



June 30, 2022

Lina Khan  
Chair  
Federal Trade Commission

Noah Joshua Phillips  
Commissioner

Rebecca Kelly Slaughter  
Commissioner

Christine S. Wilson  
Commissioner

Alvaro Bedoya  
Commissioner

CC: Director Holly Vedova, FTC Bureau of Competition; Director Sam Levine, FTC Bureau of Consumer Protection

Dear Chair Khan and Commissioners,

I am writing to provide you an update on the position of the Communications Workers of America on Microsoft's proposed acquisition of Activision Blizzard.

As stated in a March 22 letter to you signed by CWA and other stakeholder advocates, labor monopsony is pervasive in our economy today and can be exacerbated by mergers that increase employer market power. We recognize and appreciate the current Commission's commitment to examine labor market impacts of mergers. As the FTC and DOJ work to update the merger guidelines, we hope the agencies will commit to undertake robust investigations of downstream labor market harms that have been neglected for so long and recognize the critical role that workers' countervailing bargaining power can play in balancing the scales.<sup>1</sup> CWA wrote in our submission to the recent request for comment on how the agencies can modernize enforcement of the antitrust laws regarding mergers, "The importance of collective bargaining for mitigating employer market power should be recognized and incorporated in the merger review process."<sup>2</sup>

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<sup>1</sup> An October 2016 issue brief on labor monopsony from the Council of Economic Advisors pointed to literature finding that "By providing an important counterweight to bargaining leverage and the unilateral exercise of monopsony power, unions may promote higher wages, better working conditions, and even more efficient levels of employment." [https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025\\_monopsony\\_labor\\_mrkt\\_cea.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf)

<sup>2</sup> Communications Workers of America, Request for Information on Merger Enforcement by the Federal Trade Commission and Department of Justice, Docket No. FTC-2022-0003, <https://cwa-union.org/news/releases/cwa-urges-ftc-doj-prioritize-labor-market-impacts-agencies-prepare-overhaul-corporate>.

We now support approval of the transaction before you because Microsoft has entered an agreement with CWA to ensure the workers of Activision Blizzard have a clear path to collective bargaining.<sup>3</sup> Microsoft's binding commitments will give employees a seat at the table and ensure that the acquisition of Activision Blizzard benefits the company's workers and the broader video game labor market.

This labor-management compact is particularly groundbreaking and important because it reflects a shared understanding that the current labor law regime does not deliver on the rights it professes to guarantee. Workers who seek to form unions in the United States today face severe barriers to exercising basic rights of freedom of association, with frequent firings of union supporters well-documented but not discouraged through any meaningful consequences.<sup>4</sup>

As explained by Emily Knief, a senior motion graphic designer who is part of the workers' organization A Better ABK, to *The Observer*, "[The agreement between Microsoft and CWA] is huge and absolutely game-changing. ABK employees will have an easy path to recognition and easier access to collective action."

The Activision workers' current path to collective bargaining has been obstructed by management intransigence at every turn. With CWA's support, the workers have filed a number of unfair labor practice charges with the NLRB alleging that Activision executives have prohibited employees from communicating about ongoing investigations of sexual harassment and working conditions, and threatened or disciplined employees on account of protected concerted activity.<sup>5</sup> In May, the NLRB confirmed that it found merit to allegations that Activision Blizzard allegedly threatened employees for discussing working conditions, wages, and ongoing investigations under the guise of an "overly broad social media policy."<sup>6</sup>

When quality assurance testers at Activision Blizzard subsidiary Raven studio sought to form a union and requested voluntary recognition, management refused and instead attempted to stymie workers' ability to achieve certification of their union with multiple aggressive tactics now under investigation by the NLRB.<sup>7</sup>

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<sup>3</sup> Communications Workers of America, "CWA, Microsoft Announce Labor Neutrality Agreement," Press Release, June 13, 2022, <https://cwa-union.org/news/releases/cwa-microsoft-announce-labor-neutrality-agreement>.

<sup>4</sup> Barry Eidlin, "It's all too easy for employers to interfere in union elections," *The Washington Post*, April 23, 2021, [https://www.washingtonpost.com/outlook/its-all-too-easy-for-employers-to-interfere-in-union-elections/2021/04/23/f2378ca6-a2d1-11eb-85fc-06664ff4489d\\_story.html](https://www.washingtonpost.com/outlook/its-all-too-easy-for-employers-to-interfere-in-union-elections/2021/04/23/f2378ca6-a2d1-11eb-85fc-06664ff4489d_story.html).

<sup>5</sup> Communications Workers of America, "Employees of Activision Blizzard File Unfair Labor Practice Charge Against the Gaming Company," September 14, 2022, <https://cwa-union.org/news/releases/employees-of-activision-blizzard-file-unfair-labor-practice-charge-against-gaming>; Communications Workers of America, "Communications Workers of America Files Second Unfair Labor Practice Charges Against Activision Blizzard Over Threatening Employee's Protected Speech," April 29, 2022, <https://cwa-union.org/news/releases/communications-workers-of-america-files-second-unfair-labor-practice-charges-against>.

<sup>6</sup> Josh Eidelson, *Bloomberg*, "Activision Illegally Threatened Staff, Labor Officials Find," May 23, 2022, <https://www.bloomberg.com/news/articles/2022-05-23/activision-illegally-threatened-staff-us-labor-officials-find>.

<sup>7</sup> Communications Workers of America, "Statement from CWA, Game Workers Alliance (CWA) Following National Labor Relations Board Hearing," February 16, 2022, <https://cwa-union.org/news/releases/statement-cwa-game-workers-alliance-cwa-following-national-labor-relations-board>; Mikhail Klimentov and Shannon Liao, *The Washington Post*, "NLRB ruling gives green light to Raven Software union vote," April 22, 2022, <https://www.washingtonpost.com/video-games/2022/04/22/raven-nlr-ruling/>.

The Raven QA workers persevered and now they are headed to the bargaining table where they have the ability to exchange proposals, discuss market conditions, and share first-hand experiences between workers and management. The outcome will be a better workplace that can lead the industry in high-road practices that incorporate worker voice.

The National Labor Relations Act preamble enshrines in federal law that it is the policy of the US government to “encourag[e] the practice and procedure of collective bargaining and [protect] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.” On the basis of CWA’s agreement with Microsoft, workers can now be assured that this transaction will not undermine that legal principle or the broader antitrust laws pertaining to labor markets.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher M. Shelton". The signature is fluid and cursive, with a prominent initial "C" and "S".

Christopher Shelton  
President  
Communications Workers of America