

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

ANSWER AND DEFENSES
OF RESPONDENT MICROSOFT CORP.

Pursuant to Rule 3.12 of the Federal Trade Commission’s (“FTC” or the “Commission”) Rules of Practice for Adjudicative Proceedings (the “Rules”), Respondent Microsoft Corp (“Microsoft”), by and through its undersigned counsel, hereby files the following answer to the Commission’s Administrative Complaint (the “Complaint”) against Microsoft.

INTRODUCTION

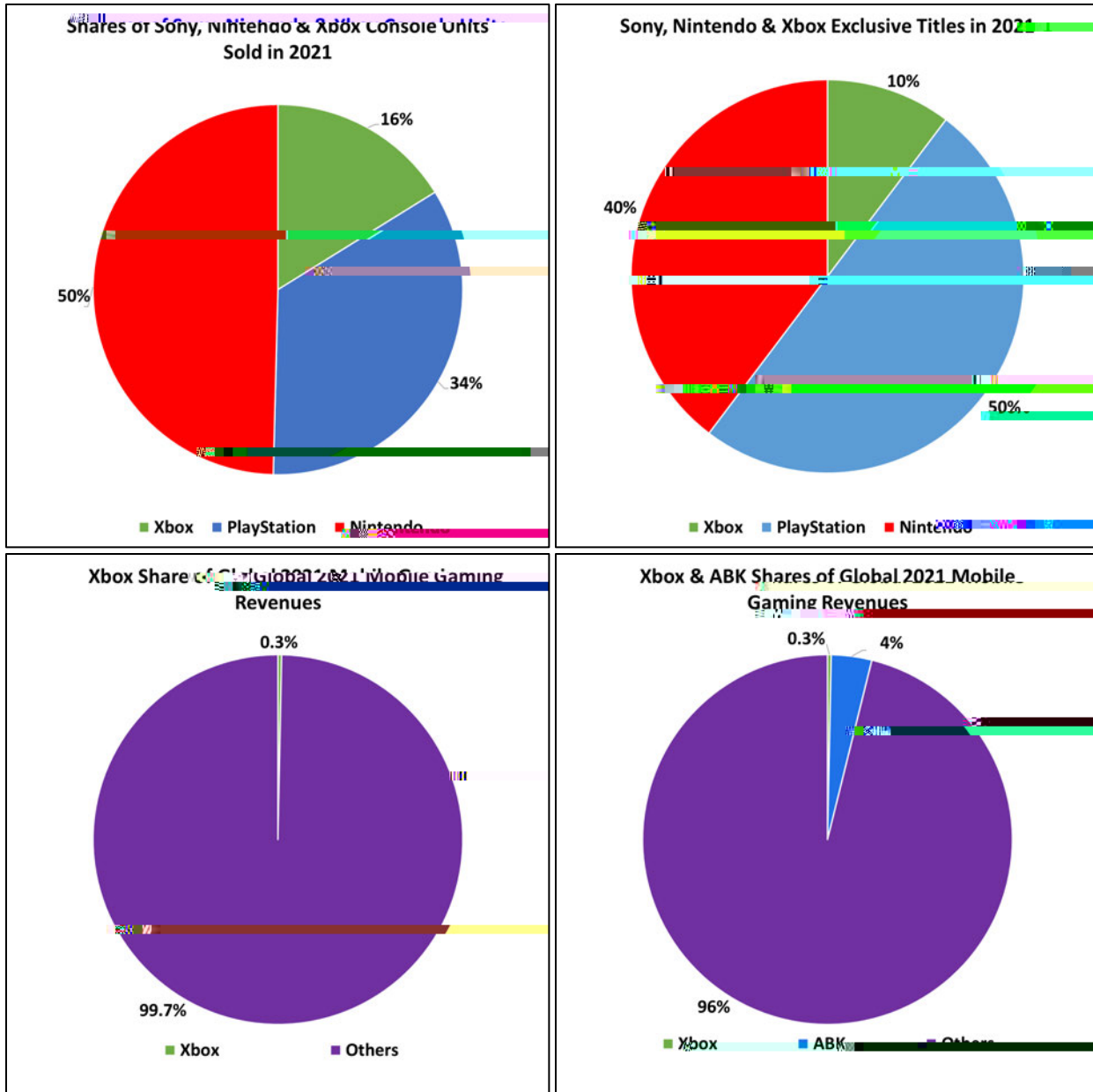
This case involves a transaction between the three-place manufacturer of gaming consoles and one of many publishers of popular video games. Microsoft competes in gaming through its Xbox division (“Xbox”). Xbox started behind Nintendo and Sony when it began making consoles 20 years ago, and it remains in third place today. Xbox also has next to no presence in mobile gaming, the fastest growing segment of gaming and the place where 94% of gamers spend their time today. And Xbox and Respondent Activision Blizzard King of Activision”) are just two of hundreds of game publishers, who compete by providing different types of games on different

