

**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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Microsoft Corp. (“Microsoft”), and Activision Blizzard, Inc. (“Activision”) have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

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-performance video game consoles, develops and sells Xbox gaming consoles. Microsoft is vertically integrated: through its in-house game studios, it develops and publishes popular video game titles such as *Halo*. Such in-house games are known as “first-party” titles in the industry. Microsoft also offers a leading video game subscription service, Xbox Game Pass, for which customers pay a monthly fee to access a library of hundreds of first- and third-party video games for console or personal computer (“PC”). The top tier of Xbox Game Pass, called Xbox Game Pass Ultimate, includes “cloud gaming” functionality that enables subscribers to stream certain games, as opposed to downloading games locally, and then to play those games across a variety of devices including consoles, PCs, tablets, and mobile phones.

3. Activision develops and publishes high-quality video games for multiple devices, including video game consoles, PCs, and mobile devices. Activision’s games include high-quality games that are commonly referred to in the industry as “AAA” titles. AAA games are costly to produce because of the creative talent, budgets, and time required for development. Gamers highly anticipate the release of AAA games.

4. Activision produces some of the most iconic video game titles, including several leading AAA franchises. For example, Activision develops the popular franchises *Diablo* and *Overwatch* and the marquee franchise *Call of Duty*.

5. The *Diablo* and *Overwatch* AAA franchises are among several Activision franchises that have individually earned more than ██████████ in lifetime revenues. *Overwatch* just released a successful new title, *Overwatch 2*, available for play on multiple gaming consoles and PCs. *Diablo*, a long-running franchise first introduced in the 1990s, has a highly anticipated new title, *Diablo IV*, slated for release in early 2023.

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 [REDACTED] 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 [REDACTED] 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 frequently made those acquired titles exclusive to its own consoles and/or subscription services, eliminating the opportunity for consumers to play those titles on rival products or services. By taking games exclusive, Microsoft strengthens the position of its console and subscription service products relative to competitors.

10. The Proposed Acquisition is reasonably likely to substantially lessen competition or tend to create a monopoly in multiple markets because it will create a combined firm with the ability and increased incentive to use its control of Activision titles to disadvantage Microsoft’s competitors. The Proposed Acquisition also may accelerate an ongoing trend towards vertical integration and consolidation in, and raise barriers to entering, the relevant markets.

11. Microsoft’s ownership of Activision would provide Microsoft with the ability to withhold or degrade Activision content through various means, including manipulating Activision’s pricing, degrading game quality or player experience on rival offerings, changing the terms and timing of access to Activision’s content, or withholding content from competitors entirely.

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 decision to make several of the newly acquired ZeniMax titles, including *Starfield*, *Redfall*, and *Elder Scrolls VI*, Microsoft exclusives.

13. Today, Activision touts that it is [REDACTED] and seeks to offer its games wherever gamers want to be playing them. It has an incentive to offer its titles broadly. Microsoft’s ownership of Activision’s content would alter that dynamic. As Microsoft seeks to increase its profits from the lucrative video game industry, the Proposed Acquisition will increase Microsoft’s incentive to withhold Activision content from, or degrade Activision content on, consoles and subscription services that compete with Xbox consoles and Xbox Game Pass. Such conduct would be reasonably likely to substantially lessen competition and harm gamers in the United States.

14. These effects are likely to be felt throughout the video gaming industry. The Proposed Acquisition is reasonably likely to substantially lessen competition and/or tend to create a monopoly in both well-developed and new, burgeoning markets, including high-performance consoles, multi-game content library subscription services, and cloud gaming subscription services.

JURISDICTION

15. Respondents Microsoft and Activision are each “corporations” as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and in Section 1 of the Clayton Act, 15 U.S.C. § 12.

16. Respondents are engaged in activities in or affecting “commerce” as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and in Section 1 of the Clayton Act, 15 U.S.C. § 12.

17. The Proposed Acquisition constitutes a merger subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

RESPONDENTS AND THE PROPOSED ACQUISITION

18. Respondent Microsoft is a publicly traded technology company incorporated in the State of Washington with headquarters in Redmond, Washington. Microsoft sells software, services, and devices across the technology industry and is among the most valuable companies in the world. Microsoft’s gaming division produces Xbox hardware and Xbox content and services. Its total gaming revenues in FY2022 were over \$16 billion. Microsoft’s total revenues in FY2022 were over \$198 billion.

