

FEDERAL TRADE COMMISSION

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In the Matter of:

MICROSOFT/ACTIVISION

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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

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3
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(Continued on next page.)

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39 (Continued on next page.)

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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

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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,

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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?

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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

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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

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2 (Whereupon, a brief recess was
3 taken.)
4 THE COURT REPORTER: We're back on
5 the record.
6 BY MR. WEINGARTEN:
7 Q. Let's go back to PX1062, 1062 which
8 is the document we were looking at right
9 before the break.
10 Do you have that, sir?
11 A. I do.
12 Q. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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1 P. Spencer - Highly Confidential
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[REDACTED]
25 Q. You can put that game -- that

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2 document aside. Thank you.
3 When I ask about Game Pass, does
4 Game Pass also include within it other
5 subscription services? So, for example, when
6 I subscribe -- if I were to subscribe to Game
7 Pass, does that give me access within Game
8 Pass to also subscribe to another kind of
9 subscription service, for example, something
10 from EA or Epic or something like that?
11 A. If you subscribe to Game Pass
12 Ultimate today, you get a subscription to EA
13 Access, I believe is the name of their
14 subscription, as part of your Ultimate
15 subscription.
16 Q. So, are there any other
17 subscription services that are included
18 inside Game Pass like the one from EA that
19 you mentioned?
20 A. We have done cross-promotion on
21 subscriptions with subscriptions like a
22 Spotify or a Disney Plus or a Paramount,
23 they're usually time based, but there have
24 been instances where you get a promotion,
25 either get Game Pass for some amount of time

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2 if you subscribe to them or vice versa. But
3 nothing in perpetuity.
4 Q. And when you talk about Disney or
5 Spotify, do you mean -- subscribe to Game
6 Pass and you'll also get a subscription to go
7 to Disney, and maybe you're going to Disney
8 on your Roku or through your TV or do you
9 mean Disney Plus is inside Game Pass?
10 A. No, it would be if you are a Game
11 Pass subscriber or -- it depends on the
12 promotion or signed up for Game Pass now,
13 maybe you get two months of access, as I'm
14 just using it as an example, to Disney Plus.
15 You could access on any device, Xbox has
16 Disney Plus app, but it wouldn't be specific
17 to access on any specific device. It would
18 just be a cross-promotion between two
19 subscriptions.
20 So, just for completeness, when you
21 ask me about are there other subscriptions
22 that can have links to Game Pass, that's how
23 the others have occurred.
24 Q. Okay. And I want to understand, is
25 the EA subscription relationship different

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C E R T I F I C A T E

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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 *Candida Borriello*
21
22 CANDIDA BORRIELLO
23
24
25

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ERRATA SHEET FOR THE TRANSCRIPT OF:

1
2 Case Name: MICROSOFT/ACTIVISION
INVESTIGATIONAL HEARING
3 Dep. Date: OCTOBER 11, 2022
Deponent: PHIL SPENCER
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5 Pg. Ln. Now Reads Should Read Reason
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20 PHIL SPENCER
21
22 SUBSCRIBED AND SWORN BEFORE ME,
This ___ day of _____, 20__.
23
24 Notary Public
My Commission Expires: _____
25