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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 **FEDERAL TRADE COMMISSION,**

21 Plaintiff,

22 v.

23 **MICROSOFT CORP.,**

24 and

25 **ACTIVISION BLIZZARD, INC.,**

26 Defendants.

Case No.

**COMPLAINT FOR A TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION
PURSUANT TO SECTION 13(b)
OF THE FEDERAL TRADE
COMMISSION ACT**

**REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED**

1
2 Plaintiff Federal Trade Commission (“FTC” or “Commission”), by its designated
3 attorneys, petitions this Court to enter a temporary restraining order and grant a preliminary
4 injunction enjoining Defendants Microsoft Corp. (“Microsoft”) and Activision Blizzard, Inc.
5 (“Activision”) from consummating their proposed acquisition (the “Proposed Acquisition”) or a
6 similar transaction. Plaintiff seeks this provisional relief pursuant to Section 13(b) of the Federal
7 Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Both a temporary restraining order and
8 a preliminary injunction are necessary because Microsoft and Activision have represented that
9 they may consummate the Proposed Acquisition at any time [REDACTED]
10 [REDACTED] without any further notice to the Commission. A preliminary injunction is necessary to
11 maintain the status quo and prevent interim harm to competition during the pendency of the
12 FTC’s administrative proceeding to determine whether the Proposed Acquisition violates U.S.
13 antitrust law. A temporary restraining order is necessary to maintain the status quo while this
14 Court decides whether to grant the requested preliminary injunction.

15 On December 8, 2022, the Commission initiated an administrative proceeding to
16 determine whether the Proposed Acquisition violates Section 7 of the Clayton Act, 15 U.S.C. §
17 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. An evidentiary hearing in that proceeding will
18 begin in just seven weeks, on August 2, 2023. Fact discovery in the administrative proceeding
19 has closed, expert reports have been served, and final witness lists and exhibit lists have been
20 exchanged. The parties have scheduled expert depositions through the end of June, and motions
21 *in limine* and pretrial briefs are due in July. The administrative hearing will assess the legality of
22 the Proposed Acquisition and will provide all parties a full opportunity to present testimony and
23 other evidence regarding its likely competitive effects. The record from the evidentiary hearing
24 can be submitted to this Court in aid of its adjudication of Plaintiff’s request for a preliminary
25 injunction. *See, e.g., FTC v. Tronox Ltd.*, 332 F. Supp. 3d 187, 196 (D.D.C. 2018).

1 Until recently, Defendants indicated that they would not complete the Proposed
2 Acquisition unless and until they received clearance from European regulators, including in
3 proceedings before this Court in a private case challenging the Proposed Acquisition.

4 On April 26, 2023, the United Kingdom Competition and Markets Authority (“UK
5 CMA”) issued a report finding that the Proposed Acquisition may be expected to result in a
6 substantial lessening of competition in cloud gaming services in the United Kingdom. On May 5,
7 2023, the UK CMA issued an interim order blocking the Proposed Acquisition as of that date.
8 On May 18, it issued a proposed final order prohibiting the Proposed Acquisition for a ten-year
9 period. Defendants have appealed the UK CMA’s decision.

10 On May 24, [REDACTED]
11 [REDACTED]. Press reports
12 began circulating suggesting that Defendants were seriously contemplating closing the Proposed
13 Acquisition despite the pending administrative litigation and the CMA Orders. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Accordingly, pursuant to FTC Act § 13(b), Plaintiff requests (1) a preliminary injunction
20 to protect the Commission’s ability to evaluate the antitrust merits of the Proposed Acquisition
21 and (2) a temporary restraining order to protect this Court’s ability to decide the FTC’s request
22 for a preliminary injunction and order appropriate relief. Plaintiff’s request for a temporary
23 restraining order is the subject of a separate emergency motion, in which Plaintiff asks the Court
24 to enter—before 8:59 p.m. Pacific Time on June 15, 2023—an order prohibiting Defendants
25 from consummating the Proposed Acquisition or a substantially similar acquisition until after
26 this Court rules on the FTC’s request for a preliminary injunction.

