

Microsoft, regulators tangle in court over fate of \$69 billion deal that could reshape video gaming

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Federal regulators on Thursday launched a legal attack on Microsoft's proposed \$69 billion takeover of video game maker Activision Blizzard by depicting it as an anticompetitive weapon while Microsoft hailed the deal as a way to make popular games such as Call of Duty more widely available at cheaper prices.

Those were the dramatically contrasting pictures drawn by lawyers arguing before U.S. District Judge Jacqueline Scott Corley on the first of five days of scheduled hearings in San Francisco that are likely to make or break what would be the most expensive acquisition in technology history.

The U.S. Federal Trade Commission is trying to persuade Corley to issue an order that would prevent the takeover from being consummated before a more extensive administrative trial begins August 2 in Washington. Meanwhile Microsoft is fighting to close the deal ahead of a July 18 deadline that would require paying a \$3 billion breakup fee to Activision.

Microsoft struck the deal 17 months ago in hopes of expanding its video game imprint beyond its Xbox console, which has about half the market share of the longtime industry leader Sony and its PlayStation device.

But the FTC has been fighting hard to block a deal that it fears will

enable Microsoft to make popular franchises such as Call of Duty and World of Warcraft exclusive to the Xbox and online subscription services that are becoming an increasingly bigger part of the \$210 billion worldwide video game market—larger than the movie and music industries combined.

FTC lawyer James Weingarten told Corley the agency will show evidence that Microsoft will have a "myriad of strategies" to withhold popular games from PlayStation and rival subscription prices, degrade the quality of games on competing platforms and raise prices on games that have developed fiercely loyal audiences.

"Activision makes the games that gamers want to play," Weingarten asserted. "Having differentiated content is critical to selling more consoles and getting more subscribers."

Microsoft lawyer Beth Wilkinson belittled the FTC's argument as a "very naive" thesis that ignores the pressure the company's gaming division will be under to deliver profit margins to justify the huge price being paid for Activision and the fierce backlash likely to happen among highly opinionated video game fans if a popular franchise such as Call of Duty was withheld from other platforms.

"They couldn't face the wrath from the gamers," Wilkinson argued. She also pointed to lengthy commitment that Microsoft has already made to make Call of Duty available on Nintendo's Switch console and a Nvidia gaming subscription service as evidence that the Activision deal would be "good news for consumers."

Microsoft also tried to present evidence that Sony is trying to blow up the deal to preserve its giant lead in the console market. As part of that effort, Wilkinson displayed an email from Sony executive Jim Ryan shortly after the Activision deal was announced that indicated his

confidence that Call of Duty would remain available the PlayStation for many years to come. Ryan, the CEO of Sony Interactive Entertainment, wrote that even though he wished the deal hadn't happened, he believed that Sony would be okay.

Several months after Ryan issued that reassuring email, Wilkinson said Sony emerged as the FTC's "complainer in chief" about the Activision deal and so far hasn't rebuffed Microsoft's offer to make an ironclad commitment to keep Call of Duty on the PlayStation console. When Wilkinson tried to display some information about Microsoft's offer, a Sony lawyer interrupted the proceedings to assert the document was confidential and it was taken off the screen.

A videotaped deposition of Ryan is expected to be played in court at some point in the proceedings. Both Microsoft CEO Satya Nadella and Activision Blizzard CEO Bobby Kotick are expected to testify in person before the proceedings are scheduled to conclude June 29.

Corley isn't expected to rule until after the Independence Day holiday.

The hearings represent a major test of the FTC's amped-up oversight of Big Tech under Chairperson Lina Khan, who has been outspoken about her belief that U.S. regulators were too lenient in past deals that helped increase the power of companies such as Amazon, Google and Facebook. The courtroom tussle with Microsoft comes six months after the FTC took Facebook owner Meta Platforms to court in Silicon Valley to try to stop a takeover of a virtual reality fitness company [only to be rebuffed by the judge in that case](#).

Another major regulator, the [U.K.'s Competition and Markets Authority](#), also has taken action to thwart Microsoft's takeover.

Microsoft has lashed back against the British regulators standing in its

way with an appeal of their decision, as well as voicing strong opposition to U.K. government officials.

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