



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

June 9, 2022

The Honorable Elizabeth Warren
309 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your March 31, 2022 letter to the Federal Trade Commission (“FTC” or “Commission”) regarding the potential employee impact of the proposed acquisition of Activision Blizzard, Inc. by Microsoft.

I share your concern that monopsony power in labor markets may enable firms to harm workers in a host of ways, including through undermining their rights and dignity. Although antitrust law in recent decades generally has neglected monopsony concerns and harms to workers, I strongly believe that merger investigations must scrutinize the impact on labor markets.¹ Given that Activision disclosed in a March 21, 2022 securities filing that the FTC is conducting a review of the proposed transaction,² I am able to confirm that the FTC is investigating the proposed merger.³ Whenever the FTC initiates a merger review, we are committed to thoroughly examining effects on competition in all relevant markets for potential law enforcement action as appropriate.

The FTC and the Department of Justice are redoubling our commitment to ensuring we consider how unlawful mergers and conduct may harm workers. The agencies recently hosted a joint workshop focused on competition and labor markets,⁴ and our current joint public inquiry to consider revisions to the merger guidelines includes a request for public comments to inform

¹ Letter from Chair Lina M. Khan to The Honorable David Cicilline and The Honorable Ken Buck (Sept. 28, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596916/letter_to_cicilline_and_buck_for_sept_28_2021_hearing_on_labor_antitrust.pdf.

² Schedule 14A, Activision Blizzard, Inc. (Mar. 21, 2021), <https://www.law360.com/articles/1476134/attachments/0> (“On March 3, 2022, Activision Blizzard and Microsoft each received a request for additional information and documentary material (which we refer to as a ‘Second Request’) from the FTC in connection with the FTC’s review of the transaction.”).

³ Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy, 62 Fed. Reg. 18,630 (Apr. 16, 1997), https://www.ftc.gov/sites/default/files/documents/federal_register_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf.

⁴ Press Release, Fed. Trade Comm’n, FTC and DOJ to Hold Virtual Public Workshop Exploring Competition in Labor Markets (Oct. 27, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-doj-hold-virtual-public-workshop-exploring-competition-labor-markets>.

how to better address a merger's potential labor market effects.⁵ Additionally, the FTC is scrutinizing whether certain contractual provisions—including non-compete clauses and non-disclosure agreements—may constitute unfair methods of competition, and how unfair or deceptive practices may also harm workers.⁶

Thank you again for raising this subject. If you have any questions, please do not hesitate to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan
Chair, Federal Trade Commission

⁵ Press Release, Fed. Trade Comm'n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>.

⁶ Remarks of Chair Lina M. Khan at the Joint Labor Workshop of the Federal Trade Commission and the Department of Justice (Dec. 6, 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/remarks-chair-lina-m-khan-joint-labor-workshop-federal-trade-commission-department-justice>.