



EUROPEAN COMMISSION
DG Competition

Case M.11033 – ADOBE / FIGMA

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 22
Date: 14/02/2023



EUROPEAN COMMISSION

Brussels, 14.2.2023

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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Kilpailu- ja kuluttajavirasto - Finnish
Competition and Consumer Authority
P.O.B 5, 00531, Helsinki
Finland

Subject: **Case M.11033 – ADOBE / FIGMA**
Request for referral by the *Kilpailu- ja kuluttajavirasto*, the Competition Authority of Finland, to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Ref.: Letter of the *Kilpailu- ja kuluttajavirasto*, the Competition Authority of Finland of 25 January 2023

Dear Sir or Madam,

1. INTRODUCTION

(1) By letter of 9 January 2023, in application of Article 22(1) of the Merger Regulation, the Austrian *Bundeswettbewerbsbehörde*, the Federal Competition Authority of Austria (the “**Austrian NCA**”) formally requested the Commission to examine the

¹ OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p.3 (the ‘EEA Agreement’).

concentration whereby Adobe, Inc. (“**Adobe**” or the “**Notifying Party**”, US) will acquire sole control over Figma, Inc. (“**Figma**”, US) (the “**Transaction**”). Adobe and Figma are together referred to as the “**Parties**”, and the Austrian NCA’s request as the “**Referral Request**”.

- (2) Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have a Union dimension within the meaning of Article 1 of the Merger Regulation, but which (i) affects trade between Member States and (ii) threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration, or, if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.
- (3) With the above mentioned letter of 25 January 2023, *Kilpailu- ja kuluttajavirasto*, the Competition Authority of Finland (the “**Finnish NCA**”) joined the Referral Request of Austria.

2. PROCEDURE

- (4) The Parties notified the Transaction in Germany and Austria, as it met the applicable jurisdictional thresholds under the respective national competition rules. The Austrian NCA received the notification of the Transaction on 16 December 2022 (the “**Notification**”).
- (5) The Commission received the Referral Request made by Austria pursuant to Article 22(1) of the Merger Regulation on 9 January 2023.
- (6) In accordance with Article 22(2) of the Merger Regulation, the Commission informed the competent authorities of the other Member States and the EFTA Surveillance Authority of the Referral Request on 10 January 2023.
- (7) As mentioned above, the Finnish NCA joined the Referral Request of Austria on 25 January 2023. Also on 25 January 2023, the *Комисията за защита на конкуренцията*, the Bulgarian Competition Authority (the “**Bulgarian NCA**”) and the *Competition and Consumer Protection Commission*, the Irish Competition Authority (the “**Irish NCA**”), joined the Referral Request. On 26 January 2023, the *Autorità Garante della Concorrenza e del Mercato*, the Italian Competition Authority (the “**Italian NCA**”) and the *Konkurransetilsynet*, the Norwegian Competition Authority (the “**Norwegian NCA**”), joined the Referral Request. On 27 January 2023, the *Autorité de la concurrence*, the French Competition Authority (the “**French NCA**”), and the *Samkeppniseftirlitið*, the Icelandic Competition Authority (the “**Icelandic NCA**”), joined the Referral Request. On 30 January 2023, the *Επιτροπή Προστασίας Ανταγωνισμού*, the Cypriot Competition Authority (the “**Cypriot NCA**”), the *Úřad Pro Ochranu Hospodářské Soutěže*, the Czech

Competition Authority (the “**Czech NCA**”), the *Autoriteit Consument & Markt*, the Dutch Competition Authority (the “**Dutch NCA**”), the *Bundeskartellamt*, the German Competition Authority (the “**German NCA**”), and the *Autorité de la concurrence*, the Luxembourgish Competition Authority (the “**Luxembourgish NCA**”), joined the Referral Request. On 31 January 2023, the *Belgische Mededingingsautoriteit/Autorité belge de la Concurrence*, the Belgian Competition Authority (the “**Belgian NCA**”), the *Konkurrence- og Forbrugerstyrelsen*, the Danish Competition Authority (the “**Danish NCA**”), and the *Konkurrensverket*, the Swedish Competition Authority (the “**Swedish NCA**”), joined the Referral Request.

- (8) The NCAs mentioned in paragraph (7) are collectively referred to as the “**Joining NCAs**”.
- (9) The Austrian NCA and the Joining NCAs agreed to receive any decision in this case in English.

