

**PUBLIC VERSION**

**NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION 66 OF THE COMMERCE ACT 1986**

13 June 2022

The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to s 66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

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### 1. EXECUTIVE SUMMARY

#### The Proposed Transaction

1.1 On 18 January 2022, Microsoft Corporation via a wholly owned subsidiary agreed to acquire the gaming company, Activision Blizzard Inc. (together, the "**Parties**") ("**Proposed Transaction**").

1.2 The Proposed Transaction concerns the video gaming industry. Video games are electronic games played by manipulating images on an electronic display. Consumers (gamers) play and interact with games on three main categories of electronic devices: personal computers ("**PCs**"), game consoles, and mobile devices like smartphones and tablets. Gamers access games either by installing them onto their device through a digital download or physical disc, or streaming from a remote server ("**in the cloud**"). The former is the predominant method, but streaming is anticipated to grow in the future. Some games need to be bought upfront ("**buy-to-play**"), others are provided for free ("**free-to-play**") and monetised either by in-game purchases or in-game advertisements, and gamers may also pay for content through subscriptions (either to an individual game or to a library offering multiple different games).

1.3 For the reasons set out in this application, the Proposed Transaction will not result in a substantial lessening of competition in any market in New Zealand. That is for the following reasons:

#### **There is no potential for the Proposed Transaction to give rise to horizontal effects**

1.4 **Video game development and publishing:** Regardless of how the market is defined, Microsoft and Activision Blizzard are small players in a highly fragmented publishing space.

(a) The merged entity would have a low combined share post-merger of only [ ]% globally and [ ]% in New Zealand for games developed and published on PCs and consoles.

(b) There will remain a number of significant competitors post-Transaction including Tencent ([ ]%, globally / [ ]% in New Zealand ), Nintendo ([ ]% globally / [ ]% in New Zealand), Electronic Arts (EA) ([ ]% globally / [ ]% in New Zealand), Sony ([ ]% globally / [ ]% in New Zealand), Take-Two Interactive ("**Take-Two**") ([ ]% globally / [ ]% in New Zealand ) and Epic Games ([ ]% globally / [ ]% in New Zealand).

(c) Even if game publishing for PCs and consoles were to be considered separately, the merged entity would only have a global share of [ ]% and [ ]% for PCs and Consoles, respectively, with combined New Zealand shares of [ ]% and [ ]%, respectively.

(d) With respect to native mobile game development and publishing, the market is even more highly fragmented with a diverse range of market participants, reflected in the very small shares of the Parties. The merged entity would have a combined global share of [ ]%. The shares are also low when measured on a New Zealand basis, with a combined share of only [ ]%. These shares are well below the level that would raise any horizontal competition concern.

(e) Barriers to entry are low, with the entry of new well-resourced entrants such as Amazon, and there are a range of channels to market, resulting in a vibrant competitive landscape.

