

FEDERAL TRADE COMMISSION

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In the Matter of:

MICROSOFT/ACTIVISION

-----X

File No. 221-0077

\*\*\* HIGHLY CONFIDENTIAL \*\*\*

INVESTIGATIONAL HEARING

HELD REMOTELY

DATE: OCTOBER 5, 2022

TIME: 11:31 a.m. Eastern Time

WITNESS: MATTHEW BOOTY

Reported by:  
CANDIDA BORRIELLO  
JOB NO. 6207019-001

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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 2001 M Street, NW

7 Washington, D.C. 20036

8 (212) 847-4044

9 BY: MICHAEL BLEVINS, ESQ.

10 MERRICK PASTORE, ESQ.

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15 (Appearances continued on next page.)

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1

2 ALSO PRESENT:

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5 Canadian Competition Bureau

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1

2 On Behalf of Microsoft and the Witness

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8 BY: RAKESH KILARU, ESQ.

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17 - and -

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22 (202) 682-7091

23 BY: NICOLE BOOTH, ESQ.

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1 M. Booty - Highly Confidential

2 THE COURT REPORTER: We're now on

3 the record.

4 The parties and counsel

5 participating in this matter

6 acknowledge that I am not physically

7 present and will be reporting this

8 hearing remotely.

9 They further acknowledge that, in

10 lieu of an oath administered in

11 person, the witness will verbally

12 declare his or her testimony in this

13 matter is under penalty of perjury.

14 The parties and their counsel

15 consent to this arrangement and waive

16 any objection to this manner of

17 reporting.

18 M A T T H E W B O O T Y,

19 called as a witness, having been

20 duly sworn by a Notary Public,

21 was examined and testified as

22 follows:

23 EXAMINATION BY

24 MR. BLEVINS:

25 Q. Good morning, Mr. Booty. How are

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1 M. Booty - Highly Confidential  
2 give you an example if you need.  
3 A. Well, sure, go ahead, please.  
4 Q. So, I'm clear on what I meant by  
5 brand, 'cause I don't know if it's the same  
6 term you use. But I'll think of Halo for  
7 instance. Halo Infinite, that launched,  
8 what, in maybe was it 2020.  
9 Does the name Halo carry with it --  
10 is that like an ingredient that will help  
11 sell more Halo games in the future?  
12 A. So, Halo Infinite launched this  
13 past December, so would've been December of  
14 2021 is when we launched that. But the name  
15 recognition of a game could be both a pro and  
16 a con. So, on the one hand it helps with  
17 consumer awareness, but also it raises the  
18 expectations of what the game needs to be.  
19 And so, the consumer expectation can be  
20 higher which then could raise the bar for  
21 what you need to achieve to be successful.  
22 So, I would say that it is -- it's  
23 not a straight advantage, it could be a pro  
24 or a con.  
25 Q. When you say "raise the bar," can

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1 M. Booty - Highly Confidential  
2 you explain what you mean by that?  
3 A. The consumers expect more  
4 complicated production values, more  
5 complicated technology, longer gameplay, more  
6 sophisticated story lines, those sorts of  
7 things.  
8 Q. Does that make a game more  
9 expensive to develop?  
10 A. It can, yes, it's not one to one,  
11 but it can.  
12 Q. How is it more expensive?  
13 A. Well, as technology of a game  
14 increases, for example, more software  
15 developers are needed to write the software.  
16 As the art becomes more complicated and photo  
17 realistic, more artists are needed as the  
18 game. For example, if the length of the game  
19 increases, there's just -- you need more  
20 content, which takes more time to develop.  
21 Q. Okay. I wanted to move into a  
22 couple different, like, just definitions so I  
23 better understand.  
24 One of the things I don't  
25 understand perfectly well is the difference

