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FTC Sues Microsoft to Block \$69 Billion Activision Blizzard Acquisition

On December 8, 2022, the Federal Trade Commission ("FTC"), the U.S. antitrust (competition) regulator, sued Microsoft, maker of the Xbox video gaming platform, to block its all-cash \$69 billion acquisition by merger of virtual reality ("VR") video game publisher Activision Blizzard, maker of the "Call of Duty" and "World of Warcraft" games, leading entries in the nearly \$200 billion gaming sector. A copy of the FTC complaint, filed in the FTC's administrative court, can be found [Here](#).

The FTC complaint alleges that the proposed merger, intended to close by next June, violates s. 7 of the Clayton Act (18 U.S.C. s. 12, et seq., s. 18), which prohibits mergers and acquisitions of either stock or assets whose effect "may be substantially to lessen competition, or tend to create a monopoly." Per the complaint, Microsoft competes directly with Sony's Playstation and Nintendo's switch as the troika of leading makers of high-end video gaming consoles, with a sub-segment of the industry consisting only of Microsoft and Sony competing for the most technologically advanced gaming consoles. Microsoft is already vertically integrated with video game content publishing in that it publishes leading VR games such as "Halo" and "Minecraft," and has previously purchased other content providers.

The FTC complaint goes on to allege that the proposed merger will create a combined firm with incentives to withhold or degrade Activision's games for use by competing console makers, leading to reduced consumer choice, higher prices, and lower quality products; reduce innovation in optimizing Activision content for competing platforms; and reduce competition for high-end consoles and gaming subscription services in the United States. The complaint is noticed

for an evidentiary hearing before an FTC administrative law judge on August 2, 2023.

This is the second time in five months that the FTC has moved against a big tech company acquisition in the VR space. We reported earlier this year on "FTC Sues Facebook Parent Meta to Block Acquisition of Virtual Reality Company Within Unlimited, August 1, 2022. That trial is scheduled to begin this week, Thursday, December 15 in San Jose, CA. We have reported in the past year-and-a-half on the newly activist merger review policies of the Biden administration under FTC Chair Lina M. Khan and Department of Justice ("DoJ") Antitrust Division Chief Jonathan Kanter after decades of a relatively "laissez faire" treatment of proposed M&A activity. See, "FTC and DoJ Launch Effort to Restrict Anticompetitive Mergers," "FTC Restores Restrictive Prior Approval Merger Review Policy," and "FTC Sets Ambitious M&A Enforcement Agenda," and discussed the FTC and DoJ's power to review and block mergers in our "Mergers & Acquisitions VIII: Antitrust Merger Control and Clearance," all available at [Kurtin PLLC Mergers & Acquisitions](#).

A generation of dealmakers and their attorneys have grown up with a relatively relaxed attitude towards the Government's likelihood of closely scrutinizing M&A activity. That time is past. Anyone structuring a transaction that will significantly reduce or eliminate competition generally, and one with tech sector market consolidation, concentration and monopoly implications, an announced FTC target, should be aware that antitrust review is a real issue even for smaller transactions, should plan for Government scrutiny, and structure their deals with that in mind.

For additional information or for information on our M&A and other professional services, please visit our website at the link below and contact us at info@kurtinlaw.com or +1.212.554.3373.

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