

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**  
                                 **Alvaro M. Bedoya**

**In the Matter of**

**Microsoft Corp.,**

a corporation,

and

**Activision Blizzard, Inc.,**

a corporation.

**Docket No. 9412**

**REDACTED PUBLIC VERSION**

## NATURE OF THE CASE

1. Microsoft and Sony control the market for high-performance video game consoles. The number of independent companies capable of developing standout video games for those consoles has contracted, with only a small group of firms commanding that space today. Microsoft now proposes to acquire Activision, one of the most valuable of those developers, in a vertical merger valued at nearly \$70 billion (the “Proposed Acquisition”) that will increase Microsoft’s already considerable power in video games. If consummated, the Proposed Acquisition would be the largest in the history of the video game industry and the largest in Microsoft’s history. The Proposed Acquisition would continue Microsoft’s pattern of taking control of valuable gaming content. With control of Activision’s content, Microsoft would have the ability and increased incentive to withhold or degrade Activision’s content in ways that substantially lessen competition—including competition on product quality, price, and innovation. This loss of competition would likely result in significant harm to consumers in multiple markets at a pivotal time for the industry.

2. Microsoft, one of only two manufacturers of high-p

6. Activision and industry participants recognize **Call of Duty** as Activision's "key product franchise." **Call of Duty** was originally launched in 2003, and Activision releases new titles for the franchise on an annual basis. Activision allocates substantial resources to the franchise. As many as primary development studios are devoted to it at any one time and its budget is significantly larger than other AAA titles.

7. By any measure, **Call of Duty** is a leading AAA franchise. It is one of the most successful console-game franchises ever. From its launch in 2003 up through 2020, it generated \$27 billion in revenues. **Call of Duty** also has a massive following, with million monthly active users ("MAU") in 2020, according to an Activision strategy document. Its loyal fanbase and enduring appeal have made it particularly valuable, influencing gamer engagement and gaming product adoption. The franchise has achieved sustained dominance over the past decade, with **Call of Duty** titles comprising 10 of the top 15 console games sold between 2010–2019. No other franchise had more than one title in the top 15. **Call of Duty** has continued to top the charts in 2020 and 2021, and its latest installment, **Modern Warfare II**, amassed more than \$1 billion in sales within just ten days of its release and is on track to outsell all other games this year despite not having been released until late October 2022. The previous franchise record was held by **Call of Duty: Black Ops II** which took 15 days to hit the \$1 billion mark.

8. Activision's content is extremely important for, and drives adoption of, video game consoles. Given their immense popularity, Activision's titles are of particular importance to console makers, including Microsoft's competition.

9. Microsoft produces its own first-party video game titles. Microsoft has acquired over ten third-party studios and their titles in recent years to expand its offerings. Microsoft has

12. Microsoft’s past conduct provides a preview of the combined firm’s likely plans if it consummates the Proposed Acquisition, despite any assurances the company may offer regarding its plans. In March 2021, Microsoft acquired ZeniMax Media Inc. (“ZeniMax”), the parent company of the well-known game developer and publisher Bethesda Softworks LLC (“Bethesda”). Microsoft assured the European Commission (“EC”) during its antitrust review of the ZeniMax purchase that Microsoft would not have the incentive to withhold ZeniMax titles from rival consoles. But, shortly after the EC cleared the transaction, Microsoft made public its

19. Respondent Activision is a publicly traded company, incorporated in the State of Delaware with headquarters in Santa Monica, California. Activision develops and publishes video games for consoles, PCs, and mobile devices. Activision's revenues in FY2021, its most recently reported fiscal year, were \$8.8 billion.

20. Microsoft entered into an Agreement and Plan of Merger with Activision on January 18, 2022, for an all-cash n is/intpj/TT9Td([(B7 -2 cr)F)/TTc 0 Tw004 (a)4 (nt)-20 2 (ong2 (i)0 (M) 1dg

27. Since the 1970s, competing video game console makers have periodically released consoles featuring the latest technological advances, with a new generation of consoles released approximately every five to ten years. Within the video game industry, competition for sales and technological supremacy is commonly referred to as “the console wars.”