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 purchase price of \$95 per Activision share and a total estimated value of \$68.7 billion.

BACKGROUND

21. Activision's gaming content is extremely important in a gaming industry where content availability shapes gamers' decisions about which video game consoles and services to purchase. If the Proposed Acquisition is allowed to proceed, Microsoft would gain control of Activision's content and have the ability and increased incentive to withhold or degrade Activision's content, which is reasonably likely to reduce competition and cause a number of harmful outcomes, including dampened innovation, diminished consumer choice, higher prices and/or lower quality products, and harm to the millions of Americans who benefit from competition in video game consoles and subscription services.

22. Today, gaming is the largest category in the entertainment industry, with revenues that far exceed those of both the film and music industries. This year, the gaming industry is expected to be worth more than \$170 billion in global revenues, five times greater than global movie box office revenues.

23. Gaming's unrivaled popularity among consumers is expected to continue. Microsoft projects global gaming revenues to grow to █████ billion in annual sales by █████. Microsoft also expects the number of gamers worldwide to increase significantly, expanding by another █████ billion players and reaching █████ of the global population over the next █████ years.

24. Video game content and services are generally available on a variety of devices, including video game consoles that are predominantly used for playing video games; PCs, including general purpose PCs as well as high-performance gaming PCs configured to play computationally demanding games; and mobile devices.

25. Consumers purchase consoles based on the technological capability of the console, the price, and the games available for that specific console, among other factors.

I. Consoles

26. For gamers who play games on gaming consoles today, the most popular options, Microsoft's Xbox, Sony's PlayStation, and Nintendo's Switch, come from the same trio of companies that have been manufacturing consoles for decades with no meaningful new competition.

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 [REDACTED]

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 [REDACTED]. In internal communications, Microsoft executives regularly discuss [REDACTED].

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 [REDACTED] 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 PlayStation 5 are sold at the same price, while the Series S offers lower performance and is sold at a lower price.

33. Other consoles lack the high performance of the Xbox Series X|S and PS5 consoles. For example, the Nintendo Switch, which is designed to allow portable, handheld use, necessarily sacrifices computing power, which leaves it unable to play certain games that require more advanced graphic processing. Retailing at \$299.99, the Nintendo Switch is also less expensive than the Xbox Series X and PlayStation 5 consoles, both priced at \$499.99. While the Xbox Series S had the same retail price at launch as the Nintendo Switch, the graphical and processing capabilities of the Series S are much more aligned with the Xbox Series X and PS5 consoles. The Xbox Series S enables gamers to play the same video games as the Xbox Series X, both of which offer more graphically advanced gameplay than on the Nintendo Switch.

II. Gaming Content

A. Multi-Game Content Library Subscription Services

34. For the last several decades, gamers have purchased games through a “buy-to-play” model: either purchasing physical copies of games or, more prevalent today, purchasing digital copies of individual games that gamers download to their gaming console, PC, or other device.

35. Recent years, however, have seen the expansion of a subscription model. Multi-game content library subscription services allow gamers to access a library of games for a fixed monthly or yearly fee. Microsoft’s multi-game content library subscription service, Xbox Game Pass, launched in 2017, rapidly grew to 10 million subscribers by 2020 and in 2022 announced it had grown to 25 million subscribers.

36. Xbox Game Pass provides subscribers with unlimited access to a library of over 300 first- and third-party games at no additional cost. The service is priced at \$9.99 per month for gamers who seek to download games to play solely on an Xbox console or solely on a PC. The higher tiered service, Xbox Game Pass Ultimate, priced at \$14.99 per month, allows gamers to download games for play on either an Xbox console or a PC, and additionally enables gamers to stream games from an off-site server to any web-enabled local device that can access Game Pass (*e.g.*, an Xbox console, PC, mobile device, or smart TV).

37. Sony also offers a multi-game content library subscription service, PlayStation Plus, which at certain tiers is comparable to Xbox Game Pass. The lower comparable tier, PlayStation Plus Extra, priced at \$14.99 per month, provides access to a library of hundreds of games that can be played on PlayStation consoles as well as online multiplayer access, discounts on other games, and cloud storage. The higher comparable tier, PlayStation Plus Premium, priced at \$17.99 per month, provides access to an even larger library of games that can be played on PlayStation, along with cloud streaming.

