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ANTITRUST AND AMBITIONS: MICROSOFT'S ACTIVISION MERGER

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I. ABSTRACT

Microsoft's colossal \$68.7 billion acquisition of gaming giant Activision Blizzard in 2022 is poised to redefine the gaming industry. This analysis explores the deal's implications, including antitrust concerns, data privacy, workplace culture, and its potential impact on consumers and the gaming market. While the acquisition has the potential to bring forth innovations, it also raises questions about competition, data security, and the future of gaming.

II. INTRODUCTION

The gaming industry, a realm of innovation, competition, and entertainment, witnessed a seismic shift in January 2022 with Microsoft's audacious acquisition of Activision Blizzard for a staggering \$68.7 billion. This acquisition, the largest in the history of the gaming world and one of the most momentous in the broader landscape of mergers and acquisitions (M&A), set in motion a cascade of implications that reverberate through the industry and beyond. In this comprehensive analysis, we embark on an intricate journey through the multifaceted dimensions of this historic deal, dissecting its significance, evaluating the antitrust implications, scrutinizing data privacy and security concerns, pondering over workplace culture implications, and delving into Microsoft's commitments aimed at addressing both regulatory and critical concerns.

This analysis doesn't merely serve as an exploration of a corporate transaction; it is a probing of the very foundations of the gaming universe, where gamers, developers, and regulators alike are vested with a stake in the outcome. From the convergence of gaming giants to the cloud gaming advancements, this acquisition carries the potential

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to reshape how we experience and engage with video games. However, it is not without its challenges, with antitrust concerns, data privacy intricacies, and workplace culture issues casting a long shadow over this monumental deal.

As regulators worldwide scrutinize the implications of this acquisition, the industry stands at a crossroads. It is a juncture where potential benefits, such as greater innovation and consumer choice, must be weighed against the risks of market consolidation and diminished competition. Microsoft's promises to safeguard data privacy, uphold workplace standards, and foster competition underscore the gravity of the issues at hand. This acquisition, one that unfolds on a grand stage, has placed the gaming world on the cusp of transformation. The outcome is uncertain, but one fact remains crystal clear: Microsoft's acquisition of Activision Blizzard is more than a business transaction; it is a defining moment in the history of gaming.

A. Research Statement

Microsoft's acquisition of Activision Blizzard is a complex deal with far-reaching implications for the video game industry, both positive and negative. Regulators and other stakeholders must carefully monitor the situation to ensure that the acquisition benefits consumers, developers, and the industry as a whole. This research statement summarizes the central argument of the paper, which is that the Microsoft-Activision Blizzard acquisition is a complex deal with both potential benefits and risks. The paper goes on to discuss the potential implications of the deal for competition, innovation, and the broader industry landscape. It also emphasizes the importance of careful regulatory oversight and corporate responsibility in ensuring that the acquisition benefits the gaming industry as a whole.

III. ANTITRUST IMPLICATIONS OF THE ACQUISITION

The Microsoft-Activision Blizzard acquisition has raised significant antitrust concerns, prompting regulators around the world to scrutinize its potential impact on competition and consumers. The antitrust implications are complex and multifaceted, and they encompass several key areas of concern:

1. Market Power and Consolidation:

One of the primary antitrust concerns is the significant increase in market power that Microsoft would gain through this acquisition. Microsoft is already a major player in the video game industry, with its Xbox console and Windows PC gaming platform. Activision Blizzard, as a major video game publisher, holds a substantial share of the market with popular franchises like Call of Duty, World of Warcraft, and Candy Crush. The acquisition of Activision Blizzard would give Microsoft control over a substantial portion of the video game market, raising concerns that it could reduce competition. The potential consequences of this consolidation include:

- **Higher Prices:** With reduced competition, Microsoft could potentially raise prices for video games, consoles, and related services, leading to increased costs for consumers.
- **Lower Quality Products and Services:** A lack of competition could diminish the incentive to innovate and provide high-quality products and services, potentially resulting in a stagnation of the industry.
- **Less Innovation:** Reduced competition might discourage the development of innovative gaming experiences and technologies, as there would be fewer incentives to push the boundaries of what's possible in gaming.

