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Microsoft's Proposed Acquisition of Activision Blizzard: In Brief

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Introduction

On January 18, 2022, Microsoft Corp. announced plans to acquire Activision Blizzard Inc., a video game company, for \$68.7 billion.¹ The Federal Trade Commission (FTC) is reviewing the acquisition,² as provided under the Hart-Scott-Rodino Act (HSR),³ to determine whether its effect might be “substantially to lessen competition”—a violation of Section 7 of the Clayton Act.⁴ Competition authorities in other countries are reviewing Microsoft’s proposed acquisition as well.⁵ The companies have said they expect to complete the acquisition before June 30, 2023.⁶

In recent decades, enforcement of antitrust laws has typically focused on how a proposed merger or acquisition might affect consumers, such as by reducing price competition in relevant product markets. Some of the FTC’s actions and statements over the last two years suggest that in its review of Microsoft’s proposed acquisition, the FTC may be considering other factors that are discussed in this report.⁷

This report discusses Microsoft’s proposed acquisition of Activision Blizzard, including some of the potential effects on existing product markets, labor markets, and on product markets that do not currently exist but may develop in the future. The report also provides some considerations for Congress, discussing some bills that may affect Microsoft’s proposed acquisition or Microsoft’s future behavior if the acquisition is completed.

The Video Game Industry

The video game industry can be separated into three components:

- developers or gaming studios that create and design video games;
- publishers who market and monetize the video games; and

¹ Microsoft News Center, “Microsoft to Acquire Activision Blizzard to Bring the Joy and Community of Gaming to Everyone, Across Every Device,” Microsoft, January 18, 2022, at <https://news.microsoft.com/2022/01/18/microsoft-to-acquire-activision-blizzard-to-bring-the-joy-and-community-of-gaming-to-everyone-across-every-device/>.

² First disclosed by Activision Blizzard (Activision Blizzard, Inc., SEC Form Schedule 14A, March 21, 2022, pp. 69-70, at https://www.sec.gov/Archives/edgar/data/0000718877/000110465922036155/tm225196-4_defm14a.htm#tREAP). Confirmed by FTC Chair Lina Khan’s letter to Senator Elizabeth Warren, June 9, 2022, at <https://www.warren.senate.gov/imo/media/doc/Response%20Letter%20to%20FTC%20Chair%20Lina%20M.%20Khan%20to%20Sen.%20Warren%20re%20Microsoft%20Activision.pdf>.

³ Federal Trade Commission (FTC), “Hart-Scott-Rodino Antitrust Improvements Act of 1976,” accessed on April 28, 2022, at <https://www.ftc.gov/legal-library/browse/statutes/hart-scott-rodino-antitrust-improvements-act-1976>.

⁴ 15 U.S.C. §18. For a brief summary of §7 of the Clayton Act, see CRS In Focus IF11234, *Antitrust Law: An Introduction*, by Jay B. Sykes.

⁵ For example, the United Kingdom’s Competition and Markets Authority and Australian Competition and Consumer Commission are reviewing the acquisition; for more information, see <https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-merger-inquiry> and <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/microsoft-corporation-activision-blizzard-inc>.

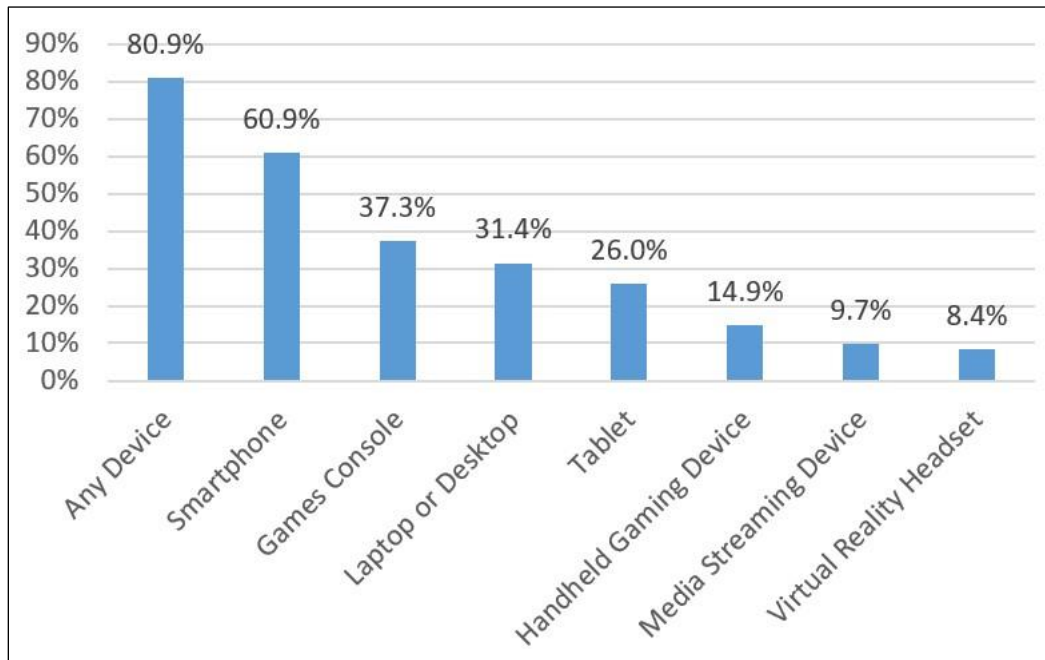
⁶ Activision Blizzard, Inc., SEC Form Schedule 14A, March 21, 2022, pp. 69-70, at https://www.sec.gov/Archives/edgar/data/0000718877/000110465922036155/tm225196-4_defm14a.htm#tREAP.