platforms at different prices, ranging all the way down to \$0.

Microsoft is buying Activision to try to become more competitive in this expanding global industry. Its vision for the transaction is simple: Xbox wants to grow its presence in mobile gaming, and three quarters of Activision's gamers and more than a third of its revenues come from mobile offerings. Xbox also believes it is good business to make Activision's limited portfolio of popular games more accessible to consumers, by putting them on more platforms and making them more affordable. That includes making Call of Duty, one of Activision's most popular games, more broadly available. Microsoft made this public pledge on the day the deal was announced. Since then, Xbox has agreed to provide the game to Nintendo (which does not currently have it)

also on PCs, mobile devices, and even directly on some televisions. Game developers are churning out an ever-increasing variety of games, ranging from roleplay in complex fantasy worlds to sports simulations to simple puzzles. Hits come out of nowhere, providing consumers with choices beyond the iconic and treasured games they grew up playing. Indeed, while franchises like Activision's Call of Duty and Electronic Arts FIFA have been popular for a long time, so too are games like Minecraft, Splinter Cell, Player Unknown: Battlegrounds, Clash of Clans, and Among Us which burst onto the scene and achieved great success despite being developed by smaller studios.

Gamers also pay for games in different ways. TT ao p.3 Td [(G)2 (ahpor)3 ((o)-4 (u)4 (r)3 A



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 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

when the acquired input is “essential” Call of Duty were truly essential Sony would have no reason to refuse [REDACTED].

The Complaint’s reference to Microsoft’s recent acquisition of ZeniMax—a set of gaming studios acquired in 2020—has no relevance to the current transaction. After that transaction closed, ZeniMax’s first two new games were made exclusive to PlayStation for one year post launch. Xbox anticipates that three future titles— [REDACTED] all of which are designed to be played primarily alone or in small groups—will be exclusive to Xbox and PCs. But consistent with its historic approach, Xbox has continued to release new updates of existing ZeniMax games such as Fallout 76 and Elder Scrolls Online on both Xbox and PlayStation, because these games are designed to be played together by broad communities of gamers on different platforms. This last set of games is the one most analogous to Call of Duty. So the ZeniMax experience cuts against the idea that Xbox would make that game exclusive. Since it is not just the ZeniMax games where Xbox has taken this approach, Xbox has also expanded (cuy(en)-4o-1 (i)-2 (v;144 (xpa)4 (sre) (t) (i) (5) (E) 4 (x) (06) 3 Td (c) (0) (B) (W) (6) (2) (ha)ac)-93 -0.004 02ev

to form a belief as to the truth of the allegations concerning the lifetime revenue of the Diablo and Overwatch game titles; or as to the truth of the allegations concerning when Diablo was first introduced and whether its upcoming release is highly anticipated. Microsoft denies the remaining allegations contained in Paragraph 5.

6. 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 content. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning industry perception of Call of Duty and Call of Duty's original release date; or as to the truth of the allegations concerning Call of Duty's launch and typical release schedule and the resources and budget Activision allocates to Call of Duty, or the number of studios that work on Call of Duty. Microsoft denies the remaining allegations contained in Paragraph 6.

7. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of allegations concerning Call of Duty revenue, sales, and monthly active users. 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 7.

8. Microsoft denies the allegations contained in Paragraph 8.

9. Microsoft admits that it produces its own first-party video game titles; and that since 2018, it has acquired 8 companies, one of which operates multiple studios. Microsoft denies the remaining allegations contained in Paragraph 9.