2. Vertical Foreclosure:

Microsoft's control over Activision Blizzard's games raises concerns about vertical foreclosure. Vertical foreclosure occurs when a company with significant market power restricts competitors' access to a critical input or distribution channel. In this context, Microsoft could potentially use its control over Activision Blizzard's games to foreclose rivals from competing in the video game market. For example, Microsoft could require game developers to exclusively use its Xbox console or Windows PC gaming platform to distribute their games. This could lead to a reduction in the number of games available on competing platforms, limiting consumer choice and potentially harming competitors.

3. Tying:

Tying² is another antitrust concern associated with this acquisition. Tying occurs when a company forces customers to purchase one product or service to gain access to another product or service. In this case, Microsoft could tie Activision Blizzard's games to its other products and services, such as its Xbox console, Windows PC gaming platform, or Azure cloud computing platform. By requiring consumers to purchase Microsoft products and services to access Activision Blizzard's games, Microsoft could potentially stifle competition and limit consumer choice. This could be particularly concerning if it results in consumers being locked into Microsoft's ecosystem.

4. Antitrust Regulators' Scrutiny:

Antitrust regulators around the world are closely examining the acquisition to determine its potential impact on competition and consumers. For example:

- The U.S. Federal Trade Commission (FTC) has filed a lawsuit to block the deal, arguing that it would harm competition and consumers³.
- The European Commission is conducting an in-depth review of the acquisition to assess its effects on competition in the European market.⁴
- The UK Competition and Markets Authority (CMA) expressed initial concerns about the deal and is conducting its own investigation.⁵

The outcome of these antitrust reviews is uncertain, but it is evident that the antitrust implications of the acquisition are substantial and could have a profound influence on the video game industry and consumers. Antitrust regulators will need to weigh the potential benefits, such as increased investment in new games and technologies, against the potential harms, including reduced competition and higher prices for consumers.

² US Department of Justice: "Antitrust Enforcement Guidelines for the Licensing of Intellectual Property" (2017)

³ <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-block-microsoft-corps-acquisition-activision-blizzard-inc>

⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6578

⁵ https://assets.publishing.service.gov.uk/media/634536048fa8f5153767e533/MSFT.ABK_phase_1_decision_-_1.09.2022.pdf

IV. DATA PRIVACY AND SECURITY IMPLICATIONS OF THE ACQUISITION

Microsoft's acquisition of Activision Blizzard carries significant data privacy and security implications, given the vast amount of user data collected by both companies. This acquisition raises concerns about how Microsoft will handle and protect user data, and these concerns extend to various aspects:

1. Data Aggregation:

Microsoft and Activision Blizzard are both data-intensive companies, gathering a substantial amount of information from their users. The acquisition means that Microsoft will gain control over an even larger pool of user data. The increased data aggregation potential is a critical concern. Data aggregation is the process of combining data from different sources to create comprehensive user profiles. This aggregated data can be used for various purposes, including targeted advertising, credit scoring, and other data-driven decision-making processes. The risk of extensive data aggregation could raise privacy concerns among users.

2. Data Misuse:

A critical concern is the potential misuse of user data. Microsoft's control over Activision Blizzard's data opens the door to various uses of this data, and concerns arise regarding how it might be employed:

- **Targeted Advertising:** Microsoft could use the data to develop more targeted advertising, potentially leading to a more invasive advertising experience for users. This could include displaying ads based on gaming habits, personal preferences, or other user data.
- **Competitive Advantage:** Microsoft could employ the data to gain a competitive edge over rivals. For instance, it might use insights from user data to refine its gaming services, content recommendations, or game development strategies, potentially disadvantaging other players in the industry.

3. Data Security and Breach Risks:

Both Microsoft and Activision Blizzard have experienced data breaches in the past. The acquisition increases the risk of future data breaches, as Microsoft will now oversee an even larger dataset. Data breaches can expose sensitive user information, potentially leading to identity theft, financial fraud, or other malicious activities. Safeguarding this expanded volume of data from cyberattacks and unauthorized access becomes a paramount concern. Users entrust these companies with their personal information and financial details, and any breach could have severe consequences.

