

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**Microsoft Corp.  
a corporation;**

**and**

**Activision Blizzard, Inc.  
a corporation.**

**Docket No. 9412**

**RESPONENT MICROSOFT CORP.'S CONSENT MOTION FOR LEAVE  
TO AMEND ITS ANSWER AND DEFENSES**

In accordance with Federal Trade Commission Rule of Practice 3.15, Respondent Microsoft Corp. (“Microsoft”) brings this Consent Motion for Leave to Amend its Answer and Defenses. Microsoft seeks to withdraw Defenses No. 17 through 22 raised in its Answer filed December 22, 2022. *See Answer and Defenses of Respondent Microsoft Corp. at 34.*

A motion for leave to amend may be granted “whenever determination of a controversy on the merits will be facilitated thereby.” 16 C.F.R. § 3.15(a)(1). Granting this Motion will facilitate a determination on the merits in this proceeding by streamlining the pre-hearing process. Complaint Counsel consents to this amendment, and Microsoft acted promptly in bringing this Motion. The proposed amendment will not cause prejudice to any party, and expediting the resolution of this matter is in the public interest.

Accordingly, Microsoft requests that the Court grant this Motion and permit Microsoft to file the proposed Amended Answer and Defenses, attached as Exhibit B to this Motion, as its operative Answer and Defenses in this matter.

Dated: ~~DOU~~ 3, 202

Respectfully submitted,

By: /s/ Beth Wilkinson

Beth Wilkinson  
Rakesh N. Kilaru  
Kieran Gostin  
Grace L. Hill  
Anastasia M. Pastan  
Sarah E. Neuman  
Wilkinson Stekloff LLP  
2001 M Street NW, 10th Floor  
Washington, DC 20036  
Telephone: (202) 847-4000  
Fax: (202) 847-4005  
bwilkinson@wilkinsonstekloff.com  
rkilaru@wilkinsonstekloff.com  
kgostin@wilkinsonstekloff.com  
ghill@wilkinsonstekloff.com  
apastan@wilkinsonstekloff.com  
sneuman@wilkinsonstekloff.com

Michael Moiseyev  
Megan A. Granger  
Weil Gotshal & Manges LLP  
2001 M Street NW  
Suite 600  
Washington, DC 20036  
(202) 682-7026  
michael.moiseyev@weil.com  
megan.granger@weil.com

*Counsel for Microsoft Corp.*

# **EXHIBIT A**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**Microsoft Corp.  
a corporation;**

**and**

**Activision Blizzard, Inc.  
a corporation.**

**Docket No. 9412**

**[PROPOSED] ORDER GRANTING RESPONDENT MICROSOFT CORP.'S  
CONSENT MOTION FOR LEAVE TO AMEND ITS ANSWER AND DEFENSES**

Respondent Microsoft Corp. has filed a Consent Motion for Leave to Amend its Answer and Defenses. Having considered the Motion, and Complaint Counsel's consent to the Motion, it is hereby ORDERED that the Motion is GRANTED. Respondent Microsoft Corp. may file with the Office of the Secretary of the FTC the public and confidential version of the Amended Answer and Defenses attached as Exhibit B to Respondent's Motion no later than \_\_\_\_\_. This Order shall not affect the date of the prehearing scheduling conference or any other deadlines in this matter.

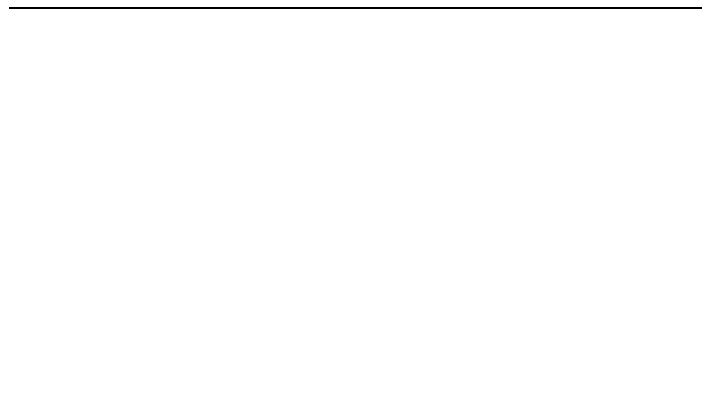
SO ORDERED.

