>

- 5.4 Based on the evidence that we have seen, we provisionally do not believe that Microsoft would have the ability to foreclose PlayStation solely through partial foreclosure strategies. In our Provisional Findings, we found that *CoD* accounts for around [X]% of gametime on PlayStation, and our survey results suggest that around [X]% of PlayStation customers would switch away from PlayStation in response to a total foreclosure strategy. This would represent a [X]% reduction in PlayStation's range, and a significant reduction in spend on PlayStation (around [X]%).
- 5.5 In case of partial foreclosure, however, PlayStation would not lose [X]% of its range; rather, [X]% of its range would suffer a quality deterioration (or price increase) that would likely represent only a small fraction of the value that gamers derive from *CoD*. As such, a partial foreclosure strategy would amount to a deterioration in a small fraction of [X]% of PlayStation's range.<sup>46</sup>
- 5.6 We have not seen any robust evidence to suggest that PlayStation users would switch from PlayStation to Xbox at the same rate in response to partial and total foreclosure strategies. We consider that it is unlikely that they would do so, since under a partial foreclosure strategy *CoD* would still be available on PlayStation (albeit not at the same time, or not with the same exact content). Given that any deterioration in PlayStation's offering would be more modest under a partial foreclosure strategy, we would expect that only a fraction of gamers would switch to Xbox. On this basis, we have provisionally concluded that Microsoft would not have the ability to foreclose PlayStation on the basis of partial foreclosure strategies.

### ***Incentive to foreclose and effect on competition***

- 5.7 As we have provisionally concluded that Microsoft would not have the ability to foreclose PlayStation on the basis of partial foreclosure strategies, we do not need to separately consider its incentive to foreclose or the effect on competition in relation to partial foreclosure strategies (noting in any case, that

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<sup>45</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 7.12 and 7.14.

<sup>46</sup> As noted above, we recognise that partial foreclosure strategies can be incremental and, depending on their type and severity, can have a similar impact as a total foreclosure strategy. We consider that partial foreclosure strategies which, alone or in combination, amount to something similar to a total foreclosure strategy can be assessed under the total foreclosure framework set out in our Provisional Findings and these Revised Provisional Findings (ie, in which Microsoft would lack the incentive to withhold *CoD* from PlayStation). Our discussion of partial foreclosure strategies here relates to the types of strategies described in our Provisional Findings, to the extent they fall short of a total foreclosure strategy.

the question of effect on competition is captured to a large extent in the assessment of ability to foreclose).

## 6. Revised provisional findings

- 6.1 In our Provisional Findings, we provisionally concluded that the Parties would have an incentive to engage in a total foreclosure strategy in console using *CoD* on the basis of (i) evidence on quantifiable gains and losses associated with foreclosure, (ii) Microsoft's behaviour in past acquisitions of game publishers, and (iii) evidence on other less quantifiable or strategic gains and losses from foreclosure.
- 6.2 We consider that any model attempting to estimate financial gains and losses by focusing only on direct switching from PlayStation to Xbox can be subject to important limitations. In particular, these models do not account for the strategic benefits that are more difficult to quantify. Our revised LTV-based analysis, which has the advantage of using data used by Xbox in the ordinary course of business, now indicates strong incentives not to foreclose PlayStation.
- 6.3 We remain of the view that quantitative modelling is inherently subject to uncertainties and must rely on assumptions where information is imperfect, and this limits the weight we can give to this type of evidence. However, we consider that the data we received since the Provisional Findings is more accurate and our model more robust than it was at the Provisional Findings stage. Given the significant losses that this model suggests Microsoft would incur post-Merger, under all plausible scenarios, we now place relatively more weight on this evidence when assessing it in the round, together with Microsoft's behaviour following previous acquisitions and its longer-term strategic objectives.
- 6.4 Our assessment also shows that Microsoft has acquired a range of gaming studios and, with very few exceptions, has redirected the efforts of those studios to produce exclusive Xbox games. We have reassessed this evidence in light of the revised LTV model and now consider that it is not sufficiently conclusive to suggest that Microsoft would have an incentive to foreclose PlayStation. Although *Minecraft* has some similarities to *CoD*, we do not consider it to be sufficiently similar to provide strong evidence that Microsoft's strategy with *CoD* would be the same as its strategy with *Minecraft* insofar as making it available on PlayStation post-Merger. Other past acquisitions also offer limited evidential value, since most of the studios that Microsoft has acquired did not have regular releases of popular gaming franchises available on different platforms, such that Microsoft did not have to decide whether to

make multiplatform games with a large customer base exclusive to Xbox following these acquisitions.

- 6.5 We have also seen that there are longer-term strategic benefits that are difficult to quantify, but which nonetheless contribute to Microsoft's incentive to engage in foreclosure strategies to some extent. These include Microsoft's plans to grow Game Pass, [X]. Longer-term strategic benefits also include the potential to acquire new loyal customers, and the reputational benefits from owning a console with exclusive (or at least superior) CoD content than rivals. We have not found evidence to suggest that these strategic benefits are of a scale that they would mitigate the significant losses that the LTV model suggests Microsoft would incur as a result of a total foreclosure strategy.
- 6.6 We also assessed whether Microsoft would have the ability and incentive to foreclose PlayStation through partial foreclosure strategies. We found that any such strategies would represent a deterioration of the equivalent of [X]% of PlayStation's game range, with the remaining [X]% largely unaffected. That quality deterioration would likely represent only a fraction of the value that PlayStation gamers derive from *CoD*. As such, we provisionally consider that Microsoft would have no ability to foreclose PlayStation through partial foreclosure strategies (or, if the partial foreclosure strategies approximate a total foreclosure strategy, no incentive to do so).
- 6.7 Based on our assessment above, and placing particular weight on the significant losses that our revised LTV model suggests Microsoft would incur if it were to engage in a total foreclosure strategy, we provisionally conclude that the Merged Entity would not have the incentive to engage in a total foreclosure strategy using *CoD* or the ability to foreclose PlayStation through partial foreclosure strategies.
- 6.8 We have, therefore, provisionally concluded that the Merger may not be expected to result in an SLC in the market for the supply of console gaming services in the UK.

## 7. Responses to this Addendum

- 7.1 Any party wishing to respond to this addendum should do so in writing, by no later than **17:00 UK time on 31 March 2023**. Please email [MS.Activision-PFsresponses@cma.gov.uk](mailto:MS.Activision-PFsresponses@cma.gov.uk)
- 7.2 The Inquiry Group will have regard to any such reasons in making its final decisions on the statutory questions and any consequential actions. The



Inquiry Group shall not be obliged to take into account reasons which are provided after the deadline specified in paragraph 7.1 above.