

United States Senate
WASHINGTON, DC 20510

March 31, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Khan,

We are writing today regarding Microsoft’s proposed \$68.7-billion acquisition of Activision Blizzard, a merger that threatens worker-led demands for accountability and could create a dangerous precedent in the industry.¹ Workers at Activision Blizzard, following years of rampant sexual misconduct and discrimination and unfair labor practices, have led calls for greater transparency and accountability in the gaming industry,² and we are deeply concerned that this acquisition could further disenfranchise these workers and prevent their voices from being heard. As this proposed deal moves forward in the review process, the Federal Trade Commission (FTC) should assess whether the ways in which these companies have failed to protect the rights and dignity of their workers are driven by monopsony power or amount to anticompetitive harms in our labor market, and if so, if the merger will exacerbate these problems.

Activision Blizzard’s “frat boy” culture³ has come to light in recent years as regulators investigated allegations of sexual misconduct and discrimination, and Activision Blizzard employees have spoken up about their experiences at the company. In September 2021, Activision Blizzard agreed to pay \$18 million to settle allegations with the Equal Employment Opportunity Commission over gender-based harassment and retaliation at the company.⁴ Following an investigation that started in May 2020, the EEOC alleged that Activision Blizzard employees were subjected to “sexual harassment that was severe or pervasive to alter the conditions of employment,” and the company “failed to take corrective and preventative

¹ Polygon, “Activision Blizzard accused of ‘union-busting’ as Raven QA union hearing continues,” Nicole Carpenter, February 17, 2022, <https://www.polygon.com/22939657/activision-blizzard-raven-software-union-nlrh-hearing?s=09>.

² Slate, “Fun* and Games,” Aaron Mark, February 7, 2022, https://slate.com/technology/2022/02/activision-raven-union-video-games-testers-ga.html?utm_medium=social&utm_campaign=traffic&utm_source=article&utm_content=twitter_share.

³ Wall Street Journal, “SEC Is Investigating Activision Blizzard Over Workplace Practices, Disclosures,” Kirsten Grind and Sarah E. Needleman, September 20, 2021, https://www.wsj.com/articles/sec-is-investigating-activision-blizzard-over-workplace-practices-disclosures-11632165080?mod=article_inline.

⁴ Wall Street Journal, “Activision Blizzard Agrees to Pay \$18 Million to Settle EEOC Probe,” Kirsten Grind and Sarah E. Needleman, September 27, 2021, https://www.wsj.com/articles/activision-blizzard-agrees-to-pay-18-million-to-settle-eec-probe-11632784605?mod=article_inline.

measures.”⁵ Similarly, in July 2021, the California Department of Fair Employment and Housing filed a suit against Activision Blizzard alleging gender-based discrimination, harassment, and retaliation, with female employees “routinely subjected to unwanted sexual advances and other harassing conduct.”⁶ Since the lawsuit was filed, Activision Blizzard received “more than 500 reports from current and former employees alleging harassment, sexual assault, bullying, pay disparities and other issues.”⁷

Activision Blizzard is also facing a “wide-ranging” investigation from the Securities and Exchange Commission into its handling of sexual misconduct and discrimination that has enmeshed several senior executives including CEO Bobby Kotick.⁸ Despite Mr. Kotick’s professed ignorance, internal documents and interviews released in November 2021 showed that he was aware of several sexual misconduct issues, including alleged assaults, and failed to inform the board of directors or regulators.⁹ The *Wall Street Journal* reported that in 2019, Mr. Kotick explicitly intervened on behalf of an employee accused of sexual harassment against the recommendations of the human resources department, and that in 2020, he was aware of an email from 30 female employees alleging “unwanted touching, demeaning comments, exclusion from important meetings, and unsolicited comments on their appearance.”¹⁰ Former Activision Blizzard employee Jennifer Oneal, the first woman to lead one of the company’s business units, left in September 2021 after experiencing sexual harassment and discrimination, writing that “the company would never prioritize our people the right way.”¹¹

In addition to the allegations that Activision Blizzard fostered and protected a culture of sexual misconduct and discrimination, the company has been accused of exploiting quality assurance (QA) employees and abruptly laying off significant sections of their team.¹² QA workers, who are “undervalued and exploited,”¹³ frequently work 50- and 60-hour work weeks, for contracts

⁵ *Id.*

⁶ Wall Street Journal, “Activision Blizzard Gender-Bias Suit Shows Videogame Culture Remains a Flashpoint,” Sarah E. Needleman, July 26, 2021, https://www.wsj.com/articles/activision-blizzard-gender-bias-suit-shows-videogame-culture-remains-a-flashpoint-11627300325?mod=article_inline.

