

1 Joseph M. Alioto (State Bar No. 42680)
Tatiana V. Wallace (State Bar No. 233939)

2 **ALIOTO LAW FIRM**

One Sansome Street, 35th Floor

3 San Francisco, CA 94104

Telephone: (415) 434-8900

4 Facsimile: (415) 434-9200

Email: jmalimoto@aliotolaw.com

5 twallace@aliotolaw.com

6 Joseph R. Saveri (State Bar No. 130064)

Steven N. Williams (State Bar No. 175489)

7 Cadio Zirpoli (State Bar No. 179108)

Elissa Buchanan (State Bar No. 249996)

8 David H. Seidel (State Bar No. 307135)

Kathleen J. McMahon (State Bar No. 340007)

9 **JOSEPH SAVERI LAW FIRM, LLP**

601 California Street, Suite 1000

10 San Francisco, CA 94108

Telephone: (415) 500-6800

11 Facsimile: (415) 395-9940

Email: jsaveri@saverilawfirm.com

12 swilliams@saverilawfirm.com

13 czirpoli@saverilawfirm.com

eabuchanan@saverilawfirm.com

dseidel@saverilawfirm.com

14 kmcmahon@saverilawfirm.com

15 *Counsel for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

20 DANTE DEMARTINI, CURTIS BURNS JR.,
NICHOLAS ELDEN, JESSIE GALVAN,
21 CHRISTOPHER GIDDINGS-LAFAYE, STEVE
HERRERA, HUNTER JAKUPKO, DANIEL
22 LOFTUS, BEOWULF OWEN, and IVAN CALVO-
PÉREZ,

23 Plaintiffs,

24 v.

26 MICROSOFT CORPORATION, a Washington
corporation,

27 Defendant.

Case No. 3:22-cv-08991-JSC

**AMENDED COMPLAINT TO PROHIBIT
THE ACQUISITION OF ACTIVISION
BLIZZARD BY MICROSOFT
CORPORATION IN VIOLATION OF
SECTION 7 OF THE CLAYTON
ANTITRUST ACT, 15 U.S.C.**

TABLE OF CONTENTS

1

2 INTRODUCTION 1

3

4 JURISDICTION AND VENUE 6

5 BACKGROUND 7

6 A. The Video Game Industry: From Innovative Distraction to Serious Business 7

7 B. Video Games: Platform and Content 8

8 C. Video Game Consoles 9

9 D. Multi-Game Content Library Subscriptions 11

10 E. Cloud-Gaming 12

11 F. Triple-A Video Game Content 13

12 G. First-Party vs. Third-Party Gaming Content 15

13 H. Exclusivity, Partial Exclusivity, Timed Exclusivity 16

14 I. Gaming content drives demand for gaming platforms 16

15 J. The Industry has Undergone Significant Consolidation 17

16 K. Network Effects and Barriers to Entry 20

17

18 PARTIES 21

19 A. Plaintiffs 21

20 B. Microsoft Corporation 23

21 C. Activision Blizzard 25

22

23 THE PROPOSED TRANSACTION 27

24 COUNT 1 28

25 VIOLATION OF SECTION 7 OF THE CLAYTON ACT (15 U.S.C. § 18) 28

26

27 RELEVANT MARKETS 28

28 A. Triple-A Video Games 28

1 B. High-Performance Consoles 32

2 C. Multi-Game Content Library Subscriptions 37

3 D. Cloud-Gaming Subscription Services 40

4 E. Computer Operating Systems Market 42

5

6 GEOGRAPHIC MARKET 43

7 HORIZONTAL HARM TO COMPETITION 44

8 VERTICAL HARM TO COMPETITION 47

9 A. Triple -A Games Are Crucial Inputs to Gaming Platforms that Drive Demand 49

10 B. Microsoft’s Demonstrated And Admitted Incentive to Make Content Exclusive 50

11 C. Activision’s Gaming Content Is a Key Input 54

12 D. Microsoft’s “10-Year Deals” Do not Prevent Microsoft’s Stated Foreclosure Strategy 59

13 E. The Merger May Substantially Lessen Competition in the Console Market 62

14 F. The Merger May Substantially Lessen Competition in The Multi-Game Content Library

15 Subscription Market 63

16 G. The Merger May Substantially Lessen Competition in The Cloud-Gaming Market 65

17 H. The Merger May Substantially Lessen Competition in the Computer Operating Systems

18 Market⁶⁷

19 PRAYER FOR RELIEF 68

20

21

22

23

24

25

26

27

28

INTRODUCTION

1
2 1. This is a private antitrust action seeking an order of the Court prohibiting the proposed
3 acquisition of Activision Blizzard, Inc. by Microsoft Corporation as a violation of Section 7 of the
4 Clayton Antitrust Act (15 U.S.C. § 18). The threatened loss or damage to Plaintiffs and to the public at-
5 large by the merging of these two giants in the video game industry is extensive and broad.

6 2. The acquisition will substantially lessen competition in five relevant markets in the
7 United States: (1) Triple-A games [*see infra* ¶¶ 165–185]; (2) High-Performance Consoles [*see infra* ¶¶
8 186–208]; (3) Multi-Game Content Library Subscription Services [*see infra* ¶¶ 209–220]; (4) Cloud-
9 Gaming Subscription Services [*see infra* ¶¶ 221–238]; and (5) computer operating systems [*see infra* ¶¶
10 232–238].

11 3. The acquisition will harm competition in the Triple-A games market, because Microsoft
12 and Activision Blizzard are direct competitors in this market, and the number of firms capable of
13 publishing Triple-A games is small and the industry has already concentrated significantly. [*See infra* ¶¶
14 247–260].

15 4. The acquisition will harm competition in the four platform-side markets because post-
16 acquisition, Microsoft will have the incentive and the means to withhold Activision Blizzard’s gaming
17 content from Microsoft’s rivals, thereby foreclosing key inputs to platforms competing with Microsoft,
18 just as Microsoft has done with numerous other Triple-A games. [*See infra* ¶¶ 261–385].

19 5. Indeed, by all accounts, Microsoft appears to be running the same playbook as when it
20 recently acquired another major publisher of Triple-A games, ZeniMax Media, the parent company to
21 Bethesda Softworks, in 2021. During regulatory scrutiny of that major acquisition, Microsoft
22 asserted—just as it does now—that Microsoft had no incentive to withhold ZeniMax gaming content
23 from rival platform manufacturers. Microsoft asserted to the European Commission that “Microsoft
24 would not have the incentive to cease or limit making ZeniMax games available for purchase on rival
25 consoles.” But after the acquisition was allowed to consummate, Microsoft pulled the plug on
26 Bethesda’s development of *Redfall* for the PlayStation, which was already underway. In a recent
27 interview, the director of *Redfall*, Harvey Smith, stated: “We got bought by Microsoft and that was a
28 huge sea change. They said, ‘no PlayStation 5. Now we’re gonna do Game Pass, Xbox, and PC.’” Two

1 other major Triple-A games from Bethesda have also been announced as exclusive to Microsoft. It has
2 thus come to light that Microsoft's statements to the European Commission in this regard were false.
3 Microsoft is now making the same statements with respect to Activision Blizzard.

4 6. The video game industry is the largest section of the media and entertainment industry.
5 Video games generate more than \$226 billion per year. The industry is still growing and developing
6 with new innovations emerging. Now more than ever, competition in this industry must be preserved.

7 7. On January 18, 2022, Microsoft announced plans to acquire Activision Blizzard. Microsoft
8 agreed to pay \$68.7 billion (\$68,700,000,000.00), or approximately \$95 per share in an all-cash
9 transaction. Under the proposed terms of the acquisition, Microsoft would acquire all the outstanding
10 stock of Activision Blizzard. Upon completion of the deal, Activision Blizzard would be wholly owned
11 by Microsoft.

12 8. The acquisition is the single largest acquisition by purchase price in the history of the
13 tech sector. An analysis of the horizontal aspects of the merger shows that the combination will
14 concentrate the market power of two dominant competitors.

15 9. There are just a few firms remaining that are capable of developing and publishing the
16 most advanced and anticipated video games (known in the industry as "Triple A" or "AAA" video
17 games). Microsoft previously acquired ZeniMax Media, the parent company of Bethesda Softworks
18 LLC ("Bethesda"), another one of only a handful of Triple-A publishers.

19 10. Microsoft's proposal to acquire Activision Blizzard—one of the most valuable
20 developers of Triple-A games—through a merger valued at nearly \$70 billion dollars (hereinafter
21 "Proposed Acquisition") will significantly increase Microsoft's already considerable power in several
22 markets within the video game industry and will substantially reduce competition in several key
23 markets.

24 11. First, the acquisition will substantially lessen competition in the Triple-A game market,
25 because Microsoft and Activision Blizzard are currently two of the largest Triple-A game publishers,
26 and they directly compete to produce the best Triple-A games. Microsoft's own documents show that

27 .
28 Microsoft and Activision Blizzard compete to produce the best video games that will most capture

1 consumer engagement. This competition among Triple-A publishers spurs innovation, increases output,
2 and constrains prices. With substantially less competition in the Triple-A games market, innovation and
3 output are likely to decrease and prices are likely to increase.

4 12. Second, the acquisition will substantially lessen competition in four key video game
5 platform markets, because Microsoft's strategy of making its own video game content exclusive to
6 Microsoft's own platforms, and thereby foreclosing video games from rival platforms is well
7 documented and consistent with their past behavior. Based on the evidence uncovered to date, there is
8 no question that Microsoft will seek to make Activision Blizzard's gaming content exclusive or
9 partially exclusive to Microsoft's own platforms and foreclose Activision's Blizzard's gaming content
10 from rival video game platforms.

11 13. This vertical foreclosure theory of harm has more than a reasonable probability of
12 lessening competition in the platform markets because (1) Triple-A games are crucial inputs to gaming
13 platforms; (2) Microsoft has previously demonstrated and admitted to pursuing this foreclosure
14 strategy; (3) Activision Blizzard's gaming content is particularly important to rival platform producers,
15 and *Call of Duty* is especially important; and (4) Microsoft's proposed "10-year deals" with other
16 platform manufacturers are insufficient to prevent Microsoft from pursuing its foreclosure strategy.

17 14. The Proposed Acquisition would continue Microsoft's strategy of obtaining control of
18 valuable gaming content, foreclosing competitors from that important content, and increasing its own
19 market power. With control of Activision Blizzard's content, Microsoft would acquire and maintain the
20 ability and incentive to withhold or reduce Activision Blizzard's content in ways that would
21 substantially lessen competition—including competition on product quality, price, and innovation. This
22 destruction of the competitive process and loss of competition would result in significant harm to
23 consumers and the Plaintiffs in multiple relevant markets at a pivotal time for the industry.

24 15. In the High-Performance Console market, Microsoft is one of only two platform owners,
25 with Microsoft and Sony each having roughly 50% market share in the United States. Microsoft sells
26 the Xbox Series X|S, which competes against Sony's PlayStation 5. By pursuing its foreclosure
27 strategy, Microsoft will make Activision Blizzard's games exclusive and/or partially exclusive to the
28 Xbox, foreclosing the PlayStation from this important gaming content, just as Microsoft has already

1 done with its own first-party games, including games being published by Bethesda, a previously
2 independent Triple-A game publisher acquired by Microsoft in 2021.

3 16. In the Multi-Game Content Library Subscription service, a new market in which
4 consumers can pay for a subscription to receive access to a library of gaming content, Microsoft
5 already controls between 60% and 68% of the market. By pursuing its foreclosure strategy, Microsoft
6 will make Activision Blizzard's games exclusive and/or partially exclusive to its Game Pass
7 subscription service, foreclosing its rivals from this important gaming content.

8 17. In the Cloud-Gaming market, Microsoft is also the leading competitor with roughly 40%
9 of the nascent Cloud Gaming market. Microsoft has used its cloud-based infrastructure Azure to secure
10 its dominant position, as well as by leveraging its dominant position in Multi-Game Content Library
11 Subscription services to grow its Cloud Gaming business through bundling the two services. Through
12 its foreclosure strategy, Microsoft will make Activision Blizzard's games exclusive and/or partially
13 exclusive to its Cloud Gaming service, foreclosing its rivals from this important gaming content.

14 18. In the computer operating systems market, Microsoft is already a monopolist.
15 Microsoft's Windows controls greater than 95% of the operating systems market used to play video
16 games on personal computers. Through its foreclosure strategy, Microsoft will make Activision
17 Blizzard's games exclusive and/or partially exclusive to Windows-based personal computers
18 (hereinafter "PC"), foreclosing its rivals from this important gaming content. In this market, Microsoft
19 can shore up its monopoly and ensure that Linux, Mac OS, or other operating systems have no chance
20 at gaining a foothold in the computer operating systems market through gaming's rapid expansion.
21 Notably, the Steam Deck, a recently released portable video game device, runs on Linux, which
22 Microsoft views as a competitive threat to Microsoft's monopoly in the operating systems market.

23 19. By any measure, this acquisition would combine two of the world's largest and most
24 dominant video game companies.

25 20. Microsoft, which already has a massive Triple-A game publishing business that
26 competes directly with Activision Blizzard, is also the world's most dominant video game platform
27 manufacturer when viewed across the numerous platform markets (consoles, game-library
28 subscriptions, cloud gaming, and computer operating systems). By having a dominant position across

1 multiple platforms, Microsoft owns a dominant gaming ecosystem, and can leverage its dominance
2 across platforms.

3 21. Activision Blizzard is arguably the world’s most successful Triple-A game publisher.
4 Activision Blizzard’s *Call of Duty* is by most measures the most successful Triple-A game franchise of
5 all time. From its launch in 2003 up through 2020, it has generated \$27 billion in revenues, utilizing
6 annualized development and sales. *Call of Duty* has a huge following which has come to expect annual
7 versions of the game. Its loyal fanbase and appeal and annual cycle have made it extremely valuable,
8 influencing both gamer engagement and gaming product adoption.

9 22. In the words of Activision Blizzard itself, Activision Blizzard’s gaming content,
10 including *Call of Duty*, are [REDACTED]

11 [REDACTED] Microsoft is well
12 aware and is prepared to utilize Activision Blizzard’s games to their full potential.

13 23. This acquisition will reduce the number of independent Triple-A game publishers even
14 further. Microsoft’s acquisition of Activision Blizzard comes shortly after Microsoft acquired another
15 massive Triple-A game publisher when it acquired Bethesda in 2021.

16 24. As Microsoft seeks to increase its profits from this lucrative industry, the Proposed
17 Acquisition will increase Microsoft’s incentive to withhold Activision Blizzard content from, or
18 degrade Activision Blizzard content on, consoles and subscription services that compete with Xbox
19 consoles and Xbox Game Pass, as well as Cloud Gaming services and operating systems. Such conduct
20 would be reasonably likely to substantially lessen competition and harm gamers, including Plaintiffs in
21 the United States.

22 25. These effects are likely to be felt throughout the entire industry.

23 26. The Proposed Acquisition is a violation of Section 7 of the Clayton Antitrust Act (15
24 U.S.C. § 18) in that the effect of the potential consolidation “may be substantially to lessen competition
25 or tend to create a monopoly” in various markets in the video game industry.

26 27. This private action is authorized under Section 16 of the Clayton Antitrust Act (15
27 U.S.C. § 26), which provides in relevant part that “any person . . . shall be entitled to sue and have
28 injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws.” The remedy

1 afforded to private plaintiffs includes injunctive relief prohibiting any potential unlawful acquisition as
2 well as divestiture.

3 28. The Clayton Act codifies Congress' "intent to encourage private litigation against
4 anticompetitive mergers" that may substantially lessen competition. *California v. Am. Stores Co.* 495,
5 U.S. 271, 284 (1990).

6 29. Plaintiffs bring this action under the authority of Section 16 of the Clayton Antitrust Act
7 and allege that the proposed acquisition of Activision Blizzard by Microsoft constitutes a substantial
8 threat of injury to the Plaintiffs and the public because the acquisition may have the effect of
9 substantially lessening competition and may tend to create a monopoly in various markets in violation
10 of Section 7 of the Clayton Antitrust Act.

11 30. Competition rather than combination is the rule of trade in the United States so that
12 these Plaintiffs, and the public at large, may enjoy the benefits and innovations that come from
13 competition, including, among others, improved quality and increased choices at the lowest possible
14 prices.

15 **JURISDICTION AND VENUE**

16 31. The proposed acquisition is in and substantially affects the interstate and foreign
17 commerce of the United States in that video game consoles, multi-game content library subscriptions,
18 cloud-gaming services, Triple-A video games, and personal computers are sold throughout the United
19 States.

20 32. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and
21 Sections 7 and 16 of the Clayton Act (15 U.S.C. §§ 18 and 26).

22 33. Jurisdiction and venue are proper in this judicial district pursuant to 15 U.S.C. §§15, 22,
23 26, and 28 U.S.C. § 1391.

24 34. Pursuant to Civil Local Rule 3-5(b), assignment of this case to the San Francisco Division
25 is proper because a substantial number of the Plaintiffs reside in and practice gaming in San Francisco.
26
27
28

BACKGROUND

A. The Video Game Industry: From Innovative Distraction to Serious Business

35. Despite its humble beginnings, video gaming is now one of the largest media and entertainment industries with roughly \$226 billion in yearly revenue. Nearly two-thirds of Americans play video games regularly. Three-quarters of players are over the age of eighteen.

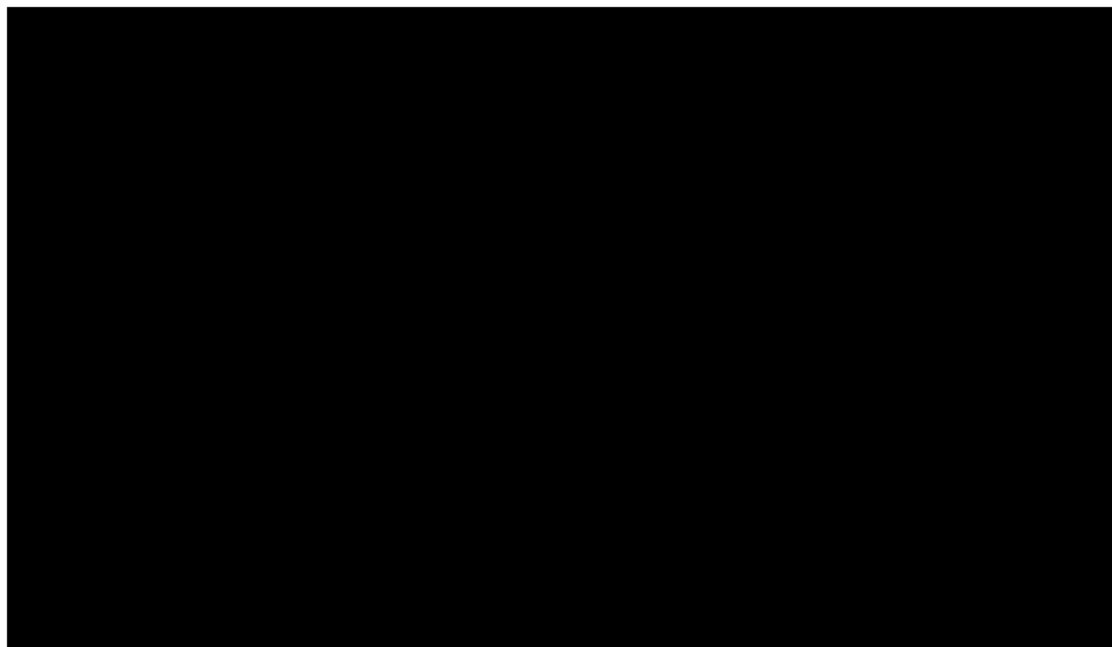
36. The average age of a video game player is 33 years old, according to a report commissioned by the Entertainment Software Association, a Washington, D.C. based organization that serves as the voice and advocate for the United States video game industry.

