

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880-JSC

JOINT STATEMENT

Dept.: Courtroom 8
Judge: Honorable Jacqueline Scott Corley

1 Pursuant to the Court’s Order Regarding Evidentiary Hearing on Preliminary Injunction
2 Motion (Dkt. 76), Plaintiff Federal Trade Commission (“FTC”) and Defendants Microsoft
3 Corporation (“Microsoft”) and Activision Blizzard, Inc. (“Activision”) jointly submit the
4 following statement.

5 **A. Witnesses**

6 **1. Plaintiff’s Witnesses**

7 **Phil Eisler (Vice President and General Manager of GeForce NOW Cloud Gaming**
8 **at Nvidia Corp.). Plaintiff** is calling Mr. Eisler by video deposition designation to testify about
9 the video game industry, competition in the high performance and broader video game console
10 markets, cloud gaming, video game subscription services, Nvidia’s GeForce NOW cloud gaming
11 service, PC gaming, Nvidia’s agreements with Microsoft, and any topics as to which he
12 previously testified. Direct examination 10 mins. Cross-examination 5 mins.

13 **Jeff Fisher (Senior Vice President of GeForce at Nvidia Corp.). Plaintiff** is calling
14 Mr. Fisher by video deposition designation to testify about the video game industry, competition
15 in the high performance and broader video game console markets, cloud gaming, video game
16 subscription services, Nvidia’s GeForce Now cloud gaming service, PC gaming, Nvidia’s
17 agreements with Microsoft, and any topics as to which he previously testified. Direct
18 examination 10 mins. Cross-examination 5 mins.

19 **Pete Hines (Group Senior Vice President and Head of Publishing at Bethesda**
20 **Softworks LLC (a Microsoft subsidiary)). Plaintiff** is calling Mr. Hines as an adverse witness
21 to testify live about Microsoft’s acquisition of ZeniMax Media / Bethesda Softworks (“the
22 ZeniMax acquisition”), Microsoft Gaming decisions about video game content, and any topics as
23 to which he previously testified. Direct examination 20 mins. Cross-examination 15 mins.
24
25
26
27
28

1 **Robin Lee (Professor of Economics, Harvard University). Plaintiff** is calling Dr. Lee
2 as an expert witness to testify about the relevant antitrust markets in this case, the combined
3 firm’s ability and incentive to foreclose competition, the harms to competition and consumers
4 from foreclosure, potential pro-competitive effects, the likely effects of the Proposed Acquisition
5 in the relevant markets, and any of the material disclosed in his expert reports served in
6 connection with this matter. Plaintiff intends to present Dr. Lee’s direct testimony by declaration.
7 Cross-examination 90 minutes. Redirect examination 45 minutes.
8

9 **Dov Zimring ((Former) Director of Product Management for Stadia at Google**
10 **LLC). Plaintiff** is calling Mr. Zimring live to testify about the video game industry, cloud
11 gaming, Google’s Stadia cloud gaming service, and any topics as to which he previously
12 testified. Direct examination 20 mins. Cross-examination 10 mins.
13

14 **2. Defendants’ Witnesses**

15 **Liz Bailey (PhD, Vice President, Charles River Associates). Defendants** are calling
16 Dr. Bailey as an expert witness to testify about the opinions and conclusions of Plaintiff’s experts
17 Robin Lee particularly regarding the gaming industry, the relevant markets alleged, the
18 competitive significance of Activision content, and the ways in which the transaction will
19 increase output.. Direct examination 90 minutes. Cross examination 45 minutes.
20

21 **Sarah Bond (Corporate Vice President of Gaming Ecosystem, Microsoft).**
22 **Defendants** are calling Ms. Bond live to testify about Xbox’s content strategy, partnerships with
23 publishers, subscription offering for consumers, expanding distribution of Xbox games, benefits
24 associated with the Activision acquisition, negotiations and agreements with third parties to
25 bring Activision content onto competitor services, the remedy Xbox agreed to with the European
26 Commission, and any topics as to which she previously testified. Direct examination 60
27 minutes. Cross examination 40 minutes.
28