28. Of these three console makers, PlayStation and Xbox compete in a high-performance segment that includes only the most technologically advanced and capable consoles. In November 2020, both Microsoft and Sony launched their current generation of consoles, the Xbox Series X and Series S consoles (collectively, “Xbox Series X|S”) and the PlayStation 5 and PlayStation 5 Digital Edition consoles (collectively, “PS5”), respectively. Xbox Series X|S and PS5 consoles are the only high-performance consoles available today, and are considered to be in the ninth generation of gaming consoles. In contrast, Nintendo’s most recent console—the Nintendo Switch—is not a ninth-generation gaming console. The Nintendo Switch was released in 2017, in the latter half of the eighth generation of gaming consoles, which had begun in approximately 2013. The Nintendo Switch (“Switch”) also has lower computational performance, more in line with Microsoft’s and Sony’s eighth generation consoles.

29. The Xbox Series X|S are two ninth-generation Xbox consoles offered by Microsoft. The Series X is a more powerful console while the Series S is more affordable. Together, these consoles provide Microsoft’s

30. Microsoft closely tracks the performance of its Xbox consoles relative to Sony’s PlayStation consoles. For example, in FY2022, the first full year that Xbox Series X|S consoles were available, one of Microsoft’s key metrics for evaluating success was  
In internal communications, Microsoft executives  
regularly discuss

31. Xbox Series X|S consoles have been a commercial success. In a July 26, 2022 earnings call, Microsoft CEO Satya Nadella announced that the company “ha[d] been the market leader in North America for three quarters in a row among next gen consoles.”

32. The Xbox Series X|S and PS5 consoles are from a broad consumer perspective, in a number of technical specifications, including offering similar graphics, user experiences, and hardware features. In addition, the Xbox Series X and m5



40. Microsoft touts numerous benefits of cloud gaming to customers. Cloud gaming enables gamers to begin playing a game in seconds, rather than waiting for games to download or update, and streaming rather than downloading avoids burdening the storage limits on a gaming device. Cloud gaming also broadens access to gaming by expanding the universe of devices that can play games. Today, cloud gaming subscription services are available on consoles, Windows PC, Mac PC, Chromebook PC, tablet, mobile phones, and some smart TVs, with device compatibility varying by service. This permits gamers to play computationally demanding games on less powerful devices that otherwise lack the computing power or storage to support the games.

41. In September 2020, Microsoft added cloud gaming to its top-tier multi-game content library subscription service offering, Xbox Game Pass Ultimate. To date, more than 20 million gamers have used the service to stream games from the cloud. Microsoft has stated that cloud gaming subscription services are integral to its goal of expanding gaming to 3 billion gamers worldwide and enabling gamers “to play the games you want, with the people you want, anywhere you want.”

42. Other cloud gaming subscription services include Amazon Luna, Nvidia GeForce NOW, and Google Stadia, although Alphabet Inc. has announced that it is discontinuing Stadia in January 2023. Amazon’s Luna+ (a tier of Amazon Luna), priced at \$9.99 per month with additional options available for further purchases, provides streaming access to a library of over 100 third-party games. Nvidia GeForce NOW, priced at \$49.99 for six months for the Priority tier or \$99.99 for six months for the RTX 3080 tier, allows gamers to stream game titles that they already own, with the streaming hosted on Nvidia Corporation (“Nvidia”) datacenters. Although it will soon be discontinued, Stadia Pro, priced at \$9.99 per month with additional options for further purchases, allows gamers to stream games from a library of hundreds of third-party games.

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46. The gaming industry recognizes a limited top tier of independent game publishers, sometimes referred to as the “Big 4” or simply the AAA publishers: Activision, Electronic Arts, Take-Two, and Ubisoft. These publishers reliably produce AAA games for high-performance consoles and collectively own a significant portion of the most valuable IP in the gaming industry. These high-profile franchises include, for example, *Call of Duty* (Activision), *FIFA* (EA), *Grand Theft Auto* (Take-Two), and *Assassin’s Creed* (Ubisoft).

47. Only a few other studios are typically credited with releasing AAA games. Epic Games, maker of *Fortnite*, a free-to-play game that is currently one of the most popular games in the United States, is sometimes

52. AAA

58. Activision currently has a combined million MAU globally across its console and PC games and the company expects this number to grow to over million MAU by 2024. Activision’s statements reflect its ability to influence video game product purchase decisions.

