

Fate of record tech industry tie-up heads to judge as Microsoft defends \$69B Activision deal

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Microsoft CEO Satya Nadella arrives at the Phillip Burton Federal Building and U.S. Courthouse, in San Francisco, on Wednesday, June 28, 2023. Microsoft is defending the company's proposed \$69 billion takeover of video game maker Activision Blizzard as federal regulators seek to block the deal. Credit: AP Photo/Noah Berger

The fate of what could be the priciest merger in tech industry history is now in the hands of a federal judge who must decide whether to stop Microsoft from closing its deal to buy video game company Activision Blizzard.

Federal antitrust enforcers have sued to block the \$69 billion acquisition that they say will harm competition between Microsoft and gaming industry competitors such as Sony and Nintendo.

And much of the decision could rest on a single Activision blockbuster franchise, the military commando game Call of Duty, and whether Microsoft could harm competition by controlling how it is distributed to gamers.

"All of this is for a shooter video game," said U.S. District Judge Jacqueline Scott Corley, expressing a hint of exasperation about the nature of the dispute near the end of a 5-day San Francisco court hearing Thursday. "We're concerned about the competition for this one shooter video game."

Microsoft has largely had the upper hand in the court proceedings that ended Thursday, [calling in its CEO Satya Nadella](#) and other executives, including longtime Activision Blizzard CEO Bobby Kotick, to testify in favor of the merger.

The Federal Trade Commission, which enforces antitrust laws, has asked Corley to issue an injunction that would temporarily block Microsoft and Activision from closing the deal before the FTC's in-house judge can review it in an August trial.



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Both Microsoft and Activision have suggested that such a delay would effectively force them to abandon the deal they signed 17 months ago. Microsoft promised to pay a \$3 billion breakup fee to Activision if the deal doesn't close by July 18.

"The relief the FTC seeks is not only unprecedented but deal-killing," said Microsoft's lead attorney, Beth Wilkinson, in a final written defense filed Thursday.

The case is an important test for the FTC's heightened scrutiny of the technology industry under its Chair Lina Khan, installed by President Joe Biden in 2021 because of her tough stance toward what she sees as monopolistic behavior by tech giants such as Amazon, Google and Facebook parent Meta. A loss for the FTC could repeat what happened earlier this year, when another judge rebuffed the FTC's attempt to stop Meta's takeover of a [virtual reality fitness company](#).



Activision Blizzard CEO Bobby Kotick leaves the Phillip Burton Federal Building and U.S. Courthouse in San Francisco on Wednesday, June 28, 2023. Microsoft is defending the company's proposed \$69 billion takeover of video game maker Activision Blizzard as federal regulators seek to block the deal. Credit: AP Photo/Noah Berger

Corley has shown skepticism of the FTC's arguments against the Activision deal, particularly on Thursday when she stopped the agency's lead attorney during his closing arguments to ask him to pin down "exactly what is the harm" to consumers.

"Why don't you sort of be a little bit more precise?" Corley said. She added later: "It's not the harm to Sony we care about. It's the harm to the consumer."

Sony, the deal's most vocal opponent in the game industry, has told regulators that it fears Microsoft will deprive its dominant PlayStation game console of popular Activision franchises such as Call of Duty or offer a subpar version of those titles to drive gamers to desert PlayStation for Microsoft's Xbox system.

Nadella, Kotick and other Microsoft witnesses sought to dispel those concerns this week, arguing that it was better for business to keep games like Call of Duty on multiple platforms and that pulling it from PlayStation would lead to a gamer backlash.



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"The possibility of making Call of Duty exclusive to Xbox was never assessed or discussed with me, nor was it even mentioned in any of the presentations to or discussions with the Board of Directors," said Microsoft's chief financial officer, Amy Hood, in written testimony filed before Thursday's court session. Hood sat in the courtroom Thursday but wasn't asked to take the stand.

The FTC's lead attorney in the case, James Weingarten, on Thursday

sought to undercut Microsoft's assertions that it didn't care much about making games exclusive. Weingarten grilled a financial executive at Microsoft's Xbox division about the company's internal strategy discussions for the Activision Blizzard acquisition as well as its 2021 purchase of another top game-maker, ZeniMax, for \$7.5 billion.

Xbox's chief financial officer, Tim Stuart, was asked about the stir he caused when he told an investor conference in 2020 after the ZeniMax deal was first announced that Microsoft's long-run plan was to differentiate its platform by making its games "either first or better or best."



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Activision Blizzard as federal regulators seek to block the deal. Credit: AP Photo/Noah Berger



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Lulu Cheng Meservey, EVP for corporate affairs and CCO of Activision Blizzard, leaves the Phillip Burton Federal Building and U.S. Courthouse in San Francisco on Wednesday, June 28, 2023. Microsoft is defending the company's proposed \$69 billion takeover of video game maker Activision Blizzard as federal regulators seek to block the deal. Credit: AP Photo/Noah Berger



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Stuart confirmed there were internal discussions about how a drop in sales from making games exclusive to Xbox could be offset by the money made from selling more Xbox consoles and subscriptions to Microsoft's Game Pass monthly subscription service.

Microsoft has since made some of ZeniMax's games, such as the [upcoming release Starfield](#), exclusive to Xbox. But in response to concerns about the Activision deal, Microsoft offered to make binding

deals to keep Call of Duty on other platforms for at least ten years. Nintendo agreed to such a deal for its Switch console, while Sony has rebuffed it.

Both Microsoft and the FTC made their closing arguments Thursday. Corley didn't say when she would issue the ruling but said she was mindful of the timeliness of the case.

The deal also faces opposition from another major regulator, the [U.K.'s Competition and Markets Authority](#), while other countries and the European Union have approved it.

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