SONY INTERACTIVE ENTERTAINMENT'S ACQUISITION OF BUNGIE

BRIEFING PAPER TO THE COMPETITION AND MARKETS AUTHORITY

CONFIDENTIAL
CONTAINS BUSINESS SECRETS

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Briefing Paper to the Competition and Markets Authority

Sony Interactive Entertainment LLC's Anticipated Acquisition of Bungie, Inc.

1. On 31 January 2022, Sony Interactive Entertainment LLC ("SIE") entered into a binding agreement to acquire Bungie, Inc. ("Bungie", together with SIE, the "Parties") for approximately $3.6 billion (£2.8 billion) (the "Transaction").[1]

2. The Transaction is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), but, based on currently available information, it is not expected to be notified in any other jurisdiction. Closing is expected to take place in Q2 2022.

3. This Briefing Paper explains why the Transaction is not a relevant merger situation for the purposes of the Enterprise Act 2002 (the "Act") and why there is no reason for the CMA to open an investigation.[2]

I. THE PARTIES

4. **SIE** is a video game and digital entertainment company headquartered in the United States and wholly owned by the Sony Group Corporation. SIE develops, produces, and sells PlayStation consoles, accessories, and services. It also develops and publishes video games. Further information is available at: https://www.sie.com/en.

5. **Bungie** is a video game developer and publisher headquartered in the United States. [redacted].[3] [redacted] Further information is available at: https://www.bungie.net/en/.

II. OVERVIEW

6. The Transaction does not meet the jurisdictional thresholds in section 23 of the Act:

   (i) [redacted]; and

   (ii) As explained below, although the Parties both develop and publish video games, the 25% share of supply test is not met because the Parties together account for [redacted] of total revenues generated from such activities in the UK.

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1 *See* https://www.sony.com/en/SonyInfo/IR/news/20220131_E.pdf.

2 This Briefing Paper contains business secrets that are protected from disclosure under Part 9 of the Act. Confidential information has been designated as follows: Confidential to SIE. Confidential to Bungie. Confidential to both.

3 Bungie also supports *Destiny*, the original title in the franchise [redacted].

III. TRANSACTION RATIONALE

7. [redacted][4]

IV. RELEVANT MARKETS

8. To SIE's best knowledge, the CMA has not previously assessed a transaction in the video gaming sector. In 2021, however, the European Commission ("Commission") examined, and unconditionally approved, Microsoft's acquisition of ZeniMax, a video game publisher.[5] For the purposes of this submission, SIE has taken account of the findings and analytical framework set out in that decision.

9. **Product Market Definition.** The Commission identified two principal activities:

   (i) Developing and publishing video games that are played on hardware (*e.g.*, consoles, PCs, and mobile devices) ("video games publishing"); and

   (ii) Distributing video games in physical form through "bricks and mortar" retailers or digital channels (*e.g.*, digital stores, app stores, and subscription services) for use on consoles, PCs, and mobile devices (together, "video games distribution").

10. The Commission considered whether either area should be segmented, but left the question open, having identified a number of reasons for not doing so,[6] including:

   (i) Different genres of games (*e.g.*, sport, action-adventure) may compete with each other to a greater or lesser extent.

   (ii) Video games released in digital and physical form are generally considered interchangeable by consumers.

   (iii) Video games used on different hardware are generally substitutable from the perspective of publishers (games are typically designed for and released on different hardware), distributors (the same code is used to distribute games across different hardware), and players (most consumers access games from multiple

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4 In the past, video games were typically stand-alone products sold in physical form that had defined endings, limited play times, linear progressions, and could be played by one gamer at any time on a single platform ("Games-as-a-Product" or "GaaP"). The GaaS model involves "live" games that evolve, contain changing and evolving content, are available on multiple platforms, and may be played and/or watched by multiple gamers at the same time, and are ordinarily not distributed on physical media. By contrast with the traditional video game model, for which consumers pay once for a specific game, the GaaS model is a new way of marketing and monetizing games. The GaaS model allows games to be available free or for a fee, and permits consumers to purchase add-on content, to play differently, or to play more often. *See, e.g.*, https://www.innovecsgames.com/blog/games-as-a-service-model/. From a player's standpoint, GaaP and GaaS are interchangeable.