59. Even among AAA games, Activision’s most well-known franchise, Call of Duty, is particularly strong. First released nearly twenty years ago in 2003, Call of Duty is, in Activision’s own words, “one of the most successful entertainment franchises of all time.” In 2021, Call of Duty Vanguard topped the revenue charts as the bestselling game in the United States, with Call of Duty Black Ops Cold War coming in second. And in 2022, Call of Duty: Modern Warfare II took in \$1 billion globally in the first ten days following its launch. By comparison, the highest grossing film of the year so far, Top Gun: Maverick took one month to reach the \$1 billion threshold.

### **RELEVANT MARKETS**

60. The Proposed Acquisition will result in a combined firm with the ability and increased incentive to withhold or degrade Activision’s valuable gaming content to undermine its competitors in multiple Relevant Markets. This anticompetitive behavior is reasonably likely to lead to reduced consumer choice, higher prices and/or lower quality products, and less innovation, and the Proposed Acquisition will not produce cognizable procompetitive effects sufficient to offset such harms.

61. The Proposed Acquisition is likely to harm innovation, for instance, by decreasing the combined firm’s incentive to optimize Activision’s content for gameplay on rival hardware, thereby reducing the quality of consumer gaming experiences on competing products.

62. The Proposed Acquisition is reasonably likely to substantially lessen competition or tend to create a monopoly in the Relevant Markets for High-Performance Consoles, Multi-

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66. Microsoft's Xbox Series X|S and Sony's PS5 consoles are characterized by greater computational power, different content portfolios, different form factors and technical specifications, generally higher prices, and different release cadences than the Nintendo Switch and other handheld consoles.
- a. Superior computational power enables faster processing that shapes the kind of content that can run on High-Performance Consoles, enabling higher resolution, more realistic graphics, and cutting-edge performance. Both Xbox Series X|S and PS5 consoles have similar hardware, and Microsoft and Sony compete closely on hardware innovation, including over graphics and performance. Conversely, Nintendo pursues a different strategy of integrating its lower performance, portable hardware with its own distinctive first-party games to appeal to player nostalgia for Nintendo's unique gaming experience over high resolution, life-like graphics, and performance speed. While Microsoft's Xbox Series X|S and Sony's PS5 consoles incorporate semi-custom systems-on-a-chip ("SoC") designed by AMD, Nintendo's Switch runs on a non-AMD SoC that is more closely related to a mobile device processor found in higher-end mobile phones and tablets.
  - b. Microsoft and Sony compete closely for high-quality, resource-intensive AAA console games. They compete over genre coverage, portfolio size and quality, and multiplayer game availability, and they routinely benchmark their [REDACTED] against each other. A substantial share of High-Performance Console content is available on both Xbox and PlayStation consoles. By contrast, although Nintendo offers third-party content on the Switch, Nintendo's main strategy centers on [REDACTED]
  - c. Xbox Series X|S and PS5 consoles provide a technologically advanced gaming experience from a stationary endpoint. The Xbox Series X|S and PS5 consoles are plug-in devices that draw electrical power to support advanced computations and are connected to an external display like a television. In contrast, the Nintendo Switch is a portable battery-operated device with a built-in display screen, and it can optionally be connected to an external display. Nintendo's Switch also has detachable controllers that can be used for motion-based game play that is not available on the Xbox or PlayStation consoles. Microsoft and Sony commonly benchmark against each other on [REDACTED]
  - d. The PlayStation 5 and the Xbox Series X, the companies' latest flagship consoles, retail for \$499.99. By contrast, the Nintendo Switch retails for \$200 less at \$299.99.
  - e. Since the 2000s, Microsoft and Sony have released new console generations largely contemporaneously—most recently in 2020. The prior generation (Generation 8) Xbox One and PlayStation 4 were released in 2013, and the current generation (Generation 9) Xbox Series X|S and PS5 consoles were released in November 2020. By contrast, the Nintendo Switch launched in March 2017, nearly five years after the beginning of the eighth generation.

67. Microsoft’s own ordinary course documents regularly

Respondents conceded in a regulatory filing that

68. Due to their distinct offerings, Microsoft and Sony consoles appeal to different gaming audiences than the Nintendo Switch. While Xbox Series X|S and PS5 consoles offer more mature content for more serious gaming, Nintendo’s hardware and content tends to be used more for casual and family gaming.