⁷ Examples of recent actions and statements include the FTC and Department of Justice (DOJ) reviewing guidelines that outline standards used by both agencies to review mergers, a recent lawsuit filed by the FTC, and the FTC Chair Lina Khan’s response to a letter from some Senators. These are discussed in greater detail in “Potential Action from Antitrust Enforcers.”

- distributors who provide the video games to consumers.⁸

Video games are most commonly played on game consoles, personal computers (PCs), and mobile devices (**Figure 1**). Although some retailers sell physical copies of video games for consoles and PCs, the majority of video games are sold in digital format;⁹ games for mobile devices are sold only in digital format.

Figure 1. Percentage of Internet Users in the United States Ages 16 to 64 Playing Video Games, by Device



Source: CRS using Global Web Index data (2021 Q3) from DataReportal, “Digital 2022: The United States of America,” February 9, 2022, p. 44, at <https://datareportal.com/reports/digital-2022-united-states-of-america>.

The extent of competition among distributors depends on the format and device used to play the game. The digital format of video games played on a console generally can only be downloaded from a digital store operated by the producer of the console. Games for PCs can be purchased from a selection of digital stores that are operated by various firms,¹⁰ including publishers and developers.¹¹ Some of these firms also provide their games as apps on certain mobile devices;¹² these are distributed through app stores, such as Google Play and Apple’s App Store.

⁸ Gamingstreet Staff, “Intro to the Industry: The Difference Between Game Developers and Publishers,” *Gaming Street*, September 18, 2019, at <https://gamingstreet.com/intro-to-the-industry-the-difference-between-game-developers-and-publishers/>.

⁹ The Entertainment Software Association estimates that in 2018, 83% of video game sales were in digital format, and 17% were sold in a physical format. Entertainment Software Association, “2019 Essential Facts About the Video Game Industry,” 2019, p. 20, at <https://www.theesa.com/resource/essential-facts-about-the-computer-and-video-game-industry-2019/>.

¹⁰ Examples include Valve Corp.’s Steam (only allows individual games to be purchased) and Google’s Stadia (subscription service).

¹¹ Examples include Epic Games Store and Electronic Arts (EA) Play.

¹² Some of these video games require a minimum level of hardware specifications, such as a certain amount of random-access memory (RAM). For example, *Call of Duty: Mobile* is compatible with Android and iOS devices with at least 2

Consoles are typically sold at a loss; the manufacturers then profit from sales of games and subscription services.¹³ This can incentivize console producers to acquire developers and publishers and offer exclusive content.¹⁴ Technological developments have allowed some PCs and other devices, depending on their hardware capabilities, to compete with game consoles.¹⁵ For example, early in 2022, Valve Corp. released a handheld PC—Steam Deck—that resembles the Nintendo Switch console but provides features that are typically available on PCs, such as a web browser, and allows users to download third-party software, including other operating systems.¹⁶

Some firms have started offering video game subscription services that provide access to multiple games for a monthly fee, meaning users do not need to purchase each individual game.¹⁷ Some firms offer cloud gaming, which allows users to play video games using remote servers in data centers, reducing the hardware requirements needed to play the games and expanding the variety of devices that can be used.¹⁸ Cloud gaming, however, requires a high-speed internet connection and is not feasible for potential users who do not have access to sufficiently high broadband speeds.¹⁹ Subscription services reportedly provide 4% of total revenue in the North American and European video game markets.²⁰

Some firms backed by venture capitalists and large firms that are primarily known for providing other online services have shown interest in entering the video game industry.²¹ For example,

GB of RAM. Activision Support, “Call of Duty: Mobile,” Activision Blizzard, February 8, 2021, at <https://support.activision.com/cod-mobile/articles/call-of-duty-mobile>.

¹³ MarketLine, *MarketLine Industry Profile: Game Consoles in the United States*, December 2021; and Nick Statt, “Microsoft VP Confirms Xbox Hardware Business Loses Money,” *Protocol*, May 5, 2021, at <https://www.protocol.com/microsoft-confirms-the-xbox-hardware-business-loses-money>.

¹⁴ Console producers have been offering exclusive games for decades. For example, *Super Mario* games are offered only on Nintendo’s consoles (<https://mario.nintendo.com/>), *Marvel’s Spider-Man: Miles Morales* is offered only on Sony’s consoles (<https://www.playstation.com/en-us/games/marvels-spider-man-miles-morales/>), and *Halo Infinite* is offered only on Microsoft’s consoles and PCs with a Windows operating system (<https://www.halowaypoint.com/halo-infinite>).

¹⁵ Chris Plante, “Console or PC? This Fall, the Choice is Simple,” *Polygon*, November 5, 2020, at <https://www.polygon.com/2020/11/5/21551308/should-i-buy-xbox-ps5-or-pc>.

¹⁶ Steam, “Steam Deck Launching February 25th,” January 26, 2022, at <https://store.steampowered.com/news/app/1675180/view/3117055056380003048>; and Jacob Ridley, “Steam Deck: Everything you need to know about Valve’s handheld gaming PC,” *PC Gamer*, February 25, 2022, at <https://www.pcgamer.com/steam-deck-price-release-date-specs/>.

¹⁷ Some games, such as *World of Warcraft*, require a subscription to access the entire game (<https://worldofwarcraft.com/en-us/start>). Examples of streaming and cloud gaming services are available at Dan Ackerman, “Best Game Subscription Services,” *CNET*, June 13, 2022, at <https://www.cnet.com/tech/gaming/best-game-subscription-services/>.