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D. Michael Chappell  
Chief Administrative Law Judge

Date:

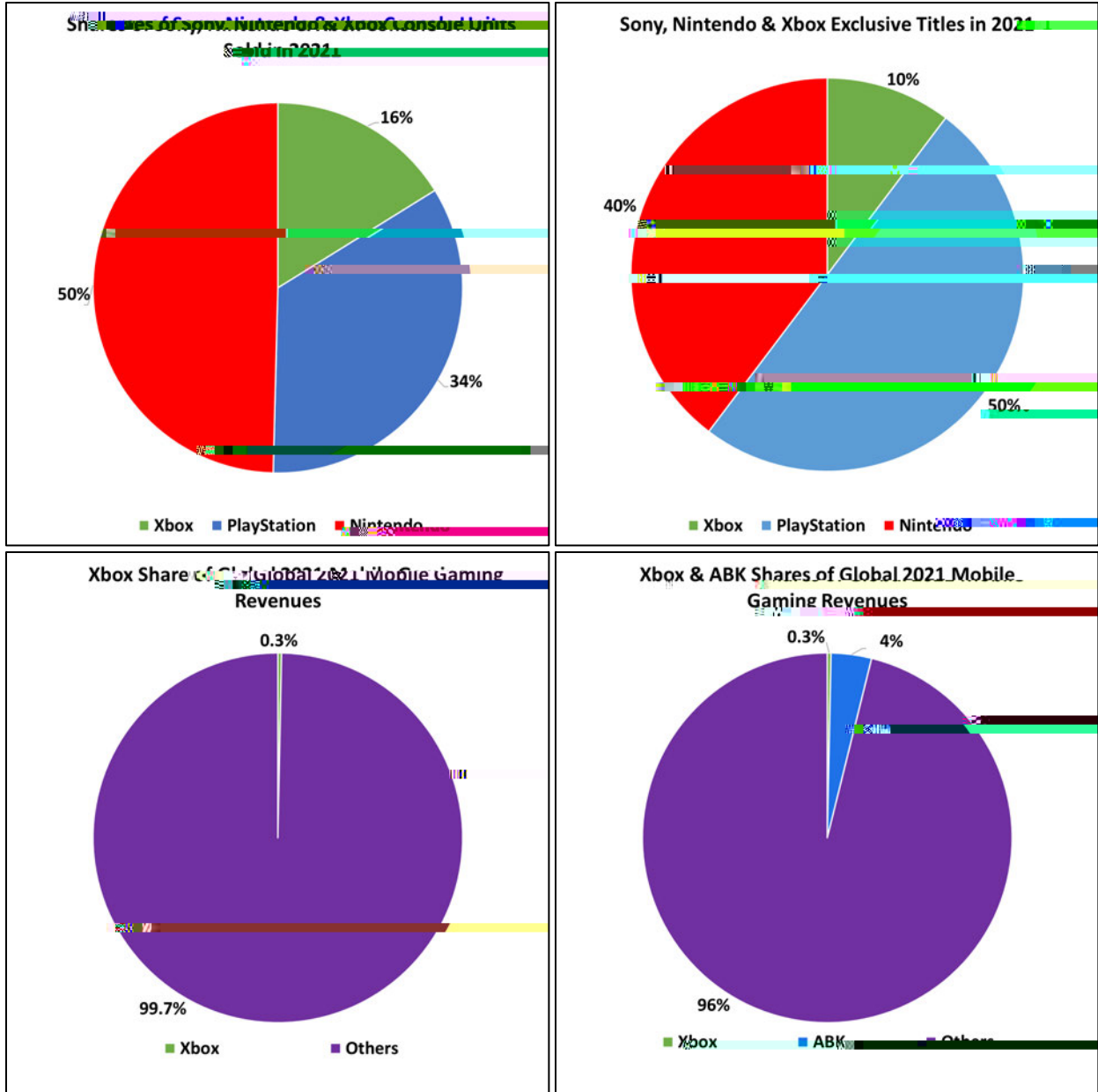
# **EXHIBIT B**











Microsoft is buying Activision to meet the billions of gamers who choose to play on mobile devices instead of a console or PC, and to learn how to make games that appeal to and engage them. Xbox also wants to make Activision’s non-mobile games more broadly available. One way is by continuing to distribute Activision’s games everywhere they currently exist and expanding to additional platforms like Nintendo. Another is by adding new Activision console and PC games

to Xbox's Game Pass subscription service on the day those new games are released, creating new ways to access those games. Activision has never before put its new games immediately in subscription.

