

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:

Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-6399

Respondent

ORDER RELATING TO  
MICROSOFT CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Microsoft Corporation, of Redmond, Washington (“Microsoft”), of its intention to initiate an administrative proceeding pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> through the issuance of a Proposed Charging Letter that alleges, through the actions of its subsidiary Microsoft Rus LLC (“Microsoft Russia”), seven violations of the Regulations.<sup>2</sup> Specifically:

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2022). The charged violations occurred in 2016-2017. The Regulations governing the violations at issue are found in the 2016-2017 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2022 Regulations set forth the procedures that apply to this matter.

### **Charges 1-7 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On seven occasions between on or about December 28, 2016 and on or about December 22, 2017, employees of Microsoft Russia facilitated the sale and/or transfer of items subject to the Regulations with knowledge or reason to know that a violation of the Regulations was intended or about to occur in connection with the items.<sup>3</sup> Specifically, employees of Microsoft Russia caused Microsoft Ireland Operations Limited (“MIOL”) to enter into or sell software licensing agreements with knowledge or reason to know that the transactions would allow the transfer or access to software subject to the EAR<sup>4</sup> by United Shipbuilding Corporation Joint Stock Company (“United Shipbuilding Corporation”) and FAU ‘Glavosekspertiza Rossii’ without the required U.S. Government authorization.

United Shipbuilding Corporation was added to the Entity List, which is set forth in Supplement 4 to Part 744 of the Regulations, on August 6, 2014, for acting contrary to the national security or foreign policy interests of the United States.<sup>5</sup> Per the U.S. Department of State, United Shipbuilding Corporation “is responsible for developing and building the Russian Navy’s warships as a part of implementing Russia’s state defense order and produces a wide range of military vessels, including submarines, frigates, and mine sweepers, among others.”<sup>6</sup>

Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a license was required to export, reexport, or transfer (in-country) any item subject to the

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<sup>3</sup> Section 736.2(b)(10) of the EAR provides:

**General Prohibition Ten - Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).** You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

(Emphasis in original).

<sup>4</sup> The software at issue was classified under Export Control Classification Number 5D992.c, which is controlled for anti-terrorism reasons, and designated EAR99.

<sup>5</sup> 79 Fed. Reg. 45,675 (Aug. 6, 2014). The *Federal Register* notice in part describes United Shipbuilding Corporation as “a Russian state-owned company that manufactures, among other things, ordnance and accessories, and is engaged in shipbuilding, repair, and maintenance.”

<sup>6</sup> <https://www.state.gov/additional-state-department-designations-targeting-russian-state-owned-defense-shipbuilding-enterprise/>

Regulations to United Shipbuilding Corporation, including the software at issue. No license exceptions were available and license applications to export, reexport, or transfer (in-country) to United Shipbuilding Corporation were subject to a license review policy of a presumption of denial.

FAU 'Glavgosekspertiza Rossii' was added to the Entity List, which is set forth in Supplement No. 4 to Part 744 of the Regulations, on September 9, 2016, for acting contrary to the national security or foreign policy interests of the United States.<sup>7</sup> FAU 'Glavgosekspertiza Rossii' "is a Russian federal institution authorized to conduct official examinations of project documentation for significant construction works in Russian Federation territory. In 2015, after Russia's occupation and attempted annexation of the Crimean Peninsula, FAU 'Glavgosekspertiza Rossii' opened a branch in the city of Sevastopol and reviewed project documentation for the Kerch Bridge" [referring to a bridge Russia started building in 2016 to better incorporate Crimea into Russia].<sup>8</sup>

Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a license was required to export, reexport, or transfer (in-country) any item subject to the Regulations to FAU 'Glavgosekspertiza Rossii', including the software at issue. No license exceptions were available and license applications to export, reexport, or transfer (in-country) to FAU 'Glavgosekspertiza Rossii' were subject to a license review policy of a presumption of denial.<sup>9</sup>