¹⁸ Jacob Roach and Kevin Parrish, “What Is Cloud Gaming?,” *DigitalTrends*, March 29, 2021, at <https://www.digitaltrends.com/gaming/what-is-cloud-gaming-explained/>; and Michael Kriech, “The Rise of Cloud Gaming,” *DataCenters*, April 26, 2022, at <https://www.datacenters.com/news/the-rise-of-cloud-gaming>.

¹⁹ Taylor Clogston, “The 10 Worst Things About Cloud Gaming, Ranked,” *CBR*, February 13, 2022, at <https://www.cbr.com/the-worst-things-about-cloud-gaming-ranked/>; and Sam Naji and Damian Abrahams, “Cloud Gaming Is Being Sold As the Next Stage of Video Game Innovation, but Consumers Will Have the Last Word,” *GamesIndustry.biz*, March 14, 2022, at <https://www.gamesindustry.biz/articles/2022-03-14-cloud-gaming-is-being-sold-as-the-next-stage-of-video-game-innovation-but-consumers-will-have-the-last-word-opinion>. For more information on broadband speeds, see CRS In Focus IF11875, *Raising the Minimum Fixed Broadband Speed Benchmark: Background and Selected Issues*, by Colby Leigh Rachfal.

²⁰ The estimate of total revenue includes physical copies and digital downloads of games and game add-ons. Stephen Totilo, “Gaming’s Netflix or Spotify Moment Is Still a Long Way Off,” *Axios*, March 28, 2022, at <https://www.axios.com/2022/03/28/video-game-subscriptions-xbox-game-pass-netflix>.

²¹ Nick Statt, “Andreessen Horowitz Launches a \$600 Million Gaming Fund,” *Protocol*, May 18, 2022, at

Netflix started offering games on mobile devices on November 2, 2021, and has acquired video game developers.²² These firms may be able to further expand the selection of distributors available for certain devices and potentially increase competition in the industry.²³

Microsoft and Activision Blizzard in the Video Game Industry

Microsoft distributes video games using Microsoft Store, its subscription service Game Pass,²⁴ and its cloud gaming service Xbox Cloud Gaming (Beta);²⁵ publishes games, including the franchises *Halo* and *Minecraft*;²⁶ and owns 23 gaming studios.²⁷ In 2021, Microsoft had the second-highest share in the U.S. market for game consoles at 34.8%, according to a report from MarketLine, an industry research firm; estimates for Sony and Nintendo were 40.7% and 24.5%, respectively.²⁸ In January 2022, Microsoft stated that it had more than 25 million Game Pass subscribers.²⁹ In April 2022, Microsoft reported that more than 10 million people have streamed games over Xbox Cloud Gaming,³⁰ although it is unclear how long or how many times users accessed the service. Estimates from Ampere Analysis reportedly indicate that Game Pass makes up about 60% of the video game subscription market.³¹ Among video game publishers in the United States, Microsoft had the highest market share at 23.9%, according to IBISWorld.³²

Activision Blizzard is a video game publisher and developer primarily known for its franchise games, which include *World of Warcraft*, *Call of Duty*, *Diablo*, and *Candy Crush*.³³ The company can be separated into three segments—Activision, Blizzard, and King—that each contain their own gaming studios. Among video game publishers in the United States, Activision Blizzard had

<https://www.protocol.com/bulletins/andreessen-horowitz-gaming-fund-launch>.

²² Mike Verdu, “Let the Games Begin: A New Way to Experience Entertainment on Mobile,” Netflix, November 2, 2021, at <https://about.netflix.com/en/news/let-the-games-begin-a-new-way-to-experience-entertainment-on-mobile>; Amir Rahimi, “Game Developer Boss Fight Entertainment Joins Netflix,” Netflix, March 24, 2022, at <https://about.netflix.com/en/news/game-developer-boss-fight-entertainment-joins-netflix>.

²³ Aisha Malik, “Netflix Buys Independent Game Developer Boss Fight in Latest Gaming Acquisition,” *TechCrunch*, March 25, 2022, at <https://techcrunch.com/2022/03/25/netflix-buys-game-developer-boss-fight/>; and Kellen Browning, “Netflix Buys Another Video Game Studio As It Builds Out Its Gaming Business,” *New York Times*, March 24, 2022, at <https://www.nytimes.com/2022/03/24/business/netflix-game-studio.html>.

²⁴ Microsoft, “Xbox Game Pass,” accessed on June 15, 2022, at <https://www.xbox.com/en-US/xbox-game-pass>.

²⁵ Microsoft, “Xbox Cloud Gaming (Beta) with Xbox Game Pass,” accessed on June 15, 2022, at <https://www.xbox.com/en-US/xbox-game-pass/cloud-gaming>; and Microsoft Xbox, “How to Use Cloud Gaming,” accessed on June 15, 2022, at <https://support.xbox.com/en-US/help/games-apps/cloud-gaming/about-cloud-gaming>.

²⁶ Franchises or franchise video games are multiple games released under the same main title (e.g., *Halo Infinite*, *Halo Recruit*).

²⁷ Microsoft, “Welcome to Xbox Game Studios,” accessed on July 22, 2022, at <https://www.xbox.com/en-US/xbox-game-studios>.

²⁸ MarketLine, *MarketLine Industry Profile: Game Consoles in the United States*, December 2021.

