



OPINION

of the ADVISORY COMMITTEE on MERGERS

at its meeting on 03/05/2023

concerning a draft decision

in case M.10646 – MICROSOFT / ACTIVISION BLIZZARD

RAPPORTEUR: ROMANIA

(Text with EEA relevance)

Concentration

1. The Advisory Committee (15 MS) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings (the "Merger Regulation")¹.

Market definition

Product market definition

2.

- a) The Advisory Committee (15 MS) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant product markets for development and publishing of video games segmented by platform (PC, console, mobile), by types of video game (AAA games vs. non-AAA games) and by genre (action and adventure, shooter/battle royale, role-playing games, sports, racing, fighting, and strategy).
- b) The Advisory Committee (14 MS) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the following relevant product markets distribution of video games segmented by platform (PC, console, mobile); 1 MS abstains.
- c) The Advisory Committee (15 MS) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the following relevant product markets operating systems for PC.

¹ OJ L 24, 29.1.2004, p. 1.

Geographic market definition

3.

- a) The Advisory Committee (15 MS) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant geographic market for the product markets development and publishing of video games (i.e., at least EEA-wide, if not worldwide).
- b) The Advisory Committee (14 MS) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant geographic market for the product markets distribution of video games (i.e., at least EEA-wide, if not worldwide); 1 MS abstains.
- c) The Advisory Committee (15 MS) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant geographic market for the product markets operating systems for PC (i.e. worldwide).

Competitive assessment

4. The Advisory Committee (15 MS) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of horizontal non-coordinated effects arising from the combination of Microsoft's and Activision Blizzard's activities.
5. The Advisory Committee (15 MS) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition as a result of vertical non-coordinated effects arising from the targeted foreclosure of rival distributors of console video games as a result of the merged entity's targeted total or partial input foreclosure strategy by restricting or degrading access to Activision Blizzard's AAA shooter console video games.
6. The Advisory Committee (15 MS) agrees with the Commission's assessment that the notified transaction would likely significantly impede effective competition as a result of vertical non-coordinated effects arising from the targeted input foreclosure of rival distributors of console or PC video games that offer cloud game streaming services as a result of the merged entity foreclosing the supply of Activision Blizzard's console and PC games.
7. The Advisory Committee (15 MS) agrees with the Commission's assessment that the notified transaction would likely significantly impede effective competition on the market for the supply of PC OS as a result of conglomerate effects arising from tying of Activision Blizzard's games and of Microsoft's distribution of games via cloud game streaming services to the Windows OS.

Commitments

8. The Advisory Committee (12 MS) agrees with the Commission's conclusion that the Consumer License and the Streaming Provider License offered by the Notifying Party on 20 April 2023 remove concerns as to the (i) input foreclosure of providers of rival distributors of console or PC video games that offer cloud game streaming services as a result of the merged entity foreclosing the supply of Activision Blizzard's console and PC games and (ii) conglomerate effects arising from tying of Activision Blizzard's games and of Microsoft's distribution of games via cloud game streaming services to the Windows OS. 1 MS disagrees. 2 MS abstain.
9. The Advisory Committee (12 MS) agrees with the Commission that, subject to the full compliance with the final commitments offered by the Notifying Party on

20 April 2023, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it. 1 MS disagrees. 2 MS abstain.

Compatibility with the internal market and the Agreement on the European Economic Area

10. The Advisory Committee (12 MS) agrees with the Commission that the notified concentration must therefore be declared compatible with the internal market and the Agreement on the European Economic Area² in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the Agreement on the European Economic Area. 1 MS disagrees. 2 MS abstain.

² OJ L 1, 3.1.1994, p.3.