38. In addition to Sony’s PlayStation Plus Extra and Premium, other multi-game content library subscription services include EA Play and Ubisoft+. EA Play, starting at \$4.99 per month, and Ubisoft+, starting at \$14.99 per month, each offer access only to content from the respective publishers, Electronic Arts Inc. (“EA”) and Ubisoft Entertainment SA (“Ubisoft”).

B. Cloud Gaming Subscription Services

39. Today, video game software typically runs locally on the player’s gaming device. Recently, however, cloud gaming subscription services have been introduced that allow players to stream games that run on remote hardware without downloading the game locally. The primary processing for the game occurs in off-site datacenters and a live feed of the game is streamed to the player’s device.

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.

C. Importance of AAA Games

43. AAA games are particularly important within the gaming industry. The term “AAA” is frequently used by industry participants to refer to highly anticipated games bearing similar characteristics: high development costs, superior graphical quality, and expectations of high unit sales and revenue, typically from a studio with large development and publishing teams, supported by extensive marketing and promotion. AAA content can act as [REDACTED] content, where, as a consultant to Microsoft explained, it [REDACTED]

44. In the words of one Microsoft executive, AAA games are [REDACTED]. They are also not numerous. Phil Spencer, CEO of Microsoft Gaming, estimates there are [REDACTED]

45. Production budgets for AAA games frequently exceed [REDACTED] million, if not [REDACTED] million, and development teams can include thousands of developers working over several years. The high cost of AAA game development is driven by many factors such as long development cycles and the scarcity of AAA-capable studios and talent.

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 viewed within the industry as a AAA-level publisher, such that industry participants will sometimes refer to the “Big 4 + Epic.”

48. Internally, Microsoft recognizes that [REDACTED] Despite significant growth in the gaming industry, the head of Xbox Game Studios has noted [REDACTED] Creating a studio with the capability to produce AAA games requires scarce talent and is a capital-intensive endeavor.

49. Microsoft and Sony also produce AAA games. The *Elder Scrolls*, *Halo*, and *Forza* franchises are AAA games from Microsoft, while the *God of War*, *MLB The Show*, and *Spider-Man* franchises are AAA games from Sony.

50. Microsoft’s own experience with releasing AAA games reflects the cost and time to develop such content. *Halo Infinite*, a recent title from the Microsoft’s first-party *Halo* franchise, was in production for [REDACTED] years, and cost almost [REDACTED] million. Other AAA games may take even longer to develop. For instance, according to one Microsoft executive, [REDACTED] a forthcoming title from the [REDACTED] franchise, may take a [REDACTED] to develop.

51. Access to AAA content is crucial for Microsoft, and the company strives to ensure that new AAA content is available on its console and subscription services on a regular basis. In May 2022, Mr. Spencer of Microsof [REDACTED]

[REDACTED]

52. AAA content has particularly important downstream effects because it generates player interest, develops a base of users, and drives monetization opportunities. As Microsoft's CEO has explained, [REDACTED]

[REDACTED] As an internal Microsoft document explained, [REDACTED]

[REDACTED] An internal strategy document on scaling Xbox Game Pass [REDACTED]

53. To differentiate their products from rivals, console manufacturers and subscription service providers may seek to make certain titles exclusive to their products and unavailable on rivals' products, including by obtaining exclusive licenses from third-party game publishers. An internal Microsoft analysis estimates [REDACTED]

[REDACTED] Typically, exclusivity in this context does not prevent a game from being available for PC or other non-console devices.

54. A diverse array of AAA content that increases adoption and engagement gives a console or subscription service greater leverage in attracting additional content. The console or subscription service can tout the size of its player base in negotiations with publishers and developers seeking to increase the discoverability and engagement of their content. As an internal Microsoft strategy document notes, [REDACTED]

[REDACTED] The result of these dynamics is to generate competition among console manufacturers and subscription service providers for AAA content.