NATURE OF THE CASE

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

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

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

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

6 5. The *Diablo* and *Overwatch* AAA franchises are among several Activision
7 franchises that have individually earned more than ██████ in lifetime revenues. *Overwatch*
8 just released a successful new title, *Overwatch 2*, available for play on multiple gaming consoles
9 and PCs. *Diablo*, a long-running franchise first introduced in the 1990s, launched a highly
10 anticipated new title, *Diablo IV*, on June 6, 2023. An Activision Press Release noted that *Diablo*
11 *IV* quickly became its Blizzard division’s “fastest-selling game of all time, with Blizzard’s
12 highest pre-launch unit sales ever on both console and PC. In the four days since early access
13 started on June 1, *Diablo IV* has been played for 93 million hours, or over 10,000 years --- the
14 equivalent playing 24 hours a day since the beginning of human civilization.”

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

20 7. By any measure, *Call of Duty* is a leading AAA franchise. It is one of the most
21 successful console-game franchises ever. From its launch in 2003 up through 2020, it generated
22 \$27 billion in revenues. *Call of Duty* also has a massive following, with ██████ million monthly
23 active users (“MAU”) in 2020, according to an Activision strategy document. Its loyal fanbase
24 and enduring appeal have made it particularly valuable, influencing gamer engagement and
25 gaming product adoption. The franchise has achieved sustained dominance over the past decade,
26 with *Call of Duty* titles comprising 10 of the top 15 console games sold between 2010–2019. No
27 other franchise had more than one title in the top 15. *Call of Duty* has continued to top the charts
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1 in 2020 and 2021, and its latest installment, *Modern Warfare II*, amassed more than \$1 billion in
2 sales within just ten days of its release. The previous franchise record was held by *Call of Duty:*
3 *Black Ops II*, which took 15 days to hit the \$1 billion mark.

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

7 9. Microsoft produces its own first-party video game titles. Microsoft has acquired
8 over ten third-party studios and their titles in recent years to expand its offerings. Microsoft has
9 frequently made those acquired titles exclusive to its own consoles and/or subscription services,
10 eliminating the opportunity for consumers to play those titles on rival products or services. By
11 taking games exclusive, Microsoft strengthens the position of its console and subscription
12 service products relative to competitors.

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

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

23 12. Microsoft’s past conduct provides a preview of the combined firm’s likely plans if
24 it consummates the Proposed Acquisition, despite any assurances the company may offer
25 regarding its plans. In March 2021, Microsoft acquired ZeniMax Media Inc. (“ZeniMax”), the
26 parent company of the well-known game developer and publisher Bethesda Softworks LLC
27 (“Bethesda”). Microsoft assured the European Commission (“EC”) during its antitrust review of
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1 the ZeniMax purchase that Microsoft would not have the incentive to withhold ZeniMax titles
2 from rival consoles. But, shortly after the EC cleared the transaction, Microsoft made public its
3 decision to make several of the newly acquired ZeniMax titles, including Starfield, Redfall, and
4 Elder Scrolls VI, Microsoft exclusives.

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

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

18 15. Defendants cannot show cognizable, merger-specific efficiencies that would
19 offset the reasonably probable and substantial competitive harm resulting from the Acquisition.

20 16. On December 8, 2022, the Commission found reason to believe that the
21 Acquisition would substantially lessen competition in violation of Section 7 of the Clayton Act,
22 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, and commenced an administrative
23 proceeding on the antitrust merits of the Proposed Acquisition. The administrative proceeding
24 provides a forum for fact discovery, which closed on April 7, 2023, after all parties issued
25 document subpoenas, requests for admission, interrogatories, and conducted over thirty
26 depositions of party and non-party witnesses. Pretrial disclosures are underway and the
27 evidentiary hearing is scheduled to begin before an Administrative Law Judge ("ALJ") on
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1 August 2, 2022, with up to 210 hours of live testimony permitted by rule. *See* 16 C.F.R. § 3.41.

