

# THE MICROSOFT AND ACTIVISION MERGER INQUIRY ORDER 2023

## Explanatory Note

### This note is not a part of the Order

#### Introduction

1. On 15 September 2022 the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**) referred the anticipated acquisition by Microsoft Corporation (**Microsoft**) of Activision Blizzard, Inc. (**Activision**) (the **Merger**) for further investigation and report by a group of CMA panel members.
2. The CMA published '[Anticipated acquisition by Microsoft of Activision Blizzard, Inc. Final report](#)' (the **Report**) on 26 April 2023. In the Report, the CMA decided, in accordance with [section 36](#) of the Act, that:
  - (a) the anticipated acquisition of Activision by Microsoft constitutes arrangements in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) in the supply of cloud gaming services in the UK, due to vertical effects resulting from input foreclosure;
  - (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC; and
  - (d) the prohibition of the Merger would be the only effective and proportionate remedy to the SLC and any adverse effects which have resulted from, or may be expected to result from, the SLC.
3. The CMA published a notice on 19 May 2023 of its intention to make an order to remedy the adverse effects on competition that it had identified.

4. On the making of this order (the Order) the reference is finally determined.
5. A review can be sought in relation to the Order under [section 120](#) of the Act.

### **Possible consequences of not complying with the Order**

6. [Section 94](#) of the Act places a duty on any person to whom this Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action before the courts.
7. [Section 94](#) of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.
8. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
9. [Section 87](#) of the Act provides that, if there is a failure to comply with a direction under the Order, the CMA can seek to enforce the direction in court and may recover the costs or expenses of such enforcement.

### **Review of this Order**

10. The CMA has a duty under [section 92](#) of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances.

### **Status of this explanatory note**

11. Nothing in this explanatory note is legally binding. In the event of a conflict between this explanatory note and any provision of the Order, the Order shall prevail.

### **Structure of the Order**

12. The Order contains 25 Articles.
  - General provisions (Articles 1 to 11), which provide the title of the Order (Article 1), the date it comes into force and ceases to have effect (Articles 2 and 3), the scope of the Order (Articles 4 and 5) and interpretation (Articles 6 to 11) (which also apply to terms used in this explanatory note).

- The prohibition (Articles 12 to 14), which provides Microsoft and Activision must not merge (as explained further below) within the Prohibition Period of ten years from the date of the Order.
- Compliance provisions including: provision of information to the CMA (articles 15 to 18), the CMA's power to issue directions (Articles 19 to 21), and consequential provisions on severability and governing law (Articles 22 to 25).

13. This explanatory note deals with each of the articles in the Order.

### ***Articles 1 to 11 – Title, commencement, application and interpretation***

14. The Commencement Date for the Order is the date on which it is made, [insert date]. The Order ceases to have effect on [insert date].
15. The Order applies to Microsoft, Activision, and the Group of Interconnected Bodies Corporate to which each of them belong, and its purpose is to give effect to the Report.

### ***Articles 12 to 14 – Prohibition on merger***

16. Article 12 provides that Microsoft may not acquire an Interest in Activision or any entity holding an Interest in Activision for ten years, with an Interest defined to mean the conferring of control within the meaning of [section 26](#) of the Act. This also applies to each of the entities within the Microsoft corporate group.
17. As an exception to the general prohibition, the Order provides that the CMA may grant its written consent for a transaction between Microsoft and Activision which would otherwise result in the creation of a relevant merger situation. This provision permitting the CMA's consent to be sought in relation to a particular proposed transaction is without prejudice to the right to request the CMA to vary or revoke the Order on the basis that there has been a change of circumstances as described in paragraph 10 of this explanatory note, and the CMA's standard merger control processes.
18. Article 13 makes the same provision for Activision in respect of Microsoft. This also applies to each of the entities within the Activision corporate group.
19. Article 14 makes provision that requires Microsoft and Activision to ensure that their Subsidiaries comply with the terms of the Order.

### **Articles 15 to 18 – Provision of Information to the CMA**

20. Article 15 requires any person to whom the Order applies to provide information so the CMA can monitor compliance with and the effectiveness of the Order and fulfil its functions.
21. Article 16 requires the production of records and provision of information in person to assist in the discharge of the CMA's functions in relation to the Order.
22. Article 17 requires the CMA to be informed immediately if a person to whom the Order applies suspects that the Order is likely to be, has or might have been breached.
23. Article 18 provides that the CMA may publish information received in connection with the Order in compliance with [Part 9](#) of the Act.

### **Articles 19 to 21 – Powers of Direction**

24. Articles 19 to 21 provide that the CMA may give written directions so as to carry out or ensure compliance with the Order.

### **Article 22 – Severability**

25. Article 22 provides that the remaining provisions of the Order shall survive if some become invalid or contrary to law.

### **Articles 23 to 25 – Governing law**

26. Articles 23 to 25 provide that the Order and contractual obligations connected with the Order are governed by English law and that any dispute connected with the Order is to be heard in the courts of England and Wales.