55. Microsoft Xbox's Chief Marketing Officer has emphasized the importance of such content, noting: [REDACTED]

56. Microsoft expects that Activision's AAA content [REDACTED]. As Mr. Spencer explained to Microsoft investors, "[a]s our platform becomes more attractive, the flywheel of content creators and players accelerates. As the creative range on our platform continues to expand, more players are attracted to the service, and the growing scale of the customer base makes the platform more attractive for additional publishers, and so on."

57. Activision content is especially valuable to any gaming console or subscription service due to the ability of Activision games to drive sales and engagement. Activision's CEO Bobby Kotick testified that Activision's games are "[REDACTED]" and "[REDACTED]" Microsoft, in presentations to its Board of Directors regarding this Proposed Acquisition, called Activision's content [REDACTED]

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

[REDACTED]

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 best-selling 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-Game Content Library Subscription Services, and Cloud Gaming Subscription Services. The Proposed Acquisition is therefore reasonably likely to result in harm to both competition and consumers.

I. High-Performance Consoles are a Relevant Product Market

63. High-Performance Consoles are a Relevant Market for evaluating the likely competitive effects of the Proposed Acquisition.

64. The only High-Performance Consoles offered for sale today are the most recent generation of Microsoft Xbox and Sony PlayStation consoles—the Xbox Series X|S and the PS5. The Xbox Series X|S and PS5 are therefore included within the Relevant Market.

65. The third major gaming console available today, the Nintendo Switch, is highly differentiated from the Xbox and PlayStation consoles in significant ways. The Nintendo Switch, therefore, is not included in the Relevant Market.

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 [REDACTED]

[REDACTED] Respondents conceded in a regulatory filing that [REDACTED].

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 [REDACTED] percent of PlayStation console owners owned an Xbox and only [REDACTED] 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, Inc. v. Apple Inc.*, 559 F.Supp.3d 898, 981 (N.D. Cal. 2021). Mobile gaming devices are therefore not included in the Relevant Market.

72. High-Performance Consoles are a relevant antitrust market. However, although the Nintendo Switch is highly differentiated from the Xbox Series X|S and PS5 consoles, it shares many of the same characteristics that make High-Performance Consoles distinct from PCs, and mobile devices. Accordingly, the anticompetitive effects of the Proposed Acquisition alleged in this Complaint are also reasonably likely to occur in a broader market for gaming consoles that includes High-Performance Consoles and the highly differentiated Nintendo Switch.

II. Multi-Game Content Library Subscription Services are a Relevant Product Market

73. Multi-Game Content Library Subscription Services are a relevant product market for evaluating the competitive effects of the Proposed Acquisition.

74. The Relevant Market for Multi-Game Content Library Subscription Services includes services that offer unlimited access to a library of video games that are predominantly played on non-mobile devices and are available to play at zero additional cost beyond the subscription fee, either via download or cloud streaming.

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 [REDACTED] Microsoft’s ordinary course documents show that [REDACTED] For example, Xbox CFO Tim Stuart sent an email [REDACTED] Mr. Stuart went on to report: [REDACTED]

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. The pricing of individual games does not dictate Microsoft’s pricing decisions for its Xbox Game Pass subscriptions. Additionally, when speaking with third-party game developers, Microsoft’s executives tout Game Pass as [REDACTED] Microsoft further showcases the additive nature of Game Pass through public statements that report Game Pass subscribers invest more time and money in gaming than their fellow gamers without a subscription.

80. Subscription services that focus on enabling online multiplayer gaming, such as Xbox Live Gold and PlayStation Plus Essential, are not commercially reasonable alternatives and therefore are not included in the Relevant Market. Xbox Live Gold and PlayStation Plus Essential, as currently structured, award a limited number of free games as “bonus content.” These services do not provide access to the same breadth and diversity of content as Multi-Game Content Library Subscription Services and do not facilitate the same level of game discoverability.

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 “Bring Your Own Game” (“BYOG”) approach where users play games they own in their own personal library by streaming those games through their Cloud Gaming Subscription Service. In all cases, users pay a periodic fee, either monthly or yearly, to access the Cloud Gaming Subscription Service.

86. Cloud Gaming Subscription Services provide a way to play games that is distinct from running them locally on the player’s gaming device. Such subscription services make predominantly non-mobile video games available instantly on a wide variety of devices, reducing the need for gamers to make large investments in expensive hardware, such as a High-Performance Console or a gaming PC, and eliminating download time.