37. Gamers vary in demographic. Gamers can be young or adult, and can be casual or competitive, including professional. Gamers are ethnically diverse. And gamers can be found in all corners of the globe.

38. Particularly in light of the COVID-19 pandemic, gaming as an industry experienced rapid growth as gamers were able to compete and stay connected while remaining at home. During the pandemic, time spent on gaming and related activities increased by 39% across the globe.

39. Gaming is the largest segment in the entertainment industry, with revenues that dwarf other media and entertainment segments such as film, music, and television. Not only is gaming the largest segment, it is also the fastest growing segment in media and entertainment. Gaming’s unrivaled popularity among consumers is expected to continue.

1 40. The graph below shows that gaming has eclipsed other forms of media by revenue:
2
3
4
5
6
7
8
9
10
11
12



13 41. Microsoft projects global gaming revenues to grow to [REDACTED] in annual sales by
14 [REDACTED]. Microsoft additionally expects the number of gamers worldwide to increase significantly,
15 expanding by another [REDACTED] players and [REDACTED] of the global population over the
16 next [REDACTED].

17 **B. Video Games: Platform and Content**

18 42. Video games consist of two components: platforms and content.

19 43. The platform refers to the device that processes the video game and provides the player
20 input (often and most commonly a hardware device, such as a computer, console or mobile phone).

21 44. The content is the video game itself.

22 45. Video game content is specifically engineered and designed for certain platforms.

23 Although the same game is often developed for multiple platforms, a video game must be developed
24 and programmed to be playable on a particular platform.

25 46. Thus, platform manufacturers and content developers must work together to bring video
26 games to the market. For example, where a platform manufacturer creates a new feature that gaming
27 content can take advantage of (haptic feedback from a game controller as but one example), game
28 developers must have access to the internal structures of the platform-side feature to be able to program

1 content that takes advantage of that platform-specific feature. Similarly, when a new generation of
2 consoles provides further graphics and computer-processing power, video game developers must
3 understand those platform systems and features to be able to develop a game that takes advantage of
4 those higher-processing features, and performs in a seamless manner. Game content developers expend
5 significant time and cost in developing, optimizing, updating, and fixing video games for compatibility
6 with each platform.

7 47. For example, Activision Blizzard works closely with both Microsoft and Sony to
8 develop and program its games for both the Xbox (Microsoft) and PlayStation (Sony) platforms. When
9 Sony and Microsoft develop new console systems or new features, Sony and Microsoft disclose the
10 specifications of those features to Activision Blizzard and other third-party game publishers and work
11 closely with those game publishers to ensure that the game publishers are able to provide quality
12 gaming content that works seamlessly with the new platform specifications and features and does not
13 have bugs or problems from day one.

14 48. Third-party content creators have significant business incentives in ensuring its games
15 function at the highest level across every platform that the game is developed for.

16 **C. Video Game Consoles**

17 49. Video game consoles are stand-alone hardware devices designed to run video games
18 specifically designed for them. They are operated with controllers, and most often plug into a TV for the
19 display.

20 50. Since the 1970's, competing video game console makers have periodically released
21 consoles featuring the latest technological advances, with a new generation of consoles released
22 approximately every five to ten years. Within the video game industry, competition for sales and
23 technological supremacy is commonly referred to as the "console wars."

24 51. For gamers who play games on gaming consoles today, the most popular options,
25 Microsoft's Xbox, Sony's PlayStation, and Nintendo's Switch, come from the same trio of companies
26 that have been manufacturing consoles for decades with no meaningful new competition from new
27 entrants.

1 52. Of these three consoles, PlayStation and Xbox compete in a high-performance segment
2 that includes only the most technologically advanced and capable consoles. In November 2020, both
3 Microsoft and Sony launched their current generation of consoles, the Xbox Series X and Series S
4 consoles (collectively, “Xbox Series X|S”) and the PlayStation 5 and PlayStation 5 Digital Edition
5 consoles (collectively, “PS5”), respectively. Xbox Series X|S and PS5 consoles are the only high-
6 performance consoles available today and are considered to be in the ninth generation of gaming
7 consoles. Xbox Series XS and PS5 are technological peers and direct horizontal competitors.

8 53. In contrast, Nintendo’s most recent console—the Nintendo Switch—is not considered a
9 ninth-generation gaming console. The Nintendo Switch was released in 2017, in the latter half of the
10 eight generation of gaming consoles, which had begun in approximately 2013. The Nintendo Switch
11 also has lower computational performance, more in line with Microsoft’s and Sony’s eighth generation
12 consoles.

13 54. The Xbox Series X|S are two ninth-generation Xbox consoles offered by Microsoft. The
14 Series X is a more powerful console while the Series S is more affordable. Together, these consoles
15 provide Microsoft’s [REDACTED]

16 55. As direct competitors, Microsoft closely tracks the performance of its Xbox consoles
17 relative to Sony’s PlayStation consoles. For example, in FY2022, the first full year that Xbox Series
18 X|S consoles were available, one of Microsoft’s key metrics for evaluating success [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 56. Xbox Series X|S consoles have been a commercial success. In a July 26, 2022, earnings
22 call, Microsoft CEO Satya Nadella announced that the company “had been the market leader in North
23 America for three quarters in a row among next gen consoles.”

24 57. The Xbox Series X|S and PS5 consoles [REDACTED] from a broad
25 consumer perspective, in a number of technical specifications, including offering similar graphics, user
26 experiences, and hardware features. In addition, the Xbox Series X and PlayStation 5 are sold at the
27 same price, while the Series S offers lower performance and is sold at a lower price.
28

1 58. Other consoles lack the high performance of the Xbox Series X|S and PS5 consoles. For
2 example, the Nintendo Switch, which is designed to allow portable, handheld use, necessarily sacrifices
3 computing power, which leaves it unable to play certain games that require more advanced graphic
4 processing, or are only able to play them in a reduced capacity.

5 59. Retailing at \$299.99, the Nintendo Switch is also less expensive than the Xbox Series X
6 and PlayStation 5 consoles, both priced at \$499.99.

7 60. While the Xbox Series S had the same retail price at launch as the Nintendo Switch, the
8 graphical and processing capabilities of the Series S are much more aligned with the Xbox Series X and
9 PS5 consoles. The Xbox Series S enables gamers to play the same video games as the Xbox Series X,
10 both of which offer more graphically advanced gameplay than on the Nintendo Switch.

11 **D. Multi-Game Content Library Subscriptions**

12 61. For the last several decades, gamers have purchased games through a “buy to play”
13 model: either purchasing physical copies of games or, more prevalent today, purchasing digital copies
14 of individual games that gamers download from the internet to their gaming console, PC, or other
15 device with a one-time purchase price for each game. Gamers play games they purchase locally on the
16 consoles or computers they possess.

17 62. Recent years, however, have seen the expansion of subscription-model based gaming.
18 Multi-game content library subscription services allow gamers to access a library of games for a fixed
19 monthly or yearly fee. Consumers most commonly play games they download under the terms of a
20 subscription locally on the consoles they possess.

21 63. Microsoft’s multi-game content library subscription service, Xbox Game Pass, launched
22 in 2017, rapidly grew to 10 million subscribers by 2020 and in 2022 announced it had grown to 25
23 million subscribers. Historically, games have often been placed on subscription services later in their
24 lifecycles. The most profitable and highly popular Triple-A games, such as *Call of Duty*, have typically
25 been sold separately and not offered on subscription services.

26 64. Xbox Game Pass provides subscribers with unlimited access to a library of over 300
27 first-and third-party games at no additional cost. The service is priced at \$9.99 per month for gamers
28 who seek to download games to play solely on an Xbox console or solely on a PC. The higher tiered

1 service, Xbox Game Pass Ultimate, priced at \$14.99 per month, allows gamers to download games for
2 play on either an Xbox console or a PC, and additionally enables gamers to stream games from an off-
3 site server to any web-enabled local device that can access Game Pass (e.g., an Xbox console, PC,
4 mobile device, or smart TV).

5 65. Sony also offers a multi-game content library subscription service, PlayStation Plus,
6 which at certain tiers is comparable to Xbox Game Pass. The lower comparable tier, PlayStation Plus
7 Extra, priced at \$14.99 per month, provides access to a library of hundreds of games that can be played
8 on PlayStation consoles as well as online multiplayer access, discounts on other games, and cloud
9 storage. The higher comparable tier, PlayStation Plus Premium, priced at \$17.99 per month, provides
10 access to an even larger library of games that can be played on PlayStation, and also includes the ability
11 to play the games through cloud streaming.

12 66. In 2022, Xbox Game Pass had roughly [REDACTED] subscribers whereas PlayStation Plus
13 had roughly [REDACTED] subscribers. [REDACTED]

14 [REDACTED].
15 67. In addition to Sony's PlayStation Plus Extra and Premium, other multi-game content
16 library subscription services include EA Play and Ubisoft+. EA Play, starting at \$4.99 per month, and
17 Ubisoft+, starting at \$14.99 per month, each offer access only to the content from the respective
18 publishers, Electronic Arts Inc. ("EA") and Ubisoft Entertainment SA ("Ubisoft").

19 **E. Cloud-Gaming**

20 68. Cloud gaming is a nascent but rapidly expanding segment of gaming. Traditionally,
21 games are run locally on a console or PC. With cloud gaming, however, games are run remotely
22 through a cloud-based server on remote hardware and streamed to the player.

23 69. Typically, for a game run on the cloud, the end-user activates an app on their device
24 queuing up a request for a game. The device sends signals to a remote server run by a service provider.
25 The remote servers run and process the game and transmit the video game content over the internet to
26 the end-user.

1 70. Triple-A games can be available over the cloud. Cloud gaming is dependent on internet
2 access which may hamper a gamer’s ability to react. In games where fractions of seconds may matter,
3 issues with latencies or internet connectivity issues can mean the difference between victory or defeat.

4 **F. Triple-A Video Game Content**

5 71. Triple-A games (also referred to as “AAA”) are crucially important within the gaming
6 industry. The term Triple-A is frequently used by industry participants to refer to the latest generation
7 games with the highest production value, which can generally only be produced by the largest video
8 game publishers, referred to as Triple-A publishers. They are the most anticipated games, with high
9 development costs, superior graphical quality, and expectations of high unit sales and revenue, and
10 supported by extensive marketing and promotion. Triple-A content can act as a [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 72. In the words of one Microsoft executive, Triple-A [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 73. Production budgets for Triple-A games frequently exceed [REDACTED]
18 [REDACTED], and development teams can include thousands of developers working over several years. The
19 high costs of Triple-A game development are driven by many factors such as long development cycles
20 and the scarcity of Triple-A-capable studios and talent.

21 74. The gaming industry recognizes a limited tier of independent game publishers capable of
22 publishing Triple-A games. They are sometimes referred to as the “Big 4” or simply the Triple-A
23 publishers: Activision Blizzard, Electronic Arts, Take-Two, and Ubisoft. These publishers reliably
24 produce Triple-A games for high-performance consoles and computers and collectively own a
25 significant portion of the most valuable IP in the gaming industry. The Big 4 possess high-profile
26 franchises, including for example, *Call of Duty* (Activision), *FIFA* (EA), *Grand Theft Auto* (Take-Two),
27 and *Assassin’s Creed* (Ubisoft).
28

1 75. Only a few other studios are typically credited with releasing Triple-A games. Epic
2 Games, maker of *Fortnite*, a free-to-play game, is sometimes viewed within the industry as a Triple-A-
3 level publisher, such that industry participants will sometimes refer to the “Big 4 + Epic.”

4 76. Internally, Microsoft recognizes that [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED] Industry consolidation will likely continue this trend.

8 77. Microsoft and Sony also produce Triple-A games. *The Elder Scrolls*, *Halo*, and *Forza*
9 franchises are Triple-A games from Microsoft, while *God of War*, *MLB The Show*, and *Spider-Man*
10 franchises are Triple-A games from Sony.

11 78. *Halo Infinite*, a recent title from Microsoft’s first-party *Halo* franchise, was in
12 production [REDACTED], and cost almost [REDACTED] million to develop and bring to market. Other
13 Triple-A games take even longer to develop. For instance, according to one Microsoft executive, [REDACTED]
14 [REDACTED] a forthcoming title from the [REDACTED] franchise, may take a decade to develop.

15 79. Access to Triple-A content is crucial for Microsoft, and the company strives to ensure
16 that new Triple-A content is available on its console and subscription services on a regular basis.

17 Failure to have access to new Triple-A content has dire consequences. In May 2022, [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 80. The downstream effects of Triple-A content are of significant importance because it
23 generates player interest, develops a base of users, and drives monetization opportunities. As

24 Microsoft’s CEO has explained, [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 81. To differentiate their products from rivals, console manufacturers and subscription
5 service providers seek to make certain titles exclusive to their products and unavailable on rivals'
6 products, including by obtaining exclusive licenses from third-party game publishers. An internal
7 Microsoft [REDACTED]
8 [REDACTED]

9 82. As an internal Microsoft strategy document notes, [REDACTED]
10 [REDACTED] The result of these dynamics is to generate competition among
11 console manufacturers and subscription service providers for Triple-A content.

12 83. Microsoft Xbox's Chief Marketing Officer has emphasized the importance of such
13 content, noting: [REDACTED]
14 [REDACTED]

15 **G. First-Party vs. Third-Party Gaming Content**

16 84. First-Party gaming content refers to the gaming content created by vertically integrated
17 companies who also sell video game platforms. Because Microsoft, Sony, and Nintendo are the only
18 significant manufacturers of consoles, First-Party gaming content most often refers to the gaming
19 content created by Microsoft, Sony, and Nintendo.

20 85. Third-Party Content refers to the gaming content produced by non-vertically integrated
21 gaming companies, who do not control a gaming platform.

22 86. There are a very limited number of third-party Triple-A game publishers in the world
23 that are capable of producing Triple-A games, including Activision Blizzard, Ubisoft, Take-Two,
24 Electronic Arts.

25 87. Activision Blizzard is, unless acquired by Microsoft, the most successful third-party
26 Triple-A game publisher.
27
28

1 **H. Exclusivity, Partial Exclusivity, Timed Exclusivity**

2 88. The term exclusivity in the gaming industry refers to gaming content that is made
3 “exclusive” to a particular platform, or a family of platforms. In other words, a publisher may choose to
4 make its content only available on a particular platform while withholding it from others. For example,
5 Microsoft’s *Forza Horizon* game is a Triple-A racing game that is developed and published by
6 Microsoft, and made exclusively for Microsoft’s own platforms: the Xbox and the Windows operating
7 system for PC, and is sold exclusively on Microsoft’s own multi-game subscription service, Game
8 Pass.

9 89. The vast majority of first-party games are exclusive. Indeed, that a first-party publisher
10 would expend the time and cost to develop and then maintain and update a game for platforms other
11 than its own is rare. For example, the vast majority of games developed and published by Microsoft are
12 fully exclusive to Microsoft’s own platforms. The same is true of other first-party publishers, Sony and
13 Nintendo.

14 90. Partial exclusivity refers to games that are developed in ways that make them partially
15 exclusive to a particular platform. For example, the game may have less features on other platforms, or
16 may have other meaningful differences that make the game more desirable to be played on a particular
17 platform as opposed to others.

18 91. Timed exclusivity refers to games that are exclusive to a particular platform or family of
19 platforms for a certain amount of time, before the game is then distributed and made available on other
20 platforms.

21 92. The timing of gaming releases is of key importance in the gaming industry. Microsoft
22 documents and deposition testimony show that [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 **I. Gaming content drives demand for gaming platforms**

26 93. Video games are critical inputs for gaming platforms, and receiving adequate
27 development of gaming content for the platform is essential for a platform’s success.

1 94. Consumers choose gaming platforms in large part based on what games are available to
2 be played, and whether they can be played at the highest level.

3 95. Triple-A games play an outsized role for gaming platforms to be successful as they are
4 the most important video games, published by the largest video game publishers and drive consumer
5 demand.

6 96. Availability of content is also critical for the development of nascent markets such as the
7 subscription services market and cloud gaming markets.

8 97. Potential entrants into nascent gaming services markets rely on content being available
9 on their services as availability of content is a very important driver for user-demand.

10 98. Indeed, even the most well-funded gaming services are doomed to fail if they do not
11 have content that drives demand for the platform.

12 99. Google announced Stadia in 2019, a cloud-based gaming service. Despite investing tens
13 of millions of dollars in the project, and extensive efforts to promote the service that Google branded
14 the “future of gaming,” Stadia failed and stopped operating on January 18, 2023. Stadia’s failure was
15 attributed in part to a sub-par video game library.

16 **J. The Industry has Undergone Significant Consolidation**

17 100. The video game industry has recently been undergoing a concentration, with numerous
18 mergers and acquisitions.

19 101. Piers Harding-Rolls, research director at market data firm Ampere Analysis, believes
20 excessive consolidation will likely impact the ability of smaller independent publishers and developers
21 to compete in the long term. Harding-Rolls stated, “We’re just at the starting point, and if there’s more
22 big publisher consolidation to come aligned to distribution and platforms, then the focus is going to be
23 on first-party content...If you’re thinking about games that are going to engage people over a long
24 period of time...then there’s going to be a shift towards those kinds of service-based games within
25 subscription services. I think that leans more towards bigger companies than smaller entities who might
26 be developing smaller, shorter experiences.”