2 17. A temporary restraining order is necessary to prevent Defendants from
3 consummating the Proposed Acquisition until after the fifth business day after this Court rules on
4 the Commission’s motion for a preliminary injunction pursuant to Section 13(b), or until after
5 the date set by the District Court, whichever is later. Such a temporary restraining order is
6 necessary to preserve the status quo and protect competition while the Court considers the
7 Commission’s application for a preliminary injunction.

8 18. Preliminary injunctive relief is similarly necessary to preserve the status quo and
9 protect competition during the Commission’s ongoing administrative proceeding. Allowing the
10 Proposed Acquisition to proceed while the Commission is assessing whether it violates Section 7
11 of the Clayton Act, as amended, 15 U.S.C. § 18 and is an unfair method of competition that
12 violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, would undermine the
13 Commission’s ability to order any necessary relief.

14 **JURISDICTIONAL STATEMENT**

15 **A. Jurisdiction**

16 19. This Court’s jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. §
17 53(b), and under 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under the Acts
18 of Congress protecting trade and commerce against restraints and monopolies, and is brought by
19 an agency of the United States authorized by an Act of Congress to bring this action.

20 20. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

21 Whenever the Commission has reason to believe—

22 (1) that any person, partnership, or corporation is violating, or is about to
23 violate, any provision of law enforced by the Federal Trade Commission, and

24 (2) that the enjoining thereof pending the issuance of a complaint by the
25 Commission and until such complaint is dismissed by the Commission or set
26 aside by the court on review, or until the order of the Commission made
27 thereon has become final, would be in the interest of the public—
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1 the Commission by any of its attorneys designated by it for such purpose
2 may bring suit in a district court of the United States to enjoin any such act or
3 practice. Upon a proper showing that, weighing the equities and considering
4 the Commission’s likelihood of ultimate success, such action would be in the
5 public interest, and after notice to the defendant, a temporary restraining
6 order or a preliminary injunction may be granted without bond. . . .

7 21. Defendants and their relevant operating entities and subsidiaries are, and at all
8 relevant times have been, engaged in activities affecting “commerce” as defined in Section 4 of
9 the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

10 **B. Venue**

11 22. Personal jurisdiction exists where service is effected pursuant to a federal statute.
12 Fed. R. Civ. P. 4(k)(1)(C). The FTC Act § 13(b), 15 U.S.C. § 53(b), authorizes nationwide
13 service of process. Defendants are therefore subject to personal jurisdiction in the Northern
14 District of California. Venue is proper in the Northern District of California under 28 U.S.C.
15 § 1391(b) and (c), as well as under 15 U.S.C. § 53(b) (“Any suit may be brought where such
16 person, partnership, or corporation resides or transacts business, or wherever venue is proper
17 under section 1391 of Title 28.”)

18 **C. Assignment to the San Francisco Division**

19 23. Assignment to the San Francisco Division is proper. A related proceeding
20 regarding the Proposed Acquisition was filed in the San Francisco Division: *DeMartini v.*
21 *Microsoft Corp.*, No. C-22-08991-JSC (N.D. Cal.).

22 **THE PARTIES AND THE PROPOSED ACQUISITION**

23 24. Plaintiff, the Commission, is an administrative agency of the United States
24 government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et*
25 *seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The
26 Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the
27 Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

1 expected to be worth more than \$170 billion in global revenues, five times greater than global
2 movie box office revenues.

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

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

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

13 **II. Consoles**

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

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

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

7 37. The Xbox Series X|S are two ninth-generation Xbox consoles offered by
8 Microsoft. The Series X is a more powerful console while the Series S is more affordable.
9 Together, these consoles provide Microsoft’s [REDACTED]

10 38. Microsoft closely tracks the performance of its Xbox consoles relative to Sony’s
11 PlayStation consoles. For example, in FY2022, the first full year that Xbox Series X|S consoles
12 were available, one of Microsoft’s key metrics for evaluating success was [REDACTED]

13 [REDACTED] In internal communications, Microsoft executives
14 regularly discuss [REDACTED]

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

18 40. The Xbox Series X|S and PS5 consoles are [REDACTED] from a broad
19 consumer perspective, in a number of technical specifications, including offering similar
20 graphics, user experiences, and hardware features. In addition, the Xbox Series X and
21 PlayStation 5 are sold at the same price, while the Series S offers lower performance and is sold
22 at a lower price.