²⁹ Phil Spencer, “Welcoming the Incredible Teams and Legendary Franchises of Activision Blizzard to Microsoft Gaming,” Microsoft, January 18, 2022, at <https://news.xbox.com/en-us/2022/01/18/welcoming-activision-blizzard-to-microsoft-gaming/>.

³⁰ Microsoft, Earnings Release FY 22 Q3, Earnings Call Transcript, p. 10, at <https://www.microsoft.com/en-us/Investor/earnings/FY-2022-Q3/productivity-and-business-processes-performance>.

³¹ Stephen Totilo, “Gaming’s Netflix or Spotify Moment Is Still a Long Way Off,” *Axios*, March 28, 2022, at <https://www.axios.com/2022/03/28/video-game-subscriptions-xbox-game-pass-netflix>.

³² Sean Egan, *Video Game Software Publishing in the U.S.*, IBISWorld, September 2021.

³³ Activision Blizzard, “Who We Are,” accessed on July 8, 2022, at <https://www.activisionblizzard.com/who-we-are>.

the second highest market share at 10%, according to IBISWorld.³⁴ Activision also distributes video games for PCs through its digital store—Battle.net.³⁵

Potential Concerns Regarding Microsoft's Proposed Acquisition of Activision Blizzard

Microsoft's proposed acquisition may be considered both a vertical merger, in which one firm is the supplier and the other is a customer in the supply chain, and a horizontal merger, in which the merging firms are direct competitors, offering similar products or services that are considered substitutes. One concern with vertical mergers is that they may lead to foreclosure, a situation in which a supplier that competes with the merged firm loses access to a potential customer or a buyer that competes with the merged firm is denied access to a supplier. A concern with horizontal mergers is that they may significantly increase the market share of the merged firm, increasing concentration in the market and reducing competition, thereby enabling the remaining firms to raise prices. Microsoft's proposed acquisition may also raise other concerns that typically have not been raised in merger challenges in recent decades, such as dominance in markets that may develop in the future and labor market monopsony.³⁶

Foreclosure

A key question about Microsoft's proposed acquisition may be the extent to which Microsoft might restrict the availability of Activision Blizzard's video games to its consoles and its streaming and cloud gaming services. Such a restriction would mean that other companies' consoles or streaming or cloud gaming services would not be able to offer Activision Blizzard's games to consumers. Microsoft has stated that if the merger is approved, it would continue to make *Call of Duty* and other popular Activision games available on other gaming consoles in addition to its Xbox.³⁷ The statement specifies that Activision's popular content would be "available on competing platforms like Sony's PlayStation." It is unclear, however, if this commitment pertains only to Sony's consoles or also applies to PlayStation Plus,³⁸ Sony's version of Game Pass. Additionally, it is unclear whether Activision Blizzard's games would be available on other streaming or cloud gaming services.

Microsoft could also limit the availability of other games that are or will be under development. In 2020, after acquiring ZeniMax Media, parent company of the video game developer Bethesda Softworks,³⁹ Microsoft stated that it would honor the exclusivity commitments Bethesda made

³⁴ Sean Egan, *Video Game Software Publishing in the U.S.*, IBISWorld, September 2021.

³⁵ Blizzard, "Battle.net Desktop App," accessed on June 15, 2022, at <https://www.blizzard.com/en-us/apps/battle.net/desktop>.

³⁶ A monopsony exists when a single buyer dominates a market. In labor markets, an employer with monopsony power dominates demand for workers able to perform certain jobs, enabling it to pay lower compensation than might be required to attract workers in a competitive market.

³⁷ Brad Smith, "Adapting Ahead of Regulation: A Principled Approach to App Stores," Microsoft Blogs, February 9, 2022, at <https://blogs.microsoft.com/on-the-issues/2022/02/09/open-app-store-principles-activision-blizzard/>.

³⁸ Sony incorporated its cloud gaming service (formerly PlayStation Now) into its subscription service—PlayStation Plus—on June 13, 2022. PlayStation, "Introducing the All-New PlayStation Plus," accessed on June 16, 2022, at <https://www.playstation.com/en-us/ps-plus>.

³⁹ Microsoft News, "Microsoft Finalizes Acquisition of ZeniMax Media," Microsoft, accessed on May 26, 2022, at <https://news.microsoft.com/features/microsoft-finalizes-acquisition-of-zenimax-media/>; and Tom Warren, "Microsoft Completes Bethesda Acquisition, Promises Some Xbox and PC Exclusives," *Verge*, March 9, 2021, at

with Sony for certain games for one year,⁴⁰ but that future Bethesda games would be made available for “other consoles on a case by case basis.”⁴¹ The game *Starfield*, officially introduced by Bethesda in 2018,⁴² is scheduled to be released in November 2022 exclusively on Microsoft’s Xbox Series X and S consoles and Windows PCs; it will not be available on other consoles.⁴³

Market Dominance

Distributors

One potential concern may be how Microsoft’s acquisition might affect competition among digital stores selling video games for PCs, a market in which both Microsoft and Activision Blizzard compete. Following the acquisition, Microsoft could operate both Microsoft Store and Battle.net. This may not have a significant effect on competition, however, because Valve Corp.’s Steam is considered to be the dominant market player among PC digital stores. In a 2021 lawsuit alleging anticompetitive practices by Valve, video game developer Wolfire Games estimated that Valve controlled at least 75% of PC desktop game distribution.⁴⁴

With respect to subscription or cloud gaming services, Microsoft may be able to increase its market share with the acquisition by offering more content than other providers. In addition to developing its own games, Microsoft has entered partnerships with various developers and publishers. For example, some Game Pass subscribers can access games on Electronic Arts (EA) Play for no additional cost,⁴⁵ and *Fortnite* is available for free on Xbox Cloud Gaming without a Game Pass membership, although users must have a Microsoft account.⁴⁶ If Microsoft allows other subscription or cloud gaming services to distribute Activision Blizzard’s video games, it may charge these providers a fee to do so, meaning potential competitors could face an additional cost that Microsoft would not.