27 102. Microsoft has bolstered and cemented its large video game ecosystem through a series
28 of acquisitions of other gaming content studios. Microsoft currently owns approximately 24 different

1 gaming studios, all of whom formerly competed in the development and/or publishing of gaming
2 content, including:

- 3 a. Rare Ltd., acquired on September 24, 2002, is known for games and franchises such as
4 *GoldenEye 007*, *Perfect Dark*, and *Banjo Kazooie*.
- 5 b. Mojang Studios, acquired on September 15, 2014, and known for games such as
6 *Minecraft* and *Minecraft Dungeons*;
- 7 c. Ninja Theory Ltd., acquired on June 10, 2018, is known for games such as *Devil May*
8 *Cry* and *Disney Infinity*;
- 9 d. Playground Games Ltd., acquired on June 10, 2018, is known for games such as the
10 *Forza Horizon* and *Forza Motorsport*;
- 11 e. Undead Labs LLC, acquired on June 10, 2018, is known for games such as *State of*
12 *Decay*;
- 13 f. Compulsion Games Inc., acquired on June 10, 2018, is known for games such as *We*
14 *Happy Few*;
- 15 g. Obsidian Entertainment Inc., acquired on November 10, 2018, is known for games such
16 as *Pillars of Eternity*, *Knights of the Old Republic*, *Knights of the Old Republic II: The*
17 *Sith Lords*, *Neverwinter Nights 2*, and *South Park: The Stick of Truth*;
- 18 h. InXile Entertainment, Inc., acquired on November 10, 2018, is known for games such as
19 the *Wasteland* franchise and *Torment: Tides of Numenera*;
- 20 i. Double Fine Productions Inc., acquired on June 9, 2019, is known for games such as
21 *Psychonauts*, *Broken Age*, *Brutal Legend*, and *Grim Fandango Remastered*;
- 22 j. ZeniMax Media Inc., acquired on September 21, 2020, which comprises game studios
23 Bethesda Game Studios, ZeniMax Online Studios, id Software, Arkane Studios,
24 Machine Games, Tango Gamesworks, Alpha Dog Games, and Roundhouse Studios.
25 These studios are known for franchises like *The Elder Scrolls*, *Fallout*, *Wolfenstein*,
26 *Doom*, and *Quake*; and highly anticipated titles such as *Redfall*, and *Starfield*.

1 103. Activision Blizzard is also the product of many significant mergers and acquisitions of
2 other gaming content studios, all of whom formerly competed in the development and/or publishing of
3 gaming content, including:

- 4 a. Raven Software Corp., acquired in 1997, and known for its work on *Call of Duty*,
5 *Heretic*, and *Hexen: Beyond Heretic*;
- 6 b. Treyarch Invention LLC, acquired on October 1, 2001, and known for work on the *Call*
7 *of Duty* series;
- 8 c. Infinity Ward Inc., acquired on October 30, 2003, is known for its work on the *Call of*
9 *Duty* series;
- 10 d. High Moon Studios Inc., acquired on January 5, 2006 by Vivendi Studios and resultantly
11 Activision Blizzard after acquisition, is known for its work on *Transformers* video
12 games, *Call of Duty*, and *Destiny*;
- 13 e. Vicarious Visions Inc., now known as Blizzard Albany, acquired in January of 2005, is
14 known for work on *Tony Hawk's Pro Skater*;
- 15 f. Radical Entertainment Inc., acquired by Vivendi Games in 2005 and later Activision
16 Blizzard, is known for work on *The Simpsons: Hit & Run*, *Prototype*, *Prototype 2*, and
17 entries in the *Crash Bandicoot* franchise;
- 18 g. Toys for Bob Inc., acquired on May 3, 2005, is known for its work on *Star Control* and
19 *Star Control II*;
- 20 h. Beenox Inc., acquired on May 25, 2005, is known for its work on popular franchises
21 such as *X-Men*, *Spider-Man*, and *Shrek*;
- 22 i. Blizzard Entertainment, Inc., acquired on July 9, 2008 through acquisition of its parent
23 Vivendi Games, which includes games and franchises such as *World of Warcraft*,
24 *Starcraft*, and *Overwatch*;
- 25 j. Sledgehammer Games Inc., acquired in 2009, is known for its work on the *Call of Duty*
26 series; and
- 27 k. King Digital Entertainment PLC, acquired on February 23, 2016, a mobile game
28 conglomerate that has game studios in Stockholm, Malmö, London, Barcelona, Berlin,

1 Singapore, and Seattle with offices in San Francisco, Malta, Seoul, Tokyo, Shanghai,
2 and Bucharest. It is also known for owning the franchise *Candy Crush*, which is the
3 most popular mobile game of all time.

4 **K. Network Effects and Barriers to Entry**

5 104. The video game industry is characterized by significant network effects and barriers to
6 entry. Network effects are generally characterized as either direct or indirect.

7 105. As the United Kingdom’s Competitions and Markets Authority (“CMA”) found: “Direct
8 network effects are likely to arise particularly in multiplayer games, where users like to play the same
9 game with their friends (at the same time), and where players get ‘matched’ with other players more
10 effectively as the number of players on the platform increases. This often requires having the same
11 manufacturer’s consoles (except for games that allow cross-play across different consoles). As such, an
12 increase in the number of users that play a game in a particular platform would increase the
13 attractiveness of that game and platform, thereby drawing additional users.”

14 106. The CMA further found: “Indirect network effects arise because game publishers are
15 more likely to develop content for a platform with a significant user base and, in turn, a strong content
16 library attracts more users to the platform.”

17 107. The direct network effects in video games are well documented. As the CMA found,
18 “gamers like to be on the same platforms [and games] as their friends to play multiplayer games.”
19 Games are more attractive to gamers by the very virtue of their being popular, so that a large online
20 community can sustain quality multiplayer gaming.

21 108. The same is also becoming true for single player games, as the communities surrounding
22 video games are growing and becoming more popular. For example, Microsoft emphasizes the
23 importance of gamer communities and the ability of people to connect over multiplayer and single-
24 player games. [REDACTED]

25 [REDACTED]
26 Twitch, for example, is a highly popular service that allows gamers to livestream their video game
27 playing for others to watch. 2023 statistics for Twitch show that it has roughly 140 million monthly
28 active users, with roughly 8 million unique streamers each month. Those streamers do not merely

1 stream multiplayer games but single player games too, generating demand and conversation about
2 those games.

3 109. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 110. These direct and indirect network effects create a positive feedback loop, where the
11 largest platforms attract the most quality content, which in turn attracts more consumers to the
12 platform, thereby attracting more consumers (direct) and more quality content (indirect).

13 111. These network effects create often insurmountable barriers to entry, because a new
14 platform manufacturer not only needs to create a desirable platform, but must also attract developers to
15 make quality content for the platform. Without quality content, users are unlikely to adopt the platform,
16 which in turn means that developers are unlikely to develop content for the platform.

17 **PARTIES**

18 **A. Plaintiffs**

19 112. The Plaintiffs named below are individual citizens of the cities and states listed. Each
20 Plaintiff is a consumer of video games, all with the express interest and intent in ensuring that the
21 industry remains competitive, with the utmost innovation, output, choice, and price constraints, now
22 and in the future. The potential acquisition of Activision Blizzard by Microsoft threatens loss and harm
23 to the Plaintiffs, and to the public at large, of the salutary benefits of substantial competition within the
24 video game industry.

25 113. Dante DeMartini is a video gamer located in San Francisco, California. Mr. DeMartini
26 plays video games on the PlayStation console and on his personal computer using Windows OS. Mr.
27 DeMartini plays or has purchased titles from Activision Blizzard, including multiple versions of *Call of*
28 *Duty*, *World of Warcraft*, *Overwatch*, *Overwatch 2*, *Starcraft II*, *Diablo III*, and *Hearthstone*.

1 114. Curtis Burns Jr. is a video gamer located in Oakland, California. Mr. Burns plays video
2 games on the PlayStation console. Mr. Burns plays or has purchased titles from Activision Blizzard,
3 including *Call of Duty*.

4 115. Nicholas Elden is a video gamer located in Hoboken, New Jersey. Mr. Elden plays video
5 games on Xbox, PlayStation, Nintendo Switch, and on mobile devices. Mr. Elden plays or has
6 purchased titles from Activision Blizzard, including *Call of Duty*, *Diablo*, *Tony Hawk's*, and others.

7 116. Jessie Galvan is a video gamer located in San Diego, California. Mr. Galvan plays video
8 games on the PlayStation 5 console. Mr. Galvan plays or has purchased titles from Activision Blizzard,
9 including *Call of Duty*.

10 117. Christopher Giddings-LaFaye is a video gamer located in San Rafael, California. Mr.
11 Giddings-LaFaye plays video games on his personal computer using Windows OS, as well as on a Mac.
12 Mr. Giddings-LaFaye plays or has purchased titles from Activision Blizzard, including *Call of Duty* and
13 *Overwatch*.

14 118. Steve Herrera is a video gamer located in Oakland, California. Mr. Herrera plays video
15 games on PlayStation consoles and the Nintendo Switch. Mr. Herrera plays or has purchased titles from
16 Activision Blizzard, including *Call of Duty* titles, *Overwatch*, *Overwatch 2*, *Crash Bandicoot*, and
17 *Marvel Ultimate Alliance*.

18 119. Hunter Jakupko is a video gamer located in Los Angeles, California. Mr. Jakupko plays
19 video games on a PlayStation console. Mr. Jakupko plays or has purchased titles from Activision
20 Blizzard, including *Call of Duty: Modern Warfare 2*, *Call of Duty: Warzone 2*, *World of Warcraft*, and
21 *Overwatch 2*.

22 120. Daniel Loftus is a video gamer located in San Rafael, California. Mr. Loftus plays video
23 games on PlayStation consoles. Mr. Loftus plays or has purchased titles from Activision Blizzard,
24 including *Call of Duty* and *Overwatch*.

25 121. Beowulf Owen is a video gamer located in Las Cruces, New Mexico. Mr. Owen plays
26 video games on his personal computer using the Windows OS and Xbox consoles. Mr. Owen plays or
27 has purchased titles from Activision Blizzard including *Call of Duty* and *Overwatch*.

28

1 122. Ivan Calvo-Perez is a video gamer located in San Francisco, California. Mr. Calvo-Perez
2 plays video games on the PlayStation consoles and on his personal computer using Windows OS. Mr.
3 Calvo-Perez plays or has purchased titles from Activision Blizzard, including *Call of Duty*, *Diablo*,
4 *Starcraft*, and *Warcraft 3*.

5 123. Many of the Plaintiffs consider *Call of Duty* to be one of the most significant video game
6 franchises for them. *Call of Duty* enables many of the Plaintiffs to stay connected with family and
7 friends in different locations.

8 124. Many of the Plaintiffs would purchase Microsoft platforms if *Call of Duty* or other
9 Activision Blizzard content became exclusive or partially exclusive to Microsoft.

10 125. Plaintiffs would all be harmed by increased prices or reduced quality and reduced output
11 of Activision Blizzard games because they all are likely to purchase Activision Blizzard games in the
12 future.

13 126. Plaintiffs would all be harmed by reduction in quality and output of Triple-A games
14 because Plaintiffs are all likely to purchase and enjoy Triple-A games in the future.

15 127. Plaintiffs would all be harmed by increased prices and decreased quality and innovation
16 of Microsoft's High-Performance Consoles, Microsoft's Multi-Game Content Library Subscription
17 Services, Microsoft's Cloud Gaming services, or Microsoft's Windows operating system because
18 Plaintiffs are all reasonably likely to purchase Microsoft's various gaming platforms in the future.

19 128. Plaintiffs would all be harmed if Activision Blizzard's games are made exclusive or
20 partially exclusive to Microsoft's platforms, including Xbox, Game Pass, XCloud, and Windows,
21 because Plaintiffs are all reasonably likely to purchase such platforms in order to have access or first-
22 tier access to Activision Blizzard games, even if Microsoft's platforms are less desirable than rival
23 platforms but for the exclusivity or partial exclusivity of Activision Blizzard's games.

24 **B. Microsoft Corporation**

25 129. Defendant Microsoft Corporation is a corporation incorporated under the laws of the
26 State of Washington with its principal place of business in Redmond, Washington. Microsoft is a global
27 technology company. Microsoft sells computing devices, cloud systems and services, software, and
28 other products to consumers and businesses.

1 130. Microsoft’s video gaming business consists of video game consoles, as well as
2 applications (games), streaming service Xbox Cloud Gaming, online services such as the Xbox network
3 and Xbox Game Pass, and the development arm Xbox Game Studios

4 131. Microsoft wholly owns and directly manages Xbox Game Studios (previously known as
5 Microsoft Studios, Microsoft Game Studios, and Microsoft Games). Among other things, Xbox Game
6 Studios is an American video game publisher and part of the Microsoft Gaming division based in
7 Redmond, Washington.

8 132. Microsoft manufactures and sells Xbox gaming consoles, including most recently the
9 Xbox Series X|S. Microsoft sells and distributes Xbox consoles and offers related services to
10 consumers.

11 133. For the most recent generation of Xbox consoles Microsoft sold 7.47 million units by
12 July 2022, nearly the same number as its closest horizontal competitor, the Sony PlayStation.

13 134. Microsoft CEO Satya Nadella announced that the company was “the market leader in
14 North America for three quarters in a row among next gen consoles,” in a July 26, 2022 earnings call.

15 135. Microsoft owns and develops the Windows operating system. Windows is the primary
16 computer operating system for which computer video games are developed.

17 136. This market share is also reflected in the number of games developed and available for
18 the Microsoft Windows operating system compared to other operating systems.

19 137. Microsoft is a developer, publisher, and distributor of video games for consoles, PCs,
20 and mobile devices.

21 138. Microsoft owns roughly 24 different game development studios, including some of the
22 largest. According to Microsoft, Microsoft is “responsible for developing and publishing some of the
23 biggest video game franchises in history,” including *Age of Empires*, *Forza*, *Gears of War*, *Halo*,
24 *Minecraft*, *Fallout*, *Microsoft Flight Simulator*, *DOOM*, *The Elder Scrolls*, and many more.

25 139. Microsoft is one of only a small number of publishers that can afford to invest the time,
26 funding, and human resources required to develop and publish Triple-A games.

1 140. Microsoft also provides a multi-game content library subscription called Game Pass,
2 which allows consumers to pay a monthly fee to have access to an entire library of games on either
3 Xbox or Windows PC or both.

4 141. Microsoft offers cloud gaming through its Xbox Cloud Gaming service.

5 142. Cloud-based gaming is a new model of gaming in which users connect to remote
6 gaming servers through the internet.

7 143. Microsoft operates cloud-based gaming servers at data centers located throughout the
8 world. Microsoft hosts games on these servers and streams them to a user's devices.

9 144. Microsoft also owns and runs its Azure cloud services.

10 145. Azure is used primarily for enterprise and business server solutions, but it is also used as
11 a backend platform for hosting and supporting live games, called Azure PlayFab, which supports live
12 multiplayer games such as Microsoft's Minecraft. Microsoft also uses its Azure cloud services for
13 cloud-based gaming.

14 146. PlayFab is a complete server-side platform to create, manage and run real-time games.
15 Microsoft launched this backend development solution in 2014.

16 **C. Activision Blizzard**

17 147. Activision Blizzard, Inc., is a corporation incorporated under the laws of the State of
18 Delaware with its headquarters and principal place of business in Santa Monica, California.

19 148. Activision Blizzard was founded in July 2008 through the merger of Activision, Inc. (the
20 publicly traded parent company of Activision Publishing) and Vivendi Games. As part of the merger,
21 Activision acquired *World of Warcraft*, a massively multiplayer online role-playing game (MMORPG)
22 released in 2004 by Blizzard Entertainment.

23 149. Activision Blizzard currently includes five business units: Activision Publishing,
24 Blizzard Entertainment, King, Major League Gaming, and Activision Blizzard Studios. Activision
25 Blizzard is a video game developer, publisher, and distributor. It creates, publishes, and sells video
26 games across multiple platforms, including Xbox, PlayStation, Windows and Apple PCs, as well as
27 mobile devices.
28

1 150. Activision Blizzard’s content is extremely important for, and drives adoption of, video
2 game platforms, such as consoles. Activision Blizzard has developed and published some of the most
3 popular game franchises in history, such as *Call of Duty*, *World of Warcraft*, *Starcraft*, *Overwatch*,
4 *Diablo*, and *Candy Crush*.

5 151. Activision Blizzard’s *Call of Duty* franchise is considered to be one of the most
6 successful and important gaming franchises in the console gaming market, even among Triple-A
7 games. First released nearly twenty years ago in 2003, *Call of Duty* is currently one of the largest game
8 franchises by user base and revenue. *Call of Duty* is, in Activision’s own words, “one of the most
9 successful entertainment franchises of all time.” From its launch in 2003 up through 2020, it generated
10 \$27 billion in revenues. *Call of Duty* has continued to top the charts in 2020 and 2021. In 2021, *Call of*
11 *Duty: Vanguard* topped the revenue charts as the best-selling game in the United States, with *Call of*
12 *Duty: Black Ops Cold War* coming in second. And in 2022, *Call of Duty: Modern Warfare II* took in \$1
13 billion globally in the first ten days following its launch. The previous franchise record was held by
14 *Call of Duty: Black Ops II*, which took fifteen days to hit the \$1 billion mark. By comparison, the
15 highest grossing film of the year so far, *Top Gun: Maverick*, took one month to reach the \$1 billion
16 threshold. Although *Call of Duty: Modern Warfare 2* was released only in October 2022, it ended 2022
17 as the best-selling video game in the United States in 2022 despite being available for only a few
18 months.

19 152. *Call of Duty* also has a massive following and loyal fanbase. The loyal fanbase and
20 enduring appeal of *Call of Duty* have made it extremely valuable, influencing gamer engagement and
21 gaming product adoption.

22 153. The franchise has achieved sustained dominance over the past decade, with *Call of Duty*
23 titles comprising ten of the top fifteen console games sold between 2010-2019. No other franchise had
24 more than one title in the top fifteen.


25 154. There exist very few, if any, franchises that can be considered alternatives to *Call of*
26 *Duty* or match its level of success.

1 155. Activision Blizzard is one of the few game developers and publishers that can afford to
2 invest the time, funding, and human resources required to develop and sustain a game franchise like
3 *Call of Duty* or *World of Warcraft*.

4 156. Activision Blizzard is currently considered the second largest video game publisher in
5 the United States, with a market share of ten percent, behind only Microsoft.

6 157. There are only several independent (third-party) game publishers in the world that are
7 capable of making the highest production quality and most graphic-intensive video games that can be
8 mass marketed and are highly anticipated among gamers (generally referred to as “Triple-A” or
9 “AAA”), including Activision Blizzard, Electronic Arts, Take-Two, and Ubisoft. Microsoft and Sony
10 are also Triple-A game publishers.

11 158. Activision Blizzard is also a video game distributor, selling its gaming content through
12 its digital store front, www.battle.net.

13 159. Activision Blizzard’s content is especially valuable to gaming platforms and
14 subscription services because Activision games drive sales and engagement. Activision’s CEO Bobby
15 Kotick, in presentations to its Board of Directors regarding this Proposed Acquisition, called
16 Activision’s content 

17 **THE PROPOSED TRANSACTION**

18 160. On January 18, 2022, Microsoft announced plans to acquire Activision Blizzard. Microsoft
19 agreed to pay \$68.7 billion (\$68,700,000,000) in an all-cash transaction.