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

5 **III. Gaming Content**

6 **A. Multi-Game Content Library Subscription Services**

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

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

16 44. Xbox Game Pass provides subscribers with unlimited access to a library of over
17 300 first- and third-party games at no additional cost. The service is priced at \$9.99 per month
18 for gamers who seek to download games to play solely on an Xbox console or solely on a PC.
19 The higher tiered service, Xbox Game Pass Ultimate, priced at \$14.99 per month, allows gamers
20 to download games for play on either an Xbox console or a PC, and additionally enables gamers
21 to stream games from an off-site server to any web-enabled local device that can access Game
22 Pass (*e.g.*, an Xbox console, PC, mobile device, or smart TV).

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

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

7 **B. Cloud Gaming Subscription Services**

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

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

22 49. In September 2020, Microsoft added cloud gaming to its top-tier multi-game
23 content library subscription service offering, Xbox Game Pass Ultimate. To date, more than 20
24 million gamers have used the service to stream games from the cloud. Microsoft has stated that
25 cloud gaming subscription services are integral to its goal of expanding gaming to 3 billion
26 gamers worldwide and enabling gamers "to play the games you want, with the people you want,
27 anywhere you want."
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1 50. Other cloud gaming subscription services include Amazon Luna, Nvidia GeForce
2 NOW, and Google Stadia, although Alphabet Inc. announced that it discontinued Stadia in
3 January 2023. Amazon’s Luna+ (a tier of Amazon Luna), priced at \$9.99 per month with
4 additional options available for further purchases, provides streaming access to a library of over
5 100 third-party games. Nvidia GeForce NOW, priced at \$49.99 for six months for the Priority
6 tier or \$99.99 for six months for the RTX 3080 tier, allows gamers to stream game titles that they
7 already own, with the streaming hosted on Nvidia Corporation (“Nvidia”) datacenters. Although
8 it will soon be discontinued, Stadia Pro, priced at \$9.99 per month with additional options for
9 further purchases, allows gamers to stream games from a library of hundreds of third-party
10 games.

11 **C. Importance of AAA Games**

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

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

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

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

6 55. Only a few other studios are typically credited with releasing AAA games. Epic
7 Games, maker of *Fortnite*, a free-to-play game that is currently one of the most popular games in
8 the United States, is sometimes viewed within the industry as a AAA-level publisher, such that
9 industry participants will sometimes refer to the “Big 4 + Epic.”

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

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

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

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

60. 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]

[REDACTED]

61. 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.

62. 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.

1 63. Microsoft Xbox’s Chief Marketing Officer has emphasized the importance of
2 such content, noting: [REDACTED]

3 [REDACTED]
4 64. Microsoft expects that Activision’s AAA content [REDACTED]

5 [REDACTED]
6 [REDACTED] As Mr. Spencer explained to Microsoft investors, “[a]s our platform
7 becomes more attractive, the flywheel of content creators and players accelerates. As the creative
8 range on our platform continues to expand, more players are attracted to the service, and the
9 growing scale of the customer base makes the platform more attractive for additional publishers,
10 and so on.”