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1 M. Booty - Highly Confidential  
2 between the term developer and publisher.  
3 Can you explain the difference  
4 between those two for me?  
5 A. Yeah. There are not hard set  
6 industry definitions and some people might  
7 use these terms differently than I do. For  
8 us, a developer is a team or a studio  
9 directly creating assets for a game. So, it  
10 would be the actual game team that are the  
11 developer so that would mean writing the  
12 software, creating the art. A publisher is  
13 someone who provides the services for either  
14 funding or taking to market that game or  
15 both.  
16 So, like, publisher in our industry  
17 would be, for example, there's a group called  
18 embracer group who provides funding to game  
19 teams and then helps them take those games to  
20 market. They would be a publisher.  
21 We also use the phrase publisher to  
22 mean a group of game developers that don't  
23 have a game console or a platform. So, we  
24 would consider, for example, Electronic Arts  
25 a very large publisher, because they fund and

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1 M. Booty - Highly Confidential  
2 develop and bring to market a number of  
3 games.  
4 Q. That makes sense.  
5 When you say "we" in this context,  
6 are you referring to Microsoft?  
7 A. Yeah, I refer to Xbox. Yes, thank  
8 you.  
9 Q. Do you have any role with console  
10 development?  
11 A. One of my roles and one of the  
12 roles of our internal game studios is to give  
13 input to the early planning and design of a  
14 game console to represent the voice of the  
15 game developer and the features and  
16 technology that we think will be needed for  
17 the next generation of games.  
18 Q. Can you explain what the voice of  
19 the game developer means?  
20 A. We give input and opinions on what  
21 we think future technology and what future  
22 technology needs will be.  
23 Q. What other kind of input do you  
24 give for console development?  
25 A. We have access to early versions of

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2 MR. BLEVINS: And for the record,  
[REDACTED]

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1 M. Booty - Highly Confidential  
[REDACTED]

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1 M. Booty - Highly Confidential  
[REDACTED]

Page 57

1 M. Booty - Highly Confidential  
[REDACTED]

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1 M. Booty - Highly Confidential  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
13 Q. I understand.  
14 I've heard the term "second-party"  
15 used before.  
16 Are you familiar with that term?  
17 A. Yes.  
18 Q. Can you explain whether it's the  
19 same as co-development?  
20 A. They are two different terms. So,  
21 first-party refers to studios that we own.  
22 Third-party refers to studios that produce  
23 content and then bring them to our console.  
24 Second- party is a fuzzy term that usually  
25 refers to us entering into a marketing

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2 agreement or perhaps funding some of the  
3 game with an independent developer for them  
4 to bring it to our console. So, it sits just  
5 on the other side of third-party, where they  
6 are not entirely independent. We may take on  
7 some aspect of promoting the game or helping  
8 to fund it, but we're not at all involved in  
9 the direct development.  
10 It's a -- it's a construct that is  
11 somewhat out of date that we don't use very  
12 often anymore.  
13 Q. Second-party is a construct that's  
14 out of date?  
15 A. It is. It is. It's not something  
16 that we -- that we see very often anymore and  
17 the phrase has become kind of vague in use  
18 and in practice.  
19 Q. Why has it become out of date?  
20 A. Just industry trends. For a while,  
21 it was common to see people, again, entering  
22 into a marketing agreement or perhaps  
23 agreeing to fund part of a game, we just  
24 don't do that very often anymore. I probably  
25 could give you a bunch of details on why I

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1 M. Booty - Highly Confidential  
2 think that is, but it would be a long  
3 conversation.  
4 Q. Why do you think that is,  
5 Mr. Booty?  
6 A. Well, just that as game costs have  
7 gone up, people are more interested in having  
8 more control over those costs. If you're  
9 putting a small amount of money at risk for  
10 the developer, then you're willing to do a  
11 second-party agreement. But I would hesitate  
12 to put the kind of budgets that we see with  
13 games today, you know, in play without having  
14 more direct control.  
15 Q. Is it a matter of risk; is that  
16 fair to say?  
17 A. It's a matter of risk and it's also  
18 just a matter that marketing has also become  
19 less of a --  
20 THE COURT REPORTER: You broke up  
21 there. Less of a what?  
[REDACTED]  
[REDACTED]  
[REDACTED]

