

FEDERAL TRADE COMMISSION

-----X

In the Matter of:

MICROSOFT/ACTIVISION

-----X

File No. 221-0077

*** HIGHLY CONFIDENTIAL ***

INVESTIGATIONAL HEARING

HELD REMOTELY

DATE: OCTOBER 11, 2022

TIME: 11:28 a.m. Eastern Time

WITNESS: PHIL SPENCER

Reported by:
CANDIDA BORRIELLO
JOB NO. 6207032-001

Phil Spencer Highly Confidential
October 11, 2022

Page 2

1
2 A P P E A R A N C E S :
3
4 ON BEHALF OF THE FEDERAL TRADE COMMISSION:
5 Federal Trade Commission
6 600 Pennsylvania Ave., NW
7 Washington, D.C. 20580
8 (202) 326-3274
9 BY: JAMES WEINGARTEN, ESQ.
10 MERRICK PASTORE, ESQ.
11 JOONSUK LEE, ESQ.
12 TAYLOR ALEXANDER, ESQ.
13 MARIA CIRINCIONE, ESQ.
14 NICOLE CALLAN, ESQ.
15 EDMUND SAW, ESQ.
16 ETHAN GURWITZ, ESQ.
17 MICHAEL BLEVINS, ESQ.
18 MICHAEL FRANCHAK, ESQ.
19 MEREDITH LEVERT, ESQ.
20 CEM AKLEMAN, ESQ.
21 STEPHEN SANTULLI, ESQ.
22 AMANDA LEIGH BUTLER, ESQ.
23 E-MAIL: jweingarten@ftc.gov
24 mpastore@ftc.gov
25 jlee@ftc.gov
talexander@ftc.gov
mcirincione@ftc.gov
ncallan@ftc.gov
esaw@ftc.gov
sfrankovsky@ftc.gov
egurwitz@ftc.gov
mblevins@ftc.gov
mfranchak@ftc.gov
mlevert@ftc.gov
cakleman@ftc.gov
ssantulli@ftc.gov
abutler@ftc.gov

(Continued on next page.)

Page 3

1
2 ON BEHALF OF MICROSOFT AND THE WITNESS:
3 WILKINSON STEKLOFF LLP
4 2001 M Street, NW
5 10th Floor
6 Washington, D.C. 20036
7 (202) 847-4000
8 BY: BETH WILKINSON, ESQ.
9 ANASTASIA PASTAN, ESQ.
10 ANTHONY P. FERRARA, ESQ.
11 E-MAIL: bwilkinson@wilkinsonstekloff
12 apastan@wilkinsonstekloff.com
13 aferrara@wilkinsonstekloff.com
14
15 - and -
16
17 WEIL, GOTSHAL & MANGES LLP
18 2001 M Street, NW
19 Washington, D.C. 20036
20 (202) 682-7011
21 BY: ALEXANDRA M. AMPUDIA, ESQ.
22 MEGAN A. GRANGER, ESQ.
23 E-MAIL: alexandra.ampudia@weil.com
24 megan.granger@weil.com
25
26 ALSO PRESENT:
27
28 DAVE WARFORD
29 dave.warford@cb-bc.gc.ca
30
31 MATTHEW STATHEARN
32 matthew.strathearn@cb-bc.gc.ca
33 Canadian Competition Bureau
34
35 SAMUEL FRANKOVSKY, Paralegal
36 sfrankovsky@ftc.gov
37 Federal Trade Commission
38
39 (Continued on next page.)

Page 4

1
2 ALSO PRESENT:
3
4 JUDSON WHITE
5 Wilkinson Stekloff, LLP
6 DAVID SMUTNY
7 davidsmutny@microsoft.com
8 Microsoft
9 SAM PAILCA
10 spailca@microsoft.com
11 Microsoft
12 LINDA NORMAN
13 lnorman@microsoft.com
14 Microsoft
15
16
17
18
19
20
21
22
23
24
25

Page 5

1 P. Spencer - Highly Confidential
2 THE COURT REPORTER: We're now on
3 the record.
4 MS. WINKINSON: Good morning.
5 Beth Wilkinson on behalf of
6 Mr. Spencer and Microsoft.
7 We understand this is a remote
8 video recorded deposition and complies
9 with all the requirements, and we
10 agree that it's satisfactory.
11 P H I L S P E N C E R,
12 called as a witness, having been
13 duly sworn by a Notary Public,
14 was examined and testified as
15 follows:
16 EXAMINATION BY
17 MR. WEINGARTEN:
18 Q. Good morning, Mr. Spencer. My name
19 is James Weingarten. I'm an attorney with
20 the Federal Trade Commission, and I'm going
21 to be asking you some questions today.
22 You understand you're under oath
23 just as if you were in a court?
24 A. I do.
25 Q. And we're here today to hear your