11 65. Activision content is especially valuable to any gaming console or subscription
12 service due to the ability of Activision games to drive sales and engagement. Activision’s CEO
13 Bobby Kotick testified that Activision’s games are “[REDACTED]” and “[REDACTED].” Microsoft, in
14 presentations to its Board of Directors regarding this Proposed Acquisition, called Activision’s
15 content [REDACTED]

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

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 67. Even among AAA games, Activision’s most well-known franchise, *Call of Duty*,
23 is particularly strong. First released nearly twenty years ago in 2003, *Call of Duty* is, in
24 Activision’s own words, “***one of the most successful entertainment franchises of all time.***” In
25 2021, *Call of Duty: Vanguard* topped the revenue charts as the best-selling game in the United
26 States, with *Call of Duty: Black Ops Cold War* coming in second. And in 2022, *Call of Duty:*
27 *Modern Warfare II* took in \$1 billion globally *in the first ten days following its launch.* By
28

1 comparison, the highest grossing film of the year so far, *Top Gun: Maverick*, took one month to
2 reach the \$1 billion threshold.

3 THE RELEVANT ANTITRUST MARKETS

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

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

13 70. The Proposed Acquisition is reasonably likely to substantially lessen competition
14 or tend to create a monopoly in the Relevant Markets for High-Performance Consoles, Multi-
15 Game Content Library Subscription Services, and Cloud Gaming Subscription Services. The
16 Proposed Acquisition is therefore reasonably likely to result in harm to both competition and
17 consumers.

18 **I. High-Performance Consoles are a Relevant Product Market**

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

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

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

27 74. Microsoft's Xbox Series X|S and Sony's PS5 consoles are characterized by
28

1 greater computational power, different content portfolios, different form factors and technical
2 specifications, generally higher prices, and different release cadences than the Nintendo Switch
3 and other handheld consoles.

4 75. Superior computational power enables faster processing that shapes the kind of
5 content that can run on High-Performance Consoles, enabling higher resolution, more realistic
6 graphics, and cutting-edge performance. Both Xbox Series X|S and PS5 consoles have similar
7 hardware, and Microsoft and Sony compete closely on hardware innovation, including over
8 graphics and performance. Conversely, Nintendo pursues a different strategy of integrating its
9 lower performance, portable hardware with its own distinctive first-party games to appeal to
10 player nostalgia for Nintendo's unique gaming experience over high resolution, life-like
11 graphics, and performance speed. While Microsoft's Xbox Series X|S and Sony's PS5 consoles
12 incorporate semi-custom systems-on-a-chip ("SoC") designed by AMD, Nintendo's Switch runs
13 on a non-AMD SoC that is more closely related to a mobile device processor found in higher-end
14 mobile phones and tablets.

15 76. Microsoft and Sony compete closely for high-quality, resource-intensive AAA
16 console games. They compete over genre coverage, portfolio size and quality, and multiplayer
17 game availability, and they routinely benchmark their [REDACTED] against each other. A
18 substantial share of High-Performance Console content is available on both Xbox and
19 PlayStation consoles. By contrast, although Nintendo offers third-party content on the Switch,
20 Nintendo's main strategy centers on [REDACTED]

21 [REDACTED]
22 77. Xbox Series X|S and PS5 consoles provide a technologically advanced gaming
23 experience from a stationary endpoint. The Xbox Series X|S and PS5 consoles are plug-in
24 devices that draw electrical power to support advanced computations and are connected to an
25 external display like a television. In contrast, the Nintendo Switch is a portable battery-operated
26 device with a built-in display screen, and it can optionally be connected to an external display.
27 Nintendo's Switch also has detachable controllers that can be used for motion-based game play
28

1 that is not available on the Xbox or PlayStation consoles. Microsoft and Sony commonly
2 benchmark against each other on [REDACTED]

3 78. The PlayStation 5 and the Xbox Series X, the companies' latest flagship consoles,
4 retail for \$499.99. By contrast, the Nintendo Switch retails for \$200 less at \$299.99.

5 79. Since the 2000s, Microsoft and Sony have released new console generations
6 largely contemporaneously—most recently in 2020. The prior generation (Generation 8) Xbox
7 One and PlayStation 4 were released in 2013, and the current generation (Generation 9) Xbox
8 Series X|S and PS5 consoles were released in November 2020. By contrast, the Nintendo Switch
9 launched in March 2017, nearly five years after the beginning of the eighth generation.

