

NSR Tech Policy Quick Hit: FTC challenges Microsoft-Activision deal

By [Matt Perault](#) | December 8, 2022

What's New: In a party-line 3-1 vote, the FTC decided to challenge Microsoft's proposed \$68.7 billion acquisition of Activision Blizzard. As we wrote last week ([LINK](#)), we continue to believe that the most likely outcome is a negotiated agreement where Microsoft signs on to conditions to close the deal.

The FTC is unlikely to win a case at trial ([LINK](#)), but it will use the legal proceedings as a tool to extract greater concessions from Microsoft, while signaling to foreign regulators the rigor of its merger review process.

Going Deeper:

- We continue to believe that the FTC will seek significant concessions from Microsoft. However, FTC Chair Lina Khan has signaled that even an unsuccessful case may help advance regulatory reform and that she prefers litigating to settling through an agreement on conditions.
- While the FTC's press release expressed concern about Microsoft potentially limiting access to popular games from competitor's consoles (note that the FTC had not made a link to the Complaint available by the time we published this note), it also addressed Microsoft's growing game subscription and game streaming services. It argued the deal "would enable Microsoft to suppress competitors to its Xbox gaming consoles and its rapidly growing subscription content and cloud-gaming business."
- Defending the deal in an [op-ed in the Wall Street Journal](#) earlier this week, Microsoft President Brad Smith argued that the deal would benefit consumers by offering them "the option to subscribe to a cloud gaming service that lets them stream a variety of games on multiple devices for one reasonable fee."
- In the op-ed, Smith [wrote](#) that Microsoft had floated a 10-year licensing deal with Sony as a concession. Microsoft is likely to offer additional concessions in light of the FTC case.
- The FTC's decision to bring a suit comes on the heels of increased scrutiny by international enforcers.

Regulators in the EU, UK, and China have already signaled they will closely review the deal.

- The FTC complaint alleged that Microsoft has a history of excluding content from rival consoles. After Microsoft acquired the game developer Bethesda Softworks, it kept two popular titles from rival platforms after assuring European regulators it would not.
- Although we continue to believe that a negotiated agreement with additional concessions by Microsoft is the most likely outcome, Chair Khan has expressed a view that the FTC should litigate rather than settle. If she sticks to that commitment, then protracted litigation is likely. In that case, we think Microsoft is more likely than not to win in court. As we have written before, we think this is true because of the current competitive market structure of the gaming industry, in both games and devices ([LINK](#)). In addition, the court will consider the anti-competitive effects of the deal including the conditions to which the company has agreed, rather than the deal without such conditions.

Full 12-month historical recommendation changes are available on request

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