20 161. Under the proposed terms of the acquisition, Microsoft would acquire all the outstanding
21 stock of Activision Blizzard. Upon completion of the deal, Activision Blizzard would be wholly owned
22 by Microsoft.

23 162. As Microsoft states, the consolidation would make Microsoft the world’s third-largest
24 gaming company by revenue.

25 163. Microsoft has stipulated in this case that it will not close the acquisition until at least
26 May 22, 2023. Microsoft’s stipulation in this case is the only thing preventing Microsoft from closing
27 the acquisition, and the acquisition may consummate as early as May 22, 2023. The unlawful
28 acquisition agreement further requires Microsoft to pay Activision Blizzard a “reverse termination fee”

1 if the acquisition is unable to proceed due to a challenge under the antitrust laws. The agreement
2 provides that Microsoft will pay Activision Blizzard a reverse termination fee of \$2 billion if
3 terminated prior to January 18, 2023, \$2.5 billion if terminated after January 18, 2023, or \$3 billion if
4 terminated after April 18, 2023

5 **COUNT 1**

6 **VIOLATION OF SECTION 7 OF THE CLAYTON ACT (15 U.S.C. § 18)**

7 164. Plaintiffs hereby allege and incorporate paragraphs 1–163 as if alleged herein.

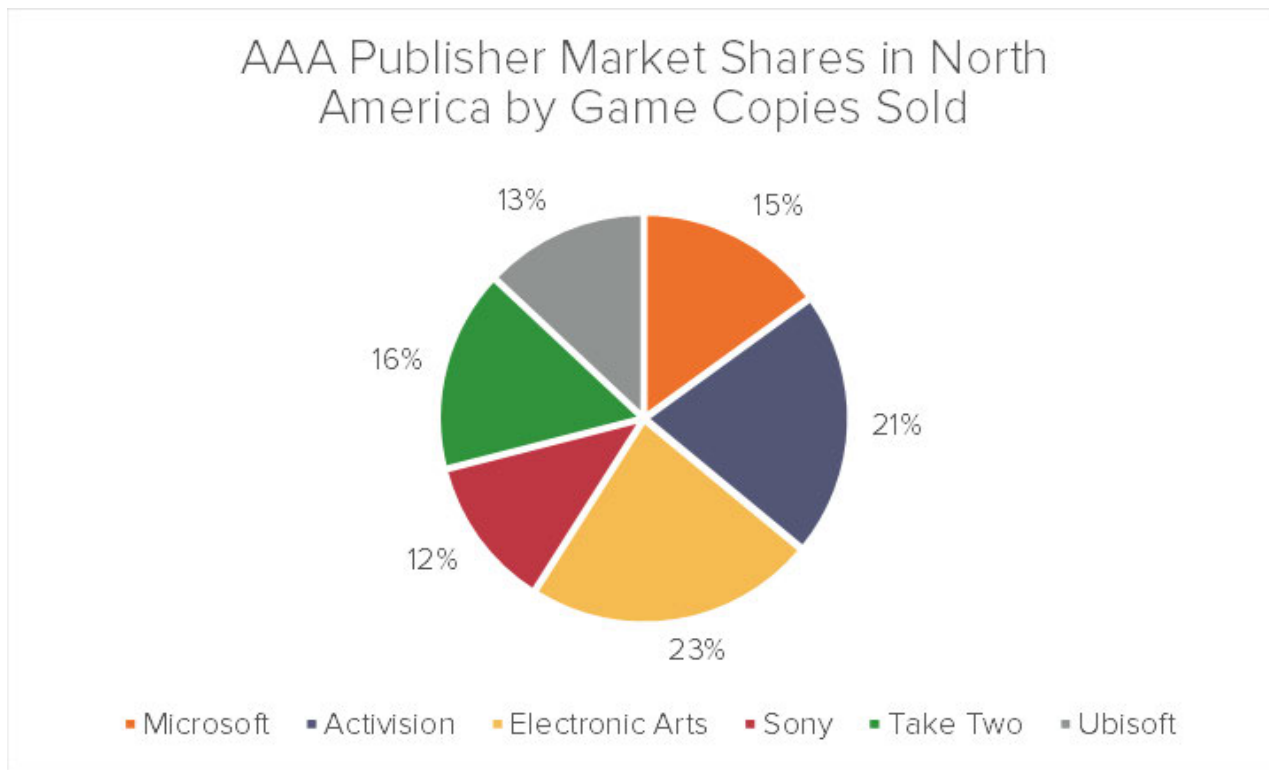
8 **RELEVANT MARKETS**

9 **A. Triple-A Video Games**

10 165. Triple-A games are vastly important within the gaming industry. Triple-A games are
11 highly anticipated games bearing similar characteristics: high development costs, superior graphical
12 quality, and expectations of high unit sales and revenue, typically from a studio with large development
13 and publishing teams, supported by extensive marketing and promotion.

14 166. Because there is no precise definition of Triple-A games, they are most commonly
15 defined as the games published by the major Triple-A publishers, who have the budgets and experience
16 to bring the most technologically advanced games with the highest production values to market.

1 167. The approximate market shares of Triple-A publishers, based on publicly available data
2 and not including free-to-play *Fortnite* publisher, Epic games, are as follows:



16 168. Microsoft and Sony, however, are first-party Triple-A game publishers, meaning that
17 they are vertically integrated and own platforms on which their games are played. The majority of
18 games produced by Microsoft and Sony are made exclusive to their own systems. The approximate
19 market shares of the third-party Triple-A game publishers (with Microsoft and Sony excluded) are as
20 follows:

21

22

23

24

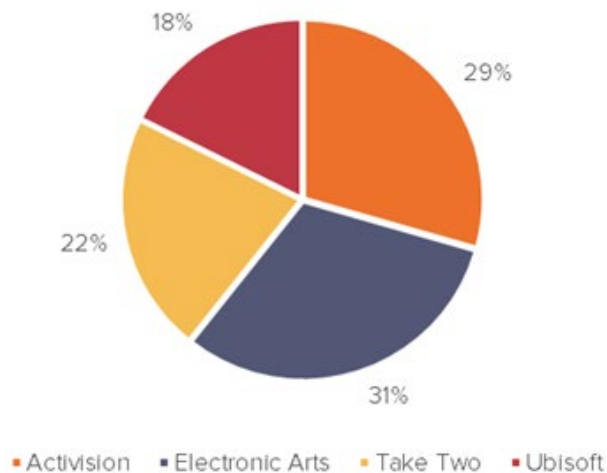
25

26

27

28

AAA Publisher Market Shares in North America by
Copies Sold - Microsoft and Sony Excluded



169. Triple-A games are considered unique in the industry, with expectations of high unit sales and revenue, are much more heavily marketed, and are unlikely to be substituted for other video games.

170. Triple-A games have distinct customers due to their widespread appeal and marketing to the general public as opposed to more limited marketing for other non-Triple-A games.

171. Development teams for Triple-A games can include thousands of developers working over several years. The high costs of Triple-A game development is driven by many factors, such as long development cycles and the scarcity of Triple-A-capable studios and talent.

172. Triple-A games' prominence and uniqueness in the industry is reflected in the ability of only a small number of companies being able to publish Triple-A games.

173. The gaming industry recognizes a limited top tier of independent game publishers, sometimes referred to as the "Big Four" or the Triple-A publishers: Activision Blizzard, Electronic Arts ("EA"), Take-Two, and Ubisoft. These publishers reliably produce Triple-A games for high-performance consoles and collectively own a significant portion of the most valuable IP in the gaming industry. These high-profile franchises include, for example, *Call of Duty* (Activision Blizzard), *FIFA* (EA), *Grand Theft Auto* (Take-Two), and *Assassin's Creed* (Ubisoft).

1 174. There are significant and durable barriers to entry into the development or distribution of
2 Triple-A games. Creating a studio with the capability to produce Triple-A games requires scarce talent
3 and is a capital-intensive endeavor. Creating video game consoles also requires special engineering
4 talent and expertise as well as the resources, infrastructure and expense of developing, manufacturing
5 and selling hardware.

6 175. Microsoft and Sony are horizontal competitors. They each also produce Triple-A games.
7 The *Elder Scrolls*, *Halo*, and *Forza* franchise are examples of Triple-A games from Microsoft, while the
8 *God of War*, *MLB: The Show*, and *Spider-Man* franchises are examples of Triple-A games from Sony.

9 176. Access to Triple-A content is crucial for Microsoft, and the company strives to ensure
10 that new Triple-A content is available on its console and subscription services on a regular basis. Triple-
11 A content has particularly important downstream effects because it generates player interest, develops a
12 base of users, and drives monetization opportunities.

13 177. To differentiate their products from rivals, console manufacturers and subscription
14 service providers may seek to make certain titles exclusive to their products and unavailable on rivals'
15 products, including by obtaining exclusive licenses from third-party game publishers. Typically,
16 exclusivity in this context does not prevent a game from being available for PC or other non-console
17 devices.

18 178. A diverse array of Triple-A content that increases adoption and engagement gives a
19 console or subscription service greater leverage in attracting additional content. The size of a console or
20 subscription service's player base provides important leverage to console or subscription service
21 owners in negotiations with publishers and developers seeking to increase the discoverability and
22 engagement of their content. The result of these dynamics is to generate competition among console
23 manufacturers and subscription service providers for Triple-A content.

24 179. As Phil Spencer explained to Microsoft investors, "[a]s our platform becomes more
25 attractive, the flywheel of content creators and players accelerates. As the creative range on our
26 platform continues to expand, more players are attracted to the service, and the growing scale of the
27 customer base makes the platform more attractive for additional publishers, and so on."
28

1 180. Activision Blizzard content, including but not limited to *Call of Duty*, is especially
2 valuable to any gaming console or subscription service due to the ability of Activision games to drive
3 sales and engagement.

4 181. Triple-A games have a unique pricing structure compared to other games and command
5 the highest prices. They are also published by Triple-A publishers who are able to market the games
6 nationally or even globally, and are able to generate considerable demand before the games are even
7 released.

8 182. Microsoft's internal documents note the importance and differentiation of Triple-A
9 games, [REDACTED]

10 183. Taken together this means that for both consumers and the platforms that run them, these
11 Triple-A games are not reasonably interchangeable for smaller, cheaper, independent niche game
12 releases. This does not exclude the possibility that small independent releases will sometimes prove
13 popular. However, these surprise hits do not competitively constrain the makers of Triple-A games.

14 184. A hypothetical monopolist of Triple-A games would therefore be able to profitably
15 increase prices (by a small but significant and non-transitory amount) without so many consumers
16 diverting to smaller independent releases that the increase would not remain profitable.

17 185. Triple-A games constitute a line of commerce and a relevant product market within the
18 meaning of Section 7 of the Clayton Act.

19 **B. High-Performance Consoles**

20 186. High-Performance Consoles are a Relevant Market for evaluating the likely competitive
21 effects of the Proposed Acquisition.

22 187. The only High-Performance Consoles offered for sale today are the most recent
23 generation of Microsoft Xbox and Sony PlayStation consoles – the Xbox Series X|S and the PS5. The
24 Xbox Series X|S and PS5 therefore constitute a relevant market for High-Performance Consoles.

25 188. The third major gaming console available today, the Nintendo Switch, is highly
26 differentiated from the Xbox and PlayStation consoles in significant ways, which means that it is not
27 reasonably interchangeable with the High-Performance Consoles produced by Microsoft and Sony.
28 Nintendo Consoles generally, including the Nintendo Switch, are therefore not part of the High-

1 Performance Console market. Microsoft's Xbox Series X|S and Sony's PS5 consoles are characterized
2 by greater computational power, different content portfolios, different play concepts (the Nintendo
3 Switch is designed to be portable, sacrificing technical specifications and graphics processing for
4 portability), generally higher prices, and different release cadences than that of the Nintendo Switch.

5 189. Superior computational power enables faster processing that shapes the kind of gaming
6 content that can run on High-Performance Consoles, enabling higher resolution, more realistic
7 graphics, and cutting-edge performance. Both Xbox Series X|S and PS5 consoles have similar
8 hardware, and Microsoft and Sony compete closely on hardware innovation, including over graphics
9 and performance.

10 190. Nintendo pursues a different strategy of integrating its lower performance, portable
11 hardware with its own distinctive first-party games to appeal to consumers. While Microsoft's Xbox
12 Series X|S and Sony's PS5 consoles incorporate semi-custom systems-on-a-chip (hereinafter "SoC")
13 designed by AMD, Nintendo's Switch runs on a non-AMD SoC that is more closely related to a mobile
14 device processor found in higher-end mobile phones and tablets.

15 191. This is further shown by the long wait times from consumers trying to purchase an Xbox
16 Series X|S and the PS5 when they arrived to market in 2020, despite the Nintendo Switch having
17 already been on the market for several years.

18 192. Microsoft and Sony are horizontal competitors with respect to high-quality, resource-
19 intensive Triple-A console games. They compete over genre coverage, portfolio size and quality, and
20 multiplayer game availability. A substantial share of High-Performance Console content is available on
21 both Xbox and PlayStation consoles. Roughly [REDACTED] of console games are developed for and available
22 on both the Xbox and PlayStation consoles. This competition generally produces more Triple-A games
23 of higher quality and promotes and encourages technological advancement in the market.

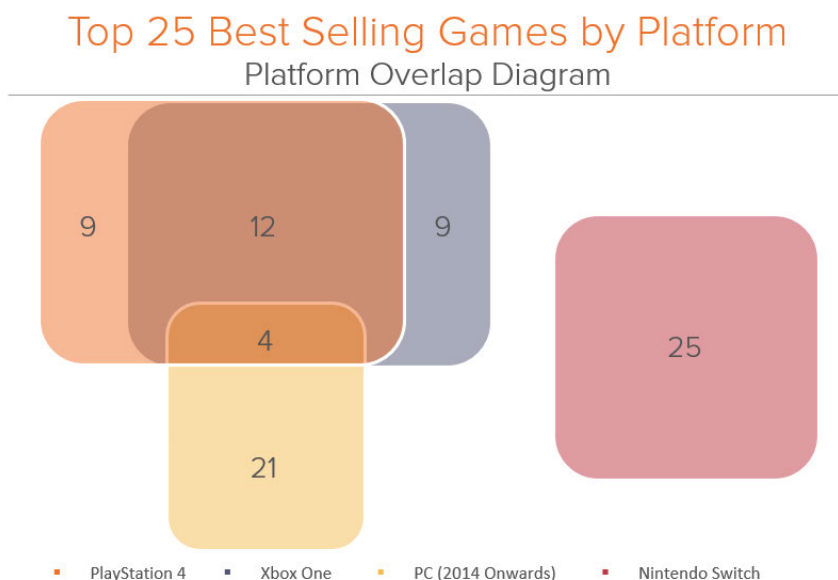
24 193. The Xbox Series X|S and PS5 consoles provide a technologically advanced gaming
25 experience from a stationary endpoint. The Xbox Series X|S and PS5 consoles are plug-in devices that
26 draw electrical power to support advanced computations and are connected to an external display like a
27 television. In contrast, the Nintendo Switch is a portable battery-operated device with a built-in display
28 screen, and it can optionally be connected to an external display.

194. The PlayStation 5 and the Xbox Series X, the companies’ latest flagship consoles, both retail for \$499.99. By contrast, the Nintendo Switch retails for \$200 less at \$299.99.

195. For two decades, Microsoft and Sony have released new console generations largely contemporaneously. Each iteration of these consoles is called “generations.” The prior generation (Generation 8) Xbox One and PlayStation 4 were released in 2013, and the current generation (Generation 9) Xbox Series X|S and PS5 consoles were released in November 2020. By contrast, the Nintendo Switch launched in March of 2017, nearly five years after the beginning of the eighth generation.

196. Due to their unique offerings, Microsoft and Sony consoles appeal to different gaming audiences than the Nintendo Switch. Xbox Series X|S and PS consoles offer more mature content for serious gaming users, while Nintendo’s hardware and content tends to be used for more family and causal gaming experiences.

197. For example, an analysis of the top 25 best-selling games for each platform demonstrates that the Xbox and PlayStation consoles share many of the same best-selling games, whereas Nintendo shares none. The top 25 best-selling games of Nintendo are all exclusive to Nintendo consoles, except for one (*Monster Hunter Rise*), which is not a top 25 best-selling game on either Xbox or PlayStation.



1 198. A study by Kosyakova et al from 2017 systematically shows a higher correlation of
2 consumer preferences between the Xbox and PlayStation consoles than between either and the
3 Nintendo consoles.

4 199. Microsoft's own documents [REDACTED]
5 [REDACTED]

6 Microsoft has stated in regulatory filings that [REDACTED]

7 200. Gamers who are "dual console owners" are more likely to own one High-Performance
8 Console and a Nintendo Switch than two High-Performance Consoles. NPD Group, a trusted source for
9 video game industry data, shows that as of 2020, nearly forty percent of PlayStation and Xbox owners
10 also owned a Nintendo Switch.

11 201. Notably, the UK's Competition and Markets Authority ("CMA") found in its survey that
12 of those PlayStation *Call of Duty* gamers that reported that they would switch in the event of *Call of*
13 *Duty* being unavailable or of a degraded quality on PlayStation, none appear to have identified
14 Nintendo as an alternative that they would switch to.

15 202. A hypothetical monopolist of High-Performance consoles would therefore be confident
16 in its ability to profitably increase prices (by a small but significant and non-transitory amount) without
17 consumers, or game developers, switching to Nintendo in significant enough numbers so as to make the
18 price increase unprofitable. Indeed, that the Nintendo Switch is sold for hundreds of dollars less than
19 the Xbox Series X|S and PlayStation 5 supports this. Nintendo consoles are generally sold for less than
20 their most closely substitutable High-Performance Consoles from Microsoft and Sony.