10 80. Microsoft's own ordinary course documents regularly [REDACTED]

11 [REDACTED]
12 [REDACTED] Defendants conceded in a regulatory filing that [REDACTED]
13 [REDACTED]

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

18 82. Indeed, "dual console owners" are more likely to own one High-Performance
19 Console and a Nintendo Switch than two High-Performance Consoles. NPD Group, a trusted
20 source for video game industry data, shows that as of 2020, nearly 40 percent of PlayStation and
21 Xbox owners also owned a Switch, while only [REDACTED] percent of PlayStation console owners owned
22 an Xbox and only [REDACTED] percent of Xbox console owners own a PlayStation.

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

26 84. Gaming PCs are distinct from High-Performance Consoles due to differences in
27 price, hardware, performance, and functionality (*i.e.*, where and when a game can be played),
28

1 among other factors. Gaming PCs are therefore not included in the Relevant Market. Mobile
2 devices are distinct from High-Performance Consoles due to differences in complexity and
3 quality of game performance, content offerings, monetization approach, gameplay and interface,
4 and audience, among other factors. Microsoft recently confirmed this factual distinction in
5 testimony during the trial of *Epic Games, Inc. v. Apple Inc.*, 559 F.Supp.3d 898, 981 (N.D. Cal.
6 2021). Mobile gaming devices are therefore not included in the Relevant Market.

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

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

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

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

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

26 89. Each service competes aggressively to offer the best, most exciting titles to attract
27 users to its service, with each attempting to provide access to a compelling library of high-end,
28

1 AAA games. Services offer a range of incentives to developers and publishers including
2 attractive revenue splits or co-marketing arrangements in order to ensure games are available on
3 their services.

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

9 91. Subscription services in the Relevant Market [REDACTED]
10 [REDACTED] Microsoft’s ordinary course documents show that

11 [REDACTED]
12 For example, Xbox CFO Tim Stuart sent an email [REDACTED]

13 [REDACTED]
14 [REDACTED] Mr. Stuart went on to report: [REDACTED]
15 [REDACTED]

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

19 The pricing of individual games does not dictate Microsoft’s pricing decisions for its Xbox
20 Game Pass subscriptions. Additionally, when speaking with third-party game developers,
21 Microsoft’s executives tout Game Pass as [REDACTED]

22 [REDACTED] Microsoft further showcases the additive nature of Game Pass through public
23 statements that report Game Pass subscribers invest more time and money in gaming than their
24 fellow gamers without a subscription.

25 93. Subscription services that focus on enabling online multiplayer gaming, such as
26 Xbox Live Gold and PlayStation Plus Essential, are not commercially reasonable alternatives
27 and therefore are not included in the Relevant Market. Xbox Live Gold and PlayStation Plus
28

1 Essential, as currently structured, award a limited number of free games as “bonus content.”
2 These services do not provide access to the same breadth and diversity of content as Multi-Game
3 Content Library Subscription Services and do not facilitate the same level of game
4 discoverability.

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

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

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

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

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

21 98. The Relevant Market includes Multi-Game Content Library Subscription Services
22 that offer access to games via cloud streaming as well as any services that offer streaming via a
23 “Bring Your Own Game” (“BYOG”) approach where users play games they own in their own
24 personal library by streaming those games through their Cloud Gaming Subscription Service. In
25 all cases, users pay a periodic fee, either monthly or yearly, to access the Cloud Gaming
26 Subscription Service.

27 99. Cloud Gaming Subscription Services provide a way to play games that is distinct
28

1 from running them locally on the player’s gaming device. Such subscription services make
2 predominantly non-mobile video games available instantly on a wide variety of devices,
3 reducing the need for gamers to make large investments in expensive hardware, such as a High-
4 Performance Console or a gaming PC, and eliminating download time.