Maintaining broad availability of Activision games is both good business and good for gamers. A substantial portion of Activision's financial value to Xbox comes from business as usual, including the continued sale of *Call of Duty*—its most popular game—on Sony PlayStation. Paying \$68.7 billion for Activision makes no financial sense if that revenue stream goes away. Nor would it make sense to degrade the game experience and alienate the millions of *Call of Duty* players who play together using different types of consoles. The reputational hit to Xbox would not be worth any theoretical economic benefit from taking *Call of Duty* away from competitors.

It is therefore unsurprising that after nearly a full year investigating this transaction, receiving millions of Microsoft and Activision documents, and speaking to over a dozen witnesses, there is no evidence that Xbox intends to take *Call of Duty* away from PlayStation—or any platform at all. No emails, no text messages, no testimony. There is one reason for that: Xbox does not intend to take that step. Xbox has some exclusive games, which are a necessary feature of any content business. But Xbox cannot afford to take Activision's games exclusive without undercutting the basic economics of the transaction. That is why Microsoft has offered to keep *Call of Duty* on PlayStation from the moment this deal was announced. Xbox's proposal [REDACTED] [REDACTED] and would extend for ten years—an unheard-of length for contracts in the gaming industry.

Xbox has made this same offer to other competitors, and at least one (Nintendo) has accepted to date. Sony refuses to deal. But a vertical merger causes anticompetitive harm only





the Complaint as well-pleaded allegations to which any response is required. To the extent such a response is required, Microsoft denies all allegations in the headings and subheadings of the Complaint. The Commission's unnumbered introductory paragraph characterizes this action and asserts legal arguments and conclusions to which no response is required. To the extent such a response is required, Microsoft denies the allegations in the Commission's unnumbered introductory paragraph. Use of certain terms or phrases defined in the Complaint is not an acknowledgement or admission of any characterization the Commission may ascribe to the defined terms. Unless otherwise defined, capitalized terms shall refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgement or admission of any characterization the Commission may ascribe to the capitalized terms.

Microsoft does not concede the truthfulness of third-party articles and news sources quoted or referenced in the Complaint. To the extent a response is required, Microsoft denies all allegations of the third-party articles and news sources quoted in or referenced in the Complaint. Microsoft additionally denies that the Commission is entitled to any of the relief sought in the Notice of Contemplated Relief on page 23 of the Complaint. Microsoft reserves the right to amend and/or supplement this Answer at a later stage of the proceedings as permitted by the Rules. Each paragraph below corresponds to the same-numbered paragraph in the Complaint.

## **SPECIFIC RESPONSES TO THE COMMISSION'S ALLEGATIONS**

### **I. NATURE OF THE CASE**

1. Paragraph 1 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those

allegations. Microsoft admits that it seeks to acquire Activision for \$68.7 billion; and that the acquisition would be the highest numerical dollar amount that Microsoft will have paid for an acquisition in its history. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the relative size of this acquisition within the gaming industry. Microsoft denies the remaining allegations contained in Paragraph 1.

2. Microsoft admits that its gaming division, Xbox, develops and sells video game consoles and video games (including the video game, *Halo*); that games created in-house are sometimes referred to as “first-party” titles; that Xbox offers a multigame subscription service, Xbox Game Pass, which provides subscribers with access to a catalog of hundreds of video games to play on console or PC; and that the Xbox Game Pass Ultimate tier offers “cloud gaming” functionality allowing subscribers to stream certain games for play across a variety of devices including consoles, PCs, tablets, and mobile phones. Microsoft denies the remaining allegations contained in Paragraph 2.

3. Microsoft admits that Activision develops and publishes video games for multiple devices, including video game consoles, PCs, and mobile devices; that Activision’s games include high-quality games; and that the term “AAA” lacks a defined meaning in the industry. Microsoft denies the remaining allegations contained in Paragraph 3.

4. Microsoft admits that Activision develops *Diablo*, *Overwatch*, and *Call of Duty*. Microsoft denies the remaining allegations contained in Paragraph 4.

5. Microsoft admits that *Overwatch 2* was released recently and made available for play on multiple gaming devices, including the Nintendo Switch and PCs; and that *Diablo IV* is slated for release in 2023. Microsoft avers that it lacks knowledge or information sufficient



allegations contained in Paragraph 10.

