



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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Molly Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
James R. Browning Courthouse
95 Seventh Street
San Francisco, CA 04103

**RE: *FTC v. Microsoft Corp.*, No. 23-15992
(Argued Dec. 6, 2023 – Collins, Forrest, Sung, JJ.)**

Dear Ms. Dwyer:

The Federal Trade Commission writes to alert the Court to Microsoft’s announced price increases in the multi-game-subscription and cloud-gaming markets,¹ which the district court found relevant to the merger analysis. *See* FTC Br. 15, 31-34. Microsoft is raising the price for its “Game Pass Ultimate” product from \$16.99/month to \$19.99/month—a 17% year-over-year increase.

Additionally, Microsoft is discontinuing its \$10.99/month “Console Game Pass” product. Users of that product must pay 81% more to switch to “Game Pass Ultimate.” For consumers unwilling to pay 81% more, Microsoft is introducing a degraded product, “Game Pass Standard,” at \$14.99/month. This product costs 36% more than Console Game Pass, and withholds day-one releases. Product degradation—removing the most valuable games from Microsoft’s new service—combined with price increases for existing users, is exactly the sort of consumer harm from the merger the FTC has alleged. *Cmplt.* ¶29.

Microsoft’s price increases and product degradation—combined with Microsoft’s reduced investments in output and product quality via employee layoffs, *see* FTC’s February 7, 2024, Letter—are the hallmarks of a firm exercising market power post-merger. *See United States v. AT&T*, 916 F.3d 1029, 1045 (D.C. Cir. 2019) (“Vertical mergers can create harms beyond higher

¹ Tom Warren, [Microsoft is hiking the price of Xbox Game Pass Ultimate and launching a new ‘Standard’ tier](#) (The Verge July 9, 2024).

prices for consumers, including decreased product quality and reduced innovation”); *accord* Areeda & Hovenkamp, ANTITRUST LAW ¶¶501-502.

Importantly, Microsoft’s actions are inconsistent with Microsoft’s representations below. Microsoft’s price increases coincide with adding “Call of Duty” (CoD) to Game Pass’s most expensive tier, and discontinuing the Console tier will happen shortly before releasing CoD’s newest game. Below, Microsoft promised that “the acquisition would benefit consumers by making [CoD] available on Microsoft’s Game Pass on the day it is released on console (with no price increase for the service based on the acquisition).” ECF_108 at 20. Microsoft’s post-merger actions thus vindicate the congressional design of preliminarily halting mergers to fully evaluate their likely competitive effects, and judicial skepticism of promises inconsistent with a firm’s economic incentives. *See* FTC Br. 6-7, 62-65.

Respectfully submitted,

/s/ Imad Abyad
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FEDERAL TRADE COMMISSION

cc: Counsel of Record