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U.K. Competition and Markets Authority Blocks Microsoft-Activision Blizzard Acquisition

We reported on December 12, 2022 that 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 \$69/75 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. On April 26, 2023, the United Kingdom Competition and Markets Authority ("CMA"), the U.K. counterpart to the FTC, blocked the Microsoft - Activision Blizzard deal in the U.K. The CMA, the first of the antitrust/competition authorities in the U.S., U.K. and E.U. to rule on the deal, may have dealt a fatal blow to the transaction, although both Microsoft and Activision Blizzard immediately indicated that they would appeal the decision.

The transaction comes as the gaming industry is transitioning from a console-based model in which users buy games for their console to one in which users stream cloud-based games on whatever console or other device they want. 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 publishing leading VR games such as "Halo" and "Minecraft," and has previously purchased other content providers. The FTC complaint, noticed for an evidentiary hearing on August 2, 2023, alleges 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 CMA decision focuses on the merger's potential to reduce innovation and choice for consumers. Notably, the CMA stated that it was NOT concerned that the deal would reduce gaming sector competition, a possible focus of the parties' upcoming appeal.

We have reported in the past two years 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](#). It appears that the CMA is taking a similarly harder line for the U.K. on M&A activity that is potentially anticompetitive.

A generation of dealmakers and their attorneys have grown up with a relatively relaxed attitude towards Government's likelihood of closely scrutinizing M&A activity. That time is past. Anyone structuring a transaction that will potentially significantly reduce or eliminate competition generally, and one with tech sector market consolidation, concentration and monopoly implications should be aware that antitrust/competition 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.

Owen D. Kurtin

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Kurtin PLLC | One Rockefeller Plaza, Floor 11, New York, NY 10020

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