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- 1.5 **Video game distribution:** The Parties overlap with respect to the distribution of digital games only for PC and console. Neither is active at the retail level in the physical distribution of video games or in the digital distribution of mobile games.<sup>1</sup>
- (a) The merged entity would have a low share post-merger of global distribution of games for all devices based on sales data from 2020: [ ]% globally and [ ]% in New Zealand. Given the small shares and the [ ] increment (Activision Blizzard has only [ ]% of distribution globally and [ ]% in New Zealand), the Proposed Transaction is highly unlikely to change market dynamics.
  - (b) There remain other significant distributors of video games digitally on PCs and consoles globally, including Sony ([ ]% globally for all devices and [ ]% in New Zealand), Tencent ([ ]% globally and [ ]% in New Zealand), Valve ([ ]% globally and [ ]% in New Zealand), and Nintendo ([ ]% globally and [ ]% in New Zealand), that will continue to compete vigorously and effectively with the merged entity.
  - (c) Even if video game distribution for PC and console are considered separately, similarly low shares and fragmentation exist in the PC distribution segment (combined share of [ ]% globally, and [ ]% in New Zealand), and Activision Blizzard does not distribute console games.
- 1.6 **Video game-related merchandising:** The Parties' activities are *de minimis* in the sale of video game-related merchandising (such as clothing, accessories etc.). There also remain significant suppliers of video game-related merchandise such as Nintendo, Sony, Epic Games, Square Enix, Ubisoft and Bandai Namco.
- 1.7 **Online display advertising:** The Proposed Transaction does not give rise to horizontal issues in the market for online display advertising. The combined market share of the Parties is less than [ ]% on a global basis and the increment is [ ]%; Activision Blizzard's revenues were only USD [ ] million in 2021. In any event, the Parties' offerings are differentiated. Activision Blizzard currently focuses on in-game advertising for its "freemium" mobile games, and Microsoft has only a very limited presence in in-game advertising (see market shares for mobile game publishing above, noting that in-game advertising is more prominent in mobile games).
- There is no potential for the Proposed Transaction to give rise to vertical or portfolio effects:**
- 1.8 **No likelihood of input foreclosure:** The merged entity will not have the ability or incentive to foreclose rival console and PC video game distributors from accessing content that enables them to compete in relation to game distribution, given: the highly fragmented nature of the market for game development and publishing; the lack of "unique" characteristics of any Activision Blizzard game; as well as Microsoft's commercial commitment to maintain access to Activision Blizzard games on Sony (which is consistent with Microsoft's focus on a consumer-centric, cross-platform approach that will allow gamers to play wherever, and on whatever device they wish).
- 1.9 **No likelihood of customer foreclosure:** The merged entity will not have the ability or incentive to foreclose rival video game developers and publishers by foreclosing distribution through limiting access to Microsoft's digital storefronts, including the Xbox Store (or other

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<sup>1</sup> Activision Blizzard owns a UK based distribution business, Centresoft, which operates only at the wholesale level and serves primarily UK retailers. [ ] Activision Blizzard does not itself distribute physical games in New Zealand and does not maintain warehouses in New Zealand. New Zealand-based retailers who distribute Activision Blizzard games order these games directly from Activision Blizzard overseas and arrange warehousing of the products in New Zealand themselves.

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Xbox console-specific digital storefronts), in light of competition from a wide range of other distributors, including Sony and Nintendo on console, and Tencent, Valve and many others on PC.

- 1.10 **No likelihood of foreclosure of cloud computing services:** The Proposed Transaction does not give rise to anti-competitive concerns arising from the vertical relationship between cloud computing services and video game publishing and distribution. The Parties would have no ability or incentive to foreclose other providers from supplying cloud computing services to game publishers (particularly noting the fragmentation of gaming markets). Nor would Microsoft have any ability or incentive to foreclose or restrict other game distributors from using Microsoft's Azure cloud service, given Amazon Web Services ("**AWS**") is by far the leading player globally, in addition to the incentives to Microsoft to encourage as much use of Azure as possible (as Azure is built as an open, extensible and neutral cloud platform).

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### PART A: BACKGROUND TO THE PROPOSED TRANSACTION

#### 2. THE PARTIES

##### Microsoft

2.1 This notice seeking clearance is given by Microsoft Corporation ("**Microsoft**").

2.2 The contact details for Microsoft are as follows:

[ ]  
[ ]  
[ ]

2.3 All correspondence and notices in respect of the application for Microsoft should be directed in first instance to:

**Russell McVeagh**

PO BOX 8

Auckland 1140

Attention: Troy Pilkington (Partner) / Petra Carey (Senior Associate)

Telephone: +649 367 8108 / +64 9 367 8831

Email: troy.pilkington@russellmcveagh.com / petra.carey@russellmcveagh.com

2.4 A corporate structure chart of relevant Microsoft entities is enclosed with this application on a confidential basis at **Confidential Attachment One**.

2.5 Microsoft Corporation is a publicly listed global technology company headquartered in Redmond, Washington, USA.<sup>2</sup> Microsoft offers a wide range of products and services to customers organised around three operating segments:

(a) Productivity and Business Processes;<sup>3</sup>

(b) Intelligent Cloud;<sup>4</sup> and

(c) More Personal Computing.<sup>5</sup>

2.6 Microsoft's gaming and gaming device activities operate within the More Personal Computing division. These activities are set out below, and Microsoft's offering in New Zealand is generally consistent with its offering globally.