4. Microsoft's Commitments:

To address these data privacy and security concerns, Microsoft has made certain commitments:

- **Data Separation:** Microsoft has stated that it will not merge Activision Blizzard's data with its own data without users' consent. This commitment is intended to prevent the indiscriminate aggregation of user data and maintain a level of separation between the two companies' datasets.
- **User Data Protection:** Microsoft has pledged to protect user data and respect privacy. Users are concerned that their data could be used for purposes that violate their privacy or security, and this commitment is meant to allay such fears.
- **Transparency and User Control:** Microsoft has committed to providing users with greater control over their data. This includes enabling users to have a say in how their data is used and ensuring transparency about data collection and utilization practices.

While these commitments are intended to address data privacy and security concerns, skeptics argue that they may not go far enough in mitigating the potential risks associated with the acquisition. Microsoft's ability to uphold these commitments effectively remains a subject of ongoing scrutiny by both regulators and users.

V. WORKPLACE CULTURE IMPLICATIONS OF THE ACQUISITION

The workplace culture implications of Microsoft's acquisition of Activision Blizzard are a critical facet of the deal, given the well-documented workplace issues at Activision Blizzard. This acquisition has the potential to either exacerbate or ameliorate these concerns, and the following aspects underscore its significance:

1. Toxic Work Environment:

Activision Blizzard has faced extensive criticism for fostering a toxic and discriminatory workplace culture. Allegations of sexual harassment, discrimination, and a lack of diversity and inclusion have marred the company's reputation. The acquisition by Microsoft has sparked concerns that it could legitimize and perpetuate this culture, given Microsoft's influential role in the tech and gaming industries.⁶

2. Union Busting:

Another controversial issue surrounding Activision Blizzard has been its alleged union-busting practices, with claims that it has attempted to prevent its employees from forming a union. Critics argue that Microsoft's acquisition could hinder the efforts of Activision Blizzard employees to unionize and improve their working conditions. The power dynamics within the newly formed entity may influence the ability of employees to advocate for their rights.

3. Diversity and Inclusion:

Activision Blizzard has faced criticism for its lack of diversity and inclusion in the workplace. The concern is that Microsoft's acquisition of Activision Blizzard could hinder efforts to rectify this issue. The integration of the two companies could affect the progress made in promoting diversity and inclusion in the gaming industry.

4. Microsoft's Commitments:

Microsoft has taken steps to address these workplace culture concerns in the wake of the acquisition:

- **Improving Workplace Culture:** Microsoft has publicly committed to improving workplace culture at Activision Blizzard. It has acknowledged the

⁶ <https://www.washingtonpost.com/video-games/2021/08/06/blizzard-culture-sexual-harassment-alcohol/>

existing issues and stated its dedication to creating a more inclusive and equitable work environment.

- **Hiring a Diversity and Inclusion Expert:** Microsoft has taken the notable step of hiring a diversity and inclusion expert to lead its efforts in enhancing workplace culture at Activision Blizzard. This demonstrates a tangible commitment to fostering a more inclusive atmosphere.
- **Accountability for Past Mistakes:** Some critics argue that Microsoft needs to do more to hold Activision Blizzard accountable for its past mistakes and make amends. This includes addressing the fallout from prior incidents and ensuring that those responsible are held accountable.

However, these commitments are not without skepticism, and some argue that they might not be adequate to address the deep-seated workplace culture issues within Activision Blizzard.

VI. POTENTIAL BENEFITS AND RISKS OF MICROSOFT'S ACQUISITION OF ACTIVISION BLIZZARD⁷

Microsoft's acquisition of Activision Blizzard, a colossal deal in the gaming industry, carries both potential benefits and risks for various stakeholders, including consumers, developers, and the industry as a whole. This comprehensive analysis outlines these potential advantages and disadvantages.

- **Potential Benefits:**

1. **Increased Investment in Innovation:**

Microsoft has pledged to invest significantly in Activision Blizzard's game development capabilities. This commitment is expected to lead to the creation of new and innovative games, as well as enhancements to existing ones. Gamers can anticipate a richer and more diverse gaming experience.