3. THE PARTIES AND THE OPERATION

- (10) **Adobe** is a global software company headquartered in the US that provides, *inter alia*, products, services and solutions that enable individuals, teams, and enterprises to create, publish and promote digital content. Its main products include Photoshop, Illustrator, Premiere Pro and Adobe Express. Adobe also offers a desktop-based interactive product design tool (called “**Adobe XD**”). Most of Adobe’s products are sold on a subscription basis, either as stand-alone products or as part of Adobe’s “Creative Cloud” product suite.
- (11) Adobe’s FY 2021 worldwide turnover was EUR 13.3 billion, of which EUR [...] billion were generated in the EEA.
- (12) **Figma** was founded in 2012 and is headquartered in the US. Figma offers two main products: Figma Design, a web-based interactive product design tool, and FigJam, a whiteboarding tool. Figma’s products are offered on a stand-alone basis, either for free (“Starter” package and a free version of “Figma Professional” for students and educators) or as a paid, subscription-based service (“Figma Professional”, “Figma Organization” and “Figma Enterprise”).
- (13) Figma’s FY 2021 worldwide turnover was EUR [...] million, of which EUR [...] million were generated in the EEA.
- (14) The Transaction consists in the acquisition of sole control by Adobe over Figma, pursuant to a sale and purchase agreement dated 15 September 2022, according to which Adobe will acquire Figma for approximately USD 20 billion (USD 10 billion in cash and USD 10 billion in stock fixed as of the signing date, subject to adjustments) and an issuance of new Adobe restricted stock units (RSUs) to certain Figma employees. At closing of the Transaction, Figma will be a wholly owned, direct subsidiary of Adobe. Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (15) However, as Figma has revenues of less than EUR [...] million in the EEA, the Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation.

4. ASSESSMENT OF THE REFERRAL REQUEST

- (16) In order for a referral to be made by a Member State, one procedural precondition and two substantive conditions must be fulfilled pursuant to Article 22(1) of the Merger Regulation. As to the procedural precondition, the referral “*shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned*”. Any Member State joining the referral shall do so “*within a period of 15 working days of being informed by the Commission of the initial request*” according to Article 22(1) of the Merger Regulation. As to the substantive conditions the concentration must: (i) affect trade between Member States; and (ii) threaten to significantly affect competition within the territory of the Member State(s) making the request.³ If these requirements are met, the Commission may decide to examine the concentration.

4.1. PROCEDURAL PRECONDITION

- (17) The Austrian NCA received the Notification on 16 December 2022 and made the Referral Request on 9 January 2023, which is nine working days from the date of the Notification.⁴ Therefore, the Referral Request was made within the time limit of Article 22(1), second indent, of the Merger Regulation.
- (18) The Finnish NCA joined the Referral Request on 25 January 2023. Moreover, the Commission notes that the Bulgarian NCA and the Irish NCA joined the Referral Request on 25 January 2023; the Italian NCA on 26 January 2023; the French NCA on 27 January 2023; the Cypriot NCA, the Czech NCA, the Dutch NCA, the German NCA and the Luxembourgish NCA on 30 January 2023; the Belgian NCA, the Danish NCA and the Swedish NCA on 31 January 2023. Therefore, all Joining NCAs joined within the time limit of Article 22(2), second indent, of the Merger Regulation.
- (19) The Norwegian NCA joined the Referral Request on 26 January 2023 and the Icelandic NCA on 27 of January, which is within a period of 15 working days of the date on which the EFTA Surveillance Authority was informed by the Commission of the Referral Request (on 10 January 2023), thus within the time limit of Article 22(2), second indent, of the Merger Regulation in conjunction with Article 13 of Protocol 24 to the EEA Agreement.

4.2. SUBSTANTIVE CRITERIA

4.2.1. *The Transaction affects trade between Member States*

- (20) According to paragraph 43 of the of the Commission’s Notice on Case Referral in respect of concentrations (“the Referral Notice”),⁵ the first substantive condition is met when the concentration “*is liable to have some discernible influence on the pattern of trade between Member States*”.

³ See also Commission Notice on Case Referral in respect of Concentrations, paragraphs 42-44.

⁴ 23, 26, 27, 28, 29 and 30 December 2022, as well as 2 January 2023 were public holidays for the Commission.

⁵ OJ C 56, 05.03.2005, p. 2.