Amid the addition of sanctions and export controls being placed on the United Shipbuilding Corporation and FAU 'Glavgosekspertiza Rossii', certain Russia-based employees of Microsoft Russia had explicit email communications, both internal and/or with third party distributors, concerning the now prohibited end-users' access to Microsoft software. They discussed circumventing restrictions on these parties by facilitating sales to affiliates of these parties that were not on the Entity List. In order to conceal the continued use and access to software by prohibited parties, in the case of United Shipbuilding, an increased number of licenses were added under the affiliates' enterprise agreements; and in the case of FAU 'Glavgosekspertiza Rossii', licenses were ordered through one of Microsoft's Open sales programs in the names of parties not on the Entity List. The Microsoft Russia employees' objective was to allow these additional licenses to be used or accessed by United Shipbuilding Corporation and FAU 'Glavgosekspertiza Rossii' in circumvention of the company's sanctions and export controls policies and procedures. That use or access was in violation of the EAR.

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<sup>7</sup> 81 Fed. Reg. 61,595 (Sept. 7, 2016). Modified via 82 Fed. Reg. 2,887 (Jan. 10, 2017).

<sup>8</sup> <https://home.treasury.gov/news/press-releases/j15048>.

<sup>9</sup> On January 10, 2017, FAU 'Glavgosekspertiza Rossii's Entity Listing was modified to exclude from the licensing requirement "items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 11 of December 20, 2016." 82 Fed. Reg. 2,887. This modification was not pertinent to the facts or transactions alleged herein.

No U.S. Government authorization had been sought or obtained in connection with these transactions. By engaging in the above-described conduct, Microsoft Russia committed seven violations of Section 764.2(e) of the Regulations.

WHEREAS, I have taken into consideration the Settlement Agreement between Microsoft and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC Settlement Agreement");

WHEREAS, BIS and Microsoft have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

WHEREAS, Microsoft admits that its subsidiary, Microsoft Russia, committed the alleged conduct described in the Proposed Charging Letter; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, Microsoft shall be assessed a civil penalty in the amount of \$624,013. Payment of \$347,631 shall be made to the U.S. Department of Commerce within 30 days of the date of this Order. Payment of the remaining \$276,382 shall be suspended until Microsoft makes payment of the OFAC civil penalty pursuant to the terms of the OFAC Settlement Agreement, and thereafter shall be credited towards the total \$624,013 penalty amount. If Microsoft fails to pay the OFAC civil penalty, then the suspension shall be revoked and the full amount of the suspended penalty shall be imposed and become immediately due.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the

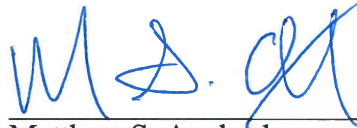
due date specified herein, Microsoft will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, compliance with the terms of the Settlement Agreement and the Order, including the full and timely payment of the civil penalty, and compliance with the OFAC Settlement Agreement, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Microsoft.

FOURTH, Microsoft shall comply with all of the terms in the above-referenced OFAC Settlement Agreement.

FIFTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Matthew S. Axelrod  
Assistant Secretary of Commerce  
for Export Enforcement

Issued this 6<sup>th</sup> day of April, 2023.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:

Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-6399

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Microsoft Corporation, of Redmond, Washington, (“Microsoft”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”).<sup>1</sup>

WHEREAS, Microsoft filed a voluntary self-disclosure with BIS’s Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

WHEREAS, BIS has notified Microsoft of its intentions to initiate an administrative proceeding pursuant to the Regulations;<sup>2</sup>

WHEREAS, BIS has issued a Proposed Charging Letter to Microsoft that alleges, through the actions of its subsidiary Microsoft Rus LLC (“Microsoft Russia”), seven violations of the Regulations, specifically:

**Charges 1-7 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On seven occasions between on or about December 28, 2016 and on or about December 22, 2017, employees of Microsoft Russia facilitated the sale and/or transfer of items subject to the Regulations with knowledge or reason to know that a violation of the Regulations was intended or about to occur in connection with the items.<sup>3</sup> Specifically, employees of Microsoft Russia caused Microsoft Ireland Operations Limited (“MIOL”) to enter into or sell software licensing agreements with knowledge or reason to know that the transactions would allow the transfer or access to software subject to the EAR<sup>4</sup> by United Shipbuilding Corporation Joint Stock Company (“United Shipbuilding Corporation”) and FAU ‘Glavgosekspertiza Rossii’ without the required U.S. Government authorization.