10. Paragraph 10 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

16. Paragraph 16 purports to state conclusions of law to which no response is required.

17. Paragraph 17 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 17.

III. RESPONDENTS AND THE PROPOSED ACQUISITION

18. Microsoft admits that it is a publicly traded company incorporated in Washington with headquarters in Redmond, Washington; that it sells software, services, and devices across the technology industry; that its gaming division, Xbox, produces specialized Xbox hardware and sells Xbox content and services; and that in fiscal year 2022, Microsoft's gaming revenue was \$16.23 billion and total revenue was \$198.27 billion. Microsoft denies the remaining allegations contained in Paragraph 18.

19. Microsoft admits that Activision is a publicly traded company, incorporated in the State of Delaware with headquarters in Santa Monica, California; and that Activision develops and publishes video games for consoles, PCs, and mobile devices. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 19.

20. Microsoft admits the allegations contained in Paragraph 20.

IV. BACKGROUND

21. Paragraph 21 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 21.

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 PC gaming, \$33 billion coming from console gaming, and the remaining revenue coming from cloud, VR, handheld, and arcade gaming. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the total revenues of the gaming industry in 2022. Microsoft denies the remaining allegations contained in Paragraph 22.

23. Microsoft admits the allegations contained in Paragraph 23.

24. Microsoft admits that video game content can be played on consoles, PCs, and mobile devices. Microsoft denies the remaining allegations contained in Paragraph 24.

25. Microsoft admits that consumers purchase consoles for a variety of reasons. Microsoft denies the remaining allegations contained in Paragraph 25.

26. Microsoft admits that the most popular gaming consoles include Sony's PlayStation, Nintendo's Switch, and Microsoft's Xbox. Microsoft denies the remaining allegations contained in Paragraph 26.

27. Microsoft admits that there has been vigorous competition in the gaming industry for decades, including competition among video game console makers. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the views of unidentified industry participants. 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 27.

28. Microsoft admits that Xbox, Sony, and Nintendo all currently offer competing

33. Microsoft admits that different consoles have different technical specifications, including varied graphical processing capabilities; that the Nintendo Switch console is portable, handheld use; and that the Nintendo Switch console and Xbox Series S console are less expensive than the Xbox Series X console and PlayStation 5 console. Microsoft denies the remaining allegations contained in Paragraph 33.

34. Microsoft admits that gamers have purchased and continue to purchase games through a buy-to-play model, purchasing either physical or digital copies of individual games for play on gaming consoles, PCs, or other devices. Microsoft denies the remaining allegations contained in Paragraph 34.

35. Microsoft admits that multigame subscription services generally allow gamers to access a catalog of games for a recurring fee. Microsoft also admits that it launched its own multigame subscription service, Xbox Game Pass, in 2017; and that other companies also launched multigame subscription services in recent years. Microsoft further admits that Xbox Game Pass had 10 million subscribers in 2020 and 25 million subscribers in 2022. Microsoft denies the remaining allegations contained in Paragraph 35.

36. Microsoft admits that Xbox Game Pass is a multigame subscription service that provides subscribers with access to a rotating catalog of hundreds of games. Microsoft further admits that there are three Game Pass offerings: a "Console" offering that allows subscribers to download to play a catalog of console games on Xbox; a "PC" offering that allows subscribers to download to play a catalog of PC games on PC; and an "Ultimate" version that provides additional features, including the ability to stream a selection of games from the cloud to various devices. Microsoft denies the remaining allegations contained in Paragraph 36.

37. Microsoft admits that Sony offers a multigame subscription service known as

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 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.

offered by Xbox Cloud Gaming. Microsoft denies the remaining allegations contained in Paragraph 40.

41. Microsoft admits that it launched cloud gaming as part of the Ultimate tier of its Game Pass subscription service in September 2020; and that over 20 million gamers have used the service to stream games from the cloud. 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 41.

42. Microsoft admits that Amazon Luna, Nvidia GeForce NOW, and Google Stadia are other existing cloud gaming services; and that Alphabet Inc. has announced that it is discontinuing Google Stadia in January 2023. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning how these cloud gaming services price and host their services. Microsoft denies the remaining allegations contained in Paragraph 42.