Page 34

1 P. Spencer - Highly Confidential
2 in the gaming industry and what capabilities
3 we would need to have in order to be -- to
4 participate in gaming's transformation, and
5 we use the framing of the three Cs, content,
6 community and cloud, as shorthand for that
7 transformation.
8 Q. And has a new framework or framing
9 replaced content, community, cloud?
10 A. I think parallel you would see
11 phrases like putting the customer at the
12 center, going from device centric to customer
13 centric. These I would say are parallel
14 constructs to content, community and cloud
15 that try to articulate the transitions we see
16 the gaming industry going through, and
17 content, community and cloud would be one of
18 those, but not the only one. If you looked
19 at our strategy documents, I think you would
20 see many of these phrases show up, sometimes
21 all of them, sometimes one or the other,
22 really thinking about in trying to clearly
23 communicate what our strategy is and maybe
24 even what our priorities are at this moment.
25 Q. So, is it fair to say that content,

Page 35

1 P. Spencer - Highly Confidential
2 community, cloud continues to be an accurate
3 description of the capabilities or offerings
4 that the gaming CSA is working towards?
5 A. In the long run, we seek content,
6 community and cloud to be important
7 components of the gaming platform that we're
8 trying to build, yeah. Yes.
9 Q. I've also seen reference to Xbox as
10 an ecosystem.
11 What does that mean, "ecosystem,"
12 in this context?
13 A. Without the context of actually
14 where you saw it, I might just say Xbox as a
15 place where our customers invest their time
16 and money.
17 Q. Okay. Fair that the ecosystem
18 includes the Xbox console products?
19 A. It includes the console, but not --
20 it's not exclusive to the console.
21 Q. Does the Xbox ecosystem include
22 Xbox products that are available on PC?
23 A. Yeah.
24 Q. And does the Xbox ecosystem include
25 Game Pass?

Page 36

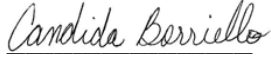
1 P. Spencer - Highly Confidential
2 A. Yes.
3 Q. Does the Xbox ecosystem include
4 xCloud?
5 A. Yes.
6 Q. And does it include the hardware
7 that is necessary to access Xbox products and
8 services?
9 A. Can you give me an example of that?
10 Q. Sure. Like a cloud, does the
11 ecosystem include a Microsoft cloud access
12 device?
13 A. The thing that a consumer might use
14 to access the game in the cloud, yes.
15 Q. I want to talk a little bit about
16 content.
17 What -- have you heard the term
18 "AAA title" with respect to video game
19 content?
20 A. I have.
21 Q. Okay. What is a AAA title?
22 A. I wouldn't say there's an industry
23 definition for what AAA actually means. I
24 think the notion of a AAA game is a game with
25 a high development budget with presumably a

Page 37

1 P. Spencer - Highly Confidential
2 high expectation for -- for sales and kind of
3 splash when it launches.
4 Q. And I appreciate you said that's a
5 notion. Is that your notion of what a AAA
6 title is?
7 A. Yes.
8 Q. So, if we were to list the features
9 or characteristics of a AAA title, one is
10 high development cost; is that fair?
11 A. Yes.
12 Q. Any others?
13 A. The one I added was, which I think
14 would hold, is prior to launch a high
15 expectation for the market reception to the
16 game.
17 Q. And when you say "market
18 reception," do you mean revenues?
19 A. Yeah, players and revenue. Yes,
20 number of players, how much revenue the game
21 would drive.
22 Q. What are some common -- when you
23 think of a AAA title, what are some AAA
24 titles you think of?
25 A. I would -- I think of games like

Phil Spencer Highly Confidential
October 11, 2022

P. Spencer - Highly Confidential

1 C E R T I F I C A T E
2
3 STATE OF NEW YORK)
 : SS.:
4 COUNTY OF RICHMOND)
5
6 I, CANDIDA BORRIELLO, a Notary
7 Public for and within the State of New York,
8 do hereby certify:
9 That the witness, PHIL SPENCER,
10 whose examination is hereinbefore set forth
11 was duly sworn and that such examination is a
12 true record of the testimony given by that
13 witness.
14 I further certify that I am not
15 related to any of the parties to this action
16 by blood or by marriage and that I am in no
17 way interested in the outcome of this matter.
18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 12th day of October, 2022.
20 
21 CANDIDA BORRIELLO
22
23
24
25

P. Spencer - Highly Confidential

1 ERRATA SHEET FOR THE TRANSCRIPT OF:
2 Case Name: MICROSOFT/ACTIVISION
 INVESTIGATIONAL HEARING
3 Dep. Date: OCTOBER 11, 2022
 Deponent: PHIL SPENCER
4
5 Pg. Ln. Now Reads Should Read Reason
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
 PHIL SPENCER
20
21 SUBSCRIBED AND SWORN BEFORE ME,
22 This ___ day of _____, 20__.
23 _____
 Notary Public
24 My Commission Expires: _____
25