1 **Dennis Carlton (David McDaniel Keller Professor of Economics Emeritus at the**
2 **Booth School of Business at the University of Chicago; Senior Managing Director,**
3 **Compass Lexecon).** Defendants are calling Dr. Carlton as an expert witness to testify about the
4 opinions and conclusions of Plaintiff's expert, Dr. Robin Lee, particularly regarding the potential
5 anticompetitive effects of the acquisition, and the procompetitive efficiencies arising from the
6 acquisition. Defendants intend to present Dr. Carlton's direct testimony by declaration. Cross
7 examination 45 minutes. Redirect examination 60 minutes.
8

9 **Amy Hood (Chief Financial Officer, Microsoft).** Defendants are calling Ms. Hood to
10 testify about Xbox's current gaming business, Xbox's financial analyses and projections, Xbox's
11 responsibility for its financial performance; the proposed acquisition of Activision, including but
12 not limited to, the rationale and strategy for the acquisition and approval; and any topics as to
13 which she previously testified. Defendants intend to present Ms. Hood's direct testimony by
14 declaration. Cross-examination 15 minutes. Redirect examination 30 minutes.
15

16 **Bobby Kotick (Chief Executive Officer, Activision Blizzard, Inc.).** Defendants are
17 calling Mr. Kotick live to testify about Activision's gaming business, future plans, and strategies,
18 including but not limited to, Activision's development and publishing of first-party gaming
19 content, distribution strategy, evaluation of potential partnership opportunities, and any topics as
20 to which he previously testified. Direct examination 45 minutes. Cross-examination 30 minutes.
21

22 **Steve Singer (Senior Vice President, Publisher and Developer Relations, Nintendo).**
23 **Defendants** are calling Mr. Singer by video deposition designation to testify about Nintendo's
24 position in the gaming industry, Nintendo's agreement with Microsoft, and any topics as to
25 which he previously testified. Direct examination 10 minutes. Cross examination 10 minutes.
26
27
28

1 **Armin Zerza (Chief Financial Officer, Activision Blizzard, Inc.). Defendants** are
2 calling Mr. Zerza to testify about Activision’s gaming business, future plans, and strategies,
3 including but not limited to, Activision’s development and publishing of first-party gaming
4 content, distribution strategy, evaluation of potential partnership opportunities, and any topics as
5 to which he previously testified. Defendants intend to present Mr. Zerza’s direct testimony by
6 declaration. Cross examination 20 minutes. Redirect examination 15 minutes.

7
8 **3. Witnesses Both Sides Are Calling¹**

9 **Matt Booty (Head of Xbox Game Studios at Microsoft). Plaintiff** is calling Mr.
10 Booty as an adverse witness to testify live about the video game industry, Microsoft Gaming’s
11 strategy and business, other Microsoft Gaming acquisitions, Microsoft Gaming decisions about
12 video game content, Microsoft’s first-party game development business and strategy, the
13 Proposed Acquisition, Microsoft’s acquisition of ZeniMax Media / Bethesda Softworks (“the
14 ZeniMax acquisition”), competition in the high performance and broader video game console
15 markets, cloud gaming, video game subscription services, and any topics as to which he
16 previously testified. **Defendants** are calling Mr. Booty to testify live about the game
17 development process; Xbox Game Studios’s development, publishing, and licensing of first-
18 party content; the competitive landscape of the gaming industry, and any topics as to which he
19 previously testified. Plaintiff’s examination (including direct and cross) 45 mins. Defendants’
20 examination (including direct and cross) 20 mins.

21
22 **Jamie Lawver (Senior Finance Director at Microsoft). Plaintiff** is calling Ms. Lawver
23 as an adverse witness to testify live about video game industry, Microsoft Gaming’s strategy and
24

25
26 _____
27 ¹ As Plaintiff has identified several party witnesses that will be called in their case-in-chief,
28 Defendants jointly list them as well to provide an accurate scope of testimony.