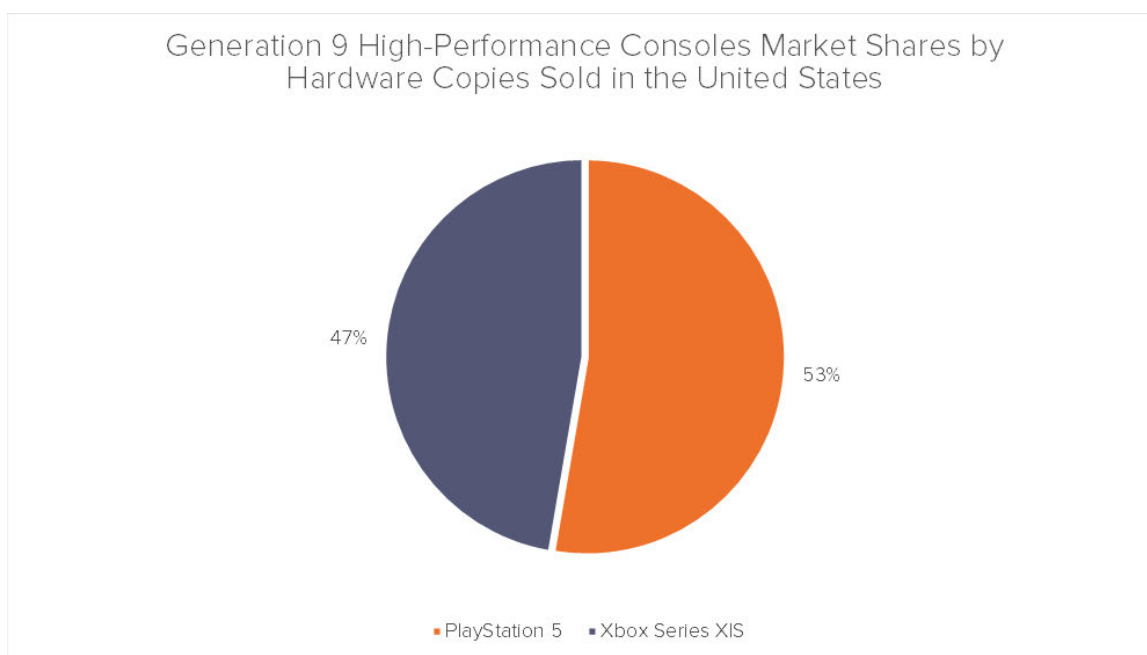
21 203. Other video gaming devices available today are not commercially reasonable
22 alternatives to High-Performance Consoles and are therefore not included in the Relevant Market.
23 These include gaming PCs and mobile devices.

24 204. Gaming PCs are distinct from High-Performance Consoles due to the differences in
25 price, hardware, performance, and functionality (*i.e.*, where and when a game can be played), among
26 other factors. Gaming PCs are therefore not included in the Relevant Market.

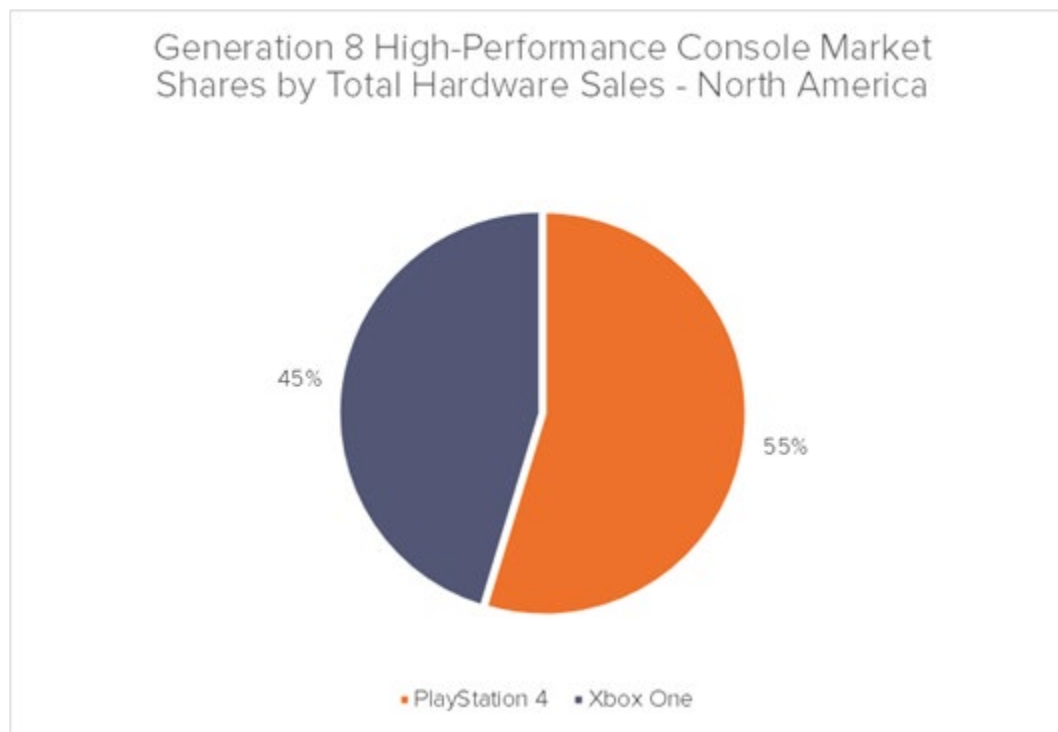
27 205. Mobile devices are distinct from High-Performance Consoles due to differences in
28 complexity and quality of game performance, content offerings, monetization approach, gameplay and

1 interface, and audience, among other factors. Microsoft recently confirmed this factual distinction in
2 testimony during the trial of *Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR (N.D. Cal.). Mobile
3 gaming devices are therefore not included in the Relevant Market. Indeed, Microsoft executive Lori
4 Wright testified that [REDACTED] *See Epic Games, Inc. v.*
5 *Apple Inc.*, 559 F. Supp. 3d 898, 981 (N.D. Cal. 2021) (“In relation to other devices, Ms. Lori Wright,
6 Microsoft’s Vice President of Xbox Business Development, noted that Microsoft does not consider
7 cellular or tablet devices such as the iPhone or iPad as competitors to the Xbox.”).

8 206. The approximate market shares for the latest generation (generation 9) of High-
9 Performance Consoles, based on total number of units sold is as follows:



1 207. The approximate market shares for the prior generation (generation 8) of High-
2 Performance Consoles, based on total number of units sold in North America is as follows:



16 208. The Nintendo consoles are highly differentiated from the Xbox and PlayStation consoles
17 and are not in the same relevant market. However, even if the entire console market, consisting of
18 Xbox, PlayStation, and Nintendo consoles were considered to be the appropriate relevant market for
19 analyzing the possible effects of the acquisition, the acquisition is equally likely to substantially lessen
20 competition in a broader market for consoles that includes Nintendo consoles.

21 **C. Multi-Game Content Library Subscriptions**

22 209. Multi-Game Content Library Subscription Services are a relevant product market for
23 evaluating the competitive effects of the Proposed Acquisition.

24 210. The Relevant Market for Multi-Game Content Library Subscription Services includes
25 services that offer unlimited access to a library of video games that are predominantly played on
26 consoles, personal computers or other non-mobile devices and are available to play at zero additional
27 cost beyond the subscription fee, either via download or cloud streaming.
28

1 211. Microsoft is a significant player in this market through its Xbox Game Pass offering and
2 continues to expand rapidly in this market. Microsoft offers two tiers of Game Pass, each of which
3 provide unlimited access to hundreds of games. Its lower tier, Xbox Game Pass, costs \$9.99 per month
4 and provides access to a catalog of games available on either the Xbox or PC. Its top tier, Xbox Game
5 Pass Ultimate, which costs \$14.99 per month, provides a catalog of games available on both Xbox and
6 PC and also provides access to Microsoft’s cloud-gaming platform, Xbox Cloud Gaming. Microsoft is
7 already the market leader with at least 25 million Game Pass subscribers.

8 212. Sony’s Multi-Game Content Library Subscription Services is called the PlayStation Plus
9 (it used to be called PlayStation Now), with two tiers: PlayStation Plus Extra, for \$14.99 per month and
10 PlayStation Plus Premium for \$17.99 per month. PlayStation Plus Premium offers a larger catalog of
11 games and also includes Sony’s cloud-gaming platform.

12 213. Each service aggressively competes to offer the best, most unique and exciting titles to
13 attract users to its service, with each attempting to provide access to a compelling library of high-end
14 Triple-A games. Services offer a range of incentives to developers and publishers including attractive
15 revenue splits or co-marketing arrangements in order to ensure games are available on their services.

16 214. Multi-Game Content Library Subscription Services rely on distinct pricing compared to
17 the traditional “buy to play” model, where gamers purchase individual games for up to \$70 per title, or
18 more. Multi-Game Content Library Subscription Services seek to offer a new method of accessing
19 games by offering access to an entire library of games for a periodic fee rather than a single title for a
20 fixed cost.

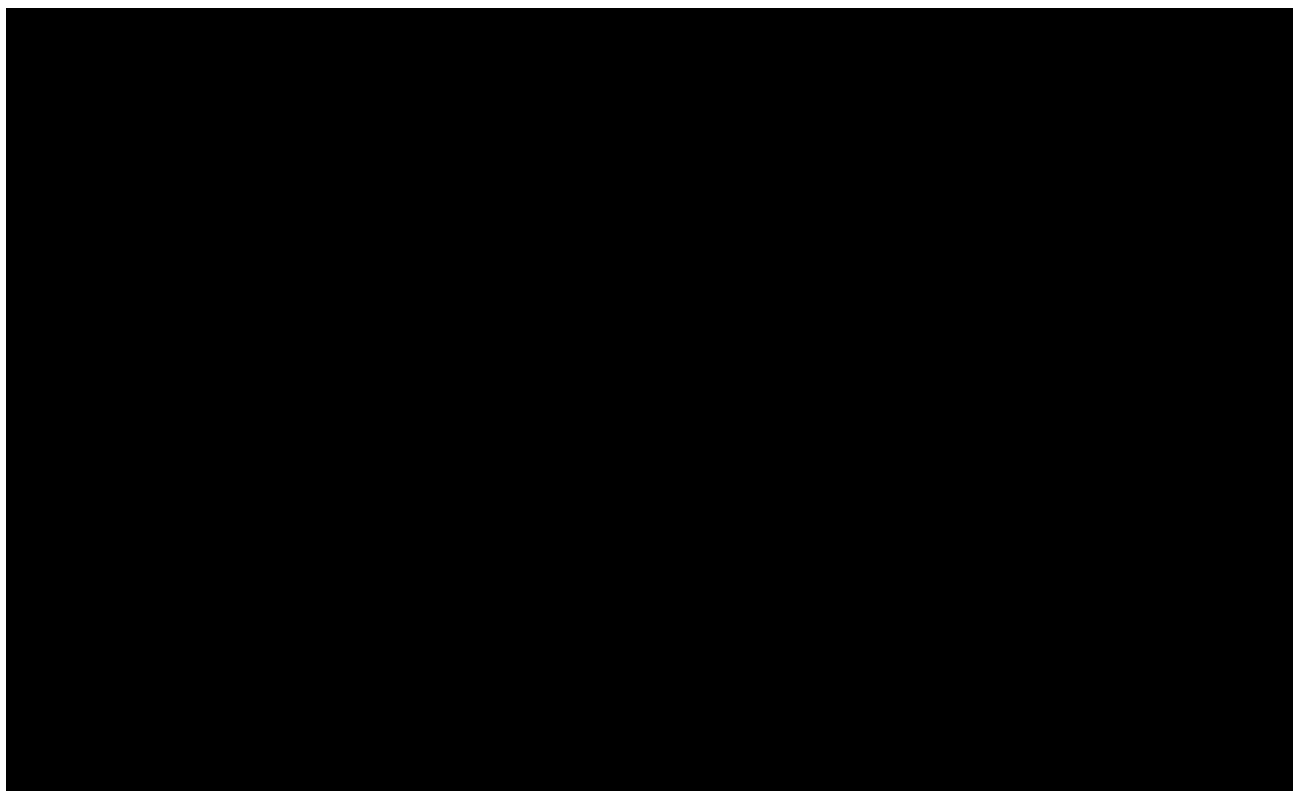
21 215. Buy-to-play games are not commercially reasonable alternatives and therefore are not
22 included in the Relevant Market. Multi-Game Content Library Subscription Services provide
23 immediate access to hundreds of game titles for a monthly fee, facilitating content discovery. The
24 pricing of individual games does not dictate Microsoft’s pricing decisions for its Xbox Game Pass
25 subscriptions. Microsoft showcases the additive nature of Game Pass, through public statements that
26 report Game Pass subscribers invest more time and money in gaming than their fellow gamers without
27 a subscription.

28

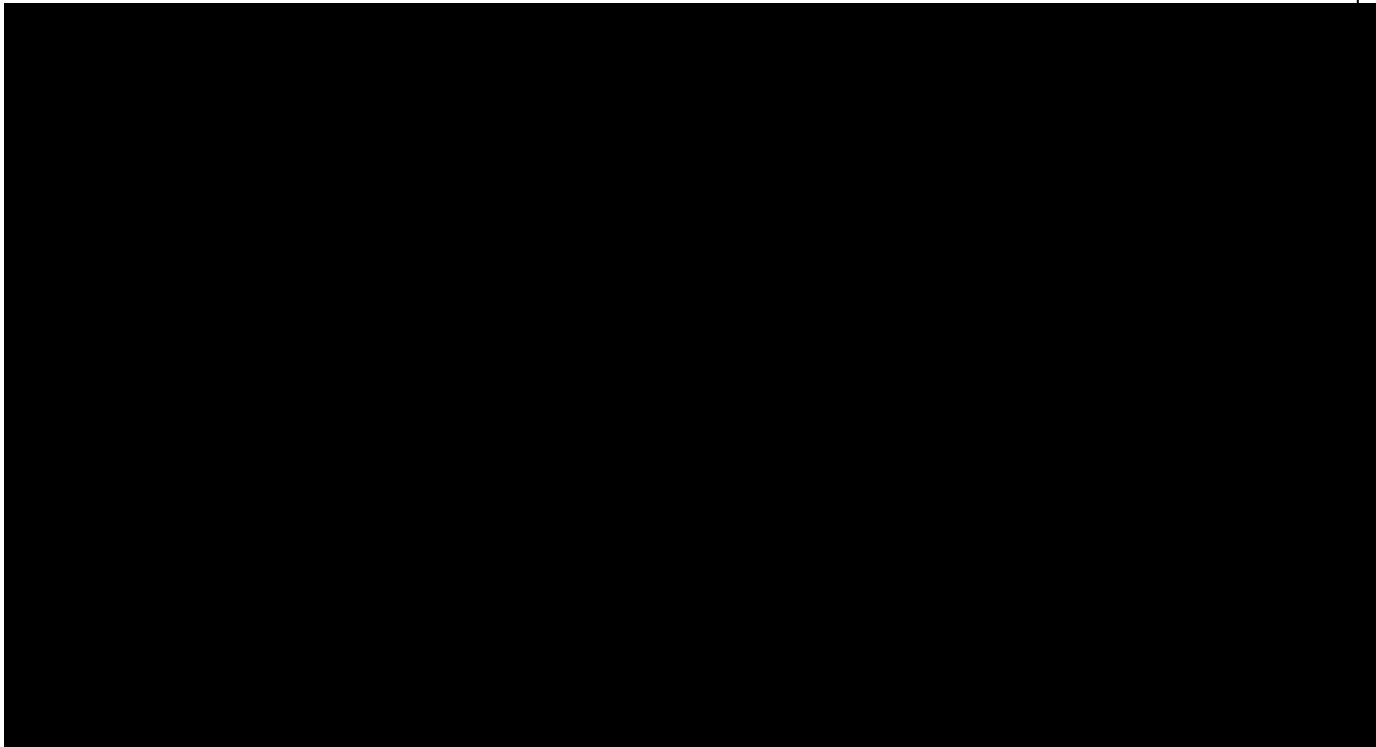
1 216. Mobile-native games are distinct from games accessed natively on a console and from
2 the most performant games accessed natively on a PC, due to differences in complexity and quality of
3 game performance, monetization approach, gameplay and interface, and audience, among other factors.

4 217. Because Multi-Game Content Library Subscription Services are so distinct from other
5 offerings, a hypothetical monopolist of Multi-Game Content Library Subscription Services would be
6 able to profitably increase prices (by a small but significant and non-transitory amount) without enough
7 consumers abandoning Multi-Game Content Library Subscription Services so as to make the price
8 increase unprofitable.

9 218. The approximate market shares of Multi-Game Content Library Subscription Services,
10 are as follows:



1 219. The graph above includes Google Play Pass and Apple Arcade which are both entirely
2 mobile-based Multi-Game Content Library Subscription Services. Excluding Apple Arcade and Google
3 Play Pass yields the following approximate market shares for Multi-Game Content Library
4 Subscription Services on consoles:



5
6
7
8
9
10
11
12
13
14
15
16
17 220. Multi-Game Content Library Subscription Services constitute a line of commerce and a
18 relevant product market within the meaning of Section 7 of the Clayton Act.

19 **D. Cloud-Gaming Subscription Services**

20 221. Cloud Gaming Subscription Services are unique to all other traditional gaming platforms
21 and are a relevant product market for evaluating the competitive effects of the Proposed Acquisition.

22 222. The relevant market for Cloud Gaming Subscription Services includes services that offer
23 the ability to (1) play Triple-A games on virtually any device (even those devices that would otherwise
24 be incapable of playing a Triple-A game natively, such as a mobile phone or tablet); and (2) allows
25 users to play any game across any device capable of streaming, which makes such services unique. A
26 gamer can play cloud-based gaming on essentially any device so long as it has a screen, sufficient user
27 input controls, and a sufficiently fast internet connection. This is appealing to consumers because it
28

1 allows flexibility and the choice of which devices are used to play Triple-A video games that are not
2 and will not be available on non-cloud mobile gaming services.

3 223. Users pay a periodic fee, either monthly or yearly, to access the Cloud-Gaming Service.

4 224. Cloud Gaming Subscription Services provide a way to play games that is distinct from
5 running them locally on the player's gaming device. Subscription services make predominantly non-
6 mobile video games available instantly on a wide variety of devices, reducing the need for gamers to
7 make large investments in expensive hardware, such as a High-Performance Console or a gaming PC,
8 and eliminating download time.

9 225. Cloud Gaming Subscription Services are designed to reach a different set of consumer
10 than other forms of game distribution (because many of these consumers will not own a high-
11 performance console or high-performance PC on which to play Triple-A games natively). However,
12 Cloud Gaming Subscription Services are also appealing to consumers who do own High-Performance
13 consoles and PCs on which to play Triple-A games natively, because through cloud-gaming, these
14 consumers can access their favorite Triple-A games across new devices. These subscription services
15 enable gaming on devices that do not meet the minimum specification for large and technologically
16 complex games, such as older and less expensive PCs, MacBooks, Chromebooks, tablets, mobile
17 devices, and smart TVs. They also enable gamers to play video games that were developed for other
18 devices and/or operating systems. Microsoft has estimated that the total addressable market for cloud
19 gaming is approximately 3 billion users.

20 226. Cloud Gaming Subscription Services also require specialized inputs. Cloud Gaming
21 Subscription Services operate on cloud infrastructure, either by deploying their own dedicated
22 infrastructure or by contracting with a third party.