Consumers would arguably benefit from having a greater selection of video games offered through Microsoft’s subscription and cloud gaming services. However, if other subscription and cloud gaming service providers are unable to increase their market shares, Microsoft may be able to dominate the market, potentially allowing Microsoft to increase prices in the future. The salience of this concern may reflect opinions on whether antitrust enforcement should consider

<https://www.theverge.com/2021/3/9/22319124/microsoft-bethesda-acquisition-complete-finalized>.

⁴⁰ Nick Pino, “Microsoft-Owned Deathloop Will Remain a PS5 Timed-Exclusive Until September 14, 2022,” *TechRadar*, July 8, 2021, at <https://www.techradar.com/news/deathloop-ps5-timed-exclusive-date>; and Owen Good, “Ghostwire: Tokyo Launch Date, Preview Showcase Announced,” *Polygon*, February 2, 2022, at <https://www.polygon.com/22914664/ghostwire-tokyo-release-date-ps5-timed-exclusive>.

⁴¹ Jay Peters, “Microsoft Will Honor Bethesda’s PS5 Exclusives, but Future Console Releases Will be a ‘Case-by-Case,’” *Verge*, September 21, 2020, at <https://www.theverge.com/2020/9/21/21449121/microsoft-bethesda-ps5-playstation-5-xbox-series-x-s-consoles-exclusives>.

⁴² Chris Plante, “Starfield Is Bethesda’s Big, New Game – Here’s Your First Look,” *Polygon*, June 10, 2018, at <https://www.polygon.com/e3/2018/6/10/17434018/starfield-trailer-bethesda-e3-2018-pc-xbox-ps4>.

⁴³ Jamel Smith, “Starfield Really Is Still an Xbox Exclusive – No, Seriously,” *TechRadar*, last updated September 1, 2021, at <https://www.techradar.com/news/starfield-really-is-an-xbox-exclusive-no-seriously>.

⁴⁴ Wolfire Games, LLC, William Herbert, and Daniel Escobar v. Valve Corp., case no. 2:21-cv-00563, April 27, 2021.

⁴⁵ EA Play, “EA Play Coming to Microsoft Game Pass Members,” accessed on June 15, 2022, at <https://www.ea.com/ea-play/news/ea-play-coming-to-xbox-game-pass>.

⁴⁶ Catherine Gluckstein, “Play Fortnite on iOS, iPadOS, Android Phones and Tablets, and Windows PC with Xbox Cloud Gaming for Free,” Microsoft Xbox News, May 5, 2022, at <https://news.xbox.com/en-us/2022/05/05/play-fortnite-with-xbox-cloud-gaming-for-free/>.

potential effects on the industry that may affect competition in the future or focus exclusively on consumer welfare.

Publishers and Developers

Among video game publishers in the United States, Microsoft and Activision Blizzard are estimated to have the largest market shares.⁴⁷ IBISWorld reports, however, that competition among publishers and developers is high, even though the success of new entrants, particularly among developers, is fairly low.⁴⁸ Publishers and developers can face high levels of uncertainty and risk.⁴⁹ Furthermore, measuring the market share of Microsoft and Activision Blizzard within the United States may not accurately reflect competition in these markets, given that these companies compete at a global level. Some industry analysts list Tencent, which is headquartered in China, as the largest video game publisher worldwide based on revenue;⁵⁰ Microsoft and Activision Blizzard are listed among the top 10, along with Sony, Nintendo, EA, and Take-Two Interactive.⁵¹ Microsoft stated that after its acquisition of Activision Blizzard, it would “become the world’s third-largest gaming company by revenue, behind Tencent and Sony.”⁵²

Potential Markets

Microsoft’s proposed acquisition could provide it with a competitive advantage in markets that may develop. In its initial announcement, Microsoft stated that its acquisition “will provide building blocks for the metaverse.”⁵³ The metaverse currently does not exist; it is a concept of a single, unified virtual system on the internet where users can purchase items, play games, learn, and socialize, shifting how we interact with technology.⁵⁴ Key components often include virtual reality (VR) and augmented reality (AR) technologies. Games such as *Fortnite* and *Roblox* have sought to develop the metaverse concept by offering virtual spaces for users to socialize when they are not playing games, such as “hang-out” spaces and virtual concerts.⁵⁵

⁴⁷ Sean Egan, *Video Game Software Publishing in the U.S.*, IBISWorld, September 2021.

⁴⁸ Ibid; and Dan Cook, *Video Game Software Developers*, IBISWorld, May 2021.

⁴⁹ Ibid; and Jeff Grubb, “Xbox’s Bethesda Acquisition Is Evidence of Blockbuster Gaming’s Volatility,” *VentureBeat*, September 22, 2020, at <https://venturebeat.com/2020/09/22/xbox-bethesda-acquisition-is-evidence-of-blockbuster-gamings-volatility/>.