11. Microsoft denies the allegations contained in Paragraph 11.

12. Microsoft admits that it acquired ZeniMax, the parent company of a game developer, in 2021; that following its acquisition of ZeniMax, all ZeniMax titles have been released on PlayStation, including two ZeniMax titles that were exclusive to PlayStation upon release as well as new updates of *Elder Scrolls Online*; and that some future ZeniMax games may be exclusive to Xbox and PC when they are initially released. Microsoft further avers that this approach is consistent with its representations to the European Commission (“EC”), as the EC has publicly stated. Microsoft denies the remaining allegations contained in Paragraph 12.

13. Paragraph 13 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. To the extent the Complaint is quoting from one or more unidentified sources, Microsoft respectfully refers the Court to any such source for an accurate and complete statement of its contents. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Activision’s incentives and business strategy. Microsoft denies the remaining allegations contained in Paragraph 13.

14. Paragraph 14 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 14.

## **II. JURISDICTION**

15. Paragraph 15 purports to state conclusions of law to which no response is required.





22. Microsoft admits that gaming is a part of the entertainment industry; that in 2020 the gaming industry was worth \$165 billion, with \$85 billion coming from mobile gaming, \$40 billion coming from console gaming, and \$40 billion coming from PC gaming.





PlayStation Plus that, like Game Pass, offers multiple tiers of pricing, including a top tier that is reported to provide cloud streaming capabilities. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the other features and game offerings available on PlayStation Plus, as well as the pricing of this subscription service. Microsoft denies the remaining allegations contained in Paragraph 37.

38. Microsoft admits that EA Play and Ubisoft+ are other multigame subscription services. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the game offerings of EA Play and Ubisoft+, as well as the pricing of these subscription services. Microsoft denies the remaining allegations contained in Paragraph 38.

39. Microsoft admits that video games are typically downloaded to a device and played locally; and that at least since 2013, companies have also offered cloud gaming services that allow players to play games without downloading them locally, in limited circumstances, by streaming games to compatible devices via remote servers. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the features available on cloud gaming services other than those offered by Xbox Cloud  
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denies the remaining allegations contained in Paragraph 51.

52. Microsoft admits that it is valuable to have a variety of content available on Xbox and Game Pass. To the extent the Complaint is quoting or characterizing testimony from an investigational hearing of a Microsoft witness, Microsoft respectfully refers the Court to the full testimony for an accurate and complete statement of its contents. To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 52.

53. Microsoft admits that gaming companies may make some titles exclusive to some platforms. To the extent the Complaint is referencing documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 53.

54. Microsoft admits that it is valuable to have a variety of content available on Xbox and Game Pass; and that the size of a platform's player base may be one of many factors used in negotiations with publishers and developers. To the extent the Complaint is quoting from documents, Microsoft respectfully refers v965rue (y r)3 (e.PEs)-11 (-1 (s)-15 e /rT (d o.)-1 (, M)-1 (i)-





## **V. RELEVANT MARKETS**

60. Paragraph 60 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft admits the proposed acquisition will result in a combined firm. Microsoft denies the remaining allegations contained in Paragraph 60.

61. Paragraph 61 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 61.

62. Paragraph 62 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 62.

63. Paragraph 63 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 63.

64. Paragraph 64 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 64.

65. Paragraph 65 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 65.

66. Microsoft admits that Xbox, Sony, and Nintendo all currently offer competing gaming consoles; that different consoles offer different types of performance, including varied graphical processing capabilities; that the Xbox Series X|S and PlayStation 5 consoles are plug-

in devices that connect to an external display like a television, whereas the Nintendo Switch console is a portable battery-operated device with a built-in display screen and detachable controllers that can be connected to an external display; that the Xbox Series X and PlayStation 5 consoles are both priced higher than the Xbox Series S and Nintendo Switch consoles; that console competitors offer overlapping gaming content; that Nintendo offers third-party content on the Switch console; ch

required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 70.

71. Paragraph 71 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. To the extent the Complaint is characterizing witness testimony from a trial in another matter, Microsoft respectfully refers the Court to the full testimony for an accurate and complete statement of its contents. Microsoft denies the remaining allegations contained in Paragraph 71.

72. Paragraph 72 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 72.

73. Paragraph 73 purports to state conclusions of law to which no response is

including by offering multigame subscription services; that Xbox is working to develop Game Pass into a better multigame subscription service; and that Microsoft attempts to provide its users with a varied and rotating catalog of games. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations concerning unidentified industry participants and their business practices. Microsoft denies the remaining allegations contained in Paragraph 76.