87. Cloud Gaming Subscription Services are designed to reach a different set of consumers than other forms of game distribution. These subscription services enable gaming on devices that do not meet the minimum specifications for large and technologically complex games, such as older and less expensive PCs, MacBooks, Chromebooks, tablets, mobile devices, and smart TVs. They also enable gamers to play games that were developed for other devices and/or operating systems. Microsoft has estimated that the total addressable market for cloud gaming is approximately 3 billion users, compared to [REDACTED] console users.

88. Microsoft’s executives recognize the expanded opportunity Cloud Gaming Subscription Services offer. For example, Microsoft executives have explained that xCloud (now referred to as Xbox Cloud Gaming) offers [REDACTED]

and that [REDACTED]

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

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 Cloud Gaming by deploying racks of dedicated Xbox console hardware in Microsoft data centers, investing [REDACTED]. Microsoft has plans to support [REDACTED] on its [REDACTED] in the future and expects to spend over [REDACTED] on Xbox Cloud Gaming infrastructure in the next several years.

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

IV. The Relevant Geographic Market is the United States

92. The relevant geographic market in which to assess the Proposed Acquisition's effects is the United States.

93. In each of the Relevant Markets, consumer preferences and gaming behavior differ across countries. Internal research from both Microsoft and Activision also finds significant variation among countries on metrics like [REDACTED]. For its most recent Generation 9 consoles, Microsoft differentiated its [REDACTED]. Given its large installed base of Generation 8 consoles, Microsoft placed the United States into a [REDACTED] along with only [REDACTED] other countries. Microsoft has identified the United States as a [REDACTED], [REDACTED].

94. Microsoft is a leader in the United States in the Multi-Game Content Library Subscription Services market. As of the [REDACTED] Microsoft offers Game Pass at different price points outside the United States.

95. Microsoft and other Cloud Gaming Subscription Service providers have similarly focused on the United States [REDACTED]. Microsoft launched Game Pass Ultimate first in the United States and Canada, with Nvidia's GeForce NOW and Amazon Luna undertaking a similar strategy. Cloud Gaming Subscription Service providers also note that the proximity of cloud servers to gamers is important in light of the technological demands of cloud gaming.

ANTICOMPETITIVE EFFECTS

96. The Proposed Acquisition is reasonably likely to substantially lessen competition or tend to create a monopoly in the Relevant Markets by creating a combined firm with the ability and increased incentive to withhold Activision's valuable gaming content from, or degrade Activision's content for, Microsoft's rivals. The combined firm would have the ability to exclude Microsoft's rivals from access to some or all of Activision's content in the Relevant Markets. Microsoft would have the power to decide if, when, and to what extent Activision content will be available on competing products. The Proposed Acquisition is likely to increase entry barriers, thereby dampening beneficial rivalry and innovation. If permitted to make Activision a captive supplier, Microsoft would have a substantially increased incentive to engage in strategies that would likely lead to reduced consumer choice, higher prices or lower quality products, and less innovation.

I. As the Owner of Activision's Gaming Content, Microsoft Would Have the Ability to Disadvantage Rivals by Withholding or Degrading Activision Content in the Relevant Markets

97. AAA gaming content is a substantially important input for High-Performance Consoles, Multi-Game Content Library Subscription Services and Cloud Gaming Subscription Services, as these products use AAA content to attract and retain users and drive adoption. AAA content is difficult to produce given the intense resources and specialized competency required to develop these valuable games.

98. Activision is a leader amongst an already limited number of developers able to produce such content through its cherished gaming franchises, including *Call of Duty*, *Diablo*, and *Overwatch*. As the owner of Activision's gaming content, Microsoft would have the ability to disadvantage rivals by withholding or degrading Activision content in the Relevant Markets.

A. AAA Content is a Substantially Important Input for Products in the Relevant Markets

99. As discussed above, AAA gaming content is an important input for consoles and gaming subscription services. AAA games typically represent an outsized portion of revenue on these products and drive greater engagement and adoption.

100. Microsoft's own executives repeatedly emphasize [REDACTED]. In a 2019 internal email, Xbox's then-Chief Marketing Officer told Microsoft's Mr. Nadella that [REDACTED]. In a June 2020 conversation between other Microsoft executives about Game Pass growth drivers, one aptly points out, "[REDACTED]."