⁵⁰ Khee Hoon Chan, “A Closer Look at Tencent, the World’s Biggest Game Company,” *Polygon*, March 2, 2022, at <https://www.polygon.com/22949530/tencent-the-worlds-biggest-video-game-company>; Newzoo, *Global Games Market Report: The VR & Metaverse Edition*, 2021; and Game Dev Insider, “10 Biggest Game Companies of All Time,” accessed on June 24, 2022, at <https://gamedevinsider.com/10-biggest-game-companies-of-all-time/>.

⁵¹ Ibid.

⁵² Microsoft News Center, “Microsoft to Acquire Activision Blizzard to Bring the Joy and Community of Gaming to Everyone, Across Every Device,” Microsoft, January 18, 2022, at <https://news.microsoft.com/2022/01/18/microsoft-to-acquire-activision-blizzard-to-bring-the-joy-and-community-of-gaming-to-everyone-across-every-device/>.

⁵³ Ibid.

⁵⁴ Eric Ravenscraft, “What Is the Metaverse, Exactly?,” *Wired*, April 25, 2022, at <https://www.wired.com/story/what-is-the-metaverse/>.

⁵⁵ Paul Tassi, “Fortnite’s Vision of the Metaverse Feels Like It Has Stalled,” *Forbes*, January 21, 2022, at <https://www.forbes.com/sites/paultassi/2022/01/21/fortnites-vision-of-the-metaverse-feels-like-it-has-stalled/>; Dean Takahashi, “Roblox’s Year-End Data Reveals Its Metaverse Advantage,” *VentureBeat*, January 26, 2022, at <https://venturebeat.com/2022/01/26/roblox-year-end-data-reveals-its-metaverse-advantage/>; and Steve Kovach, “Next for the Metaverse: Convincing You It’s Not Just for Kids,” *CNBC*, December 22, 2021, at <https://www.cnbc.com/2021/12/22/here-are-the-companies-building-the-metaverse-meta-roblox-epic.html>.

It is unclear whether Microsoft would obtain a significant advantage in developing the metaverse through its proposed acquisition. Although Microsoft has been investing in AR and VR technologies,⁵⁶ other firms have been investing in these technologies as well, including Meta Platforms and Alphabet.⁵⁷ Activision Blizzard does not offer an interactive game that has led users to socialize in a manner similar to *Fortnite* and *Roblox*, although its studios may be able to develop similar games. It remains uncertain whether companies will be able to successfully develop technologies needed to create the metaverse and how consumers will respond.

Labor Market Monopsony

Microsoft's acquisition could reduce the number of potential employers in the video game industry. At an FTC forum, an Activision Blizzard employee raised concern that consolidation in the industry could enable firms to hire employees at lower wages than in a competitive market.⁵⁸ During its acquisition of ZeniMax, Microsoft reportedly stated that it did not plan on making changes to ZeniMax and that ZeniMax would operate independently following the acquisition.⁵⁹ One industry analyst viewed the acquisition as a means to support gaming studios under ZeniMax, which had been struggling financially; according to the analyst, without the acquisition, ZeniMax would have likely faced layoffs and released fewer games.⁶⁰ If Microsoft were to utilize a similar approach with Activision Blizzard, allowing it to essentially operate as a separate entity within Microsoft, the acquisition might not significantly affect the labor market for developers. Furthermore, some employees may have skills that would be easily transferrable to firms outside of the video game industry, which could limit Microsoft's ability to control wages. Nevertheless, Microsoft's acquisition would reduce the number of large, established firms in the video game industry, which could provide it with greater negotiating power.

Another concern may be that Microsoft's proposed acquisition could affect ongoing efforts to reach a collective bargaining agreement for Activision Blizzard employees. This concern was raised by an Activision Blizzard employee at an FTC forum and by some Senators in a March 2022 letter to the FTC,⁶¹ which cited Microsoft's dismissal of temporary quality assurance

⁵⁶ Jennifer Langston, "'You Can Actually Feel Like You're in the Same Place': Microsoft Mesh Powers Shared Experiences in Mixed Reality," Microsoft Innovation Stories, March 2, 2021, at <https://news.microsoft.com/innovation-stories/microsoft-mesh/>; Nishant Thacker, "Microsoft Mesh – A Technical Overview," Microsoft Mixed Reality Blog, March 2, 2021, at <https://techcommunity.microsoft.com/t5/mixed-reality-blog/microsoft-mesh-a-technical-overview/ba-p/2176004>.

⁵⁷ Casey Newton, "Is Facebook Cornering the VR Market?," *Verge*, June 16, 2021, at <https://www.theverge.com/2021/6/16/22537795/is-facebook-cornering-the-vr-market>; and Brian X. Chen, "What's All the Hype About the Metaverse?," *New York Times*, January 18, 2022, at <https://www.nytimes.com/2022/01/18/technology/personaltech/metaverse-gaming-definition.html>.

⁵⁸ FTC, "FTC-DOJ Merger Guidelines Listening Forum – Technology," May 12, 2022, at <https://www.ftc.gov/media/ftc-doj-merger-guidelines-listening-forum-technology-may-12-2022>.

⁵⁹ Ryan Browne, "Microsoft Buys Bethesda, Maker of Hit Fallout and The Elder Scrolls Games, in \$7.5 Billion Deal," *CNBC*, September 21, 2020, at <https://www.cnbc.com/2020/09/21/microsoft-to-buy-zenimax-owner-of-fallout-elder-scrolls-franchises.html>.

⁶⁰ Jeff Grubb, "Xbox's Bethesda Acquisition Is Evidence of Blockbuster Gaming's Volatility," *VentureBeat*, September 22, 2020, at <https://venturebeat.com/2020/09/22/xboxes-bethesda-acquisition-is-evidence-of-blockbuster-gamings-volatility/>.

