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LEGAL ANALYSIS

TMT

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A SNOWY AFFAIR: MICROSOFT'S ACQUISITION OF ACTIVISION BLIZZARD

The defining antitrust case of the decade

RL

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\$68.7bn

DEAL VALUE

\$95.00

PRICE PER SHARE

45%

PREMIUM

3

KEY JURISDICTIONS

Oct 2023

CLOSED

Deal Overview

Acquirer: Microsoft Corporation (NASDAQ: MSFT)

Target: Activision Blizzard Inc. (NASDAQ: ATVI)

Transaction Value: \$68.7 billion (all-cash at \$95.00 per share)

Price Per Share: \$95.00 (45% premium to unaffected price)

Announcement: 18 January 2022

Closing: 13 October 2023

Structure: One-step merger under Delaware law

Key Jurisdictions: CMA (UK), European Commission (EU), FTC (US)

Executive Summary

Microsoft's acquisition of Activision Blizzard was a highly anticipated antitrust case. Regulators were concerned that Microsoft could leverage Activision's flagship gaming franchises, most notably Call of Duty, to foreclose competition in console gaming, cloud gaming, and subscription services.

While the European Commission ultimately approved the transaction subject to behavioural commitments, the UK Competition and Markets Authority initially blocked the deal outright. The FTC sought to prevent closing through litigation in the US federal courts.

After nearly two years of regulatory challenges, Microsoft succeeded in securing clearance by restructuring part of the transaction. In particular, Microsoft agreed to divest Activision's cloud streaming rights to Ubisoft for 15 years, directly addressing the CMA's cloud gaming concerns. The CMA accepted the revised structure, allowing the deal to close in October 2023.

Advisors

Microsoft was advised by Simpson Thacher & Bartlett as lead M&A counsel. Antitrust was led by Weil Gotshal & Manges, whose team navigated review processes in 17 jurisdictions worldwide. When FTC litigation began, Microsoft retained boutique Wilkinson Stekloff as counsel. Sidley Austin represented Microsoft in the Ninth Circuit appeal.

Activision Blizzard used Skadden, Arps, Slate, Meagher & Flom for M&A counsel and antitrust matters. Goldman Sachs acted as financial advisor to Microsoft, while Allen & Company advised Activision Blizzard.

Transaction Structure

The transaction was structured as an all-cash, one-step merger, with Activision merging into a Microsoft subsidiary. Bobby Kotick was to remain CEO of Activision Blizzard, reporting to Microsoft Gaming CEO Phil Spencer.

This all-cash structure allowed Microsoft to avoid securities registration and ongoing disclosure obligations that would have applied in a stock-for-stock transaction. The one-step merger also reduced execution risk, requiring only majority shareholder approval, which Activision shareholders granted by near-unanimous vote in April 2022.

Due Diligence and Disclosure

The merger agreement included customary representations and warranties covering Activision's business, financial condition, and legal compliance. Microsoft made regulatory filings across multiple jurisdictions, with public disclosures

repeatedly flagging the risk of extended antitrust scrutiny in the UK, EU, and US—a risk that ultimately materialised.

Regulatory Roadmap

Jurisdiction	Regulator	Filing Type	Trigger	Risk
UK	CMA	Mandatory merger control	Share of supply	High
EU	European Commission	Mandatory (EUMR thresholds)	EU turnover	Medium
US	FTC	HSR Act mandatory filing	Size of transaction thresholds	High
US	State regulators	Various state filings	Multi-jurisdictional transaction	Low
Other	14+ jurisdictions	Various merger filings	Local thresholds	Low

CMA (United Kingdom)

The CMA conducted a Phase 2 investigation focused on vertical foreclosure risks in three areas:

1. Console gaming where Microsoft could make Activision titles exclusive to Xbox.
2. Cloud gaming where Microsoft could restrict access to Activision content on rival platforms such as NVIDIA GeForce Now or Amazon Luna.
3. Subscription services – particularly Xbox Game Pass.

On 26 April 2023, the CMA blocked the transaction, rejecting Microsoft's proposed behavioural remedies as insufficient.

European Commission

In contrast, the European Commission approved the deal on 15 May 2023, concluding that Microsoft's commitments were “fundamentally pro-competitive.” Approval was conditioned on 10-year licensing commitments ensuring that Activision games would remain available to cloud gaming competitors across the EEA.

United States – FTC

The FTC challenged the transaction in December 2022, raising concerns similar to those advanced by the CMA. The agency sought a preliminary injunction to prevent closing, arguing that Microsoft could foreclose rivals in consoles, cloud gaming, and subscriptions.

In July 2023, the US District Court denied the FTC's request for an injunction, a decision later affirmed by the Ninth Circuit in May 2025. The FTC ultimately withdrew its administrative challenge.

Legal Proceedings

Forum	Case	Outcome
US District Court	FTC v Microsoft (N.D. Cal.)	Injunction denied (10 Jul 2023)
Ninth Circuit	FTC v Microsoft	Affirmed denial (7 May 2025)
UK CAT	Microsoft v CMA	Withdrawn after settlement (13 Oct 2023)
FTC Administrative	Docket No. 9412	Withdrawn (22 May 2025)

Resolution

To resolve the CMA's objections, Microsoft restructured the transaction by divesting Activision's cloud streaming rights to Ubisoft for 15 years. This remedy directly addressed the CMA's cloud gaming concerns while preserving the core strategic rationale of the acquisition.

The CMA accepted the revised deal on 13 October 2023, allowing the transaction to close the same day.

Timeline

Date	Event
18 Jan 2022	Announcement

Dec 2022	FTC files challenge
26 Apr 2023	CMA blocks
15 May 2023	Commission approves
10 Jul 2023	District court denies FTC injunction
22 Sep 2023	Microsoft proposes Ubisoft divestiture
13 Oct 2023	CMA accepts; deal closes
7 May 2025	Ninth Circuit affirms
22 May 2025	FTC withdraws challenge

Our View

The same transaction was deemed “fundamentally pro-competitive” by the European Commission but anticompetitive by the CMA. Jurisdictions have differing views on the efficacy of behavioural remedies, so parties need to plan for scenarios where one regulator blocks while others approve, and how to structure deals to survive fragmentation.

Deal protection mechanisms must account for extended timelines. The reverse termination fee structure protected Activision shareholders from regulatory failure risk, while the absence of a hell-or-high-water provision preserved Microsoft's ability to walk away rather than accept unlimited remedies.

Microsoft divested cloud streaming rights to Ubisoft, accepted ongoing CMA undertakings, and spent nearly two years fighting regulators across

three continents. The total cost including the acquisition itself reportedly reached \$75.4 billion. Whether the deal's strategic rationale survives these concessions remains to be seen as Microsoft integrates Activision Blizzard's operations.

Editors: Pericles Cross, Jonathan Smith

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