5 Case M.10001 – *Microsoft/ZeniMax*, Commission decision of March 5, 2021.

6 *Microsoft/ZeniMax*, paras. 9-21, 29-42.

devices with <10% of gamers identifying themselves as exclusively console users[7]).

11. SIE considers that the CMA need not reach a view on the scope of the relevant market given the absence of any issue under any plausible market definition.

12. **Geographic Market Definition.** The Commission examined each area of activity on an EEA-wide or global basis.[8] For the purposes of this submission, SIE has endeavoured to provide UK data.

V. THE PARTIES' ACTIVITIES

13. **Video Games Publishing.** SIE and Bungie are both active in video games publishing. They compete with >2,000 video games publishers globally. Total global sales of video game are estimated to have amounted to around $180 billion in 2021.[9] UK sales of video games amounted to around £4.2 billion in 2021.[10]

14. To SIE's best knowledge, there are no reliable public sources of market share data for video game publishing, including because certain publishers (including Bungie and Epic Games, the publisher of *Fortnite*) do not report their sales publicly. SIE estimates that, in 2021, video games published by it and Bungie together accounted for [redacted] of video game sales on a worldwide[11] and UK basis.[12]

15. According to GamesIndustry.biz, a leading independent source of information about the video games industry, the best-selling video games in the UK in 2021 were *FIFA* (Electronic Arts), *Call of Duty* (Activision Blizzard), and *Grand Theft Auto* (Take Two). The only SIE game to feature among GamesIndustry.biz's list of the UK's 25 best-selling games in 2021 was *Spider-Man: Miles Morales*.[13] *Destiny 2* did not feature among GamesIndustry.biz's list of best-selling UK games in 2021.

16. SIE does not consider it necessary for purposes of this submission to consider different genres of games. In any event, SIE and Bungie do not compete to any material extent in any genre. SIE focuses mainly on producing action-adventure games, such as *The*

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7 *See* https://www.extremetech.com/gaming/314009-3-billion-people-worldwide-are-gamers-and-nearly-half-play-on-pcs.

8 *Microsoft/ZeniMax*, paras. 22-28, 43-51.

9 *See* https://newzoo.com/insights/articles/the-games-market-in-2021-the-year-in-numbers-esports-cloud-gaming/.

10 *See* https://www.gamesindustry.biz/articles/2022-01-06-uk-games-market-down-3-3-percent-in-2021.

11 This estimate is based on total global revenues of [redacted], as noted above, and SIE's and Bungie's 2021 worldwide video game revenues [redacted], respectively.

12 This estimate is based on total UK revenues of [redacted], as noted above, and SIE's and Bungie's 2021 UK video game revenues [redacted], respectively.

13 *See* https://www.gamesindustry.biz/articles/2022-01-18-36-million-games-and-3-4-million-consoles-sold-in-the-uk-in-2021-uk-annual-report.

Last of Us Part II, *Spider-Man: Miles Morales*, and *Ghost of Tsushima*, while Bungie's only game, *Destiny 2*, is a first-person shooter ("FPS") game.[14]

17. SIE estimates that *Destiny 2* accounted for [redacted] of UK sales of FPS games in 2021.[15] SIE currently has no leading FPS game. A decade ago, SIE published two FPS games (*Killzone Shadow Fall* (2013) and *Resistance 3* (2011)), neither of which was successful.[16] By some distance, the leading FPS franchise in the UK is *Call of Duty*,[17] published by Activision Blizzard, which Microsoft announced its intention to acquire for $68.7 billion (£53.5 billion) on 18 January 2022.[18]

18. **Video Games Distribution**. SIE is primarily active in video games distribution through the PlayStation Store, the exclusive digital storefront on PlayStation consoles.[19] The PlayStation Store makes games available for free, for an upfront payment, and/or on a subscription model through PlayStation Now and PlayStation Plus. The PlayStation Store sells thousands of games, the great majority of which are developed by third-party publishers. In 2021, games published by SIE accounted [redacted] of games sold through the PlayStation Store in the UK.[20]

19. PlayStation Store competes with numerous digital storefronts, including those operated by Nintendo and Microsoft, online retailers (such as Steam, Epic, and Battle.net), subscription services, mobile app stores and gaming platforms (such as those operated by Google, Amazon, and Facebook), and physical retailers.