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

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

15 [REDACTED] and that, [REDACTED]
16 [REDACTED]

17 102. Microsoft’s documents show that [REDACTED]
18 [REDACTED] In a recap of insights and learnings from
19 FY2022, the Xbox Cloud Gaming team reported that “[REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 103. Cloud Gaming Subscription Services also require specialized inputs. Cloud
25 Gaming Subscription Services operate on cloud infrastructure, either by deploying their own
26 dedicated infrastructure or by contracting with a third party. For example, Microsoft built Xbox
27 Cloud Gaming by deploying racks of dedicated Xbox console hardware in Microsoft data
28

1 centers, investing [REDACTED]. Microsoft has plans to support [REDACTED]
2 [REDACTED] on its [REDACTED] in the future and expects to spend over [REDACTED] on Xbox
3 Cloud Gaming infrastructure in the next several years.

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

8 **IV. The Relevant Geographic Market is the United States**

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

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

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

24 108. Microsoft and other Cloud Gaming Subscription Service providers have similarly
25 focused on the United States [REDACTED]. Microsoft launched
26 Game Pass Ultimate first in the United States and Canada, with Nvidia's GeForce NOW and
27 Amazon Luna undertaking a similar strategy. Cloud Gaming Subscription Service providers also
28

1 note that the proximity of cloud servers to gamers is important in light of the technological
2 demands of cloud gaming.

3 ANTICOMPETITIVE EFFECTS

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

15 **I. As the Owner of Activision's Gaming Content, Microsoft Would Have the Ability to** 16 **Disadvantage Rivals by Withholding or Degrading Activision Content in the** 17 **Relevant Markets**

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

23 111. Activision is a leader amongst an already limited number of developers able to
24 produce such content through its cherished gaming franchises, including *Call of Duty*, *Diablo*,
25 and *Overwatch*. As the owner of Activision's gaming content, Microsoft would have the ability
26 to disadvantage rivals by withholding or degrading Activision content in the Relevant Markets.
27
28

1 content, thereby giving Microsoft the ability to fully withhold Activision content from rivals,
2 raise rivals' costs, change the terms and timing of access to Activision content, or degrade the
3 quality of Activision content available for rival consoles and subscription services.

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

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

11 119. The Proposed Acquisition also would give Microsoft the ability to reduce efforts
12 to optimize Activision content for rival products. Currently, Activision collaborates closely with
13 gaming hardware manufacturers to ensure an optimal experience for gamers. For example,

14 Activision collaborated with [REDACTED]

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

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

22 [REDACTED]
23 [REDACTED]
24 [REDACTED] The Proposed
25 Acquisition would give Microsoft the ability to reduce efforts to optimize Activision content for
26 hardware used by rival Cloud Gaming Subscription Services.

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

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

8 122. Prior to the Proposed Acquisition, Activision sought to maximize its profits from
9 sales of its video game titles. The Proposed Acquisition would change Activision’s incentives,
10 because Microsoft stands to gain significant profits from additional gamers purchasing Xbox
11 consoles or Xbox Game Pass. Hence, the combined firm will be incentivized to disadvantage
12 Microsoft rivals by withholding Activision content from, or degrading Activision content on,
13 rival consoles and subscription services to promote sales of Microsoft’s products.

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

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

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

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

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

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

7 126. Microsoft stated in 2022 that it [REDACTED]

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

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

20 128. Microsoft’s previous representations to the EC about its incentives after its
21 purchase of ZeniMax were not borne out by Microsoft’s own post-merger behavior. Instead,
22 Microsoft put its true post-merger incentives on full display when it decided to deny rivals its
23 newly acquired future releases and thwart consumers who would choose to play them on a
24 competing product. Microsoft’s past behavior should also cast more suspicion on its non-binding
25 public commitments to keep *Call of Duty* available on PlayStation consoles through the end of
26 Activision’s existing agreement with Sony (*i.e.*, through [REDACTED]).

27 129. Microsoft is eager to further build upon its already significant strength in gaming,
28

1 with Mr. Nadella declaring publicly, “Microsoft’s *all-in on gaming*.” Looking to reap the
2 financial opportunity available in the gaming industry, Microsoft would be incentivized to
3 withhold Activision content from, or degrade content on, rival products in order to disadvantage
4 its rivals, thereby weakening competition and increasing its profits.