2.7 The company is active as a developer, publisher and distributor of games. Microsoft develops and publishes games for PCs, game console and mobile devices developed by Xbox Game Studios, a collection of 24 first-party development studios. Examples include games in the *Minecraft*, *Forza*, *Elder Scrolls* and *Halo* titles. Microsoft makes these games available for

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<sup>2</sup> For more information on Microsoft see <https://www.microsoft.com/en-us/about/company>.

<sup>3</sup> Consisting of products and services in the area of productivity, communication and information services, spanning a variety of devices and services. This segment primarily comprises Office Commercial (including Office 365, Skype for Business and Microsoft Teams), Office Consumer, LinkedIn, and Dynamic business solutions.

<sup>4</sup> Consisting of public, private, and hybrid server products and cloud services. This operating segment includes Microsoft Azure, SQL Server, Windows Server, Visual Studio including VSTS, and Visual Studio Code, System Center, and related client access licenses, GitHub and Enterprise Services, such as Premier Support Services and Microsoft Consulting Services.

<sup>5</sup> Consisting of products and services that endeavour to harmonise the experience of end-users, developers, and IT professionals across all devices. This segment primarily comprises Windows, Windows Commercial, patent licensing, MSN advertising, devices (e.g., Microsoft Xbox and Surface PCs), gaming and search advertising.

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purchase and play on many different devices. For example, the Minecraft franchise, acquired by Microsoft in 2014, continues to be available on PC, Microsoft Xbox, Sony PlayStation, and Nintendo Switch, among others. Microsoft also publishes games that are developed through independent developers. Microsoft distributes games in digital form. Microsoft operates the Microsoft Store on Windows (the Microsoft Store), an app store on Windows PCs, through which it distributes its own first-party and third-party games for PC, as well as an Xbox-branded storefront (the Xbox Store), which can be accessed via an Xbox console, web-browser or Xbox App for Windows.

- 2.8 In addition, Microsoft offers multi-title gaming subscription services that include access to first- and third-party games (e.g., Xbox Live Gold and Xbox Game Pass), online multi-player capabilities (e.g., Xbox Live and Xbox Live Gold) and cloud gaming functionality (Xbox Cloud Gaming, which is available as a feature of its top-tier Xbox Game Pass subscription offer, Xbox Game Pass Ultimate), as well as single-game subscriptions for specific game titles and/or game content such as *The Elder Scrolls Online* and *Fallout 76*.
- 2.9 In New Zealand, Microsoft's gaming business is part of Microsoft's Australasian regional business and includes sales and marketing of first-party Microsoft products to end consumers.
- 2.10 The following Microsoft legal entities sell gaming devices, gaming, and advertising into New Zealand:
- (a) [ ];
  - (b) [ ];
  - (c) [ ]; and
  - (d) [ ].

### *Development and publishing of video games*

- 2.11 Microsoft develops and publishes games across multiple devices, including PC, console and mobile. [ ]
- 2.12 Microsoft develops and publishes PC and console games developed by its collection of [ ] first-party game development studios. Examples include games in the *Minecraft*, *Forza*, *Elder Scrolls* and *Halo* franchises. Microsoft also publishes games that are developed by second- and third-party developers.<sup>6</sup>
- 2.13 Microsoft also develops and publishes native mobile games<sup>7</sup> which are offered for free, as freemium games, or as paid games. Microsoft's leading titles for mobile include the mobile version of *Minecraft* and the developed-for-mobile *Halo: Spartan Assault*.<sup>8</sup>
- 2.14 Microsoft currently has only limited revenues from mobile gaming largely limited to its Minecraft franchise.

### *Distribution of video games*

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<sup>6</sup> Microsoft has published approximately around [ ] PC and console games, including ZeniMax titles of which around [ ] were developed through first-party developers, around [ ] through second-party developers, and around [ ] through third-party developers.

<sup>7</sup> Native mobile apps are applications written to run on a specific operating system and, as such, interact directly with relevant elements of the operating systems in order to provide relevant features and functionality. Native apps can be pre-installed on devices or otherwise are typically downloaded through app stores.