2. **Lower Prices for Consumers:**

⁷ Fabian Ziermann, Assessing the World's Largest Gaming Acquisition under EU Competition Law, Vol. 14, No. 4, *Journal of European Competition Law & Practice*, 203, 211-219 (2023).

Microsoft has asserted its commitment to making Activision Blizzard's games more affordable. This could result in lower prices for consumers, especially if Microsoft bundles Activision Blizzard's games with its own products and services, such as Xbox Game Pass. Gamers may enjoy a more cost-effective gaming ecosystem.

3. More Choice and Flexibility:

Microsoft has declared that certain Activision Blizzard games will remain available on competing platforms. This promises consumers more choice and flexibility in how they access and play their favorite games, regardless of their gaming platform preference.

- **Potential Risks:**

1. Reduced Competition:

A significant concern is that the acquisition might reduce competition in the video game market. Microsoft is already a major player, and the addition of Activision Blizzard would further consolidate its market power. This consolidation could lead to higher prices, a reduction in product and service quality, and less incentive for innovation. Smaller game developers may face increased barriers to entry and competition.

2. Limited Platform Choice:

Microsoft could choose to make certain Activision Blizzard games exclusive to its own platforms, including Xbox consoles and Windows PC. Such a move would limit consumers' choices and potentially force them to switch to Microsoft's platforms to play these exclusive games, undermining the principle of platform neutrality.

3. Data Privacy and Security Concerns:

The acquisition would grant Microsoft control over a substantial amount of user data, leading to concerns about how this data will be managed and safeguarded. Users may fear data breaches or unauthorized use of their personal information. Data privacy and security concerns could erode user trust.

4. Workplace Culture Concerns:

Activision Blizzard has faced criticism for its toxic and discriminatory workplace culture. There are apprehensions that Microsoft's acquisition might not effectively address these issues, potentially perpetuating an unhealthy work environment. This could impact employee well-being and creativity.

VII. COMPETITION, INNOVATION, AND INDUSTRY LANDSCAPE IMPLICATIONS OF MICROSOFT'S ACQUISITION OF ACTIVISION BLIZZARD

Microsoft's acquisition of Activision Blizzard is poised to have profound implications for competition, innovation, and the broader landscape of the video game industry. This comprehensive analysis dissects the potential impacts on these crucial dimensions.

A. Competition:

1. Market Consolidation:⁸

One of the primary concerns surrounding the acquisition is its potential to reduce competition in the video game market. Microsoft is already a dominant player, and the acquisition of Activision Blizzard would further bolster its market power. This concentration could result in several adverse effects, including:

- **Higher Prices:** With reduced competition, Microsoft may have the ability and incentive to raise prices for its games, consoles, and services. Gamers might find themselves paying more for their favorite titles.
- **Lower Quality Products and Services:** Reduced competition often leads to decreased motivation for companies to invest in improving the quality of their products and services. Gamers might see a stagnation in the development of cutting-edge games and gaming technologies.

⁸ Fabian Ziermann, *Assessing the World's Largest Gaming Acquisition under EU Competition Law*, Vol. 14, No. 4, *Journal of European Competition Law & Practice*, 203, 206-211 (2023).

- **Less Innovation:** Competition is a catalyst for innovation. The diminished competitive landscape could result in fewer groundbreaking ideas and slower industry advancement.

2. Platform Neutrality Concerns:

Microsoft could decide to make certain Activision Blizzard games exclusive to its own platforms, such as Xbox consoles and Windows PC. This exclusivity may limit consumers' choices and force them to switch to Microsoft's ecosystem. This has the potential to:

- **Limit Consumer Choice:** Gamers who prefer other platforms may find themselves excluded from enjoying popular titles, reducing their gaming options.
- **Fragmentation:** The industry may become more fragmented, with exclusive games scattered across different platforms, potentially leading to gaming ecosystem silos.