⁷ Wall Street Journal, “Activision CEO Bobby Kotick Knew for Years About Sexual-Misconduct Allegations at Videogame Giant,” Kirsten Grind, Ben Fritz, and Sarah E. Needleman, <https://www.wsj.com/articles/activision-videogames-bobby-kotick-sexual-misconduct-allegations-11637075680>.

⁸ Wall Street Journal, “SEC Is Investigating Activision Blizzard Over Workplace Practices, Disclosures,” Kirsten Grind and Sarah E. Needleman, September 20, 2021, https://www.wsj.com/articles/sec-is-investigating-activision-blizzard-over-workplace-practices-disclosures-11632165080?mod=article_inline.

⁹ Wall Street Journal, “Activision CEO Bobby Kotick Knew for Years About Sexual-Misconduct Allegations at Videogame Giant,” Kirsten Grind, Ben Fritz, and Sarah E. Needleman, <https://www.wsj.com/articles/activision-videogames-bobby-kotick-sexual-misconduct-allegations-11637075680>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Bloomberg, “Activision’s Call of Duty Game Testers Plan Walkout Over Job Cuts,” Jason Schreier, December 6, 2021, <https://www.bloomberg.com/news/articles/2021-12-06/activision-s-call-of-duty-warzone-qa-team-to-strike-at-raven-software>.

¹³ Polygon, “Activision Blizzard’s contract workers say they’re ‘crushed’ by toxic culture,” Nicole Carpenter, August 12, 2021, <https://www.polygon.com/22622396/activision-blizzard-toxic-culture-qa-customer-service-report>.

below the living wage of their locations.¹⁴ In December 2021, Activision Blizzard laid off “at least a dozen” QA contractors, over one-third of the studio’s QA testers, from their studio Raven Software.¹⁵ Contractors, who were previously told that the company was working towards a “pay restructure to increase their wages,” believed the jobs were permanent and reported relocating as far as Madison, Wisconsin for the role.¹⁶

The proposed acquisition appears to be a cynical and “opportunistic” attempt to capitalize off the systemic issues coming to light at Activision Blizzard.¹⁷ Just days after the Microsoft head of Xbox Phil Spencer said Microsoft was “evaluating all aspects of our relationship with Activision Blizzard”¹⁸ due to sexual misconduct at the company, Microsoft CEO Satya Nadella expressed interest in acquiring the company.¹⁹ While Microsoft capitalized on lower stock prices from the sexual misconduct disclosures, they also signaled that they were willing to prioritize profits over entrenched issues of gender-based discrimination in the organization.²⁰

Activision Blizzard employees have worked to bring the highlighted issues to light and advocate for change in the organization, progress that could be threatened by Microsoft’s proposed acquisition. Over 1,500 Activision Blizzard employees participated in a walk-out in response to the July 2021 California Department of Fair Employment and Housing lawsuit, calling for greater pay transparency and an audit of the human resources department.²¹ After Mr. Kotick’s cover-up of widespread issues at the company was revealed in November 2021, employees

¹⁴ Slate, “Fun* and Games,” Aaron Mak, February 7, 2022, https://slate.com/technology/2022/02/activision-raven-union-video-games-testers-qa.html?utm_medium=social&utm_campaign=traffic&utm_source=article&utm_content=twitter_share.

¹⁵ Washington Post, “Activision Blizzard lays off ‘Call of Duty’ contractors,” Shannon Liao, December 3, 2021, <https://www.washingtonpost.com/video-games/2021/12/03/raven-software-layoffs/>.

¹⁶ IGN, “Activision Blizzard Lays Off ‘At Least a Dozen’ Raven Software Quality Assurance Contractors,” Adam Bankhurst, December 5, 2021, <https://www.ign.com/articles/activision-blizzard-lays-off-at-least-a-dozen-raven-software-quality-assurance-contractors>.

¹⁷ CNBC, “Microsoft’s talks with Activision started days after report on sexual misconduct sent stock tumbling,” Jordan Novet, February 18, 2022, <https://www.cnbc.com/2022/02/18/microsofts-activision-talks-started-after-reporting-on-sex-misconduct.html>.