⁶¹ FTC, "FTC-DOJ Merger Guidelines Listening Forum – Technology," May 12, 2022, at <https://www.ftc.gov/media/ftc-doj-merger-guidelines-listening-forum-technology-may-12-2022>; Rhiannon Bevan, "Activision Blizzard Dev Warns that Microsoft Merger Will Give Bosses 'Even More Power,'" *The Gamer*, May 13, 2022, at <https://www.thegamer.com/activision-blizzard-dev-merger-microsoft-ftc-doj-testimony/>; and Aaron Mak, "Fun* and Games," *Slate*, February 7, 2022, at <https://slate.com/technology/2022/02/activision-raven-union-video-games-testers->

workers two years after they formed a union in 2014.⁶² However, on June 13, 2022, Microsoft and the Communications Workers of America—the union that has been assisting Activision Blizzard employees—announced that they had entered a labor neutrality agreement enabling workers “to freely and fairly make a choice about union representation,” which would apply beginning 60 days after Microsoft’s acquisition is completed.⁶³ Furthermore, it is unclear whether working conditions would improve if Activision Blizzard were to remain an independent company rather than being acquired by Microsoft.

Potential Action from Antitrust Enforcers

Some antitrust enforcers are reportedly considering some of the concerns discussed in the previous section, including the potential effect of Microsoft’s proposed acquisition on competing gaming subscription services and the market for game developers.⁶⁴ In response to the March 2022 letter from some Senators asking the FTC to consider whether the transaction might exacerbate anticompetitive conduct in the labor market,⁶⁵ FTC Chair Lina Khan stated that she shares those Senators’ concerns about monopsony power in labor markets.⁶⁶

After reviewing the transaction, the FTC may choose to

- allow the acquisition to proceed unchallenged;
- enter a negotiated consent agreement with Microsoft that includes provisions to maintain competition; or
- seek to stop the acquisition by filing suit in federal court.⁶⁷

The FTC and DOJ jointly publish guidelines to outline the principal analytic techniques, practices, and enforcement policies used by the agencies to review mergers;⁶⁸ the FTC voted to

qa.html.

⁶² Letter from Senators Elizabeth Warren, Bernie Sanders, Sheldon Whitehouse, and Cory Booker to FTC Chair Lina Khan, March 31, 2022, at <https://www.warren.senate.gov/imo/media/doc/2022.03.31%20Letter%20to%20FTC%20re%20Activision%20Microsoft%20Deal.pdf>; Josh Eidelson and Hassan Kanu, “Microsoft Bug Testers Unionized. Then They Were Dismissed,” *Bloomberg*, August 23, 2018, at <https://www.bloomberg.com/news/articles/2018-08-23/microsoft-bug-testers-unionized-then-they-were-dismissed>; and Andrew Limbong, “Will Activision Blizzard Workers Unionize? Microsoft’s Deal Complicates Things,” *NPR*, February 17, 2022, at <https://www.npr.org/2022/02/17/1079253973/activision-blizzard-raven-union-microsoft>.

⁶³ Microsoft News Center, “CWA, Microsoft Announce Labor Neutrality Agreement,” Microsoft, June 13, 2022, at <https://news.microsoft.com/2022/06/13/cwa-microsoft-announce-labor-neutrality-agreement/>.

⁶⁴ John Sisco and Samuel Stolton, “EU Quizzes Rivals Over Microsoft-Activision Access,” *Politico*, July 22, 2022, at <https://www.politico.eu/article/eu-regulator-scrutinizing-microsoft-activision-hear-competition-concern/>.

⁶⁵ Letter from Senators Elizabeth Warren, Bernie Sanders, Sheldon Whitehouse, and Cory Booker to FTC Chair Lina Khan, March 31, 2022.

⁶⁶ Letter from FTC Chair Lina Khan to Senator Elizabeth Warren, June 9, 2022.

⁶⁷ FTC, “Premerger Notification and the Merger Review Process,” accessed on April 29, 2022, at <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review-process>.

⁶⁸ The horizontal merger guidelines were published in 2010, available at https://www.ftc.gov/system/files/documents/public_statements/804291/100819hmg.pdf. The vertical merger guidelines were published in 2020 (available at https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf), but the FTC voted to withdraw its approval in September 2021 (FTC, “Federal Trade Commission Withdraws Vertical Merger Guidelines and Commentary,” September 15, 2021, at <https://www.ftc.gov/news-events/news/press-releases/2021/09/federal-trade-commission-withdraws-vertical-merger-guidelines-commentary>). For a brief overview of the 2020 vertical merger guidelines, see CRS Legal Sidebar LSB10521, *Antitrust Regulators Release New Vertical Merger Guidelines*, by Jay B. Sykes.

withdraw its approval of the vertical merger guidelines in September 2021.⁶⁹ DOJ and the FTC have announced that they are reviewing the horizontal and vertical merger guidelines; their list of specific areas of inquiry include the use of market definition in analyzing competitive effects, threats to potential and nascent competition, and the impact of monopsony power, including in labor markets.⁷⁰ The agencies have sought public input, including information on the “unique characteristics of digital markets” and “whether alternative metrics or qualitative factors should also trigger presumptions of competitive harm.”⁷¹ Until the updated merger guidelines are released, the standards used by the agencies to examine the potential competitive effects of mergers may be unclear, including the standards used to review Microsoft’s proposed acquisition.