69. Indeed, “dual console owners” are more likely to own one High-Performance Console and a Nintendo Switch than two High-Performance Consoles. NPD Group, a trusted source for video game industry data, shows that as of 2020, nearly 40 percent of PlayStation and Xbox owners also owned a Switch, while only percent of PlayStation console owners owned an Xbox and only percent of Xbox console owners own a PlayStation.

70. Other video gaming devices available today are not commercially reasonable alternatives to High-Performance Consoles and are therefore not included in the Relevant Market. These include gaming PCs, and mobile devices.

71. Gaming PCs are distinct from High-Performance Consoles due to differences in price, hardware, performance, and functionality (i.e., where and when a game can be played), among other factors. Gaming PCs are therefore not included in the Relevant Market. Mobile devices are distinct from High-Performance Consoles due to differences in complexity and quality of game performance, content offerings, monetization approach, gameplay and interface, and audience, among other factors. Microsoft recently confirmed this factual distinction in

testimony during the trial of Epic Games, Inc0 Tc 0/2 1 Tf -0.004AA(e)3 (oe)4 ( )TJ -c0 Tc 0/, TT0 1 Tf ( MSubs]c-7 (e)3(ngh-)3 ptron iS0 [(t Tc 0.004 Tw [(ar)-8.5[(er)-1 (f)3 (a)-10 nc0 r.dstlmitetfn\* [(t Tc 0.0

75. Microsoft is already a significant player in this market through its Xbox Game Pass offerings and continues to expand rapidly in this market. Microsoft offers three tiers of Game Pass, each of which provide unlimited access to hundreds of games, with Game Pass Ultimate also providing access to Xbox Cloud Gaming. Microsoft is already the market leader with an announced 25 million Game Pass subscribers.

76. Each service competes aggressively to offer the best, most exciting titles to attract users to its service, with each attempting to provide access to a compelling library of high-end, AAA games. Services offer a range of incentives to developers and publishers including attractive revenue splits or co-marketing arrangements in order to ensure games are available on their services.

77. Multi-Game Content Library Subscription Services rely on distinct pricing compared to the traditional “buy to play” model, where gamers purchase individual games for up to \$70 per title, or more. Multi-Game Content Library Subscription Services seek to offer a new method of accessing games by offering access to an entire library of games for a periodic fee, rather than a single title for a fixed cost.

78. Subscription services in the Relevant Market  
Microsoft’s ordinary course documents show that

For example, Xbox CFO Tim Stuart sent an email

Mr. Stuart went on to report:

79. Buy-to-play games are not commercially reasonable alternatives and therefore are not included in the Relevant Market. Multi-Game Content Library Subscription Services provide immediate access to hundreds of game titles for a monthly fee, facilitating content discovery.

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81. Subscription services that do not offer a library of video games that are predominantly played on non-mobile devices are also not commercially reasonable alternatives and therefore are not included in the Relevant Market. Mobile-native games are distinct from games accessed natively on a console and from the most performant games accessed natively on a PC, due to differences in complexity and quality of game performance, monetization approach, gameplay and interface, and audience, among other factors.

82. Multi-Game Content Library Subscription Services comprise a Relevant Market. The anticompetitive effects of the Proposed Acquisition also are reasonably likely to occur in any relevant antitrust market that contains Multi-Game Content Library Subscription Services, including a combined Multi-Game Content Library and Cloud Gaming Subscription Services market.

### **III. Cloud Gaming Subscription Services are a Relevant Market**

83. Cloud Gaming Subscription Services are a relevant product market for evaluating the competitive effects of the Proposed Acquisition.

84. The Relevant Market for Cloud Gaming Subscription Services includes services that offer the ability to play predominantly non-mobile video games via cloud streaming.

85. The Relevant Market includes Multi-Game Content Library Subscription Services that offer access to games via cloud streaming as well as any services that offer streaming via a

89. Microsoft's documents show that . In a recap of insights and learnings from FY2022, the Xbox Cloud Gaming team reported that “

90. Cloud Gaming Subscription Services also require specialized inputs. Cloud Gaming Subscription Services operate on cloud infrastructure, either by deploying their own dedicated infrastructure or by contracting with a third party. For example, Microsoft built Xbox



## **ANTICOMPETITIVE EFFECTS**

96. The Proposed Acquisition is reasonably likely to substantially lessen competition or tend to create a monopoly in the Relevant

101. Similarly, Microsoft echoes the importance of AAA content on its High-Performance Consoles. As one direct report to Mr. Spencer relayed to him, the

107. Activision also works to optimize its games, including *Call of Duty*, to work on . A GPU (or Graphics Processing Unit) is a hardware component that renders graphics for video games.