¹⁸ Bloomberg, Xbox Chief Says He’s Evaluating Relationship With Activision,” Jason Schreier, November 18, 2021, <https://www.bloomberg.com/news/articles/2021-11-18/xbox-chief-says-he-s-evaluating-relationship-with-activision>.

¹⁹ Engadget, “Microsoft opened Activision acquisition talks three days after CEO harassment report,” Igor Bonifacic, February 19, 2022, <https://www.engadget.com/microsoft-activision-blizzard-sec-filing-225923532.html>.

²⁰ CNN, “Microsoft makes a big bet that it can fix Activision Blizzard’s troubled culture,” Sara Ashley O’Brien, January 27, 2022, <https://www.cnn.com/2022/01/27/tech/activision-blizzard-microsoft-workplace-culture/index.html>.

²¹ Wall Street Journal, “Activision Employees Demonstrate Over Company’s Response to Harassment Suit,” Meghan Bobrowsky and Sarah E. Needleman, July 28, 2021, https://www.wsj.com/articles/activision-blizzard-details-steps-to-address-workplace-sexual-harassment-ahead-of-planned-walkout-11627457310?mod=article_inline; New York Times, “Activision, Facing Internal Turmoil, Grapples With #MeToo Reckoning,” Kellen Browning and Mike Isaac, July 29, 2021, <https://www.nytimes.com/2021/07/29/technology/activision-walkout-metoo-call-of-duty.html>.

conducted another walkout,²² and the “ABK Workers Alliance” advocated for a “Zero Tolerance Policy” for Mr. Kotick’s resignation, and for a third party review of the company.²³

Following Activision Blizzard’s layoffs of Raven Software QA workers, Activision Blizzard employees mobilized to demand that “every member of the QA team, including those terminated on Friday, must be offered full time positions.”²⁴ Shortly after the layoffs, Activision Blizzard and Raven Software QA workers began striking, and by January 2022, workers asked for voluntary recognition to form a union with the Communications Workers of America (CWA).²⁵

However, Microsoft’s proposed acquisition could interfere with Raven Software workers’ unionization push. Although Microsoft announced in March 2022 that it would not “stand in the way” if Activision Blizzard recognized the proposed union, this announcement appears to be little more than lip service. It provides no assurances of Microsoft’s promise, and is so vague that it leaves multiple ways for Microsoft to undermine the unionization process and its outcome. And the actions of both Activision Blizzard and Microsoft throughout the merger process undermine the value of this late-in-the-game statement.²⁶

Activision Blizzard has already declined to voluntarily recognize the union²⁷ and engaged in union-busting behavior by “reorganizing” the QA workers into an embedded model, splitting up the core group of employees in a clear barrier to the unionization effort.²⁸ CWA’s organizing director Tom Smith called the reorganization “nothing more than a tactic to thwart Raven QA workers who are exercising their right to organize” and condemned the company for launching an anti-union campaign and hiring an anti-union law firm.²⁹ In addition, in their 2022 proxy statement, Activision Blizzard committed to not “voluntarily recognize any labor union, works council or similar employee organization or enter into a collective bargaining agreement” absent Microsoft’s approval, adding a further barrier for workers’ organizing efforts.³⁰

²² Washington Post, “Over 100 Activision Blizzard employees stage walkout, demand CEO step down,” Shannon Liao, November 16, 2021, <https://www.washingtonpost.com/video-games/2021/11/16/activision-blizzard-kotick-walkout/>.

²³ Twitter, ABK Workers Alliance, November 16, 2021, <https://twitter.com/ABetterABK/status/1460671347382755329>.

²⁴ The Verge, “Call of Duty workers are walking out to protest layoffs,” Jay Peters, December 6, 2021, <https://www.theverge.com/2021/12/6/22820549/activision-blizzard-raven-software-layoffs-walkout-call-of-duty>.

²⁵ Slate, “Fun* and Games,” Aaron Mak, February 7, 2022, https://slate.com/technology/2022/02/activision-raven-union-video-games-testers-qa.html?utm_medium=social&utm_campaign=traffic&utm_source=article&utm_content=twitter_share.

²⁶ Washington Post, “Microsoft says it will respect outcome of Activision Blizzard union drive,” Shannon Liao, March 24, 2022, <https://www.washingtonpost.com/video-games/2022/03/24/microsoft-activision-union-statement/>.

²⁷ NPR, “Will Activision Blizzard workers unionize? Microsoft’s deal complicates thing,” Andrew Limbong, February 17, 2022, <https://www.npr.org/2022/02/17/1079253973/activision-blizzard-raven-union-microsoft>.