In its review of Microsoft’s proposed acquisition of Activision Blizzard, the FTC may be considering product markets that currently do not exist but may develop in the future, such as the metaverse. On July 27, 2022, the FTC filed a complaint in federal court to block Meta Platforms’ acquisition of Within Unlimited, a software company that develops apps for VR devices. In its complaint, the FTC states that the acquisition “poses a reasonable probability of eliminating both present and future competition ... [a]nd Meta would be one step closer to its ultimate goal of owning the entire ‘Metaverse’”⁷² While the complaint lists the VR dedicated fitness app and VR fitness app as the relevant antitrust markets, references to the metaverse in the complaint suggest that the FTC may have concerns that Meta Platforms could foreclose competition in the metaverse. The FTC may have similar concerns regarding Microsoft’s proposed acquisition.

Over the last two decades, DOJ and the FTC have not contested most proposed mergers and acquisitions.⁷³ After conducting an investigation, the agencies often enter a consent decree with the merging firms, which typically requires a divestiture to address competition concerns. Some merging parties abandon the transaction when either agency opens an investigation or challenges the merger by filing a complaint in federal court. Recently, for example, Nvidia Corp. abandoned its proposed acquisition of Arm Ltd. after the FTC filed a complaint to challenge it;⁷⁴ the FTC Bureau of Competition director stated that the “result is particularly significant because it represents the first abandonment of a litigated vertical merger in many years.”⁷⁵ Nevertheless, the outcome of a challenged merger may ultimately be decided in the federal courts.⁷⁶

⁶⁹ FTC, “Federal Trade Commission Withdraws Vertical Merger Guidelines and Commentary,” September 15, 2021, at <https://www.ftc.gov/news-events/news/press-releases/2021/09/federal-trade-commission-withdraws-vertical-merger-guidelines-commentary>.

⁷⁰ FTC, “Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers,” January 18, 2022, at <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>; U.S. Department of Justice (DOJ), “Justice Department Issues Statement on the Vertical Merger Guidelines,” September 15, 2021, at <https://www.justice.gov/opa/pr/justice-department-issues-statement-vertical-merger-guidelines>.

⁷¹ Ibid.

⁷² FTC v. Meta Platforms Inc., Mark Zuckerberg, and Within Unlimited Inc., case no. 3:22-cv-04325, July 27, 2022.

⁷³ Since FY2000, more than 1,000 mergers and acquisitions that meet HSR thresholds have been proposed each year except FY2009. In-depth investigations of these transactions, indicated by a second request for additional information, occurred for less than 5% of the transactions. Only a portion of these in-depth investigations resulted in one of the agencies contesting the transaction. See FTC, *Hart-Scott-Rodino Annual Reports*, at <https://www.ftc.gov/policy/reports/annual-competition-reports>.

⁷⁴ FTC, “Statement Regarding Termination of Nvidia Corp.’s Attempted Acquisition of Arm Ltd.,” February 14, 2022, at <https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-nvidia-corps-attempted-acquisition-arm-ltd>.

⁷⁵ Ibid.

⁷⁶ For example, in 2017, the DOJ filed a complaint to challenge AT&T’s acquisition of Time Warner. The U.S. District Court judge ruled in favor of the merging parties, allowing the merger to be consummated. U.S. v. AT&T Inc.,

Considerations for Congress

Microsoft's proposed acquisition would be the largest technology industry acquisition to date.⁷⁷ Antitrust enforcers may be considering potential harms to competition that could result from the proposed acquisition, in addition to potential benefits to consumers. The FTC may be considering issues that typically have not been raised in merger reviews in recent decades.

Some bills introduced in the 117th Congress are related to mergers and acquisitions. For example, S. 225 and S. 3267 would amend antitrust laws to explicitly prohibit monopsony, requiring antitrust enforcers and courts to consider the effect of proposed mergers on labor markets. H.R. 7101, S. 3847, and S. 1074 would amend antitrust laws to prevent firms of a certain size or share of a defined market from making any acquisitions. If these bills are passed into law, they could affect Microsoft's proposed acquisition if it meets other requirements in the bills, such as the threshold for market share.

Some bills would prohibit specific conduct by certain firms that do not focus on mergers and acquisitions. For example, H.R. 3816 and S. 2992 would prohibit large firms from engaging in specified forms of discriminatory conduct.⁷⁸ S. 4201 and H.R. 7858 would create a new federal commission to regulate digital platforms, with additional requirements for systemically important digital platforms. If these bills are passed into law, they likely would not affect Microsoft's proposed acquisition. They may, however, affect Microsoft's future behavior if the acquisition is completed and Microsoft meets the thresholds specified in the bills.

DirecTV Group Holdings, LLC, and Time Warner Inc., case no. 1:17-cv-02511, November 20, 2017, at <https://www.justice.gov/atr/case-document/file/1012916/download>; U.S. v. AT&T Inc., et al., civil case 17-2511 (RJL), June 12, 2018, at <https://www.dcd.uscourts.gov/sites/dcd/files/17-2511opinion.pdf>.

⁷⁷ Ari Levy, "Microsoft sets record for biggest tech deal ever, topping Dell-EMC merger in 2016," *CNBC*, January 18, 2022, at <https://www.cnbc.com/2022/01/18/biggest-tech-deal-ever-microsoft-activision-set-69-billion-record.html>.

⁷⁸ For an overview of this bill and others targeting large online platforms, see CRS Report R46875, *The Big Tech Antitrust Bills*, by Jay B. Sykes.

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