

NSR Policy: Meta Wins Within Case

By [Blair Levin](#) | February 1, 2023

What's New: In July, the FTC sued Meta to block its purchase of Within, the maker of Supernatural, a popular VR fitness app. Today, the judge in the case denied the FTC's petition for a preliminary injunction to block the transaction. The decision was sealed so we don't know how the judge came to his decision. The Judge separately issued a temporary restraining order blocking Meta from closing the transaction for a week to give time to the FTC to decide whether to appeal his ruling to the Ninth Circuit Court of Appeal. The FTC is also already pursuing the case concurrently under its internal ALJ.

Implications: Here are what we think are the major implications.

No new law. As we expected, Meta prevailed. We doubt there will be anything major from an antitrust law perspective.

- That is, attempting to block the deal was, as the FTC admitted, a stretch ([LINK](#)).
- The FTC had argued that even though the acquisition target was small, the transaction could be seen as leading to a monopoly down the road.
- Had the FTC won the case, it could have led to a large companies having second thoughts about acquiring any small companies.

What may matter are the reactions. While this decision and the transaction are not anything close to "game changers," the reactions could be.

- FTC Chair Khan had said she was willing to lose in anticipation that Congress will then see the need to change the law to enable challenges like this. However, we think it will have no impact on Congress and our view that Congress will not act to change antitrust law remains unchanged.
- We think the loss may affect the possibility that the FTC negotiates with Microsoft on the Activision deal.

- Khan may now be more reluctant to risk a second big defeat in court, increasing the odds of a negotiated deal. However, there are many variables, including how the EU and the UK Competition authorities deal with the merger.
- Note: we will soon be publishing a five-part series on the Microsoft/Activision review which will cover this development and other factors in the review.

Impact on companies.

Meta. In an odd way, it's a negative for Meta as it likely paid more for Within than it is worth.

- It further commits Meta to a sector that investors doubt will pay off.
- But it's a positive in that it opens the door to further transactions, particularly smaller transactions.
- We don't think the decision will have any bearing on the current FTC litigation against Meta for alleged illegal monopolization.

Amazon. It's a positive for Amazon, as it increases the odds of either the FTC or the courts allowing the company to proceed with the iRobot and One Medical deals or other small transactions.

Alphabet. It's a positive for Alphabet in opening the door to small transactions.

- We don't think the decision will have any bearing on the current DOJ and states' lawsuits against Google for search and ad-tech monopolization.

Other Big Companies. It's also a positive for other tech companies in that it keeps open the door for small acquisitions.

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