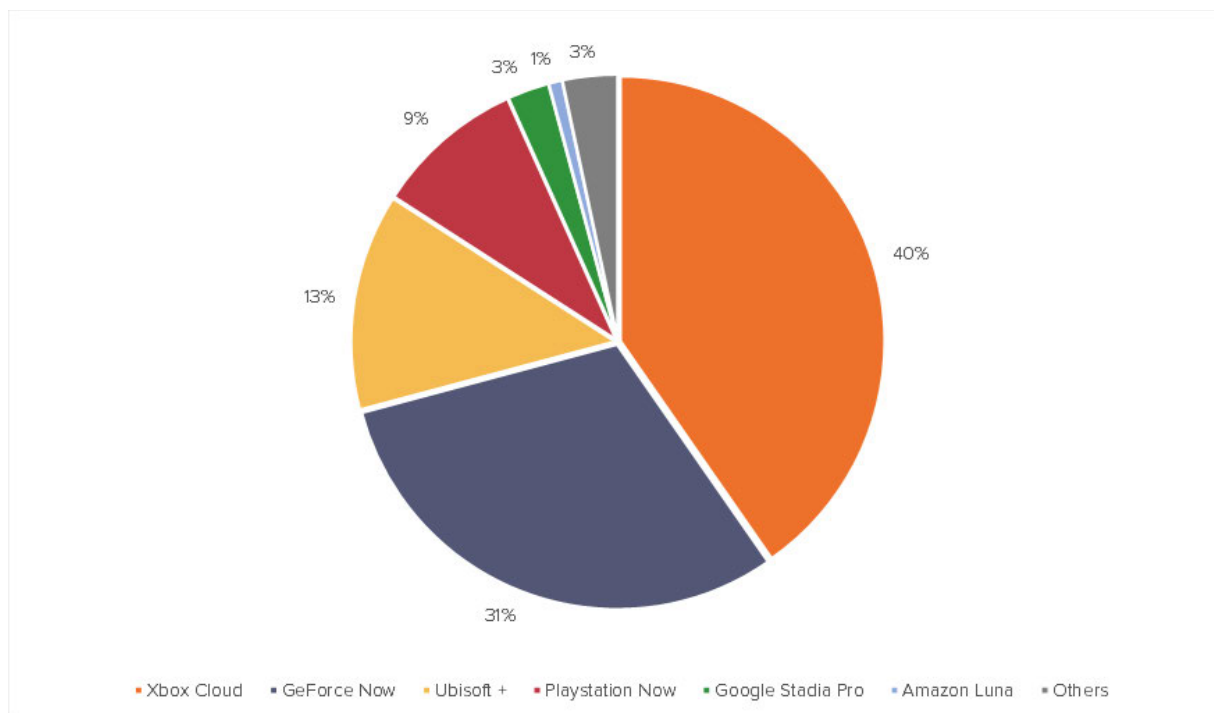
23 227. Microsoft's executives recognize the expanded opportunity Cloud-Gaming Subscription
24 Services offer, and thus, seek to capitalize on the opportunity by entering into this proposed acquisition.

25 228. Microsoft has plans to support [REDACTED]
26 [REDACTED]

27 229. A hypothetical monopolist of Cloud Gaming Subscription Services could profitably
28 increase its price by a small but significant and non-transitory amount (a SSNIP) without enough

1 gamers switching to traditional hardware based play. First, those potential consumers without a high-
 2 performance console or high-performance PC will certainly not be in a position to switch to traditional
 3 hardware-based play in response to such an increase. Second, those consumers that place little value on
 4 the option of playing Triple-A games across new devices, such as mobile phones, are unlikely to
 5 purchase cloud gaming subscriptions in any case. And third, consumers that want to play Triple-A
 6 games on new devices, including mobile, would be unlikely to switch to the existing low-tech mobile
 7 gaming options in the event of a SSNIP by a hypothetical monopolist of Cloud Gaming Subscription
 8 Services, given the evidence (see section A) on the differentiated experience in playing Triple-A games.

9 230. The approximate market shares of Cloud Gaming Subscription Services are as follows,
 10 with Microsoft being the largest, owning roughly 40% of the market:



11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23 231. Cloud Gaming Subscription Services constitute a line of commerce and a relevant
 24 product market within the meaning of Section 7 of the Clayton Act.

25 **E. Computer Operating Systems Market**

26 232. A computer operating system is the program that, after being initially loaded into the
 27 computer by a boot program, manages all of the other application programs in a computer. The
 28

1 application programs make use of the operating system by making requests for services through a
2 defined application program interface (API).

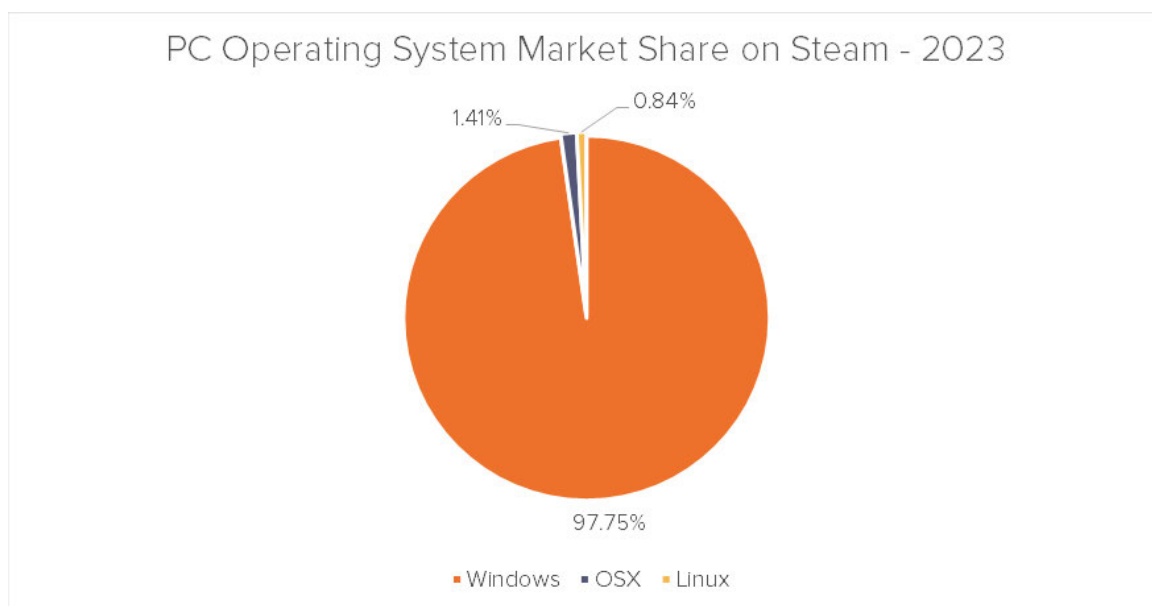
3 233. All programs must be specifically developed and programmed to run on a specific
4 operating system.

5 234. There are only three competing operating systems for computers: Microsoft's Windows,
6 Apple's macOS, and the open source Linux.

7 235. Microsoft's Windows' market share of computer operating systems is roughly 70–80%
8 worldwide.

9 236. But with respect to computer gaming, that share is well over 90%.

10 237. Thus, Microsoft already has a monopoly on operating systems for video games. The
11 percentages of games being played on each operating system is roughly as follows, based on the sales
12 of games on the video game store Steam, which accounts for roughly 70% of computer game sales:



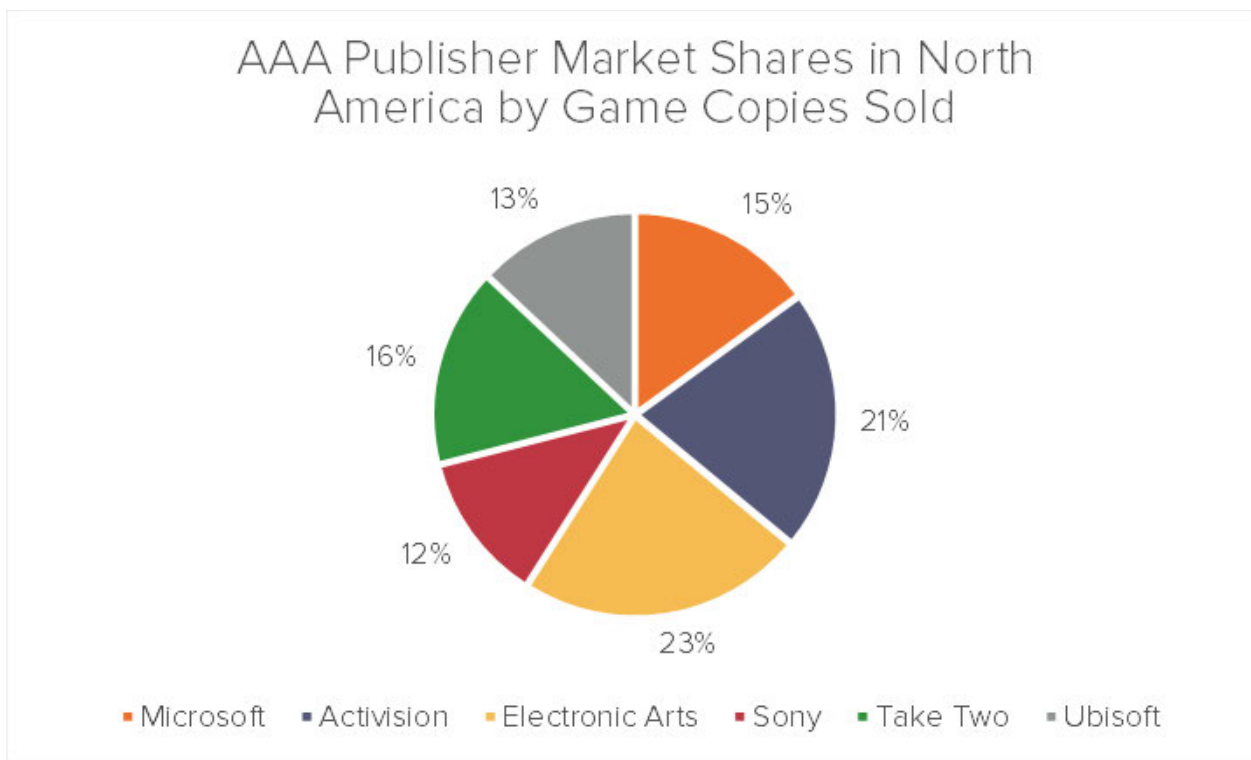
23 238. Computer operating systems constitute a line of commerce and a relevant product
24 market within the meaning of Section 7 of the Clayton Act.

25 **GEOGRAPHIC MARKET**

26 239. With respect to the challenged conduct in the above markets, the United States is the
27 relevant geographic antitrust market.

1 248. The elimination of Activision Blizzard as a horizontal competitor would directly and
2 significantly harm competition within the market for Triple-A games, with the likely result in the form
3 of higher prices, reduced quality, reduced technological innovation, and reduced output.

4 249. Among Triple-A publishers, and based on publicly available data, Microsoft and
5 Activision Blizzard would control approximately 30% or more of the Triple-A game market:



19 250. Microsoft and Activision Blizzard are one of only a small number of Triple-A game
20 publishers, including Electronic Arts, Take-Two, Ubisoft, Sony, and sometimes Epic, although Epic is
21 primarily known for *Fortnite*, which is free to play, and therefore not included in the above graph.
22 Microsoft and Sony, however, are “first-party” Triple-A publishers because Microsoft and Sony have
23 their own platforms, and thus the majority of Microsoft and Sony’s self-published Triple-A games are
24 developed exclusively for their own platforms.

25 251. With the exclusion of Microsoft and Sony, there are only four primary third-party Triple-
26 A publishers. Activision Blizzard is the most successful. Activision Blizzard possesses some of the
27 most valuable and durable video game franchises, including *Call of Duty*.
28

1 252. Microsoft considers Activision Blizzard to be a significant competitor to Microsoft in
2 the Triple-A game development market. In Microsoft internal documents, Microsoft [REDACTED]
3 [REDACTED]
4 Activision Blizzard poses a significant competitive threat to Microsoft's Triple-A game development
5 and publishing business because Activision Blizzard's games are so consistently popular. For example,
6 Microsoft developed the *Halo* game franchise and made it exclusive to Xbox, Game Pass, and
7 Windows. Yet *Call of Duty* has consistently eclipsed *Halo* in popularity and revenue metrics. Thus,
8 even though Microsoft makes *Halo* exclusive to Microsoft platforms in order to attract users to its
9 platforms and foreclose other platforms from the *Halo* franchise, *Call of Duty* is far more popular and
10 engaging, and consumers are able to access *Call of Duty* on all platforms, including those platforms in
11 competition with Microsoft.

12 253. Thus, Microsoft has significant incentives to develop video games that would compete
13 with and be more popular than *Call of Duty*. However, if Microsoft is allowed to acquire *Call of Duty*,
14 Microsoft no longer has the incentive to develop video games that would compete with *Call of Duty*
15 and Activision Blizzard's other gaming content. In fact, Microsoft would likely have the incentive *not*
16 to develop games that compete with *Call of Duty* in order not to cannibalize its own *Call of Duty*
17 success.

18 254. The competition between Triple-A game publishers promotes and ensures growth,
19 creativity, and quality in games, as each Triple-A game must compete for consumer demand over other
20 Triple-A games. These are essential attributes of competition and the competitive process.

21 255. Publishers of Triple-A games, including Microsoft, Sony, Activision Blizzard and the
22 few other independent Triple-A publishers compete on price.

23 256. Microsoft and Activision Blizzard compete to produce games that will sustain gamers'
24 attention and interest and become significantly popular so that they will enjoy the substantial network
25 effects that arise when a critical mass of players play the game.

26 257. Few other game publishers have comparable resources and game-development talent to
27 develop and bring to market the most immersive and highly desirable game titles, as bringing Triple-A
28 games to market often takes years to complete, with significant financial investment, including in

1 scarce engineering talent. For example, Microsoft's own experience with releasing Triple-A games
2 reflects the cost and time to develop such content. *Halo Infinite*, a recent multiplayer game from the
3 *Halo* franchise published by Microsoft and made exclusive to Microsoft's ecosystem, was in
4 production for [REDACTED], and cost almost [REDACTED] to bring to market. According to a
5 Microsoft executive, [REDACTED], another first-party Microsoft game, may take [REDACTED] to
6 develop.

7 258. Independent developers acknowledge that the Proposed Acquisition may leave them
8 with few options other than to develop games for Xbox Platforms, including listing their titles on Game
9 Pass. This lack of competition for the output of independent producers would limit output, investment
10 and quality in video games.

11 259. This in turn would lead to fewer independent developers who may not be able to
12 compete with ever more concentrated Triple-A publishers. This would also mean that independent
13 developers would be faced with weakened bargaining power if the market is concentrated and
14 developers feel the need to access Game Pass's userbase leading to worse terms for these developers
15 and worse outcomes for consumers.

16 260. The acquisition of Activision Blizzard by Microsoft may irreparably harm competition in
17 the Triple-A gaming market because Microsoft is acquiring, and thereby eliminating, one of only a few
18 significant competitors of Triple-A game publishing. The acquisition also eliminates one of a dwindling
19 number of independent Triple-A publishers. The current and future competition between Microsoft and
20 Activision Blizzard will be irretrievably lost if the acquisition is allowed to go forward.

21 **VERTICAL HARM TO COMPETITION**

22 261. Microsoft's acquisition of Activision Blizzard has a reasonable probability of lessening
23 competition in the markets for gaming platforms, including high-performance consoles, multi-game
24 content library subscriptions, cloud-based gaming, and computer operating systems, because post-
25 acquisition, Microsoft will have the ability and the incentive to foreclose Activision Blizzard's key
26 gaming inputs from rival game platforms.

1 262. Foreclosure and vertical harm to competition is particularly virulent in the gaming
2 industry because the gaming industry has significant direct and indirect network effects and barriers to
3 entry. *See* paragraphs 104–111.

4 263. The existence of direct network effects amplifies the effect of any foreclosure strategy,
5 because it will cause a greater number of users to switch platforms in order to continue playing the
6 same games with their friends and online community.

7 264. The existence of indirect network effects also amplifies the effect of any foreclosure
8 strategy because it incentivizes other publishers to focus their efforts on making games for platforms
9 with a significant user base, which in turn attracts more customers to that platform.

10 265. These network effects separately and together further amplify foreclosure strategies
11 because they create significant barriers to entry for nascent market entry into gaming platforms,
12 because gaming platforms cannot attract users without access to Triple-A gaming content.

13 266. Exclusivity also threatens competition because foreclosure, coupled with network
14 effects, can cause detrimental effects to Microsoft’s competitors and lessen their ability to compete.

15 267. Were Microsoft to make Activision Blizzard titles exclusive or partially exclusive, as is
16 their practice with its other first-party content, including content acquired through the prior acquisitions
17 of Triple-A publishers, such foreclosure would further build a competitive moat, insulating Microsoft
18 gaming platforms from competition. This risk is particularly acute given the dominance of *Call of Duty*
19 and other popular Activision Blizzard titles.

20 268. Presently, given that many Activision Blizzard titles are available on multiple consoles
21 and platforms, Microsoft’s competitors can attract Microsoft’s users who play those titles. If, however,
22 Activision Blizzard titles were made exclusive or partially exclusive, that competition may be shut off,
23 and consumers of Activision Blizzard titles are likely to become “locked in” to Microsoft platforms.

24 269. Foreclosure of Activision titles will also weaken competition because Microsoft will
25 have weaker incentives to innovate and invest in order to retain its own user base or to compete for
26 others. By making Activision Blizzard titles exclusive, rather than compete on the merits, Microsoft can
27 rely on the already existing and locked-in player-base of Activision Blizzard titles.
28

1 270. The Proposed Acquisition will also weaken competition by other competitors and current
2 and future market participants. Foreclosure of Activision Blizzard titles may entrench consumers to
3 Microsoft platforms in order to access Activision Blizzard games. Users who switch from other
4 consoles to Xbox in order to play or continue to play Activision Blizzard games would become less
5 likely to switch in response to innovation and technological development from Microsoft’s current and
6 future competitors, diminishing competition on the merits. The same is true with respect to the other
7 Microsoft platforms.

8 271. Microsoft is well aware of the barriers to entry and the diminution of competition that
9 foreclosure strategies create. For example, in Microsoft internal documents, [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 272. Microsoft has also demonstrated its awareness of the damaging effect of foreclosure
13 strategies on competition when it attempts to give assurance to regulators, and in the press, that it is
14 prepared to take steps to ameliorate or delay its likely and obvious foreclosure strategies, as described
15 below at paragraphs.

16 **A. Triple -A Games Are Crucial Inputs to Gaming Platforms that Drive Demand**

17 273. Consumers play video games. They do not play platforms. Platforms are used to run and
18 process the video game content. They have differentiated features, but a video game platform is only
19 worthwhile to the extent it allows a consumer to play the video games they want to play. Thus, there is
20 no question that making gaming content exclusive has an effect on consumer purchasing behavior with
21 respect to game platforms.

22 274. For example, in a survey conducted by the CMA, 89% of respondents mention that the
23 availability of content was important to their decision in purchasing consoles.