United Shipbuilding Corporation was added to the Entity List, which is set forth in Supplement 4 to Part 744 of the Regulations, on August 6, 2014, for acting contrary to the

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<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2022). The charged violations occurred from 2016 through 2017. The Regulations governing the violations at issue are found in the 2016-2017 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2022 Regulations set forth the procedures that apply to this matter.

<sup>3</sup> Section 736.2(b)(10) of the EAR provides:

**General Prohibition Ten - Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).** You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

(Emphasis in original).

<sup>4</sup> The software at issue was classified under Export Control Classification Number 5D992.c, which is controlled for anti-terrorism reasons, and designated EAR99.

national security or foreign policy interests of the United States.<sup>5</sup> Per the U.S. Department of State, United Shipbuilding Corporation “is responsible for developing and building the Russian Navy’s warships as a part of implementing Russia’s state defense order and produces a wide range of military vessels, including submarines, frigates, and mine sweepers, among others.”<sup>6</sup>

Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a license was required to export, reexport, or transfer (in-country) any item subject to the Regulations to United Shipbuilding Corporation, including the software at issue. No license exceptions were available and license applications to export, reexport, or transfer (in-country) to United Shipbuilding Corporation were subject to a license review policy of a presumption of denial.

FAU ‘Glavgosekspertiza Rossii’ was added to the Entity List, which is set forth in Supplement No. 4 to Part 744 of the Regulations, on September 9, 2016, for acting contrary to the national security or foreign policy interests of the United States.<sup>7</sup> FAU ‘Glavgosekspertiza Rossii’ “is a Russian federal institution authorized to conduct official examinations of project documentation for significant construction works in Russian Federation territory. In 2015, after Russia’s occupation and attempted annexation of the Crimean Peninsula, FAU ‘Glavgosekspertiza Rossii’ opened a branch in the city of Sevastopol and reviewed project documentation for the Kerch Bridge” [referring to a bridge Russia started building in 2016 to better incorporate Crimea into Russia].<sup>8</sup>

Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a license was required to export, reexport, or transfer (in-country) any item subject to the Regulations to FAU ‘Glavgosekspertiza Rossii’, including the software at issue. No license exceptions were available and license applications to export, reexport, or transfer (in-country) to FAU ‘Glavgosekspertiza Rossii’ were subject to a license review policy of a presumption of denial.<sup>9</sup>

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<sup>5</sup> 79 Fed. Reg. 45,675 (Aug. 6, 2014). The *Federal Register* notice in part describes United Shipbuilding Corporation as “a Russian state-owned company that manufactures, among other things, ordnance and accessories, and is engaged in shipbuilding, repair, and maintenance.”

<sup>6</sup> <https://www.state.gov/additional-state-department-designations-targeting-russian-state-owned-defense-shipbuilding-enterprise/>

<sup>7</sup> 81 Fed. Reg. 61,595 (Sept. 7, 2016). Modified via 82 Fed. Reg. 2,887 (Jan. 10, 2017).

<sup>8</sup> <https://home.treasury.gov/news/press-releases/j15048>.

<sup>9</sup> On January 10, 2017, FAU 'Glavgosekspertiza Rossii's Entity Listing was modified to exclude from the licensing requirement “items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 11 of December 20, 2016.” 82 Fed. Reg. 2,887. This modification was not pertinent to the facts or transactions alleged herein.