1 business, the ZeniMax acquisition, other Microsoft Gaming acquisitions, Microsoft Gaming
2 decisions about video game content, competition in the high performance and broader video
3 game console markets, cloud gaming, video game subscription services, the Proposed
4 Acquisition, other topics regarding Microsoft's incentive and ability to foreclose competition in
5 the relevant markets, and any topics as to which she previously testified. **Defendants** are calling
6 Ms. Lawver to testify about the Xbox deal models and analyses, and any topics as to which she
7 previously testified. Plaintiff's examination (including direct and cross) 30 mins. Defendants'
8 examination (including direct and cross) 15 mins.
9

10 **Satya Nadella (CEO of Microsoft). Plaintiff** is calling Mr. Nadella as an adverse
11 witness to testify live about the video game industry, Microsoft Gaming's strategy and business,
12 the Proposed Acquisition, and any topics as to which he previously testified. **Defendants** are
13 calling Mr. Nadella live to testify about Microsoft's gaming business, Microsoft's approach to
14 software distribution, the acquisition of Activision, and any topics as to which he previously
15 testified. Plaintiff's examination (including direct and cross) 30 mins. Defendants' examination
16 (including direct and cross) 15 mins.
17

18 **Phil Spencer (CEO of Microsoft Gaming). Plaintiff** is calling Mr. Spencer as an
19 adverse witness to testify live about the video game industry, Microsoft Gaming's strategy and
20 business, the ZeniMax acquisition, Microsoft Gaming decisions about video game content, the
21 Proposed Acquisition, competition in the high performance and broader video game console
22 markets, cloud gaming, video game subscription services, and any topics as to which he
23 previously testified. **Defendants** are calling Mr. Spencer to testify about Xbox's gaming
24 strategy, offerings, and services, Xbox's proposed acquisition, including but not limited to the
25 rationale and strategy for the acquisition, and Xbox's negotiations and agreements with third
26
27
28

1 parties to bring Activision content onto competitor services. Plaintiff's examination (including
2 direct and cross) 60 mins. Defendants' examination (including direct and cross) 45 mins.

3 **James "Jim" Ryan (CEO of Sony Interactive Entertainment).** Plaintiff is calling Mr.
4 Ryan by video deposition designation to testify about competition in the relevant antitrust
5 markets, the video game industry, competition in the high performance and broader video game
6 console markets, cloud gaming, video game subscription services, the effects of the Proposed
7 Acquisition, and any topics as to which he previously testified. **Defendants** are calling Mr. Ryan
8 by video deposition designation to testify about the gaming industry, including console gaming,
9 subscription gaming, cloud game streaming, mobile gaming; Sony and Xbox's negotiations
10 regarding the distribution of Activision content, and any topics as to which he previously
11 testified. Plaintiff's examination (including direct and cross) 45 mins. Defendants' examination
12 (including direct and cross) 60 mins.

14 **Tim Stuart (CFO of Microsoft Gaming).** Plaintiff is calling Mr. Stuart as an adverse
15 witness to testify live about the video game industry, Microsoft Gaming's strategy and business,
16 the ZeniMax acquisition, other Microsoft Gaming acquisitions, Microsoft Gaming decisions
17 about video game content, the Proposed Acquisition, competition in the high performance and
18 broader video game console markets, cloud gaming, video game subscription services, and any
19 topics as to which he previously testified. **Defendants** are calling Mr. Stuart live to testify about
20 Xbox's first-party content strategy, including platform expansion and distribution, Xbox's
21 financial strategy for console sales and subscription services, including Game Pass' streaming
22 feature, Xbox's proposed acquisition, including but not limited to the deal valuation and strategy
23 for the acquisition, and any topics as to which he previously testified. Plaintiff's examination
24
25
26
27
28

(including direct and cross) 45 mins. Defendants’ examination (including direct and cross) 30 mins.

