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Microsoft Announces Plan to Acquire Activision Blizzard – Will it Work?

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On January 18, 2022, Microsoft announced that it was acquiring Activision Blizzard in an all-cash transaction valued at \$68.7 billion.¹ This will be a stock purchase,² with Microsoft paying \$95 per share of Activision Blizzard's stock.³ After the acquisition, Microsoft stands to become the world's third largest gaming company behind Tencent and Sony.⁴ This transaction is set to be the largest all-cash acquisition on record (and the largest gaming industry deal in history), surpassing Bayer's \$63.9 billion acquisition of Monsanto in 2016.⁵

Understandably, the news of the proposed acquisition shocked the video game industry and consumers alike.⁶ Activision Blizzard has been embroiled in a massive sexual harassment scandal that began when the California Department of Fair Employment and

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¹ Microsoft Corp., *Current Report* (Form 8-K) (Jan. 18, 2022), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000789019/000119312522010667/d301984d8k.htm>.

² See generally *Asset Purchase vs Stock Purchase*, CORPORATE FINANCE INSTITUTE (last visited Jan. 28, 2022), <https://corporatefinanceinstitute.com/resources/knowledge/deals/asset-purchase-vs-stock-purchase/>. A buyer may acquire a target company by either purchasing the target's assets or purchasing the target's stock. Here, Microsoft is purchasing all of Activision Blizzard's stock.

³ *Microsoft to Acquire Activision Blizzard to Bring the Joy and Community of Gaming to Everyone, Across Every Device*, MICROSOFT (Jan. 18, 2022), <https://news.microsoft.com/2022/01/18/microsoft-to-acquire-activision-blizzard-to-bring-the-joy-and-community-of-gaming-to-everyone-across-every-device/>.

⁴ *Id.*

⁵ Subrat Patnaik & Supantah Mukherjee, *Microsoft to Gobble Up Activision in \$69 billion Metaverse Bet*, REUTERS (Jan. 18, 2022), <https://www.reuters.com/technology/microsoft-buy-activision-blizzard-deal-687-billion-2022-01-18/>.

⁶ Kyle Campbell, *The Video Game Industry Reacts to Microsoft Buying Activision Blizzard*, USA TODAY (Jan. 18, 2022), <https://ftw.usatoday.com/lists/microsoft-buys-activision-blizzard-reaction>.

Housing filed a lawsuit against the company on July 20, 2021 after a two-year investigation.⁷ This scandal has thus far caused the departure and termination of numerous high-ranking employees, as well as boycotts of Activision Blizzard's video games by fans and various news outlets.⁸ Accordingly, Activision Blizzard's stock price plummeted from \$91.51 on July 19, 2021 to low of \$57.28 on November 30, 2021, and ended at \$65.39 on January 13, 2022 (the final closing price before the merger announcement).⁹

Regardless of Activision Blizzard's legal and public relations woes, this seems like a great move for Microsoft. Activision Blizzard's diminished stock price essentially turned this deal into a bargain for Microsoft, because the \$95 per share acquisition price is only slightly higher than Activision Blizzard's pre-scandal trading price of \$91.51 per share. Microsoft certainly has the cash on hand to take advantage of such a bargain.¹⁰ Additionally, Activision Blizzard's extensive game franchises include such popular titles as *World of Warcraft*, *Call of Duty*, and *Candy Crush*.¹¹ Microsoft will be able to integrate these game franchises into its Game Pass portfolio and bolster the pursuit of its own metaverse.¹²

Although this deal appears to be economically beneficial to Microsoft, there is a chance that it may not happen at all. Such a large tech acquisition is likely to draw the attention of the Federal Trade Commission ("FTC"). The FTC and Department of Justice are already starting to rewrite merger rules to address the recent boom in Big Tech acquisitions, and the FTC is currently trying to break up Facebook's new parent company Meta.¹³ Microsoft's rhetoric about creating multiple metaverse platforms seems to echo the desires of Facebook/Meta, and thus may raise a red flag to regulators.

However, Microsoft may not have much to worry about. The FTC may ultimately not view the merger as anticompetitive because although Microsoft is nearly doubling its share of the gaming industry market, it will still only have a relatively small slice of the pie.¹⁴ Microsoft will become the third largest gaming company after the merger, not the

⁷ Aaron Greenbaum, *Everything You Need to Know About the Activision Blizzard Scandal*, DEN OF GEEK (Jan. 20, 2022), <https://www.denofgeek.com/games/activision-blizzard-lawsuit-major-events-history-everything-explained/>.

⁸ *Id.*

⁹ *Activision Blizzard, Inc.*, CNBC (last visited Jan. 24, 2022), <https://www.cnbc.com/quotes/ATVI>. Note the consistent downward trend of Activision Blizzard's stock price after July 20, 2021 until the merger announcement on January 18, 2022.

¹⁰ Microsoft Corp., *Quarterly Report* (Form 10-Q) at *5 (Jan. 25, 2022), https://www.sec.gov/ix?doc=/Archives/edgar/data/0000789019/000156459022002324/msft-10q_20211231.htm#BALANCE_SHEETS. Microsoft had over \$125 billion in cash and cash equivalents as of December 31, 2021. This is the most recent balance sheet on file with the SEC.

¹¹ *Supra* note 3.

¹² *Id.*

¹³ David Meyer, *Microsoft-Activision Deal Could Face Antitrust Challenges Over Gaming Implications, and Maybe the Metaverse Too*, FORTUNE (Jan. 19, 2022), <https://fortune.com/2022/01/19/microsoft-activision-deal-antitrust-gaming-metaverse/>.

¹⁴ Samson Amore, *Why Antitrust Concerns Won't Block Microsoft's Activision Acquisition*, DOT.LA (Jan. 24, 2022), <https://dot.la/activision-microsoft-antitrust-2656470772.html>. Microsoft's share of the gaming market was 6.5% in 2020, and it will increase to 10.7% with the addition of Activision Blizzard.

largest. Additionally, this acquisition is likely to be considered a vertical transaction, and courts are historically reluctant to apply antitrust restrictions to vertical transactions.¹⁵ A vertical transaction is the joining of two or more companies that provide different functions.¹⁶ In the video gaming sphere, Microsoft is primarily a platform provider and distributor, whereas Activision Blizzard is a video game publisher.¹⁷ These functions are distinct enough to likely meet the definition of a vertical transaction.¹⁸

If anything, Microsoft can argue that the deal will bolster competition instead of quashing it because it will be able to compete with the likes of Tencent and Sony more effectively. Moreover, although there are concerns that Microsoft may push for more Xbox-exclusivity regarding such titles as *Call of Duty*, it has stated that it plans to keep *Call of Duty* available on the Sony Playstation.¹⁹ Nevertheless, the sheer size of the deal may still invite heavy scrutiny from the FTC regardless of whether the transaction appears to be anticompetitive at first glance.

At this point, it is difficult to predict what sort of antitrust challenges Microsoft will face before the merger is finalized, if any at all. The news of the merger is still fresh, and the FTC is in the process of updating its M&A rules. Regardless, the deal stands to change the landscape of the video game industry as we know it.

¹⁵ Rory Young, *Legal Expert Explains Why Microsoft's Acquisition of Activision Blizzard Won't Break Antitrust Laws*, GAMERANT, (Jan. 19, 2022), <https://gamerant.com/activision-blizzard-microsoft-acquisition-antitrust-laws/>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* Phil Spencer, CEO of Microsoft Gaming, stated that Microsoft will keep *Call of Duty* available on the Playstation instead of making it exclusive to the Xbox.