Amid the addition of sanctions and export controls being placed on the United Shipbuilding Corporation and FAU 'Glavgosekspertiza Rossii', certain Russia-based employees of Microsoft Russia had explicit email communications, both internal and/or with third party distributors, concerning the now prohibited end-users' access to Microsoft software. They discussed circumventing restrictions on these parties by facilitating sales to affiliates of these parties that were not on the Entity List. In order to conceal the continued use and access to software by prohibited parties, in the case of United Shipbuilding, an increased number of licenses were added under the affiliates' enterprise agreements; and in the case of FAU 'Glavgosekspertiza Rossii', licenses were ordered through one of Microsoft's Open sales programs in the names of parties not on the Entity List. The Microsoft Russia employees' objective was to allow these additional licenses to be used or accessed by United Shipbuilding Corporation and FAU 'Glavgosekspertiza Rossii' in circumvention of the company's sanctions and export controls policies and procedures. That use or access was in violation of the EAR.

No U.S. Government authorization had been sought or obtained in connection with these transactions. By engaging in the above-described conduct, Microsoft Russia committed seven violations of Section 764.2(e) of the Regulations.

WHEREAS, Microsoft has reviewed, with the assistance of counsel, the terms of this Agreement, the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter, and the Proposed Charging Letter, and understands the terms of all three documents;

WHEREAS, Microsoft enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, the Parties enter into this Agreement having taken into consideration the settlement agreement entered between Microsoft and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC Settlement Agreement");

WHEREAS, Microsoft states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Microsoft admits its subsidiary, Microsoft Russia, committed the alleged conduct described in the Proposed Charging Letter; and

WHEREAS, Microsoft agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Microsoft and Microsoft Russia, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against Microsoft:
  - a. FIRST, Microsoft shall be assessed a civil penalty in the amount of \$624,013. Payment of \$347,631 shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment of the remaining \$276,382 shall be suspended until Microsoft makes payment of the OFAC civil penalty pursuant to the terms of the OFAC Settlement Agreement, and thereafter shall be credited towards the total \$624,013 penalty amount due under this agreement. If Microsoft fails to pay the OFAC civil penalty, then the suspension shall be revoked and the full amount of the suspended penalty shall be imposed and become immediately due under this agreement.
  - b. Compliance with the terms of this Agreement and the Order, including the full and timely payment of the civil penalty agreed to in Paragraph 2.a, above, and compliance with the terms of the OFAC Settlement Agreement are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Microsoft.

3. Subject to the approval of this Agreement pursuant to Paragraph 7 hereof, Microsoft hereby waives all rights to further procedural steps in this matter, including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Microsoft also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date Microsoft pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement, or has fulfilled its obligations under the OFAC Settlement Agreement.

4. BIS agrees that upon successful compliance in full with the terms of this Agreement and the Order, if issued, BIS will not initiate any further administrative proceeding against Microsoft in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

5. Microsoft shall comply with all of the terms in the OFAC Settlement Agreement.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties

shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

10. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND  
SECURITY  
U.S. DEPARTMENT OF COMMERCE



John Sonderman  
Director of Export Enforcement

MICROSOFT CORPORATION

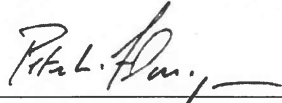


Everson Ferraz Ascencio  
Senior Director-Trade

Date: 4/6/2023

Date: 03-21-2023

Reviewed and approved by:



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Peter Flanagan, Esq.  
Covington & Burling LLP  
Counsel for Microsoft

Date: March 21, 2023

PROPOSED CHARGING LETTER

U.S. CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-6399

*Attention: Mr. Everson Ferraz Ascencio  
Senior Director-Trade*

Dear Mr. Ascencio:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Microsoft Corporation of Redmond, Washington (“Microsoft”), through actions of its subsidiary Microsoft Rus LLC (“Microsoft Russia”), is responsible for seven violations of the Export Administration Regulations (the “Regulations”).<sup>1</sup> Specifically, BIS alleges the following violations:<sup>2</sup>

**Charges 1-7 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

As described in further detail in the attached Schedule of Violations, which is incorporated herein by reference, on seven occasions between on or about December 28, 2016 and on or about December 22, 2017, employees of Microsoft Russia facilitated the sale and/or transfer of items subject to the Regulations with knowledge or reason to know that a violation of the Regulations was intended or about to occur in connection with the

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), has continued the Regulations in full force and effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2022). The violations alleged occurred in 2016-2017. The Regulations governing the violation at issue are found in the 2016-2017 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2016-2017). The 2022 Regulations set forth the procedures that apply to this matter.

items.<sup>3</sup> Specifically, employees of Microsoft Russia caused Microsoft Ireland Operations Limited (“MIOL”) to enter into or sell software licensing agreements with knowledge or reason to know that the transactions would allow the transfer or access to software subject to the EAR<sup>4</sup> by United Shipbuilding Corporation Joint Stock Company (“United Shipbuilding Corporation”) and FAU ‘Glavgosekspertiza Rossii’ without the required U.S. Government authorization.

United Shipbuilding Corporation was added to the Entity List, which is set forth in Supplement 4 to Part 744 of the Regulations, on August 6, 2014, for acting contrary to the national security or foreign policy interests of the United States.<sup>5</sup> Per the U.S. Department of State, United Shipbuilding Corporation “is responsible for developing and building the Russian Navy’s warships as a part of implementing Russia’s state defense order and produces a wide range of military vessels, including submarines, frigates, and mine sweepers, among others.”<sup>6</sup>

Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a license was required to export, reexport, or transfer (in-country) any item subject to the Regulations to United Shipbuilding Corporation, including the software at issue. No license exceptions were available and license applications to export, reexport, or transfer (in-country) to United Shipbuilding Corporation were subject to a license review policy of a presumption of denial.

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<sup>3</sup> Section 736.2(b)(10) of the EAR provides:

**General Prohibition Ten - Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).** You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

(Emphasis in original).

<sup>4</sup> The software at issue was classified under Export Control Classification Number 5D992.c, which is controlled for anti-terrorism reasons, and designated EAR99.

<sup>5</sup> 79 Fed. Reg. 45,675 (Aug. 6, 2014). The *Federal Register* notice in part describes United Shipbuilding Corporation as “a Russian state-owned company that manufactures, among other things, ordnance and accessories, and is engaged in shipbuilding, repair, and maintenance.”

<sup>6</sup> <https://www.state.gov/additional-state-department-designations-targeting-russian-state-owned-defense-shipbuilding-enterprise/>

FAU 'Glavgosekspertiza Rossii' was added to the Entity List, which is set forth in Supplement No. 4 to Part 744 of the Regulations, on September 9, 2016, for acting contrary to the national security or foreign policy interests of the United States.<sup>7</sup> FAU 'Glavgosekspertiza Rossii' "is a Russian federal institution authorized to conduct official examinations of project documentation for significant construction works in Russian Federation territory. In 2015, after Russia's occupation and attempted annexation of the Crimean Peninsula, FAU 'Glavgosekspertiza Rossii' opened a branch in the city of Sevastopol and reviewed project documentation for the Kerch Bridge" [referring to a bridge Russia started building in 2016 to better incorporate Crimea into Russia].<sup>8</sup>

Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a license was required to export, reexport, or transfer (in-country) any item subject to the Regulations to FAU 'Glavgosekspertiza Rossii', including the software at issue. No license exceptions were available and license applications to export, reexport, or transfer (in-country) to FAU 'Glavgosekspertiza Rossii' were subject to a license review policy of a presumption of denial.<sup>9</sup>

Amid the addition of sanctions and export controls being placed on the United Shipbuilding Corporation and FAU 'Glavgosekspertiza Rossii', certain Russia-based employees of Microsoft Russia had explicit email communications, both internal and/or with third party distributors, concerning the now prohibited end-users' access to Microsoft software. They discussed circumventing restrictions on these parties by facilitating sales to affiliates of these parties that were not on the Entity List. In order to conceal the continued use and access to software by prohibited parties, in the case of United Shipbuilding, an increased number of licenses were added under the affiliates' enterprise agreements; and in the case of FAU 'Glavgosekspertiza Rossii', licenses were ordered through one of Microsoft's Open sales programs in the names of parties not on the Entity List. The Microsoft Russia employees' objective was to allow these additional licenses to be used or accessed by United Shipbuilding Corporation and FAU 'Glavgosekspertiza Rossii' in circumvention of the company's sanctions and export controls policies and procedures. That use or access was in violation of the EAR.

