

# NSR Tech Policy: MSFT-ATVI: The Outcome

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New Street Research's Internet Policy Team is publishing a 5-part series of notes on the FTC's suit challenging the Microsoft-Activision merger.

In our first note ([LINK](#)), we examined the **case**: regulators' main concerns, MSFT's responses, the legal standards in key jurisdictions, and the role that "litigating the fix" might play in the outcome. Our second note examined the **global landscape**, focusing on international regulators' review of the merger ([LINK](#)). The third note looked at the **judge**: the FTC's decision to pursue the case in front of an administrative law judge in its own in-house administrative court, rather than in federal court. ([LINK](#)). The fourth note examined the **company**: how will MSFT respond to the steps regulators are taking to potentially block the deal? ([LINK](#)).

Today, in our final note, we provide our assessment of the most likely **outcome** of the case.

## Bottom line:

- With ATVI at a price of \$84.89, as of March 30th, the market values the likelihood of the deal closing at 66%.
- We believe that the market currently undervalues the likelihood that the MSFT-ATVI deal will close. As we have said since our initial review of the deal ([LINK](#)), the most likely outcome is a negotiated settlement, where MSFT is permitted to close the deal subject to conditions.
- The concessions in the deal will likely include (1) making Call of Duty available on rival consoles, including PlayStation, for a specified period of time (but at least 10 years) and with feature and release schedule parity, (2) a commitment to maintaining the quality of Call of Duty on rival consoles, and (3) a binding agreement to make any violations of these concessions enforceable in court. There is also a meaningful chance that the final settlement will include some commitments related to integration with other MSFT products, including its cloud product.

- MSFT has already publicly offered versions of some of these concessions, including to make Call of Duty available on PlayStation available for 10 years. It has also stated that it is willing to make the deal “easily enforceable.”

#### **Potential outcomes:**

There are several possible outcomes to the case.

- The deal closes without any concessions from MSFT and without litigation.
  - Likelihood: We view this outcome as extremely unlikely. If MSFT does not make additional concessions beyond the ones it has already offered, antitrust authorities will likely litigate the case to its conclusion.
- Regulators in the European Commission and the United Kingdom seek to block the deal, and the FTC proceeds to trial in August.
  - Likelihood: We view this outcome as less likely than others because we think MSFT will be able to offer concessions that are robust enough to get at least one regulator to agree to a settlement. Press reports suggest that at least the European Union is likely to reach a deal.
- MSFT reaches a negotiated outcome with one or more governments but is unable to reach a deal with all.
  - Likelihood: We view this outcome as the second most likely outcome. There is some chance that MSFT will be able to reach a deal with the European Commission or the United Kingdom, but the other regulator will deem the settlement to be unacceptable. If one of those two regulators seek to block the deal, we think the FTC will follow suit, litigating the case to its conclusion. Given the current politics in antitrust – where US regulators are concerned about seeming weaker than others – it is unlikely that the FTC will settle the case if both the European Commission and the United Kingdom seek to block it.
- MSFT reaches a negotiated outcome with the European Commission, the United Kingdom, and the United States.

- **Likelihood:** For the reasons discussed in more detail below, we believe this is the most likely outcome. If MSFT is able to reach a negotiated outcome with one major regulator, it will likely use that settlement as the foundation of a deal with other regulators.

#### **Predicted outcome:**

The most likely outcome is a negotiated settlement in which regulators allow the deal to close subject to meaningful concessions from MSFT.

It is likely that the concessions in the deal will include the following:

- making Call of Duty available on rival consoles, including PlayStation, for a specified period of time (but at least 10 years) and with feature and release schedule parity,
- a commitment to maintaining the quality of Call of Duty on rival consoles, and
- a binding agreement to make any violations of these concessions enforceable in court.

MSFT has already publicly offered versions of some of these concessions, including making Call of Duty available on PlayStation available for 10 years. It has also stated that it is willing to make the deal “easily enforceable.” As described in more detail in our fourth note in this series, MSFT has a variety of options for strengthening its concessions, such as extending its commitment to make Call of Duty available on PlayStation from 10 years to 15 ([LINK](#)).

There is also a meaningful chance that the final settlement will include some commitments related to integration with other MSFT products, including its cloud product. For instance, regulators might seek to restrict MSFT’s ability to integrate its Azure cloud service with its gaming services. MSFT will aim to avoid these types of restrictions, but may be willing to consider them if necessary to reach a settlement.

We think that the outcome will likely be determined on the other side of the pond: if the European Commission and United Kingdom reach a deal, then it is likely that the FTC will proceed with negotiations with similar terms. If either the Commission or the United Kingdom both pursue a block, then the FTC will likely continue

litigating the case. But overall, we think a settlement is more likely than a block because MSFT can offer concessions that address many of regulators' core concerns.

Our prediction here is subject to an important caveat. Events will shape how regulators review the deal. For instance, it's possible that the recent outcome in the Within case – the FTC declined to continue the case after a district court judge decided to deny the FTC's request for a preliminary injunction – will make Chair Khan more open to a settlement, since she may prefer a negotiated outcome to risk another loss in court.

Similarly, if other companies like Apple, Amazon, or Sony announce significant mergers in gaming or virtual reality, those potential shifts in the industry might change how a judge in the MSFT case would evaluate the gaming market and its competitiveness. Those shifts might impact the likelihood of a government win in court, and thus might make the government more or less likely to proceed with litigation.

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