- (21) The Austrian NCA argues that the Transaction is likely to affect trade between Member States, considering that Adobe and Figma are active in all Member States, and that the relevant markets are likely broader than national, *i.e.*, at least EEA-wide if not worldwide.
- (22) Based on the Referral Request, the Commission notes that Adobe and Figma are currently active in all EEA Member States.⁶ Adobe generated EEA-wide turnover in 2021 of EUR [...] billion (*i.e.*, approx. [...] % of its global turnover) and has subsidiaries in eleven Member States (Belgium, Czech Republic, Denmark, France, Germany, Ireland, Italy, the Netherlands, Romania, Spain, and Sweden).⁷ Figma generated more than [...] % of its turnover in the EEA in fiscal year 2021, *i.e.*, approx. EUR [...] million, and has subsidiaries in four Member States (France, Germany, Sweden and the Netherlands).⁸ Both Adobe and Figma have active users for their relevant products, *i.e.*, Adobe's Photoshop, Illustrator, Premier Pro and XD, and Figma Design and FigJam⁹ in all EEA Member States.¹⁰
- (23) The Commission notes that the potential relevant markets for the assessment of the Transaction may include software markets, namely those for creative software, interactive product design and whiteboarding, which are preliminarily assessed below.
- (24) **Creative Software.** The Commission has not previously assessed a potential market for creative software products, such as Adobe's Photoshop, Illustrator, Premier Pro and others. However, in previous decisions, the Commission has considered separate software product markets by type of software and consistently considered the geographic scope of software markets and their potential subsegments, to be at least EEA-wide, if not worldwide.¹¹
- (25) **Interactive product design.** The Commission has not yet assessed the potential market for interactive product design. The Notifying Party submits that the potential market for interactive product design would comprise both end-to-end interactive product design tools (such as Adobe XD and Figma Design), as well as workflow product design tools (which target only one or some of the steps in product design, for instance, wireframing/design, prototyping or handoff) and tools providing interactive product design functionalities. The Parties consider the market to be wider than national. Adobe's own market intelligence identifies competitors on a [...] and the Parties provide market share information for a worldwide market for interactive product design tools. In addition, the Commission notes that the Parties operate across the EEA and there appear to be no significant differences between the services offered by the Parties in the different countries within the EEA.

⁶ Referral Request, section 4.

⁷ Referral Request, Table 1 and Parties' response to request for information by the Commission of 22 December 2022.

⁸ Referral Request, sections 1 and 4 and Parties' response to request for information by the Commission of 22 December 2022.

⁹ Figma has both free and paying users for both products in all EEA Member States.

¹⁰ Parties' response to request for information by the Commission of 22 December 2022.

¹¹ See, *e.g.*, cases M.8223 – *Micro Focus/HPE Software Business*, M.8984 – *HG/Vista/Allocate*, M.9538 – *Broadcom/Symantec Enterprise Security Business*.

- (26) **Whiteboarding.** The Commission has not yet assessed the potential market for whiteboarding tools, which are collaborative tools used in the process of ideation by writing and sketching on a shared real-time co-editable digital space resembling a physical whiteboard, such as FigJam. The Parties did not provide their views on the precise product market or geographic scope of this potential market and argue that the exact market definition may be left open. The Commission considers that this market is also likely at least EEA-wide, without prejudice to the outcome of further investigation.
- (27) Therefore, the Commission notes that the geographic scope of the potential relevant markets and their possible sub-segments is likely wider than national and at least EEA-wide. As a result, it is likely that any effect of the Transaction in those markets would not be limited to Austria or the joining Member State but would extend to other EEA countries.
- (28) **Conclusion.** In light of the foregoing, the Commission considers that the requirement that the Transaction affects trade between Member States is met, *i.e.*, the Transaction is liable to have some discernible influence on the pattern of trade between Member States.
- 4.2.2. *The Transaction threatens to significantly affect competition within the territory of the Member State making the request*
- (29) According to paragraph 44 of the Referral Notice, the second criterion is met when, on the basis of a preliminary analysis, there is a real risk that the Transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
- (30) The Referral Request submits that the Transaction would significantly affect competition at least within the territory of Austria as a result of horizontal overlaps and possible conglomerate effects.
- (31) **Unilateral horizontal effects.** The Austrian NCA argues that there is a real risk that the Transaction would lead to the elimination of significant competitive pressure from Figma and, ultimately, a strengthening of Adobe's position in a potential market for interactive product design in the EEA or worldwide (unilateral horizontal effects).