²⁸ Polygon, “Activision Blizzard accused of ‘union-busting’ as Raven QA union hearing continues,” Nicole Carpenter, February 17, 2022, <https://www.polygon.com/22939657/activision-blizzard-raven-software-union-nlrh-hearing?s=09>.

²⁹ *Id.*

³⁰ Securities and Exchange Commission, Activision Blizzard, Proxy Statement, 2022, <https://investor.activision.com/node/35101/html>.

Microsoft’s “opportunistic” merger proposal with Blizzard Activision during its crisis over weak worker protections³¹ and its own history with workers also present alarming signs for how Microsoft would treat Activision Blizzard employees. In 2014, 38 of Microsoft’s temporary workers in quality assurance successfully formed a union, only to see the company eliminate all of their jobs two years later.³² Despite a filing with the NLRB alleging that the “mass termination constituted illegal retaliation for union activism,”³³ Microsoft was largely able to crush the unionization attempt and successfully retaliate against the organizers.

In addition, the proposed merger has already impeded unionization efforts and undermined workers’ calls for accountability. Over 1,800 Activision Blizzard employees signed a letter calling on Mr. Kotick to step down from the organization, one of union organizers’ key demands.³⁴ However, Microsoft’s proposed deal with Activision Blizzard is protecting Mr. Kotick, keeping him in his role as CEO until at least 2023 and guaranteeing him hundreds of millions in profit and a potential additional golden parachute worth over \$14.5 million if he does not step down voluntarily.³⁵ This lack of accountability, despite shareholders, employees, and the public calling for Kotick to be held responsible for the culture he created, would be an unacceptable result of the proposed Microsoft acquisition.

Chair Khan recently stated that “[r]obust antitrust enforcement can help ensure that workers have the freedom to seek higher pay and better working conditions, and can help promote economic opportunity and widespread prosperity for all.”³⁶ Evaluating whether prospective transactions may harm our labor markets is a critical part of this enforcement, and our *Prohibiting Anticompetitive Mergers Act*³⁷ would require the antitrust agencies to keep workers front and center throughout any merger-review process. We are deeply concerned about consolidation in the tech industry and its impact on workers, and this proposed merger has already hurt workers at Activision Blizzard in their fight for a stable job and a safe working environment. The FTC should consider the history described above when assessing the anticompetitive effects that this gigantic merger may produce, and carefully determine the meaning of Microsoft’s promise to “not stand in the way” of unionization efforts. If the FTC determines that the transaction is likely

³¹ CNBC, “Microsoft’s talks with Activision started days after report on sexual misconduct sent stock tumbling,” Jordan Novet, February 18, 2022, <https://www.cnbc.com/2022/02/18/microsofts-activision-talks-started-after-reporting-on-sex-misconduct.html>.

³² Bloomberg, “Microsoft Bug Testers Unionized. Then They Were Dismissed,” Josh Eidelson and Hassan Kanu, August 23, 2018, <https://www.bloomberg.com/news/articles/2018-08-23/microsoft-bug-testers-unionized-then-they-were-dismissed>.

³³ *Id.*

³⁴ Washington Post, “‘Scorched earth’ and big profits: How embattled gaming titan Bobby Kotick outlasts his opponents,” Gus Garcia-Roberts and Shannon Liao, February 11, 2022, <https://www.washingtonpost.com/video-games/2022/02/11/bobby-kotick-activision-blizzard-microsoft-harassment/>.

³⁵ The Verge, “Read exactly how Microsoft’s \$68.7 billion deal for Activision Blizzard came together,” Jay Peters, February 18, 2022, <https://www.theverge.com/22941636/microsoft-activision-blizzard-acquisition-sec-filing-came-together>.

³⁶ Federal Trade Commission, “Making Competition Work: Promoting Competition in Labor Markets,” December 6, 2021, https://www.ftc.gov/system/files/documents/public_events/1597830/ftc-doj_day_1_december_6_2021.pdf.

³⁷ Congres.gov, S.3847 - Prohibiting Anticompetitive Mergers Act of 2022, <https://www.congress.gov/bill/117th-congress/senate-bill/3847?r=1&s=3>.

to enhance monopsony power and worsen the negotiating position between workers and the parties to this deal, we urge you to oppose it.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Bernard Sanders
United States Senator



Sheldon Whitehouse
United States Senator



Cory A. Booker
United States Senator