24 275. Microsoft’s own internal documents show that [REDACTED]
25 [REDACTED]

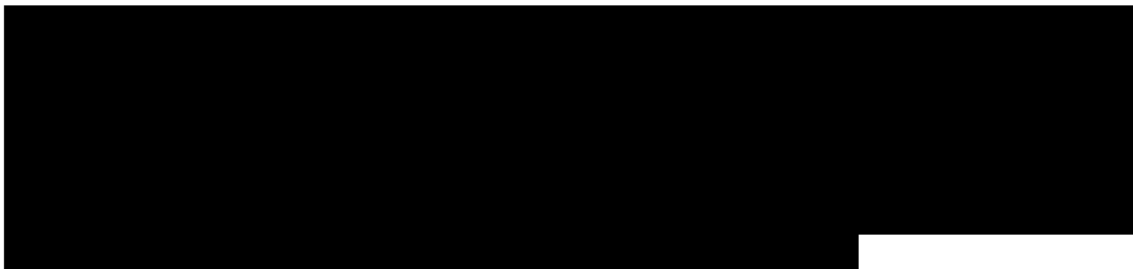
26 276. The CMA stated that “content is one of the main reasons for consumers’ choice of
27 platform.”
28

1 277. The CMA further found that “Various internal documents from Microsoft indicate that
2 the company considers content (especially large game franchises and exclusive content) to be an
3 important factor affecting both customers’ choice of console and the attractiveness of Xbox’s
4 subscription service.”

5 278. The CMA further found that several documents suggested that “content, especially AAA
6 [] releases, drives the success of [Multi Game Subscription] services (including on consoles). These
7 documents suggest that acquiring a big publisher would have a severe impact on the ability of rival
8 [Multi Game Subscription] services to succeed.

9 279. The CMA concluded that the evidence indicates that “content is a very important factor
10 affecting the choice of a console” as well as Multi Game Subscription services. [CMA 7;.142].

11 280. Microsoft’s internal documents support this. In one internal strategy memo, Microsoft
12 states:



18 281. There is no dispute that content, and in particular Triple-A content, is a crucial input to
19 video game platforms.

20 **B. Microsoft’s Demonstrated And Admitted Incentive to Make Content Exclusive**

21 282. In its attempt to push its acquisition of Activision Blizzard through antitrust scrutiny,
22 Microsoft has asserted on numerous occasions that it has no incentive to make gaming content
23 exclusive to its own platforms, and no incentive to foreclose rival platforms. For example, in several
24 media outlets, Microsoft executives have said they have no incentive to make *Call of Duty* exclusive to
25 Microsoft, and in Microsoft’s Opposition to Plaintiffs’ Motion for Preliminary Injunction, Microsoft
26 states that it “has no such incentive” to foreclose Activision Blizzard’s gaming content to its
27 competitors. *See* ECF No. 16.
28

1 283. In so doing, Microsoft does not deny the anticompetitive effect of such foreclosure
2 strategies. Instead, Microsoft seeks to give assurances to regulators and the general public that it will
3 not pursue them. This confirms the threat of such foreclosure strategies is real and that the
4 anticompetitive effect of such strategies when implemented will not be hypothetical but will be real and
5 severe.

6 284. Microsoft's assurances and other public statements are contradicted by Microsoft's own
7 stated core business strategies, Microsoft's past course of conduct, and industry practice.

8 285. Microsoft's "State of the Business" reports, which were provided directly to the Board
9 of Directors, states that [REDACTED]

10 [REDACTED] This core gaming strategy, is further explained in a gaming strategy review document,
11 in which Microsoft states that [REDACTED]

12 [REDACTED] The challenge facing Microsoft, however, is to
13 scale Microsoft's platforms and community in order to reap the rewards of significant network effects.

14 Microsoft states that [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 286. Microsoft's core gaming strategy is demonstrated by Microsoft's prior conduct with
18 respect to its own first-party gaming content. The vast majority of its own first-party gaming conduct is
19 exclusive to Microsoft platforms, including Xbox, Xbox Game Pass, and Windows PC. For example, in
20 a Microsoft gaming report, Microsoft noted 6 of its top first-party game franchises [REDACTED]

21 [REDACTED] Five out of those six are exclusive to
22 Microsoft platforms. The only exception was [REDACTED] [REDACTED]
23 [REDACTED]

24 287. In addition, Microsoft's past course of conduct with acquisitions of third-party content
25 (which then by definition becomes first-party content after acquisition) also bares out Microsoft's stated
26 core strategy.

27 288. **Microsoft's Acquisition of Playground.** For example, in 2018, Microsoft acquired
28 Playground Games, a third-party video game developer, that had developed the Triple-A racing

1 franchise *Forza Horizon*. Internal documents show the primary purpose of the acquisition was to
 2 [REDACTED]. For example,
 3 Microsoft notes that the acquisition would [REDACTED] which would
 4 [REDACTED]” The document notes the [REDACTED] and states that
 5 [REDACTED] The document describes how
 6 [REDACTED] and that [REDACTED]
 7 [REDACTED] Microsoft concluded
 8 that it [REDACTED]
 9 [REDACTED]

10 289. **Microsoft’s Acquisition of ZeniMax Media and Bethesda.** Microsoft acquired
 11 Bethesda’s game publishing business through its acquisition of ZeniMax Media in 2021. Bethesda at
 12 the time was one of only a handful of third-party Triple-A publishers.

13 290. Like its current defense of the Proposed Acquisition, during the regulatory process
 14 regarding the ZeniMax acquisition, Microsoft assured the European Commission that “Microsoft would
 15 not have the incentive to cease or limit making ZeniMax games available for purchase on rival
 16 consoles.” That statement was untrue, as subsequent events demonstrated.

17 291. Indeed, Microsoft’s statements were intended to convince the EC—and did convince the
 18 EC—not to block the transaction. As stated by the EC’s decision on the acquisition, the EC opined that
 19 “despite the commercial success of [ZeniMax] titles, Microsoft would not have the ability to foreclose
 20 rival console distributors by refusing to make ZeniMax games available on rival consoles or degrading
 21 the terms under which these games are made available,” and concluded “that the combined entity
 22 would not have the ability to foreclose rival console video game distributors by engaging in a total or
 23 partial input foreclosure strategy.” Commission decision pursuant to Article 6(1)(b) of Council
 24 Regulation No 139/2004 and Article 57 on the Agreement on the European Economic Area, Case
 25 M.10001, Microsoft/Zenimax, ¶¶ 102, 106 (2021).

26 292. Yet despite its prior statements regarding its own incentives, Microsoft has made Triple-
 27 A game content from Bethesda exclusive to Microsoft and has foreclosed Bethesda’s gaming-content
 28 from rival platforms. Indeed, after purchasing Bethesda, every single game that has been announced for

1 specific platforms is exclusive to Microsoft. Bethesda's highly-anticipated titles *Starfield*, *Redfall*, and
2 *Elder Scrolls IV* have all been stated to be exclusive to Microsoft platforms, foreclosing competition.

3 293. According to an interview with the designer of *Redfall*, development of *Redfall* for the
4 Playstation 5 was ongoing at the time Bethesda was acquired by Microsoft. Immediately after
5 acquisition, Microsoft directed the developers to stop work on the version for the PlayStation 5 and
6 instead to direct all resources to the Xbox version, as well as preparing the game to be launched
7 exclusively on Game Pass.

8 294. The director of *Redfall*, Harvey Smith, stated: "We got bought by Microsoft and that was
9 a huge sea change. They said, 'no PlayStation 5. Now we're gonna do Game Pass, Xbox, and PC.'"

10 295. Given that many of the highly-anticipated Bethesda titles (including *Redfall*, *Starfield*
11 and *Elder Scrolls VI*) have not yet been released, and that Microsoft has already made their plans to
12 release those games exclusively on Xbox, Windows PC, and Xbox Game Pass, the full anticompetitive
13 effects of the ZeniMax acquisition have not yet been fully realized. Given the popularity of these titles,
14 it is likely that future ZeniMax releases will cause some gamers to switch to Xbox or affect gamer
15 decision making when they choose their next piece of gaming hardware or subscription.

16 296. The risk of anticompetitive effects is greater with Activision Blizzard than that of the
17 acquisition of ZeniMax (and Bethesda). For example, 6.7% of PlayStation users spent over 65% of
18 their time on *Call of Duty* and 9.1% spent over 50% of their time in 2021. Given that Microsoft is
19 already withholding ZeniMax titles, given Activision Blizzard's much larger userbase, and in particular
20 *Call of Duty*'s, Microsoft has even greater incentives to withhold Activision Blizzard titles.

21 297. **Other Microsoft Acquisitions.** Microsoft's strategy of acquiring third party game
22 publishers and then making the games exclusive after the acquisition is well established. Microsoft has
23 implemented that strategy repeatedly, including with respect to Obsidian, inXile, and Ninja Theory.

24 298. **Economic Analysis.** In addition to Microsoft's own admissions and prior conduct,
25 economic analysis shows that if the acquisition is allowed to proceed, Microsoft will have the incentive
26 to withhold *Call of Duty* from rival platforms, just as it does with virtually all of its other first-party
27 games.
28

1 299. Putting aside long term strategic rationales for foreclosing rivals from key gaming
2 inputs, basic economic theory demonstrates that Microsoft will even have direct short-term incentive to
3 withhold *Call of Duty* from other platforms if the loss in *Call of Duty* sales on rival platforms is lower
4 than the profits gained from the users that switch to Microsoft’s platform because of Microsoft’s
5 foreclosure strategy.

6 300. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 **C. Activision’s Gaming Content Is a Key Input**

12 301. Activision Blizzard is, by market capitalization, the world’s largest independent game
13 developer. Activision Blizzard titles boast more than [REDACTED] monthly active players in 190
14 countries. Its games include the *Call of Duty* series, *World of Warcraft*, the *Diablo* series, *Overwatch*,
15 *Hearthstone* and *Candy Crush*.

16 302. Activision is one of the key drivers of video gaming demand and video game platforms.
17 As stated in paragraphs 165–174 above, there are only a limited number of Triple-A content producers.
18 Activision Blizzard is one of the preeminent and most successful Triple-A content producers.
19 Activision Blizzard’s current game franchises are immensely popular, and key drivers of demand for
20 video games and video game platforms.

21 303. Game availability is a key input for the relevant platform markets at issue. Microsoft
22 itself recognized that gamers’ demand is driven by their interest in particularly popular games. For
23 example, as described by an internal Microsoft document, [REDACTED]

24 [REDACTED]
25 [REDACTED] Microsoft’s competitors also recognize that game availability is a primary driver of gamer
26 demand. Internal research from [REDACTED] for example [REDACTED]

1 [REDACTED] Microsoft for its part has stated
2 its intent to make [REDACTED] in order [REDACTED]

3 [REDACTED]
4 [REDACTED]

5 304. David Hampton, Microsoft’s general manager of gaming strategy, considers [REDACTED]

6 [REDACTED]

7 305. Activision Blizzard recognizes the importance of its own gaming content, believing that
8 its franchises, including *Call of Duty*, are [REDACTED]

9 [REDACTED]

10 306. ***Call of Duty* is unique and substantially important.** *Call of Duty* is the single most
11 popular franchise in video game history. Between 2010 to 2019, *Call of Duty* titles comprised 10 of the
12 top 15 games sold. The latest installment, *Modern Warfare II*, amassed more than \$1 billion in sales
13 within ten days of release. For the last 11 years, *Call of Duty* has been the single most important
14 franchise globally for 10 of those 11 years.

15 307. The key importance of *Call of Duty* is further demonstrated by the unsuccessful efforts
16 of others to establish rival games as competitors. Indeed, many attempts to challenge *Call of Duty*’s
17 dominance have been unsuccessful. For example, Electronic Arts (“EA”) launched *Battlefield 2042*, a
18 team based first-person shooter, in 2021 to compete with *Call of Duty*. *Battlefield 2042*, however, failed
19 to approach the popularity of *Call of Duty*.

20 308. In 2021, all three *Call of Duty* titles that were available at the time were in the [REDACTED]

21 [REDACTED]

22 309. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 310. *Call of Duty* is particularly important for Microsoft’s competitors with respect to
27 consoles and subscription services. *Call of Duty* is the #1 console franchise since 2005 by revenue. It is,
28 by margin, the franchise with the highest player engagement, i.e., player spend. According to [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

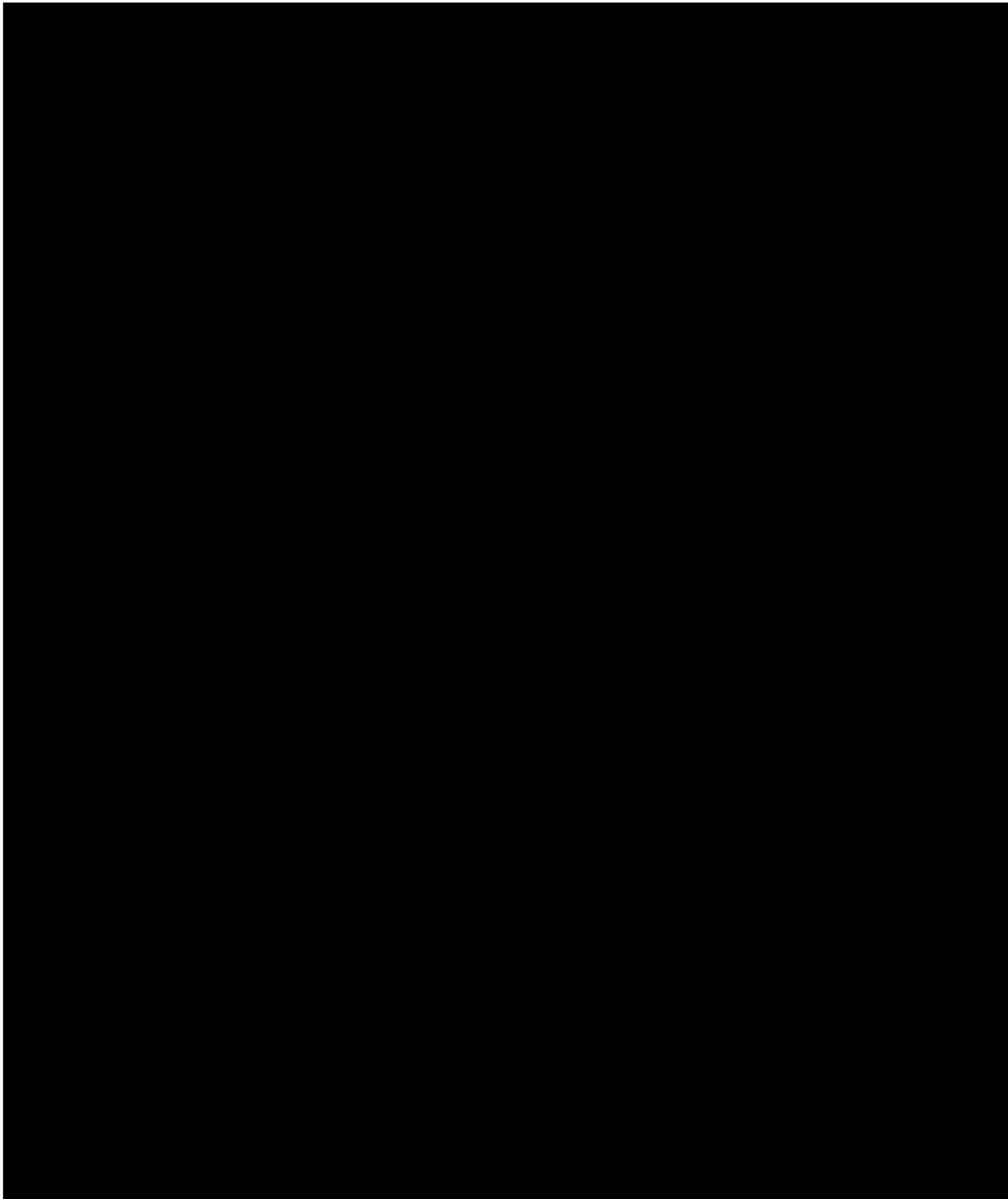
4 311. Other competitors recognize the significance of *Call of Duty*, in addition to Activision
5 Blizzard's other titles. In 2021, for example, according to research prepared for [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



313. Activision Blizzard titles, other than *Call of Duty* are also important inputs as well. *Diablo*, *Overwatch*, *StarCraft*, and *World of Warcraft* are each Triple-A titles or franchises that have earned over [REDACTED] in lifetime revenue each. *Candy Crush* is the #2 mobile franchise by revenue.

1 Activision Blizzard’s entire catalogue of gaming content is a particularly important input for gaming
2 platforms.

3 314. Numerous surveys have concluded that consumers would switch consoles if *Call of*
4 *Duty* were to become exclusive or partially exclusive. For example, 79% of respondents to the CMA
5 survey reported that their choice of console was impacted by the availability of *Call of Duty*.

6 315. Studies show 46% of PlayStation and Nintendo users in the United States would
7 consider subscribing to Microsoft’s Game Pass subscription service with the inclusion of Activision
8 Blizzard titles.

9 316. According to research conducted for [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 317. The effect on switching is further enhanced by the network effects described above.
14 Multiplayer games have network effects, which reinforce demand, and serve as barriers to entry to
15 rivals and potential competitors. Even single player games are impacted by network effects from the
16 community playing and streaming them.

17 318. The CMA stated that a third-party publisher confirmed that, stating that “established
18 AAA games benefited from significant network effects, which raised barriers to entry for new games
19 and developers.” The third-party publisher “also stated that, as gamers play games with their friends,
20 they created something akin to a social network devoted to specific games, which they said created
21 large switching costs when transitioning to other games, even in the same genre. These switching costs
22 could result in franchises being popular for years, as gamers are so deeply invested in terms of time,
23 money and friends.” Further, third parties informed the CMA that “[t]hird parties have noted the
24 existence of direct and indirect network effects in gaming, with direct network effects being particularly
25 strong for large multi-player social franchises such as [*Call of Duty*].”

26 319. If *Call of Duty* is not on full parity between Microsoft platforms and other platforms,
27 gamers will be forced to migrate to Microsoft’s Xbox and other platforms and subscriptions in order to
28 have the full *Call of Duty* experience. Gamers will be incentivized to do so—and will do so—even if

1 Microsoft’s product offerings are objectively of lower quality or less desirable to those gamers, but for
2 *Call of Duty* or Activision Blizzard’s other gaming content.

3 320. This holds true for many of the Plaintiff gamers in this case. For example, many of the
4 Plaintiff gamers in this suit would purchase an Xbox or Microsoft’s other platforms and subscription
5 services if those were the only platforms available to play *Call of Duty*, or if *Call of Duty* was partially
6 exclusive to those platforms.