<sup>8</sup> *Halo: Spartan Assault* was developed for Windows 8 and Windows Phone 8, and intended to be played via touchscreen and in short sessions typical for mobile games. It was subsequently expanded to other media.

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- 2.15 Microsoft historically operated brick-and-mortar retail locations around the world (albeit not in New Zealand), through which it sold PC and console hardware and software, but announced in June 2020 that it was closing the final 83 of its retail locations and would no longer have physical storefronts (as noted above, Microsoft never had retail stores in New Zealand). Microsoft has also discontinued selling physical copies of games through its first-party digital storefronts. Microsoft exclusively supplies video games as digital content and does not directly sell physical copies of its games to consumers through any distribution channel, online or in physical stores.
- 2.16 Microsoft operates:
- (a) the **Microsoft Store**, an app store on Windows PCs, through which it distributes its own first- and third-party PC and console games by purchase and subscription (via download and streaming);<sup>9</sup>
  - (b) the **Xbox Store**, an Xbox-branded digital storefront, which can be accessed via an Xbox console, a web browser or the Xbox app for Windows;<sup>10</sup> and
  - (c) the **Bethesda.net** digital storefront,<sup>11</sup> which offers PC video games developed by the ZeniMax Studios and subscription services for certain video game titles (e.g. *Elder Scrolls Online*<sup>12</sup> and *Fallout 76*).
- 2.17 Microsoft also offers multi-title gaming subscription services that include access to first- and third-party games, online multi-player capabilities and cloud gaming functionality (these game subscription services are available to consumers in New Zealand):
- (a) **Xbox Live**, an online multi-player gaming subscription service, available in two tiers:
    - (i) **Xbox Live Gold**, which enables multi-player gaming and social elements (friends lists, audio and visual communication) and offers discounts in the Xbox Store and “Games with Gold”, which offers a monthly set of games for the user to download and keep. Xbox Live Gold has around [ ] paid subscribers (of which over [ ] are also Game Pass Ultimate subscribers); and
    - (ii) **Xbox Live Free**, which enables the gamers to access the social elements of Xbox Live and download Xbox Live content free-of-charge;
  - (b) **Xbox Game Pass**, which is available in two tiers:
    - (i) **Xbox Game Pass for PC** and **Xbox Game Pass for Console**, a console or PC subscription, which provides access to a catalogue of Xbox and PC games from various publishers in return for a monthly subscription fee;<sup>13</sup> and
    - (ii) **Xbox Game Pass Ultimate**, a multi-game, multi-player gaming subscription service through which Microsoft combines Xbox Live Gold, Xbox Game Pass, and cloud gaming (for part of the game catalogue).

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<sup>9</sup> The Microsoft Store also offers apps and videos for PCs, Microsoft Xbox consoles and Windows devices. PCs primarily access the Microsoft Store via the Microsoft Store app (integrated on Windows PCs), and it is also available at <https://www.Microsoft.com/en-gb/store/apps/windows>. Xbox consoles primarily access the storefront through the Xbox console home page integration feature, however it may also be accessed at <https://www.xbox.com/en-GB/Microsoft-store>.

<sup>10</sup> The Xbox Store is available [here](#).

<sup>11</sup> Bethesda.net digital storefront (link available [here](#)).

<sup>12</sup> *Elder Scrolls Online* subscriptions (link available [here](#)).

<sup>13</sup> Xbox Game Pass for PC/Xbox Game Pass for Console are subscriptions for multi-game subscriptions with a larger catalogue of games available on either PC or console (excludes multi-player experience).



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Games accessible in Game Pass Ultimate via cloud gaming technology may be played on Xbox consoles, Windows PCs and Android devices via native apps and on iOS and other devices with supported web-browsers via a web app, enabling gamers to take their favourite games with them and play on the device most convenient to them.<sup>14</sup>

2.18 Microsoft's gaming subscription services are summarised in **Appendix Two**.

### *Online display advertising*

2.19 Microsoft is, through its advertising business, a publisher of digital advertising displayed on owned and operated ("**O&O**") inventory. Microsoft has a limited presence in online advertising via its Microsoft Search Network ("**MSSN**"), Microsoft Audience Network ("**MSAN**") and LinkedIn Audience Network ("**LAN**") offerings. These activities are predominantly focused on delivering ads on Microsoft O&O properties, as well as connecting advertisers with MSSN and MSAN's O&O search and non-search inventory, respectively. In particular:

- (a) MSSN places search ads on its O&O Bing search offering and partner sites;
- (b) Microsoft is active in online display advertising primarily via MSAN, which offers advertisers the opportunity to serve ads across its O&O properties outside of search, including Microsoft Start (formerly MSN), Outlook, and Edge and, to a limited extent, Xbox (although MSAN currently does not have any presence in mobile advertising); and
- (c) LAN allows for ads to be served via LinkedIn.

2.20 Microsoft [ ] revenues from display advertising within video games. Microsoft had total revenues from display advertising in 2021 being around [ ] globally, being approximately [ ] share of total worldwide digital display advertising, of which [ ] related to display advertising within games or the Xbox dashboard as follows:

- (a) **Casual Games suite advertising:** Casual Games suite is a separate studio within Microsoft's gaming division that develops casual games to be played on PC and mobile. Games developed by this studio include games such as *Solitaire*, *Mahjong* and *Sudoku*. When played online, Casual Games suite games include interstitial and banner advertisements which are sold to advertisers via auction. [ ].<sup>15</sup> Display ads in Microsoft's Casual Games suite accounted for around [ ] globally in 2021, approximately [ ] of Microsoft's total display advertising revenues.
- (b) **Xbox dashboard:** On the Xbox console dashboard pages there are two ad placements: one on the main home page and the other on the store home page (*i.e.*, one click below the main home page). Both ad placements are in the lower, right-hand corner of the page. [ ]. These ads are primarily purchased by game publishers, streaming apps, and companies with products for sale in the Xbox Store. Display ads on the Xbox dashboard accounted for [ ] globally in 2021, approximately [ ] of Microsoft's total display advertising revenues.

### *Sale of video gaming hardware devices*

2.21 Unlike Activision Blizzard, which does not sell video gaming hardware devices, Microsoft manufactures and sells dedicated gaming consoles under its Xbox brand. For completeness,

<sup>14</sup> theverge.com, "Microsoft's Xbox Game Pass service grows to 25 million subscribers", 18.01.22 (link available [here](#)).

<sup>15</sup> [ ].

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it also sells PC and mobile devices (e.g., the Surface PC series and the Microsoft Surface Duo mobile device), which can be used to play video games, but which are not designed specifically for that purpose.

### *Cloud services*

- 2.22 Microsoft offers a public cloud platform and associated services ("**cloud computing services**") called Azure. Azure offers over 200 Infrastructure as a Service ("**IaaS**") and Platform as a Service ("**PaaS**") services, including computing, storage, networking, databases, operating systems, developer tools, and runtimes, to help enterprises build and run their systems, analytics, and applications in the cloud. Customers pay [ ] fees for the services used.
- 2.23 Cloud computing has generally been industry-agnostic. But more recently, cloud services providers have started developing cloud services tailored to meet the needs of specific industries. This trend is most present in regulated industries like healthcare, financial services, energy, telecoms, and the public sector. Microsoft has recently also started offering cloud computing services targeting game developers. In particular, Microsoft offers Azure PlayFab, a backend platform for live games, providing managed game services, real-time analytics, and live operations which enables game developers to build and operate games, analyse gaming data and improve overall gaming experiences.<sup>16</sup> Examples of games that run on Azure PlayFab include first-party games such as *Minecraft*, *Forza Horizon 4*, *Doom Eternal* and *Microsoft Flight Simulator*, as well as some third-party games including *Roblox*, *Astroneer* and *Wasteland*.<sup>17</sup>
- 2.24 Cloud computing services used by game developers are distinct from cloud gaming. Cloud computing services enable developers to build, host, and run games. Cloud gaming services enable gamers to stream games to their devices over the Internet. Although Microsoft offers cloud gaming functionality as part of Game Pass Ultimate, Microsoft does not currently offer a specific cloud-based solution to host third-party cloud gaming services. [ ].