20. Bungie does not own or operate a digital storefront in the UK or elsewhere. *Destiny 2* is distributed through third-party storefronts.

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14 FPS games are ones in which the player aims and shoots at targets, seeing graphics from the viewpoint of the character they are controlling.

15 FPS games are estimated to account for [redacted] total video game revenues (*see* https://www.gamesindustry.biz/articles/2021-01-08-43-million-games-sold-in-the-uk-in-2020-uk-annual-report). On this basis, UK sales of FPS games amounted to [redacted], of which Bungie's 2021 UK revenues amounted to [redacted]

16 2021 UK revenues generated by these games were *de minimis* (c. £[redacted] million).

17 The leading titles in the franchise are currently *Call of Duty: Black Ops Cold War*, *Call of Duty: Modern Warfare* and *Call of Duty: Vanguard*.

18 *See* https://news.microsoft.com/2022/01/18/microsoft-to-acquire-activision-blizzard-to-bring-the-joy-and-community-of-gaming-to-everyone-across-every-device/.

19 Based on IDG data, PlayStation accounted for c. 34% of UK sales of consoles in 2020. Its principal rivals were Microsoft's Xbox console (22%) and Nintendo's Switch console (43%). In 2021, following the November 2020 release of the PlayStation 5 console, PlayStation's share rose to c. 49%, followed by Microsoft's Xbox console (29%) and Nintendo's Switch console (22%).

20 In 2021, SIE's highest grossing franchise on PlayStation in the UK was [redacted] which generated [redacted] in revenues and was the [redacted] best-selling game sold through the PlayStation Store, behind titles released by third-party publishers, [redacted]. The three highest grossing games franchises sold through PlayStation Store in the UK each generated revenues [redacted].

VI. NO REALISTIC PROSPECT OF AN SLC

21. Even were the Transaction to constitute a relevant merger situation (which, as explained above, it does not), there is no prospect of it substantially lessening competition.

22. **No Horizontal Issues.** The Transaction gives rise to only a small horizontal overlap in video game publishing, where the Parties together account for [redacted] of UK video game revenues. As explained above, the Parties focus on different genres of games. Post-Transaction, SIE will continue to compete with many rivals, including Electronic Arts, Microsoft, Activision Blizzard, Take Two, Ubisoft, Epic, Nintendo, and Square Enix.

23. **No Vertical Issues.** No concern will arise from the vertical relationship between Bungie's video game publishing activities and SIE's PlayStation Store for the reasons set out below.

    (i) **Customer foreclosure** (*i.e.*, foreclosing rival publishers of video games from access to PlayStation Store) may be excluded for two principal reasons:

        a. **PlayStation Store is not an indispensable distribution channel for video game publishers**, which will continue to have many alternative distribution channels, including rival digital storefronts, subscription services, app stores, and physical retailers.

        b. **It would be self-defeating for SIE to restrict the content available through PlayStation Store to SIE/Bungie video games**, as [redacted] of PlayStation Store revenues relate to sales of third-party games. SIE would therefore forego very significant revenues from third-party games sold through the PlayStation Store should it sell only its and Bungie's games.

    (ii) **Input foreclosure** (*i.e.*, foreclosing rival distributors of video games from access to Bungie's video games) may be excluded for two principal reasons:

        a. ***Destiny 2* is not indispensable**. *Destiny 2* accounts for [redacted] of UK video game sales and competes with hundreds of rival titles.

        b. **Making *Destiny 2* exclusive to PlayStation would result in a significant loss in revenue**, as [redacted] of *Destiny 2*'s revenues are generated through channels other than PlayStation. Limiting *Destiny 2*'s distribution to PlayStation would also [redacted]. [redacted] SIE has announced its intention that *Destiny 2* should remain available through multiple platforms and media.[21]

VII. CONCLUSION

24. The Transaction does not constitute a relevant merger situation in the UK as neither the turnover test nor the "share of supply" test are met. In any event, it would not give rise

[21] *See* https://www.sony.com/en/SonyInfo/IR/news/20220131_E.pdf.

to an SLC on any UK market and does not merit further investigation. SIE nevertheless stands ready to provide any relevant information or respond to any question.

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