B. Innovation:

1. Investment in New Games and Technologies:

Microsoft has committed to investing heavily in Activision Blizzard's game development capabilities. This investment is expected to foster innovation in several ways:

- **New Games:** Gamers can look forward to the creation of new and engaging games, leveraging the combined expertise of Microsoft and Activision Blizzard.
- **Technological Advancements:** Innovation isn't limited to games alone. The acquisition may accelerate the development of advanced gaming technologies, enhancing the overall gaming experience.
- **Improved Existing Titles:** Existing titles from Activision Blizzard might receive significant updates and improvements, rejuvenating popular franchises.

2. Cross-Platform Play:

Microsoft has expressed its intent to make Activision Blizzard's games more accessible to gamers on all platforms. This commitment to cross-platform play could drive innovation by:

- **Uniting Gaming Ecosystems:** Gamers on different platforms will be able to play together, fostering a more inclusive and expansive gaming community.
- **Enhancing Social Experiences:** Cross-platform play can lead to diverse social interactions and experiences, potentially making gaming more enjoyable.

C. Landscape of the Industry:

1. Increased Consolidation:

The acquisition is poised to lead to more consolidation within the video game industry. Microsoft's existing market presence, coupled with Activision Blizzard's extensive portfolio, reinforces the trend of larger entities dominating the market. This consolidation could:

- **Impede Smaller Developers:** Smaller and independent game developers may find it more challenging to compete in an environment increasingly dominated by industry giants.

2. Cloud Gaming Expansion:

Microsoft's Azure platform is a leader in cloud gaming, and the acquisition provides a significant advantage in this domain. This advantage can result in the expansion of cloud gaming, which may lead to:

- **More Cloud Gaming Services:** Gamers could see the emergence of additional cloud gaming platforms and services, expanding their gaming options.
- **Access to a Vast Library of Games:** The cloud gaming landscape might offer a more extensive library of games, providing a diverse selection for gamers.

3. Potential for More Exclusive Games:

Microsoft has the capability to make certain Activision Blizzard games exclusive to its platforms. This could have far-reaching implications, including:

- **Competitive Edge:** Microsoft's platforms may become more attractive to gamers due to exclusive titles, potentially increasing its market share.
- **Limiting Consumer Choices:** Gamers who prefer non-Microsoft platforms may face constraints, as they might be compelled to switch to access exclusive titles.

4. Potential for Higher Prices:

With increased market power, Microsoft may have the ability to charge higher prices for video games. Gamers might experience:

- **Increased Costs:** The cost of gaming could rise, affecting consumers who may need to allocate more of their budget to gaming.
- **Exclusivity Premium:** Exclusive games may come with premium pricing, and gamers who wish to access these titles may face higher entry costs.

VIII. CONCLUSION

Microsoft's acquisition of Activision Blizzard represents a monumental event in the video game industry, laden with both promise and peril. The multifaceted analysis of this acquisition has unveiled a complex interplay of factors that will sculpt the future of the industry. In the realm of competition, concerns of market consolidation and potential platform exclusivity loom large. The balance between the convenience of a unified gaming ecosystem and the risk of limiting consumer choices and innovation remains uncertain.

On the innovation front, Microsoft's commitment to investment in new games and technologies and enabling cross-platform play heralds exciting possibilities for gamers. Yet, the extent to which these promises materialize depends on execution and sustained commitment. The broader industry landscape is poised for significant change, with a likely trend towards increased consolidation. Smaller developers may find the competitive landscape more challenging, while cloud gaming is poised to expand, offering a richer gaming library. However, the potential for exclusive games may come at the cost of higher prices, impacting gamers' budgets.

Ultimately, the success or failure of this acquisition hinges on Microsoft's ability to navigate these potential pitfalls and seize the opportunities it offers. The industry's future lies at the nexus of competition, innovation, and consolidation. Vigilant regulatory oversight, consumer advocacy, and corporate responsibility will determine whether this transformative acquisition benefits or burdens the gaming world. The video game industry stands on the precipice of evolution, and Microsoft's acquisition of Activision Blizzard will undeniably leave an indelible mark on its trajectory. As gamers and industry enthusiasts watch with bated breath, the unfolding of this chapter will define the gaming landscape for years to come.

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