

Kluwer Competition Law Blog

Microsoft to Appeal CMA Block on Activision Deal

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Microsoft has said it will appeal a decision by the UK Competition and Markets Authority (CMA) to [block its proposed acquisition](#) of video games developer and publisher Activision Blizzard.

Activision is the company behind a number of popular game series, including ‘Call of Duty’. Microsoft agreed a deal to acquire Activision for \$68.7 billion in January 2022. Completion of the deal is subject to clearance by competition authorities globally, however. On Wednesday, the CMA said that while it does not expect that the deal would result in a significant lessening of competition in the market for console gaming services in the UK, it had decided to prevent the deal from going ahead in the UK because of concerns it has over its potential impact on competition in the cloud gaming market. It is the second time in recent months that the CMA has intervened in relation to a global merger in the technology sector – in October last year it ordered Meta to sell Giphy amidst concerns over the merger’s impact on access to GIFs across social media platforms and around competition in display advertising. The CMA considered that Activision’s games are likely to be important for the growing market for cloud gaming services and that clearing Microsoft’s deal to acquire the company would “reinforce Microsoft’s advantage in the market by giving it control over important gaming content”. It said it considers that the availability of games via the cloud provides UK gamers with more flexibility and choice over how they access and play games and believes Activision would “start providing games via cloud platforms in the foreseeable future” if its business was not acquired by Microsoft.

“Allowing Microsoft to take such a strong position in the cloud gaming market just as it begins to grow rapidly would risk undermining the innovation that is crucial to the development of these opportunities,” the CMA said.

However, Microsoft president Brad Smith suggested the CMA may have misunderstood the market and the way cloud technology works in considering its decision.

Smith said: *“We remain fully committed to this acquisition and will appeal. The CMA’s decision rejects a pragmatic path to address competition concerns and discourages technology innovation and investment in the United Kingdom. We have already signed contracts to make Activision Blizzard’s popular games available on 150 million more devices, and we remain committed to reinforcing these agreements through regulatory remedies. We’re especially disappointed that after lengthy deliberations, this decision appears to reflect a flawed understanding of this market and the way the relevant cloud technology actually works”*.

The CMA opened its in-depth review of the Microsoft-Activision deal in September last year and set out its provisional findings in February. Microsoft subsequently proposed a remedy designed to

address the concerns the CMA had expressed in its provisional findings. This included a commitment to make some Activision games, including Call of Duty, available royalty-free on other cloud gaming platforms beyond its own for a period of 10 years.

However, the CMA said there were “*shortcomings*” with the proposed remedy and considered that the only way to address the risk of a substantial lessening of competition in the cloud gaming services market was to prohibit the merger and that it would be proportionate to do so.

Martin Coleman, who chaired the CMA’s review of the deal, said: “*Microsoft engaged constructively with us to try to address these issues and we are grateful for that, but their proposals were not effective to remedy our concerns and would have replaced competition with ineffective regulation in a new and dynamic market. Cloud gaming needs a free, competitive market to drive innovation and choice. That is best achieved by allowing the current competitive dynamics in cloud gaming to continue to do their job*”.

The CMA’s intervention came on the same day as [the UK government introduced its long-awaited Digital Markets, Competition and Consumers \(DMCC\) Bill](#) before parliament. Under the Bill, a new Digital Markets Unit within the CMA would obtain new powers to regulate digital businesses designated as having ‘strategic market status’, and the CMA’s powers to take action against mergers which harm UK consumers and businesses would also be enhanced.

** This piece is a re-post from the original Pinsent Masons client alert, available [here](#).*

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