

NSR Tech Policy Quick Hit: FTC sues to block Meta's acquisition of Within

By Matt Perault | July 27, 2022

What happened: The FTC sued Meta in federal court in Northern California to block the company's acquisition of Within Unlimited, a virtual reality game maker. Within makes Supernatural, a virtual reality fitness app. The suit claims that Meta is a potential entrant in the virtual reality dedicated fitness app market, and that acquiring Within would have the effect of "dampening innovation and competitive rivalry." The FTC vote to authorize the suit was 3-2. Christine Wilson announced that she was one of the dissenters.

The deal was first announced in October 2021 for an undisclosed sum, though the price is rumored to have been \$400 million.

What it means:

- This is Lina Khan's first significant action against a Big Tech company, and is consistent with the new approach to mergers that she announced earlier this year. In that announcement, she highlighted that merger analysis should involve more rigorous review of potential competition, and this suit is an example of moving in that direction. It alleges that the deal "poses a reasonable probability of eliminating both present and future competition."
- The suit alleges that Meta has a "virtual reality empire," despite how small the virtual reality market still is and even as other large tech companies signal their intent to compete aggressively with Meta in this market. The FTC then defines the relevant market as an even narrower category of "VR dedicated fitness apps." Determining the relevant market and Meta's current and potential position in it will now be questions for a federal district court judge to resolve.
- Meta's response to the suit indicates some of the arguments it will likely use in court to defend the

acquisition. It claimed that the suit was “based on ideology and speculation, not evidence.” It also claimed that the virtual reality market is a “dynamic space.”

- The FTC filed the suit on the same day that Meta announced disappointing Q2 earnings. In prior notes ([LINK](#)), we have argued that when a company’s business prospects become more fragile, its policy risk is likely to diminish. But for at least three members of the FTC, Meta’s slumping business prospects and the relatively small size of the acquisition did not assuage their concerns about the company’s power.
- The suit indicates that the FTC may adopt a more aggressive posture now that Democrats have a majority on the Commission. Alvaro Bedoya was sworn in as the third Democrat on the Commission on May 16. The 3-2 vote to bring this suit reflects how important his vote is.
- The FTC’s action in this case signals that Microsoft’s acquisition of Activision could face a challenge as well, given the significantly larger size of the deal (\$68.7 billion). Microsoft will likely aim to distinguish its acquisition from Meta’s, emphasizing that it has committed to continue offering its most popular games on rival platforms.
- It is also possible that the FTC’s action in this case indicates that it is likely to challenge Amazon’s acquisitions of MGM and One Medical too. The MGM deal has already closed, but when it did, the FTC made clear that it could challenge it in the future. Amazon announced the One Medical deal last week, and critics have already raised concerns about it (we discuss the deal [HERE](#)).
- But if Meta files a motion to dismiss the case and a judge upholds it – as it did with the FTC’s December 2020 Complaint against Facebook – the loss could have a deterrent effect on these types of merger challenges by the agency.
- It is notable that one of the year’s most significant regulatory actions against Meta seemed to have an immaterial impact on the company’s stock price, as it continued to rise in the hours after the suit was announced. Investors may view a challenge to the deal as relatively insignificant and as a preferable

alternative to other options the FTC might have for using its enforcement resources against the company.

Full 12-month historical recommendation changes are available on request

Reports produced by New Street Research LLP, 18th Floor, 100 Bishopsgate, London, EC2N 4AG. Tel: [+44 20 7375 9111](tel:+442073759111).

New Street Research LLP is authorised and regulated in the UK by the Financial Conduct Authority and is registered in the United States with the Securities and Exchange Commission as a foreign investment adviser.

Regulatory Disclosures: This research is directed only at persons classified as Professional Clients under the rules of the Financial Conduct Authority ('FCA'), and must not be re-distributed to Retail Clients as defined in the rules of the FCA.

This research is for our clients only. It is based on current public information which we consider reliable, but we do not represent that it is accurate or complete, and it should not be relied on as such. We seek to update our research as appropriate, but various regulations may prevent us from doing so. Most of our reports are published at irregular intervals as appropriate in the analyst's judgment. This research is not an offer to sell or the solicitation of an offer to buy any security in any jurisdiction where such an offer or solicitation would be illegal. It does not constitute a personal recommendation or take into account the particular investment objectives, financial situations, or needs of individual clients.

All our research reports are disseminated and available to all clients simultaneously through electronic publication to our website.

New Street Research LLC is neither a registered investment advisor nor a broker/dealer. Subscribers and/or readers are advised that the information contained in this report is not to be construed or relied upon as investment, tax planning, accounting and/or legal advice, nor is it to be construed in any way as a recommendation to buy or sell any security or any other form of investment. All opinions, analyses and information contained herein is based upon sources believed to be reliable and is written in good faith, but no representation or warranty of any kind, express or implied, is made herein concerning any investment, tax, accounting and/or legal matter or the accuracy, completeness, correctness, timeliness and/or appropriateness of any of the information contained herein. Subscribers and/or readers are further advised that the Company does not necessarily update the information and/or opinions set forth in this and/or any subsequent version of this report. Readers are urged to consult with their own independent professional advisors with respect to any matter herein. All information contained herein and/or this website should be independently verified.

All research is issued under the regulatory oversight of New Street Research LLP.

Copyright © 2024 New Street Research LLP

No part of this material may be copied, photocopied or duplicated in any form by any means or redistributed without the prior written consent of New Street Research LLP.