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

9 **IV. Withholding Activision Content From, or Degrading Activision Content On,**
10 **Microsoft’s Rival Products Will Harm Competition and Consumers in the Relevant**
11 **Markets**

12 131. Withholding Activision content from, or degrading Activision content on,
13 Microsoft’s rivals’ products is reasonably likely to substantially lessen competition in the
14 Relevant Markets.

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

17 **LACK OF COUNTERVAILING FACTORS**

18 133. Defendants cannot demonstrate that entry or expansion in the Relevant Markets
19 would be timely, likely, or sufficient to reverse the anticompetitive effects of the Proposed
20 Acquisition.

21 134. Defendants cannot demonstrate that the Proposed Acquisition would likely
22 generate verifiable, cognizable, merger-specific efficiencies that would reverse the likely
23 competitive harm from the Proposed Acquisition.

24 **LIKELIHOOD OF SUCCESS ON THE MERITS,**

25 **BALANCE OF EQUITIES, AND NEED FOR RELIEF**

26 135. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission,
27 whenever it has reason to believe that a proposed merger is unlawful, to seek preliminary
28

1 injunctive relief to prevent consummation of a merger until the Commission has had an
2 opportunity to adjudicate the merger's legality in an administrative proceeding. In deciding
3 whether to grant relief, the Court must balance the likelihood of the Commission's ultimate
4 success on the merits against the equities, using a sliding scale. The principal equity in cases
5 brought under Section 13(b) is the public's interest in effective enforcement of the antitrust laws
6 and ensuring the Commission is not deprived of the ability to order appropriate relief. Private
7 equities affecting only Defendants' interests cannot tip the scale against a preliminary injunction.

8 136. The Commission is likely to succeed in proving that the effect of the Proposed
9 Acquisition may be substantially to lessen competition or tend to create a monopoly in violation
10 of Section 7 of the Clayton Act and/or Section 5 of the FTC Act, and that the Merger Agreement
11 and Proposed Acquisition constitute unfair methods of competition in violation of Section 5 of
12 the FTC Act.

13 137. Preliminary relief is warranted and necessary. Should the Commission rule, after
14 the full administrative proceeding, that the Proposed Acquisition is unlawful, reestablishing the
15 status quo would be difficult, if not impossible, if the Proposed Acquisition has already occurred
16 in the absence of preliminary relief. Allowing the Proposed Acquisition to close before the
17 completion of the administrative proceeding would enable the combined firm to, among other
18 things, begin altering Activision's operations and business plans, accessing Activision's sensitive
19 business information, eliminating key Activision personnel, changing Activision's game
20 development efforts, and entering into new contractual relationships on behalf of Activision. In
21 the absence of relief from this Court, harm to competition would occur in the interim.

22 138. Accordingly, the equitable relief requested here is in the public interest. The
23 Commission respectfully requests that the Court:

- 24 1. Enter a temporary restraining order and preliminarily enjoin Defendants from
25 consummating the Proposed Acquisition, or any other acquisition of stock,
26 assets, or other interests of one another, either directly or indirectly;

- 1 2. Retain jurisdiction and maintain the status quo until the administrative
2 proceeding initiated by the Commission is concluded; and
3 3. Award such other and further relief as the Court may determine is appropriate,
4 just, and proper.

5
6 Dated: June 12, 2023

Respectfully submitted,

7
8 Of counsel:

/s/ James H. Weingarten

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FEDERAL TRADE COMMISSION

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

see attachment

DEFENDANTS

MICROSOFT CORP., and ACTIVISION BLIZZARD, INC.

County of Residence of First Listed Defendant King County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

see attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): FTC Act § 13(b), 15 U.S.C. § 53(b)

Brief description of cause:

Action for Temporary Restraining Order and Preliminary Injunction

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Jacqueline Scott Corley

DOCKET NUMBER 3:22-cv-08991

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 06/12/2023

SIGNATURE OF ATTORNEY OF RECORD

s/ James H. Weingarten

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ATTACHMENT TO CIVIL COVER SHEET

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