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 [REDACTED]
[REDACTED]” During negotiations with top third-party publishers for inclusion of their games on Xbox Series X|S, Microsoft internally noted that Activision “[REDACTED]
[REDACTED]” entitled to “[REDACTED].”

102. Activision’s powerful influence on gaming product adoption is also borne out by its revenue share negotiations with [REDACTED]

[REDACTED] In one Microsoft executive’s words, Activision’s share on *Call of Duty* is “[REDACTED]” and is the [REDACTED]

B. As the Owner of the Activision Content, Microsoft Would Have the Ability to Withhold Activision’s Content from, or Degrade Activision Content on, Rival Consoles and Subscription Services

103. The Proposed Acquisition would give Microsoft total control over Activision’s content, thereby giving Microsoft the ability to fully withhold Activision content from rivals, raise rivals’ costs, change the terms and timing of access to Activision content, or degrade the quality of Activision content available for rival consoles and subscription services.

104. The Proposed Acquisition would give Microsoft the ability to engage in several strategies to degrade access to Activision content on rival consoles and subscription services, including timed exclusivity, exclusive downloadable content available only on Microsoft’s products, and a variety of other means across the Relevant Markets.

105. Microsoft also would gain the ability to engage in tactics to degrade the quality of Activision content on competing consoles and subscription services and create a less desirable player experience for users choosing to play anywhere other than on Microsoft’s products.

106. The Proposed Acquisition also would give Microsoft the ability to reduce efforts to optimize Activision content for rival products. Currently, Activision collaborates closely with gaming hardware manufacturers to ensure an optimal experience for gamers. For example, Activision collaborated with [REDACTED]

[REDACTED] Should the Proposed Acquisition close, the combined firm will have the ability to reduce such collaboration in the High-Performance Console Market.

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

[REDACTED] 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 sales of its video game titles. The Proposed Acquisition would change Activision's incentives, because Microsoft stands to gain significant profits from additional gamers purchasing Xbox consoles or Xbox Game Pass. Hence, the combined firm will be incentivized to disadvantage Microsoft rivals by withholding Activision content from, or degrading Activision content on, rival consoles and subscription services to promote sales of Microsoft's products.

110. While AAA content in general is important to competitors in the Relevant Markets, Activision content is especially important because of its ability to drive gaming product adoption and engagement by users.

111. Activision's own documents point out the significant role Activision content plays in consumers' choice of gaming products. In a 2019 presentation to [REDACTED], Activision highlighted consumer survey data showing that [REDACTED]

112. The Proposed Acquisition would reduce Microsoft's incentive to optimize Activision content for rival products, including via collaboration with Microsoft's rivals. Given the competition between Microsoft and Sony, the combined firm will have less incentive to collaborate with Sony to [REDACTED]. In addition, because Microsoft's Game Pass Ultimate competes [REDACTED]

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 [REDACTED]. Microsoft subsequently has wavered in its representations as to [REDACTED].

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 [REDACTED] franchise were released on PlayStation, Microsoft has confirmed that the upcoming [REDACTED] 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 of Activision's existing agreement with Sony (*i.e.*, through [REDACTED]).

116. Microsoft is eager to further build upon its already significant strength in gaming, with Mr. Nadella declaring publicly, "Microsoft's *all-in on gaming*." Looking to reap the financial opportunity available in the gaming industry, Microsoft would be incentivized to withhold Activision content from, or degrade content on, rival products in order to disadvantage its rivals, thereby weakening competition and increasing its profits.

117. Moreover, as Microsoft internally recognizes, acquisitions in this industry [REDACTED]. This Proposed Acquisition—the largest ever announced in the gaming industry—poses a reasonable probability of further accelerating this trend.

IV. Withholding Activision Content From, or Degrading Activision Content On, Microsoft's Rival Products Will Harm Competition and Consumers in the Relevant Markets

118. Withholding Activision content from, or degrading Activision content on, Microsoft's rivals' products is reasonably likely to substantially lessen competition in the Relevant Markets.

119. This lessening of competition will result in harm to consumers, including reduced consumer choice, reduced product quality, higher prices, and less innovation.

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 day of August, 2023, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

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: