

Microsoft will fight US over \$68.7B Activision Blizzard deal

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The Activision Blizzard Booth during the Electronic Entertainment Expo in Los Angeles, June 13, 2013. Microsoft is headed for a battle with the Federal Trade Commission, filing a formal challenge Thursday, Dec. 22, 2022, over whether the U.S. will block the tech giant's planned takeover of video game company Activision Blizzard. Credit: AP Photo/Jae C. Hong, File

Microsoft is headed for a battle with the Federal Trade Commission over whether the U.S. will [block the tech giant's planned takeover](#) of video game company Activision Blizzard.

Microsoft on Thursday filed a formal response to the FTC's claims that the \$68.7 billion deal is an illegal acquisition that should be stopped.

After years of avoiding the political backlash that has been directed at big tech peers such as Amazon and Google, the software giant now appears to be on a collision course with U.S. regulators emboldened by President Joe Biden's push to get tough on anti-competitive behavior.

The FTC claims the merger could violate [antitrust laws](#) by suppressing competitors to Microsoft's Xbox game console and its growing Xbox Game Pass subscription business.

At [the center of the dispute](#) is Microsoft's rivalry with PlayStation-maker Sony to secure popular Activision Blizzard franchises like the military shooter game Call of Duty.

Microsoft's response to the FTC tries to downplay Xbox's role in the industry, describing itself as the "third-place manufacturer of gaming consoles" behind Sony and Nintendo, and one of just many publishers of popular video games with "next to no presence in mobile gaming," where it is trying to make gains.

Activision Blizzard filed its own rebuttal to the FTC complaint on Thursday criticizing what it described as the FTC's "unfounded assumption" that Microsoft would want to withhold Call of Duty from platforms that compete with Xbox. Its CEO Bobby Kotick said he believes the companies will prevail.

The dispute could be a difficult test case for Biden-appointed FTC Chair

Lina Khan, who has sought to strengthen enforcement of antitrust rules. The FTC voted 3-1 earlier in December to issue the complaint seeking to block the deal, with Khan and the two other Democratic commissioners voting in favor and the sole Republican voting against.

The deal is also under close scrutiny in the European Union and the United Kingdom, where investigations aren't due to be completed until next year.

The FTC's complaint points to Microsoft's 2021 acquisition of well-known game developer Bethesda Softworks and its parent company ZeniMax, as an example of where Microsoft is making some upcoming game titles exclusive to Xbox despite assuring European regulators it had no intention to do so.

Microsoft on Thursday objected to the FTC's characterization, saying it made clear to European regulators it would "approach exclusivity for future game titles on a case-by-case basis, which is exactly what it has done."

The FTC's suit describes top-selling franchises like Call of Duty as important because they develop a base of loyal users attached to their preferred console or streaming service.

"With control of Activision's content, Microsoft would have the ability and increased incentive to withhold or degrade Activision's content in ways that substantially lessen competition—including competition on [product quality](#), price, and innovation," the FTC lawsuit says. "This loss of competition would likely result in significant harm to consumers in multiple markets at a pivotal time for the industry."

Microsoft signaled that it will vigorously fight the case in court with a team led by high-profile corporate attorney Beth Wilkinson, while also

leaving open the possibility of a settlement.

"Even with confidence in our case, we remain committed to creative solutions with regulators that will protect competition, consumers, and workers in the tech sector," said Microsoft's president, Brad Smith, in a statement Thursday. "As we've learned from our lawsuits in the past, the door never closes on the opportunity to find an agreement that can benefit everyone."

Microsoft's last big antitrust battle occurred more than two decades ago when a [federal judge](#) ordered its breakup following the company's anticompetitive actions related to its dominant Windows software. That verdict was overturned on appeal, although the court imposed other penalties on the company.

The FTC's decision to send the complaint to its in-house Administrative Law Judge D. Michael Chappell instead of seeking an urgent federal court injunction to halt the merger could drag the case out at least until August, when the first evidence hearing is scheduled. Microsoft's agreement with Activision Blizzard requires it to pay the video game company a breakup fee of up to \$3 billion if it can't close the deal before July 18.

The timing and trajectory of the case could change depending on how regulators in the U.K. and Europe rule on the merger next year. If Microsoft wins approval in Europe, it could use that to try to expedite the process in U.S. courts.

The merger faced yet another challenge this week from a group of individual video game players [who sued in a San Francisco federal court](#) to stop the deal on antitrust grounds.

The plaintiffs, all fans of Activision Blizzard's Call of Duty franchise

and other popular titles such as World of Warcraft, Overwatch and Diablo, are particularly concerned about how the consolidation would affect future [game](#) quality, innovation and output, said their attorney Joseph Alioto.

"When there's a lack of competition, the quality necessarily goes down," Alioto said. "By eliminating Activision, it gives such a strong position to Microsoft that they can do whatever they want."

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