Lori Wright (Corporate Vice President at Microsoft). Plaintiff is calling Ms. Wright as an adverse witness to testify live about competition in the high performance and broader video game console markets, cloud gaming, video game subscription services, Microsoft Gaming’s strategy and business, and any topics as to which she previously testified. **Defendants** are calling Ms. Wright to testify live about Xbox’s negotiations and agreements with third parties to bring Activision content onto competitor services, and any topics as to which she previously testified. Plaintiff’s examination (including direct and cross) 15 mins. Defendants’ examination (including direct and cross) 15 mins.

B. Exhibits

Plaintiffs and Defendants are each concurrently filing their exhibit lists.

Dated: June 20, 2023

Respectfully submitted,

/s/ James H. Weingarten

James H. Weingarten
Peggy Bayer Femenella
James Abell
Cem Akleman
J. Alexander Ansaldo
Michael T. Blevins
Amanda L. Butler
Nicole Callan
Maria Cirincione
Kassandra DiPietro
Jennifer Fleury
Michael A. Franchak
James Gossmann
Ethan Gurwitz
Meredith R. Levert
David E. Morris
Merrick Pastore

Beth Wilkinson (pro hac vice)
Rakesh N. Kilaru (pro hac vice)
Kieran Gostin (pro hac vice)
Grace Hill (pro hac vice)
Anastasia M. Pastan (pro hac vice)
Sarah E. Neuman (pro hac vice)
Alysha Bohanon (pro hac vice)
Jenna Pavelec (pro hac vice)
WILKINSON STEKLOFF LLP
2001 M Street, N.W., 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000

Jonathan E. Nuechterlein (pro hac vice)
C. Frederick Beckner III (pro hac vice)
William R. Levi (pro hac vice)
Daniel J. Hay (pro hac vice)

1 Stephen Santulli
Edmund Saw

SIDLEY AUSTIN LLP
150 K Street, N.W.
Washington, DC 20005

2 Federal Trade Commission
3 600 Pennsylvania Avenue, NW
4 Washington, DC 20580
5 Tel: (202) 326-3570

Bambo Obaro (Bar No. 267683)
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3083

6 Erika Wodinsky

Michael Moiseyev (pro hac vice)
Megan A. Granger (pro hac vice)
WEIL, GOTSHAL & MANGES LLP
2001 M Street, N.W., Suite 600
Washington, DC 20036
Telephone: (202) 682-7000

7 Federal Trade Commission
8 90 7th Street, Suite 14-300
9 San Francisco, CA 94103

*Counsel for Plaintiff Federal Trade
Commission*

Counsel for Defendant Microsoft Corporation

12 Jack DiCanio (Bar No. 138782)
13 Caroline Van Ness (Bar No. 281675)
14 SKADDEN, ARPS, SLATE, MEAGHER &
15 FLOM LLP
16 525 University Avenue
17 Palo Alto, CA 94301
18 Telephone: (650) 470-4500

17 Steven C. Sunshine (pro hac vice)
18 Julia K. York (pro hac vice)
19 SKADDEN, ARPS, SLATE, MEAGHER &
20 FLOM LLP
21 1440 New York Avenue, N.W.
22 Washington, DC 20005
23 Telephone: (202) 371-7000

22 Maria Raptis (pro hac vice)
23 Matthew M. Martino (pro hac vice)
24 Michael J. Sheerin (pro hac vice)
25 Evan R. Kreiner (pro hac vice)
26 Bradley J. Pierson (pro hac vice)
27 Jessica R. Watters((pro hac vice)
28 SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
1 Manhattan West
New York, NY 10001

Telephone: (212) 735-3000

Counsel for Defendant Activision Blizzard, Inc.

FILER'S ATTESTATION

I, Jennifer Fleury, am the ECF User whose ID and password are being used to file the foregoing. In compliance with Civil Local Rule 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Jennifer Fleury

Jennifer Fleury

Exhibit A

EXHIBIT FILED UNDER SEAL