7 **D. Microsoft’s “10-Year Deals” Do not Prevent Microsoft’s Stated Foreclosure Strategy**

8 321. Microsoft is well aware that a strategy of foreclosure and excluding current or potential
9 rival competitors from availability of gaming content is anticompetitive. Microsoft has pursued a
10 variety of strategies to convince or mislead regulators or competitors that it does not plan and will not
11 pursue such a strategy. Those representations are false and misleading.

12 322. Microsoft has claimed numerous times in the media that it intends to make *Call of Duty*
13 even more accessible than it already is, and “improve user access to *Call of Duty*.”

14 323. But, as discussed above in paragraphs 282–300, such claims are contradicted by (1)
15 Microsoft’s past conduct, in which five out of its top six first-party Triple-A games are fully exclusive
16 to Microsoft, and Minecraft, the only Microsoft Triple-A game that is not fully exclusive to Microsoft
17 is partially exclusive, and is being phased off of PlayStation consoles; (2) Microsoft’s own internal
18 documents that say [REDACTED]

19 [REDACTED] (3) Microsoft’s prior acquisition history of Triple-A games such as
20 Playground Games and Bethesda Games, among others, in which Microsoft immediately pulled the
21 plug on any future game development for competing platforms; and (4) Microsoft’s own incentives.

22 324. In addition to Microsoft’s prior course of conduct, internal documents, and prior
23 acquisitions—which are strong evidence of what Microsoft will do in the future, a comparison of
24 Microsoft’s business incentives if the Proposed Acquisition were allowed to proceed with those of the
25 current marketplace shows how the Proposed Acquisition may affect competition.

26 325. An independent third-party Activision Blizzard has much more incentive than Microsoft
27 to make its games widely available across competing platforms.

1 326. While it may be true that Microsoft may have an incentive to sell as many Activision
2 Blizzard games as Activision Blizzard sells now while independent, Microsoft has an equal if not
3 greater incentive to deny Activision Blizzard’s games to rival platform manufacturers. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 327. [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 328. The fact that Microsoft has strong incentives to foreclose rivals by making games
12 exclusive, and Activision Blizzard, as an independent publisher does not, substantially undercuts
13 Microsoft’s statements that it would increase availability of Activision Blizzard content if the Proposed
14 Acquisition were allowed to proceed.

15 329. Microsoft has signed several 10-year deals that purport to guarantee *Call of Duty* access
16 to rival platforms on parity with development and release on Microsoft’s platforms.

17 330. But Microsoft has admitted that these 10-year deals are solely to try to appease
18 regulators and push the deal through the finish line. In an interview with the Wall Street Journal, Brad
19 Smith, the President of Microsoft stated:

20 “If the only argument is that Microsoft is going to withhold *Call of Duty* from other
21 platforms, and we’ve now entered into contracts that are going to bring this to many
22 more devices and many more platforms, that is a pretty hard case to make to a court.”

23 331. Thus, Microsoft has acknowledged that the purposes of these 10-year arrangements are
24 intended to make proving Microsoft’s foreclosure strategy a “hard[er] case to make to a court.”

25 332. Moreover, on their face, the 10-year deals do not contractually prevent Microsoft from
26 moving forward on its strategy to use [REDACTED]” in order to drive its platform
27 dominance, including in its game subscription and cloud-gaming services.

28 333. The 10-year deals do not have any guarantees that Microsoft will [REDACTED]
[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 334. Currently, Activision Blizzard has the incentive for its engineers to work diligently with
4 all platforms to ensure their games function at the highest level and to highlight all of the next-gen
5 platform features in their games at the highest quality. Microsoft cannot dispute that Microsoft has—at
6 best—a conflict of interest in working closely with its rival platforms to ensure the best possible
7 playing experience of Activision Blizzard’s games, and may not devote sufficient resources or may
8 withhold sufficient resources. Given Microsoft’s strategies to date and based on internal documents,
9 Microsoft may intentionally impede sufficient development on rival platforms, just as it did with
10 *Redfall* when it purchased Bethesda, and numerous other Microsoft exclusive games.

11 335. The 10-year deals do not provide commercially viable terms. For example, in the
12 proposed 10-year deal offered to Sony, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 336. The 10-year deal with Sony does not have any requirement for [REDACTED]
18 [REDACTED]
19 [REDACTED].

20 337. In the 10-year agreement with Nintendo, Nintendo is required to pay Microsoft at
21 minimum, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 338. Further, the 10-year deals only apply to [REDACTED]
26 [REDACTED]

27 339. Nor do the 10-year deals have any reasonable enforcement mechanism.
28

1 340. The 10-year deals are also only in place for 10 years. *Call of Duty*, for example, has been
2 one of the most popular gaming franchises for roughly 20-years.

3 341. The 10-year deals do not legally prevent Microsoft from pursuing its strategy of
4 acquiring Triple-A game content and making it exclusive or partially exclusive to Microsoft's
5 platforms.

6 **E. The Merger May Substantially Lessen Competition in the Console Market**

7 342. Upon completion of the acquisition, Microsoft will have the incentive and ability to
8 foreclose or partially foreclose Activision Blizzard's gaming content on Sony PlayStations, the only
9 other producer of High-Performance Consoles.

10 343. As shown in paragraph 206–207, Microsoft and Sony each have close to 50% market
11 share of High-Performance Consoles in the United States.

12 344. As shown in paragraph 273–281 and 301–320, Triple-A content in general, Activision
13 Blizzard's gaming content in particular, and *Call of Duty* most so, are crucial inputs for consoles.

14 345. As shown in paragraphs 282–300, Microsoft has the incentive to fully and/or partially
15 foreclose *Call of Duty* and Activision Blizzard's other gaming content from PlayStation consoles.

16 346. Partial foreclosure of Activision Blizzard's gaming content in this market may include
17 (1) failing to ensure Activision Blizzard's gaming content, features, and play experience, has full parity
18 between Microsoft and rival platforms; (2) failing to release Activision Blizzard's gaming content at the
19 same time as released to Microsoft's platforms; (3) failing to provide timely and adequate bug-fixes and
20 updates; or (4) requiring rival consoles to pay onerous and commercially unviable fees to Microsoft in
21 order to make Activision Blizzard's gaming content available on the platform (which may have the
22 effect in many cases of full foreclosure).

23 347. As described in paragraph 321–341, Microsoft's various proposed and executed 10-year
24 deals do not legally preclude Microsoft from pursuing and implementing its foreclosure strategy.

25 348. As described in paragraph 104–111, the gaming industry much more than other
26 industries is governed by substantial barriers to entry and direct and indirect network effects. This
27 makes Microsoft's foreclosure strategy even more virulent than it would be in other industries. This
28 both increases Microsoft's incentives to foreclose, and makes the effects of foreclosure even more

1 harmful to competition. Indeed, given the substantial network effects (sometimes referred to as
2 “flywheel effects”), economic theory suggests a tipping point in which the first party to a certain scale
3 could dominate the industry and all but eliminate competition.

4 349. The effects of the acquisition through a vertical foreclosure strategy on competition in
5 the High-Performance Console market would be substantial.

6 350. Many consumers, including some of the Plaintiffs in this case, may be forced to
7 purchase Microsoft’s less desirable Xbox consoles instead of or in addition to their preferred
8 PlayStation consoles to have access to *Call of Duty* and Activision Blizzard’s other gaming content.

9 351. Many consumers, including some of the Plaintiffs in this case who currently play on
10 Xbox consoles, may face higher prices because Microsoft will no longer have any price constraints for
11 *Call of Duty* and other Activision Blizzard gaming content that now occurs between Xbox and
12 PlayStation consoles. Microsoft will also have less incentive to compete with PlayStation on price for
13 its console systems, because a large percentage of consumers will choose Microsoft’s Xbox console
14 over PlayStation based on Microsoft’s exclusive gaming content. For example, Microsoft has
15 developed a less expensive High-Performance Console, the Xbox Series S in order to compete on price
16 with Sony’s PlayStation 5. But Microsoft will have less incentive to do so in the future because
17 consumers are much more likely to purchase Xbox consoles regardless of price if Activision Blizzard’s
18 content is exclusive or partially exclusive to Microsoft.

19 **F. The Merger May Substantially Lessen Competition in The Multi-Game Content Library**
20 **Subscription Market**

21 352. Upon completion of the acquisition, Microsoft will have the incentive and ability to
22 foreclose or partially foreclose Activision Blizzard’s gaming content to rival multi-game subscription
23 services that compete with Microsoft’s Game Pass.

24 353. As stated in Microsoft documents, one of the major strategic goals for Microsoft is to
25 use [REDACTED] that Microsoft will have a
26 [REDACTED]

27 354. As shown in paragraphs 218–219 above, Microsoft already has a roughly 60% share of
28 the Multi-Game Content Library Subscription Market.

1 355. As shown in paragraph 273–281 and 301–320, Triple-A content in general, Activision
2 Blizzard’s gaming content in particular, and *Call of Duty* most so, are crucial inputs for Multi-Game
3 Content Library Subscriptions.

4 356. As shown in paragraphs 282–300, Microsoft has the incentive to fully and/or partially
5 foreclose *Call of Duty* and Activision Blizzard’s other gaming content from rival game subscription
6 services.

7 357. Partial foreclosure of Activision Blizzard’s gaming content in this market may include
8 (1) failing to ensure Activision Blizzard’s gaming content, features, and play experience, has full parity
9 between Microsoft’s Game Pass and rival subscription services; (2) failing to release Activision
10 Blizzard’s gaming content at the same time as released to Microsoft’s Game Pass; (3) failing to provide
11 timely and adequate bug-fixes and updates; or (4) requiring rival consoles to pay onerous and
12 commercially unviable fees to Microsoft in order to make Activision Blizzard’s gaming content
13 available to rival game subscription services (which may have the effect in many cases of full
14 foreclosure).

15 358. As described in paragraph 321–341, Microsoft’s various proposed and executed 10-year
16 deals do not legally preclude Microsoft from pursuing and implementing its content exclusivity
17 strategy.

18 359. As described in paragraph 104–111, the gaming industry much more than other
19 industries is governed by substantial barriers to entry and direct and indirect network effects. This
20 makes Microsoft’s foreclosure strategy even more virulent than it would be in other industries. This
21 both increases Microsoft’s incentives to foreclose and makes the effects of foreclosure even more
22 harmful to competition. Indeed, given the substantial network effects (sometimes referred to as
23 “flywheel effects”), economic theory suggests a tipping point in which the first party to a certain scale
24 could dominate the industry and all but eliminate competition.

25 360. The effects of the acquisition through a vertical foreclosure strategy on competition in
26 the Multi-Game Content Library Subscription Market would be substantial.

27 361. Many consumers, including some of the Plaintiffs in this case, may be forced to
28 purchase Microsoft’s less desirable Game Pass instead of their preferred game subscription service,

1 including PlayStation + or other nascent game subscription services to have access to *Call of Duty* and
2 Activision Blizzard’s other gaming content.

3 362. Many consumers, including some of the Plaintiffs in this case who currently subscribe to
4 Game Pass, may face higher prices because Microsoft will have less price constraints for subscription
5 services that now occurs between Microsoft’s subscription services and rival subscription services.
6 Microsoft will also have less incentive to compete with rival subscription services, including
7 PlayStation +, on price and features, because a large percentage of consumers will choose Microsoft’s
8 Game Pass solely due to Microsoft’s exclusive catalog of content, including Activision Blizzard’s
9 gaming content and *Call of Duty*. Further, given the significant network effects, and also given that
10 Microsoft plans to [REDACTED]

11 [REDACTED] Microsoft may acquire an
12 insurmountable “tipping point” of consumers, destroying further competition in the market.

13 **G. The Merger May Substantially Lessen Competition in The Cloud-Gaming Market**

14 363. Upon completion of the acquisition, Microsoft will have the incentive and ability to
15 foreclose or partially foreclose Activision Blizzard’s gaming content to rival Cloud-Gaming providers
16 that compete with Microsoft’s XCloud service.

17 364. As shown in paragraph 230 above, Microsoft already has a roughly 40% share of the
18 Cloud-Gaming Subscription Market.

19 365. As described in paragraphs 145 and 228 above, Microsoft’s Azure cloud services already
20 provide the infrastructure for Cloud-Gaming services giving Microsoft a significant first-mover
21 advantage.

22 366. As shown in paragraphs 273–281 and 301–320, Triple-A content in general, Activision
23 Blizzard’s gaming content in particular, and *Call of Duty* most so, are crucial inputs for Cloud-Gaming
24 services.

25 367. As shown in paragraphs 282–300, Microsoft has the incentive to fully and/or partially
26 foreclose *Call of Duty* and Activision Blizzard’s other gaming content from rival Cloud-Gaming
27 services.
28

1 368. Partial foreclosure of Activision Blizzard’s gaming content in this market may include
2 (1) failing to ensure Activision Blizzard’s gaming content, features, and play experience, has full parity
3 between Microsoft’s XCloud and rival subscription services; (2) failing to release Activision Blizzard’s
4 gaming content at the same time as released to Microsoft’ XCloud service; (3) failing to provide timely
5 and adequate bug-fixes and updates; or (4) requiring rival cloud services to pay onerous and
6 commercially unviable fees to Microsoft in order to make Activision Blizzard’s gaming content
7 available to rival Cloud-Gaming services (which may have the effect in many cases of full foreclosure).

8 369. As described in paragraph 321–341, Microsoft’s various proposed and executed 10-year
9 deals do not legally preclude Microsoft from pursuing and implementing its content exclusivity
10 strategy.

11 370. As described in paragraph 104–111, the gaming industry much more than other
12 industries is governed by substantial barriers to entry and direct and indirect network effects. This
13 makes Microsoft’s foreclosure strategy even more virulent than it would be in other industries. This
14 both increases Microsoft’s incentives to foreclose and makes the effects of foreclosure even more
15 harmful to competition. Indeed, given the substantial network effects (sometimes referred to as
16 “flywheel effects”), economic theory suggests a tipping point in which the first party to a certain scale
17 could dominate the industry and all but eliminate competition.

18 371. The effects of the acquisition through a vertical foreclosure strategy on competition in
19 the Cloud Gaming Market would be substantial.

20 372. Many consumers, including some of the Plaintiffs in this case, may be forced to
21 purchase Microsoft’s less desirable Cloud Gaming services instead of their preferred Cloud Gaming
22 service in order to have access to *Call of Duty* and Activision Blizzard’s other gaming content.

23 373. Many consumers, including some of the Plaintiffs in this case who anticipate subscribing
24 to a Cloud Gaming services in the future, including Microsoft’s XCloud service, may face higher prices
25 to join Microsoft’s Cloud Gaming service because Microsoft will have less price constraints for Cloud
26 Gaming services between Microsoft and other Cloud Gaming service providers now and in the future.
27 Microsoft will also have less incentive to compete with rival Cloud Gaming services on price and
28 features, because a large percentage of consumers will choose Microsoft’s XCloud solely due to

1 Microsoft’s exclusive catalog of content, including Activision Blizzard’s gaming content and *Call of*
2 *Duty*.

3 374. Further, given the network effects and “flywheel effects,” and also given that Microsoft
4 plans to use its already large market share in the cloud-computing space to accelerate its cloud-gaming
5 services, Microsoft may acquire an insurmountable “tipping point” of consumers therefore destroying
6 further competition in the market.

7 375. With respect to cloud-gaming specifically, exclusivity of top gaming content is of the
8 utmost importance to Microsoft. [REDACTED]

9 [REDACTED]
10 376. Currently, Microsoft already outpaces most other cloud-gaming providers with first-
11 party Triple-A gaming content, even without the acquisition of Activision Blizzard. Microsoft has
12 recognized that its “[REDACTED]

13 [REDACTED]
14 377. Given that cloud gaming is an emerging market that has not gained widespread
15 mainstream adoption yet, and the inherently strong network effects, Microsoft’s use of Activision
16 Blizzard’s important gaming catalog to foreclose rivals to these important inputs could wipeout
17 competition in these emerging spaces, thereby further increasing its market power and tending to create
18 a monopoly.

19 **H. The Merger May Substantially Lessen Competition in the Computer Operating Systems**
20 **Market**

21 378. Upon completion of the acquisition, Microsoft will have the incentive and ability to
22 foreclose or partially foreclose Activision Blizzard’s gaming content from rival Computer Operating
23 Systems that compete with Microsoft Windows operating system.

24 379. As shown in paragraphs 235–237 above, Microsoft already has more than a 90% share
25 of the computer operating systems market in computer gaming.

26 380. As shown in paragraphs 273–281 and 301–320, Triple-A content in general, Activision
27 Blizzard’s gaming content in particular, and *Call of Duty* most so, are crucial inputs for Cloud-Gaming
28 services.

1 387. Preliminarily enjoining Defendants from consummating the acquisition, or, if necessary,
2 ordering divestiture, during the pendency of this action.

3 388. Permanently enjoining Defendants from consummating the acquisition or requiring
4 divestiture.

5 389. Declaring the contract between the Defendants to be null and void and against the public
6 policy of the United States which declares that competition rather than combination is the rule of trade
7 in the United States;

8 390. Declaring the reverse termination fee to be null and void and against the public policy of
9 the United States; and

10 391. Awarding to Plaintiffs their costs of suit, including a reasonable attorney’s fee, as
11 provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.

12 392. Granting Plaintiffs such other and further relief to which they may be entitled and which
13 the Court finds to be just and proper.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: April 10, 2023

2 By: /s/ Joseph R. Saveri
3 Joseph R. Saveri

4 Joseph R. Saveri (State Bar No. 130064)
5 Steven N. Williams (State Bar No. 175489)
6 Cadio Zirpoli (State Bar No. 179108)
7 Elissa Buchanan (State Bar No. 249996)
8 David H. Seidel (State Bar No. 307135)
9 Kathleen J. McMahon (State Bar No. 340007)
10 **JOSEPH SAVERI LAW FIRM, LLP**
11 601 California Street, Suite 1000
12 San Francisco, CA 94108
13 Telephone: (415) 500-6800
14 Facsimile: (415) 395-9940
15 Email: jsaveri@saverilawfirm.com
16 swilliams@saverilawfirm.com
17 czirpoli@saverilawfirm.com
18 eabuchanan@saverilawfirm.com
19 dseidel@saverilawfirm.com
20 kmcmahon@saverilawfirm.com

21 Joseph M. Alioto (State Bar No. 42680)
22 Tatiana V. Wallace (Sate Bar No. 233939)
23 **ALIOTO LAW FIRM**
24 One Sansome Street, 35th Floor
25 San Francisco, CA 94104
26 Telephone: (415) 434-8900
27 Facsimile: (415) 434-9200
28 Email: jmalimoto@aliotolaw.com
twallace@aliotolaw.com

Joseph M. Alioto Jr. (State Bar No. 215544)
ALIOTO LEGAL
100 Pine Street, Suite 1250
San Francisco, CA 94111
Tel: (415) 398-3800
Email: joseph@aliotolegal.com

Counsel for Plaintiffs