The Proposed Acquisition would give Microsoft the ability to reduce efforts to optimize Activision content for hardware used by rival Cloud Gaming Subscription Services.

## **II. The Proposed Acquisition Would Increase Microsoft's Incentive to Disadvantage Rivals by Withholding or Degrading Activision Content in the Relevant Markets.**

108. If permitted to take control of Activision, Microsoft would have an incentive to disadvantage rivals by withholding or degrading Activision content. Gaming is a growing and lucrative market opportunity and one in which Microsoft is already well-positioned. Microsoft already has a built-in incentive to promote its own products wherever possible, and it fully understands the competitive power that owning Activision's leading gaming content would yield.

109. Prior to the Proposed Acquisition, Activision sought to maximize its profits from

### **III. Microsoft's Statements and Past Actions Indicate that It Will Likely Act on Its Incentives to Disadvantage Rivals by Withholding or Degrading Activision Content.**

113. Microsoft stated earlier this year that it . Microsoft subsequently has wavered in its representations as to

114. Moreover, Microsoft's past conduct is telling. Despite statements by Microsoft to European regulators disavowing the incentive to make ZeniMax content exclusive post-close, after the EC cleared the transaction, Microsoft plans for three of the newly acquired titles to become exclusive to Microsoft's Xbox consoles and Xbox Game Pass subscription services. For example, although previous titles in ZeniMax's franchise were released on PlayStation, Microsoft has confirmed that the upcoming will be available only on Xbox consoles, Windows PCs, and Xbox Game Pass subscription services. Microsoft has also stated that **Starfield** and **Redfall**, two of the highly anticipated new games in development at the time of Microsoft's purchase of ZeniMax, will also become Xbox console and Xbox Game Pass exclusives upon release.

115. Microsoft's previous representations to the EC about its incentives after its purchase of ZeniMax were not borne out by Microsoft's own post-merger behavior. Instead, Microsoft put its true post-merger incentives on full display when it decided to deny rivals its newly acquired future releases and thwart consumers who would choose to play them on a competing product. Microsoft's past behavior should also cast more suspicion on its non-binding public commitments to keep **Call of Duty** available on PlayStation consoles through the end -2 (w)2il( e)4 (nde )

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## **ABSENCE OF COUNTERVAILING FACTORS**

120. Respondents cannot demonstrate that entry or expansion in the Relevant Markets would be timely, likely, or sufficient to reverse the anticompetitive effects of the Proposed Acquisition.

121. Respondents cannot demonstrate that the Proposed Acquisition would likely generate verifiable, cognizable, merger-specific efficiencies that would reverse the likely competitive harm from the Proposed Acquisition.

## **VIOLATION**

### **COUNT I – ILLEGAL ACQUISITION**

122. The allegations above in paragraphs 1 to 121 are incorporated by reference as though fully set forth.

123. The Proposed Acquisition, if consummated, may lessen competition substantially or tend to create a monopoly in interstate trade and commerce in the Relevant Markets throughout the country, including as a result of the combined firm's ability and incentive to withhold or degrade content from downstream rivals in the Relevant Markets

124. The Proposed Acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and is an unfair method of competition that violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

## **NOTICE**

Notice is hereby given to the Respondents that the second

## NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. A prohibition against any transaction between Microsoft and Activision that combines their businesses, except as may be approved by the Commission.
2. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, businesses, with the ability to offer such products and services as Microsoft and Activision were offering and planning to offer prior to the Acquisition.
3. A requirement that, for a period of time, Microsoft and Activision shall not, without giving provide prior notice to and obtaining the prior approval of the Commission, acquire, merge with, consolidate, or combine their businesses with any other company engaged in business activity in the relevant markets and, if necessary, in related business activity and markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Requiring that Respondents' compliance with the order may be monitored at Respondents' expense by an independent monitor, for a term to be determined by the Commission.
6. Any other relief appropriate to correct or remedy the anticompetitive effects of the Acquisition or to restore Arm as an independent business.

**IN WITNESS WHEREOF**, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this eighth day of December, 2022.

By the Commission, Commissioner Wilson dissenting.

April J. Tabor  
Secretary

SEAL: