

UK's CMA to hear more views on Microsoft's Activision Blizzard deal

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The UK competition watchdog has said it will decide whether to clear or block Microsoft's \$69bn (£54bn) takeover of the video game developer Activision Blizzard by 29 August, as it gave fresh hope for the transaction by opening a new consultation on it. The Competition and Markets Authority, which had originally said in April it would block the deal to take over the owner of hit titles such as Call of Duty, World of Warcraft and Candy Crush, is seeking public contributions on whether it should clear it after a new submission from Microsoft. Instead of offering further concessions, Microsoft is arguing that the EU's decision in May to clear the deal, as well as a recent games licensing deal with arch-rival Sony, represents a fundamental change to the circumstances around the transaction and there are now "special reasons" for not blocking it. "Microsoft considers that it is clear that there are material changes in circumstance and special reasons under [the Enterprise Act] which mean that the CMA should not adopt the draft order prohibiting the merger," said Microsoft in its submission. The Enterprise Act contains a provision that allows the CMA to alter its final order – which in this case was heading towards a block – if there has been a "material change in circumstances" since it reached its published decision. "I'm not sure these were the sort of material circumstances originally envisaged when the act was put together, but there is nonetheless a live issue as to whether they are 'material' enough to justify a complete about turn by the CMA," said Alex Haffner, a partner at the UK law firm Fladgate. However, Haffner said he expected the CMA and Microsoft to agree new remedies in order to get the deal over the line. Microsoft said in its submission it was in the "advanced stages of putting forward a proposal to modify" the deal. The CMA decided to hold a consultation on Microsoft's new argument after guidance from the Competition Appeal Tribunal, an official body that hears appeals on the watchdog's decisions. A CMA spokesperson said: "Microsoft has submitted a document detailing why it believes there are material changes of circumstance and/or special reasons why the CMA should not impose a final order to prohibit the merger. "Submissions of this nature are possible but are very rare. We will consider Microsoft's submissions carefully, along with other responses from interested parties, ahead of the 29 August statutory deadline." The CMA's core objection to the Xbox owner's takeover of a leading video game publisher has been that it would affect competition in the market for cloud gaming, which allows users to stream games stored on remote servers on to their devices. In arguments published on Monday, Microsoft said it had already improved competition in the cloud gaming market by striking agreements with the cloud gaming services Nvidia, Boosteroid and Ubitus, allowing them to license Activision games for a decade after the deal is completed. Microsoft also said any breach of its commitments would mean European approval would no longer be valid and put it at risk of fines of up to 10% of its worldwide turnover, which would amount to \$19.8bn if based on its 2022 turnover. Its deal with Sony to keep Call of Duty on its rival PlayStation console

for a decade was also significant in terms of the impact of the Activision deal and “addresses the primary concern of the most outspoken opponent of the merger”, Microsoft said. The CMA called for anyone wishing to comment on the new version of Microsoft’s takeover to do so by 4 August. The CMA’s US equivalent, the Federal Trade Commission, is seeking to block the deal but failed recently in a bid to secure an injunction against the transaction.