43. 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 avers that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations concerning unidentified industry participants. Microsoft denies the remaining allegations contained in Paragraph 43.

44. 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 44.

45. Microsoft denies the allegations contained in Paragraph 45.

46. Microsoft admits that Activision, Electronic Arts, TakeTwo, and Ubisoft are sometimes referred to as the “Big 4”; and that they publish Call of Duty (Activision), FIFA (EA), Grand Theft Auto (TakeTwo), and Assassin’s Creed (Ubisoft), respectively. Microsoft denies the remaining allegations contained in Paragraph 46.

47. Microsoft admits that Epic Games makes Fortnite, a free-to-play game released in 2017 that is one of the most popular games in the United States and worldwide, and that Activision, Electronic Arts, TakeTwo, Ubisoft, and Epic are sometimes referred to as the “Big 4 + Epic.” Microsoft denies the remaining allegations contained in Paragraph 47.

48. 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 48.

49. Microsoft admits that Xbox produces the franchises Elder Scrolls, Halo, and Forza, and that Sony produces the franchises God of War, MLB The Show, and Spider-Man. Microsoft denies the remaining allegations contained in Paragraph 49.

50. Microsoft admits that Halo Infinite was in production for [REDACTED] years and cost approximately [REDACTED] million to produce. Microsoft denies the remaining allegations contained in Paragraph 50.

51. Microsoft admits that it wants a variety of content available on Xbox and Game Pass. 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 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

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 56.

57. To the extent the Complaint is quoting or characterizing testimony from an investigational hearing of an Activision witness, Microsoft respectfully refers the Court to the full testimony 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 testimony from an Activision witness. 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 57.

58. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of Activision's purported current or future numbers of monthly active users; as to the truth of Activision's [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 58.

59. Microsoft admits that Call of Duty was first released in 2003. 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 avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the sales of different iterations of Call of Duty and the sales of Top Gun: Maverick. Microsoft denies the remaining allegations contained in Paragraph 59.

V. RELEVANT MARKET S

60. Paragraph 60 purports to state conclusions of law to which no response is

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 proprietary content on the Switch console that Xbox and Sony released their most recent consoles (the Xbox Series X|S and the PlayStation 5, respectively) in 2020; and that Nintendo released its most recent console (the Nintendo Switch) in 2017. 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 avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning competitors' business strategies and the

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 required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 73.

74. Paragraph 74 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 74.

75. Microsoft admits that it has a multigame subscription service known as Xbox Game Pass, which has three offerings and gives gamers access to ~~over~~ hundreds of games; that Game Pass Ultimate provides access to Xbox Cloud Gaming, along with other features; and that these combined Game Pass offerings currently have approximately 25 million subscribers. Microsoft denies the remaining allegations contained in Paragraph 75.

76. Microsoft admits that gaming companies compete to improve their platforms,

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-play model; and that for some customers the multigame subscription model may be cheaper than the buy-play model in some circumstances. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning unidentified industry participants and their business practices. Microsoft denies the remaining allegations contained in Paragraph 77.

78. Microsoft admits that it considers a variety of factors in pricing its products and services, including the pricing strategies of its competitors. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning unidentified subscription services other than its own. 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 78.

79. Paragraph 79 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 some multigame subscription services provide users with access to hundreds of games for fixed periods of time; and that multigame subscription services

can allow gamers to discover new content they may otherwise have missed or not purchased. 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 79.

80. Paragraph 80 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 Xbox Live Gold and PlayStation Plus Essential offer fewer game choices to subscribers than some other subscription offerings. Microsoft denies the remaining allegations contained in Paragraph 80.

81. Paragraph 81 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 in some circumstances mobile games can have different levels of complexity and game quality than console PC native games. Microsoft

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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]

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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 "multigame content library subscription services" or "cloud gaming subscription services" because ~~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 ~~because~~ but

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2022, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System and served the following via email:

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The Honorable D. Michael Chappell
Administrative Law Judge
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I also certify that I caused the foregoing document to be served via email to:

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