77. Microsoft admits that multigame subscription services are a different way to pay for games than the traditional buy-to-play model; and that for some customers the multigame subscription model may be cheaper than the buy-to-play (model - 2r) 3r) 4r) 5r) 6r) 7r) 8r) 9r) 10r) 11r) 12r) 13r) 14r) 15r) 16r) 17r) 18r) 19r) 20r) 21r) 22r) 23r) 24r) 25r) 26r) 27r) 28r) 29r) 30r) 31r) 32r) 33r) 34r) 35r) 36r) 37r) 38r) 39r) 40r) 41r) 42r) 43r) 44r) 45r) 46r) 47r) 48r) 49r) 50r) 51r) 52r) 53r) 54r) 55r) 56r) 57r) 58r) 59r) 60r) 61r) 62r) 63r) 64r) 65r) 66r) 67r) 68r) 69r) 70r) 71r) 72r) 73r) 74r) 75r) 76r) 77r) 78r) 79r) 80r) 81r) 82r) 83r) 84r) 85r) 86r) 87r) 88r) 89r) 90r) 91r) 92r) 93r) 94r) 95r) 96r) 97r) 98r) 99r) 100r) 101r) 102r) 103r) 104r) 105r) 106r) 107r) 108r) 109r) 110r) 111r) 112r) 113r) 114r) 115r) 116r) 117r) 118r) 119r) 120r) 121r) 122r) 123r) 124r) 125r) 126r) 127r) 128r) 129r) 130r) 131r) 132r) 133r) 134r) 135r) 136r) 137r) 138r) 139r) 140r) 141r) 142r) 143r) 144r) 145r) 146r) 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85. Paragraph 85 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 85.

86. Microsoft admits that cloud gaming may, provided certain conditions (such as the availability of sufficient Internet access) are met, allow customers to stream some games from the cloud rather than downloading them to play locally on their devices, including on consoles, PCs, and mobile devices. Microsoft denies the remaining allegations contained in Paragraph 86.

87. Microsoft admits that cloud gaming allows customers to stream games from the cloud that may have been developed for other devices or operating systems; and that this may allow some consumers who are unable to afford more expensive devices to stream those games. To the extent the Complaint is relying on documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 87.

88. Microsoft admits that cloud gaming may allow some consumers who are unable to afford more expensive devices to stream games they would not have been able to without cloud gaming. To the extent the Complaint is quoting from documents, Microsoft respectfully

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Gaming; and that Xbox Cloud Gaming is operated by using custom-built servers in Microsoft data centers to remotely run Xbox console games via Xbox's specialized console hardware. Microsoft denies the remaining allegations contained in Paragraph 90.

91. Paragraph 91 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 91.

92. Paragraph 92 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 92.

93. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning unidentified industry participants. To the extent the Complaint is quoting from and characterizing documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 93.

94. Microsoft admits that as of the first quarter of 2022, Xbox had 25 million Game Pass subscribers, including a substantial number in the United States; and that Game Pass prices vary in some locations. Microsoft denies the remaining allegations contained in Paragraph 94.

95. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning other industry participants. Microsoft admits that cloud gaming requires advanced technology and sufficient Internet services. Microsoft denies the remaining allegations contained in Paragraph 95.



## **VI. ANTICOMPETITIVE EFFECTS**

96. Paragraph 96 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 96.

97. Paragraph 97 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft admits that it is valuable to have a variety of content available on Xbox and Game Pass. Microsoft denies the remaining allegations contained in Paragraph 97.

98. Paragraph 98 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 98.

99. Microsoft admits that it is valuable to have a variety of content available on Xbox and Game Pass. Microsoft denies the remaining allegations contained in Paragraph 99.

100. To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 100.

101. To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 101.

102. Microsoft admits that in its current revenue-sharing agreement with Activision,

[REDACTED]

[REDACTED]

[REDACTED]

██████████ To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 102.

103. Microsoft admits it seeks to acquire Activision and its content. Microsoft denies the remaining allegations contained in Paragraph 103.

104. Microsoft denies the allegations contained in Paragraph 104.

105. Microsoft denies the allegations contained in Paragraph 105.

106. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Activision's collaboration with other gaming hardware manufacturers and the goals of that collaboration. Microsoft denies the remaining allegations contained in Paragraph 106.

107. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning ██████████

██████████. Microsoft admits that a GPU (or Graphics Processing Unit) is a hardware component that renders graphics for video games. Microsoft denies the remaining allegations contained in Paragraph 107.