- (32) Adobe’s desktop-based interactive product design tool Adobe XD seems to compete with Figma’s web-based interactive product design tool Figma Design. Based on revenue, the Parties estimate their combined worldwide market share in a potential market for interactive product design at [...]%, as shown in the table below.¹²

Table 1 – Value-based market shares – Interactive product design (worldwide, 2021)

Competitor	Revenue (USD mn)	Share (%)
Figma	[...]	[10-20]%
Adobe XD	[...]	[0-5]%
Combined	[...]	[20-30]%
Wix	[...]	[10-20]%
InVision	[...]	[10-20]%
Squarespace	[...]	[10-20]%
Miro	[...]	[5-10]%
Canva	[...]	[5-10]%
Webflow	[...]	[0-5]%
Mural	[...]	[0-5]%
Sketch	[...]	[0-5]%
Zeplin	[...]	[0-5]%
Abstract	[...]	[0-5]%
Others (Avocode, Axure, Balsamiq, Framer, Frontify, Marvel, Origami, Penpot, Principle, Proto.io, Protopie, Sympli Handoff, UXPin, and zeroheight)	[...]	[5-10]%
Total	[...]	100.0%

Source: Parties’ estimates, Referral Request Table 3.

- (33) The Austrian NCA considered that the Transaction raises a risk of unilateral horizontal effects, given that both Parties offer interactive product design tools, with an estimated combined worldwide market share of approx. [...]% based on value of sales (and likely higher market shares if based on volume). The Transaction would therefore possibly lead to the elimination of significant competitive pressure from Figma and a strengthening of Adobe’s position in a potential market for interactive product design in the EEA or worldwide.

¹² Referral Request, Table 3.

- (34) Based on a preliminary analysis of the initial information provided to it and depending on the definition of the relevant markets, the Commission considers that there is a real risk that the Transaction could lead to unilateral horizontal effects in Austria and across the EEA in a potential market for interactive product design tools.
- (35) *First*, the Commission considers that Figma’s actual competitive significance is likely understated by the value-based market shares provided so far by the Parties. In product markets, where competitors offer products under various different pricing models, volume-based market shares typically reflect competitive market conditions more accurately. Figma follows a “freemium” business model, under which free-version users constitute a [...] part of Figma’s users. Those users are not reflected in value-based market shares.¹³ Depending on competitors’ pricing models, Figma’s share in a potential overall market for interactive product design tools, including tools offered for free and tools offered against a fee, could be significantly higher.
- (36) *Second*, the Commission notes that the potential relevant product markets may be narrower than indicated by the Parties. Therefore, the definition of the relevant markets for the competitive assessment must be further investigated in order to assess the competitive interactions between Adobe’s and Figma’s products. As mentioned above, the Parties submit that the potential market for interactive product design would comprise both end-to-end interactive product design tools (such as Adobe XD and Figma Design), as well as workflow product design tools and tools providing interactive product design functionalities. In case the outcome of the Commission’s investigation would indicate a further segmentation of the market, e.g., per type of tool/stage of the design process or per type of user, the competitive significance of Figma’s as well as the Parties’ combined market shares post-Transaction may be underestimated by the Parties’ proposed market definition.¹⁴
- (37) *Third*, the Parties’ submissions to date seem to indicate that a [...] part of former users of Adobe’s product design tool “XD” have switched to Figma Design, which therefore could constitute a close competitor to Adobe XD. Indeed, based on publicly available information, Figma seems to be viewed by market observers as the main competitor of Adobe and a strong challenger in interactive product design.¹⁵
- (38) *Fourth*, Adobe has decided to gradually phase out its resources from Adobe XD since the end of 2021 due to [...] and placed the product in maintenance mode¹⁶ in February 2022. Separately from Adobe XD, Adobe has been pursuing “Project

¹³ The Austrian NCA noted that in September 2022, approx. [...] % of Figma users in Austria used the free version.

¹⁴ In this regard, the Austrian NCA notes that, based on publicly available information, in the “Collaborative Design And Prototyping” category, Figma’s market share is reported to be 33.3% and Adobe’s 38.1% (including other Adobe products), which would result in a combined market share of 71.4%.

¹⁵ See for instance: <https://www.gartner.com/reviews/market/prototyping-software/vendor/figma/product/figma/alternatives>; <https://www.theverge.com/2022/9/21/23363188/adobe-destroy-figma-designers-ux-ui-creative-cloud>; <https://www.axios.com/2022/09/23/adobe-defends-figma-deal>; <https://www.creativebloq.com/news/adobe-buys-figma>; <https://uxtools.co/survey/2021/#ui-design>.

¹⁶ Maintenance mode means that existing customers will continue to receive basic support, but no more investment will be made in new development or active marketing. See Referral Request, page 4.

Spice” since 2020, a project to develop a web-based interactive product design tool, but development of the tool was halted in September 2022. It appears that Adobe’s decision to disinvest in its desktop-based interactive product design tool (Adobe XD) in late 2021, and to put it into maintenance mode in February 2022, as well as its decision to discontinue a project to develop an own web-based interactive design tool (Project Spice) coincided with the start of negotiations with Figma. Therefore, Adobe XD’s current market strength may not be indicative of its likely market position going forward absent the Transaction.

- (39) In this context, the Commission notes a risk that Adobe’s incentive to innovate and compete on the market for interactive product design tools may be significantly lessened as a consequence of the Transaction.
- (40) Finally, it cannot be ruled out at this stage that Adobe and Figma may be potential competitors in other markets, namely those relating to creative software products or whiteboarding.
- (41) **Potential anticompetitive conglomerate effects.** The Austian NCA also argues that the Transaction could result in anticompetitive conglomerate effects, for example through bundling of products or a reduction of interoperability post-Transaction, as Adobe’s market position is very strong in the areas of photo editing, vector graphics editing and video editing. Based on estimates by the Parties, Adobe’s market shares amount to between [40-50%] and [80-90%], depending on the market. This market position could be further strengthened to a significant extent by the Transaction.
- (42) The Commission considers *prima facie*, and based on the initial information provided to it, that there is a risk that the Transaction could lead to anticompetitive conglomerate effects across the EEA.
- (43) *First*, even though Adobe states its intention to continue offering Figma’s tools both on a standalone basis and as part of a broader entitlement to Adobe’s “Creative Cloud” applications¹⁷, considering Adobe’s strong market position in photo, vector graphics and video editing, it may have the ability and incentive to engage in anticompetitive bundling of Figma’s interactive product design tools with Adobe’s offering, to further strengthen its market position in creative software markets.
- (44) *Second*, Adobe may also have the ability and incentive to reduce interoperability with third-party tools post-Transaction, to foreclose (i) rival interactive product design tools or (ii) competing offerings of photo editing, vector graphics editing, video editing and/or other creative tools to further strengthen its already very strong position in these markets.
- (45) **Conclusion.** In light of the foregoing, the Commission considers, without prejudice to the outcome of its investigation, that the Transaction threatens to significantly affect competition across the EEA and, therefore, within the territory of the Member State joining the Referral Request. For this reason, the second condition of Article 22(1) EUMR appears to be met.

¹⁷ The Parties cite as one of the reasons for the high transaction value the expected synergies from, among other things, [...] and [...].

5. APPROPRIATENESS OF THE REFERRAL

- (46) Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at EU level.
- (47) The first category of cases normally most appropriate for referral under Article 22 of the Merger Regulation are those “*which give rise to serious competition concerns in one or more markets which are wider than national in geographic scope, or where some of the potentially affected markets are wider than national, and where the main economic impact of the concentration is connected to such markets*”.¹⁸ The second category of cases normally most appropriate for referral under Article 22 of the Merger Regulation are cases “*which give rise to serious competition concerns in a series of national or narrower than national markets located in a number of Member States, in circumstances where coherent treatment of the case (regarding possible remedies, but also, in appropriate cases, the investigative efforts as such) is considered desirable, and where the main economic impact of the concentration is connected to such markets*”.¹⁹
- (48) In the present case, the Transaction threatens to significantly affect competition in (at least) the potential market for interactive product design or potential sub-segments therein. Taking into account such potential impact on competition, the Commission considers that the referral of the case pursuant to Article 22 of the Merger Regulation would be appropriate for the following reasons.
- (49) *First*, as aforementioned, based on the Commission’s previous decisional practice and the information provided by the Parties, it appears likely that the potential market (and potential sub-segments) or other relevant markets impacted by this Transaction would have at least an EEA-wide geographic scope.
- (50) *Second*, any effect of the Transaction in the potential market for interactive product design (and potential sub-segments) or other relevant markets impacted by the Transaction, would not be limited to Austria but would extend to the Joining NCAs and other neighbouring countries.
- (51) Therefore, the Commission preliminarily considers that the Transaction falls under the first category of cases referred to in paragraph 45 of the Referral Notice.
- (52) Finally, the Commission notes that in addition to Austria, thirteen other Member States, and two EFTA States have joined the Referral Request and have raised concerns about the potential problematic nature of the effects of the Transaction. In this context, a review of the Transaction by the Commission may ensure a consistent assessment of the issues at stake.
- (53) Therefore, the Transaction is an appropriate one for referral to the Commission pursuant to Article 22 of the Merger Regulation.

¹⁸ Referral Notice, paragraph 45.

¹⁹ Referral Notice, paragraph 45.

6. CONCLUSION

- (54) For the above mentioned reasons, the Commission has decided to examine the Transaction. This decision is based on Article 22(3) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President