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2 Q. Why is that?  
3 A. Well, the promotion of a game has  
4 become dependent on digital, digital  
5 advertising, digital communities, digital  
6 word of mouth. A traditional advertising  
7 team that takes out television ads and  
[REDACTED]  
[REDACTED]  
10 Q. I apologize if you covered this,  
11 but I don't understand how that affects using  
12 a second-party game arrangement?  
13 A. So, again, a second-party  
14 arrangement is where someone has developed a  
15 game and they are looking for some sort of  
16 support to bring it to market. But they have  
17 largely already developed the game or are  
18 capable of developing it on their own, but  
19 they're looking for either marketing support  
20 or some level of funding and that is in  
21 contrast through a third-party deal where the  
22 publisher will fund and market and bring to  
23 market the game on their observe and they're  
24 just looking to bring it to our console or to  
25 our platform and that differs from

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2

3 J U R A T

4

5

6 I, MATTHEW BOOTY, do hereby

7 certify under penalty of perjury that

8 I have read the foregoing transcript

9 of my deposition taken on OCTOBER 5,

10 2022; that I have made such

11 corrections as appear noted herein in

12 ink, initialed by me; that my

13 testimony as contained herein, as

14 corrected, is true and correct.

15

16

17 \_\_\_\_\_

18 MATTHEW BOOTY

19

20 Subscribed and sworn to before me

21

22 This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

23

24 \_\_\_\_\_

25 NOTARY PUBLIC

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1 M. Booty - Highly Confidential

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK )

5 : SS.:

6 COUNTY OF RICHMOND )

7

8 I, CANDIDA BORRIELLO, a Notary

9 Public for and within the State of New York,

10 do hereby certify:

11 That the witness, MATTHEW BOOTY,

12 whose examination is hereinbefore set forth

13 was duly sworn and that such examination is a

14 true record of the testimony given by that

15 witness.

16 I further certify that I am not

17 related to any of the parties to this action

18 by blood or by marriage and that I am in no

19 way interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand this 10th day of October, 2022.

22

23 Candida Borriello

24 CANDIDA BORRIELLO

25

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2 -----I N D E X-----

3 WITNESS: MATTHEW BOOTY

4 EXAMINATION BY PAGE

5 MR. BLEVINS 5

6

7 -----E X H I B I T S-----

8

| 9 NUMBER          | DESCRIPTION                                    | PAGE |
|-------------------|--|------|
| 10 Exhibit PX1421 | E-mail chain, Bates MSFT-2R-03244989           | 37   |
| 11 Exhibit PX1497 | E-mail chain, Bates MSFT-2R-06972273           | 53   |
| 12 Exhibit PX1425 | E-mail with attachment, Bates MSFR-2R-06968677 | 98   |
| 13 Exhibit PX1486 | E-mail chain, Bates MSFT-2R-04829950           | 170  |
| 14 Exhibit PX1433 | E-mail chain, Bates MSFT-2R-08199447           | 204  |
| 15 Exhibit PX1444 | E-mail chain, Bates MSFT-2R-04798724           | 225  |
| 16 Exhibit PX1442 | E-mail chain, Bates MSFT-2R-00712144           | 245  |
| 17 Exhibit PX1450 | E-mail chain, Bates MSFT-2R-03264187           | 269  |

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2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name: MICROSOFT/ACTIVISION

4 Dep. Date: OCTOBER 5, 2022

5 Deponent: MATTHEW BOOTY

6

| 7 Pg. Ln. | Now Reads | Should Read | Reason |
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\_\_\_\_\_  
MATTHEW BOOTY

SUBSCRIBED AND SWORN BEFORE ME,

This\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_