108. Microsoft admits that gaming is a growing market with significant revenues. Microsoft denies the remaining allegations contained in Paragraph 108.

109. Paragraph 109 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft avers that it lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Activision's intentions pre-acquisition. Microsoft denies the remaining allegations contained in Paragraph 109.

110. Microsoft denies the allegations contained in Paragraph 110.

111. Microsoft avers that it lacks knowledge or information sufficient to form a belief about the truth of the allegations about Activision's alleged presentation to [REDACTED]. To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the allegations contained in Paragraph 111.

112. Microsoft denies the allegations contained in Paragraph 112.

113. To the extent the Complaint is relying on unidentified statements or sources, Microsoft respectfully refers the Court to those sources for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 113.

114. To the extent the Complaint is referencing documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft admits that it acquired ZeniMax, the parent company of a game developer; that following its acquisition of ZeniMax, all released ZeniMax titles have been available on PlayStation, including two ZeniMax titles that were exclusive to PlayStation upon release as well as new updates of *Elder Scrolls Online*; and that some future ZeniMax games may be exclusive to Xbox and PC when they are initially released. Microsoft denies the remaining allegations contained in Paragraph 114.

115. Microsoft denies the allegations contained in Paragraph 115.

116. To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 116.

117. ~~To~~ the extent the Complaint is referencing do

refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 117.

118. Paragraph 118 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations



there is, and will continue to be, entry and expansion by competitors, which is timely, likely, and sufficient.

9. The alleged harm to potential competition is not actionable.
10. The Commission cannot provide clear proof that the combination of Microsoft's gaming business and Activision's business would restrain trade in the alleged markets for "multi-game content library subscription services" or "cloud gaming subscription services" because but-for the proposed transaction, Activision's games would not be available on any such service.
11. The Commission fails to allege a time frame for the alleged anticompetitive effects.
12. The Commission is not entitled to relief because none of Microsoft's conduct identified in the Complaint is actionable—independently or in the aggregate—under the antitrust laws.
13. Microsoft's offers of binding contractual commitments to continue to offer certain titles like *Call of Duty* to other gaming companies, including Nintendo and Sony, for at least ten years address all of the alleged anticompetitive effects in the alleged markets and ensure that there will be no harm to competition or consumers.
14. The Commission's claims are too speculative to support any claim on which relief can be granted.
15. Neither the filing of this administrative action nor the contemplated relief is in the public interest, pursuant to 15 U.S.C. § 45.
16. The Complaint reflects improper selective enforcement of the antitrust laws.

17. The Commission's charges under Section 5 of the Federal Trade Commission Act are unlawful to the extent the Commission purports to apply Section 5 beyond the metes and bounds of the Sherman and Clayton Acts.

WHEREFORE, Microsoft respectfully requests that the Administrative Law Judge enter an order:

1. Denying the Commission's contemplated relief;
2. Dismissing the Complaint in its entirety with prejudice;
3. Awarding Microsoft its costs of suit; and
4. Awarding such other and further relief as the Administrative Law Judge may deem proper.

Dated: -DØDU\

Respectfully submitted,

By: /s/ Beth Wilkinson

Beth Wilkinson  
Rakesh N. Kilaru  
Kieran Gostin  
Grace L. Hill  
Anastasia M. Pastan  
Sarah E. Neuman  
Wilkinson Stekloff LLP  
2001 M Street NW, 10th Floor  
Washington, DC 20036  
Telephone: (202) 847-4000  
Fax: (202) 847-4005  
bwilkinson@wilkinsonstekloff.com  
rkilaru@wilkinsonstekloff.com  
kgostin@wilkinsonstekloff.com  
ghill@wilkinsonstekloff.com  
apastan@wilkinsonstekloff.com  
sneuman@wilkinsonstekloff.com

Michael Moiseyev  
Megan A. Granger  
Weil Gotshal & Manges LLP  
2001 M Street NW  
Suite 600  
Washington, DC 20036  
Telephone: (202) 682-7026  
michael.moiseyev@weil.com  
megan.granger@weil.com

*Counsel for Microsoft Corp.*



**CERTIFICATE OF SERVICE**

I hereby certify that on ~~1/3/2023~~ I caused a true and correct copy of the  
foregoing to be filed electronically using the FTC's E-Filing System and served the

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Steven C. Sunshine (steve.sunshine@skadden.com)  
Julia K. York (julia.york@skadden.com)  
Jessica R. Watters (jessica.watters@skadden.com)  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.

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