No U.S. Government authorization had been sought or obtained in connection with these transactions. By engaging in the above-described conduct, Microsoft Russia committed seven violations of Section 764.2(e) of the Regulations.

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<sup>7</sup> 81 Fed. Reg. 61,595 (Sept. 7, 2016). Modified via 82 Fed. Reg. 2,887 (Jan. 10, 2017).

<sup>8</sup> <https://home.treasury.gov/news/press-releases/j15048>.

<sup>9</sup> On January 10, 2017, FAU 'Glavgosekspertiza Rossii's Entity Listing was modified to exclude from the licensing requirement "items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 11 of December 20, 2016." 82 Fed. Reg. 2,887. This modification was not pertinent to the facts or transactions alleged herein.



\* \* \* \* \*

Accordingly, Microsoft is hereby notified that an administrative proceeding in relation to the conduct of its subsidiary is instituted pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions,<sup>10</sup> including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$356,579 per violation,<sup>11</sup> or twice the value of the transaction that is the basis of the violation;<sup>12</sup>
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Microsoft fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Microsoft defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Microsoft. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Microsoft is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Microsoft is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Microsoft have a proposal to settle this case, Microsoft should transmit it to the attorney representing BIS named below.

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<sup>10</sup> The alleged violations occurred prior to August 13, 2018, the date of enactment of ECRA. Consequently, the potential sanctions are provided for in IEEPA. In situations involving alleged violations that occurred on or after August 13, 2018, the potential sanctions are specified in Section 1750(c) of ECRA.

<sup>11</sup> *See* 15 C.F.R. §§ 6.3(b)(4), 6.3(b)(6), 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. *See* 88 Fed. Reg. 3, 5 (Jan. 3, 2023) (adjusting for inflation this amount under IEEPA from \$330,947 to \$356,579, effective Jan. 15, 2023). *See also* note 1, *supra*.

<sup>12</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Microsoft is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Microsoft may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>. The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Microsoft's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Microsoft's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Attention: Gregory Michelsen and Rachel Morris  
Room H-3839  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Gregory Michelsen and Rachel Morris are the attorneys representing BIS in this case; any communications that Microsoft may wish to have concerning this matter should occur through them. Mr. Michelsen may be contacted by email at [gmichelsen@doc.gov](mailto:gmichelsen@doc.gov). Ms. Morris may be contacted by email at [rmorris@doc.gov](mailto:rmorris@doc.gov).

Sincerely,

Handwritten signature of John Sonderman, consisting of a stylized 'J' followed by 'S' and 'for'.

John Sonderman  
Director  
Office of Export Enforcement

**SCHEDULE OF VIOLATIONS**

<b><u>Violation</u></b>	<b><u>Date</u></b>	<b><u>Invoice No.</u></b>	<b><u>Entity</u></b>	<b><u>Violation</u></b>
1	12/28/2016	9567902877; 9567903261; 9567903813	FAU 'Glavgosekspertiza Rossii'	15 C.F.R. § 764.2(e)
2	12/29/2016	9825348627; 9825348628	JSC United Shipbuilding Corporation	15 C.F.R. § 764.2(e)
3	12/30/2016	9825352218	JSC United Shipbuilding Corporation	15 C.F.R. § 764.2(e)
4	6/23/2017	9825985399	JSC United Shipbuilding Corporation	15 C.F.R. § 764.2(e)
5	6/29/2017	9826007846	JSC United Shipbuilding Corporation	15 C.F.R. § 764.2(e)
6	6/30/2017	9826013826; 9826013827	JSC United Shipbuilding Corporation	15 C.F.R. § 764.2(e)
7	12/22/2017	9876481534	FAU 'Glavgosekspertiza Rossii'	15 C.F.R. § 764.2(e)