### *Merchandising*

- 2.25 Microsoft also sells video game-related merchandising and has its own online merchandising store<sup>18</sup> on which it offers various products ranging from clothing to household and technical items. Further, Microsoft sells merchandising products specifically related to its Xbox brand such as clothing, water bottles, USB sticks, and pens, as well as merchandising related to specific games.<sup>19</sup> In addition, Microsoft earns royalties from licensing its trademarks and logos to third parties.

### *Other*

- 2.26 For completeness, Microsoft sponsors three official "e-sports communities" through their respective studios, namely *Halo Championship*, *Gears Esports* and *2022 Quake Pro League*. Microsoft contracts with third parties to operate these events.<sup>20</sup>

## **Activision Blizzard**

- 2.27 The contact details for Activision Blizzard are as follows:

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<sup>16</sup> Microsoft, "What is PlayFab?", 19.10.21 (link available [here](#)).

<sup>17</sup> Microsoft, Azure PlayFab (link available [here](#)).

<sup>18</sup> Microsoft Company Store (link available [here](#)).

<sup>19</sup> Microsoft Company Store (link available [here](#)), Bethesda Gear Store (link available [here](#)) and Bethesda Store (link available [here](#)).

<sup>20</sup> [ ].

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[ ]

- 2.28 All correspondence and notices in respect of the application for Activision Blizzard should be directed in first instance to Russell McVeagh (details at 2.3 above).
- 2.29 A corporate structure chart for Activision Blizzard and its related companies is enclosed with this application on a confidential basis at **Confidential Attachment Six**.
- 2.30 Activision Blizzard is a video game developer and publisher founded in 2008 and headquartered in Santa Monica, California, USA. Activision Blizzard is publicly listed on NASDAQ.<sup>21</sup>
- 2.31 Unlike Microsoft, Activision Blizzard is exclusively dedicated to gaming, offering its products and services in all major markets worldwide. Activision Blizzard develops games for PCs, consoles and mobile devices and publishes them in most countries around the world through three business units: Activision Publishing, Inc ("**Activision**"), Blizzard Entertainment, Inc ("**Blizzard**"); and King Digital Entertainment ("**King**"). [ ]. King delivers content primarily through free-to-play offerings and primarily [ ]. Activision Blizzard's *Call of Duty*, *World of Warcraft* and *Candy Crush* games represented 82% of its global 2021 net revenue.<sup>22</sup>
- 2.32 Moreover, Activision Blizzard does not offer video game consoles or other gaming hardware.
- 2.33 Activision Blizzard's activities in New Zealand include video game development, publishing and digital distribution for PC, console and mobile; as well as online advertising and merchandising. Sledgehammer Games New Zealand Limited ("**Sledgehammer Games NZ**"), [ ] is the only Activision Blizzard entity incorporated in New Zealand, however, the following are the Activision Blizzard legal entities that sell into New Zealand:
- (a) [ ];
  - (b) [ ];
  - (c) [ ];
  - (d) [ ];
  - (e) [ ];
  - (f) [ ];
  - (g) [ ];
  - (h) [ ].
- 2.34 Activision Blizzard's activities are set out further below.
- Development and publishing of video games*
- 2.35 As discussed above, Activision Blizzard develops and publishes video games for PC, console and mobile devices across multiple genres through its three operating units:

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<sup>21</sup> For more information on Activision Blizzard see Activision Blizzard, "About Us" (link available [here](#)).

<sup>22</sup> Activision Blizzard's 2021 10-K filing page 20 (link available [here](#)).

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- (a) Activision, which develops and publishes games and content, such as *Call of Duty*, historically for PC and consoles, and more recently for mobile platforms;
- (b) Blizzard, which develops and publishes games such as *World of Warcraft*, historically for PCs, and more recently for mobile platforms; and
- (c) King, which is primarily a mobile game developer.

2.36 Using financial year 2021 revenues as an approximation, Activision Blizzard estimates that Activision generates [ ] of its revenues from [ ]; Blizzard generates [ ]; and King generates [ ].

2.37 [ ]. Of these titles, *Call of Duty*, *Candy Crush* and *World of Warcraft* represent 82% of Activision Blizzard's 2021 net revenue.<sup>23</sup> [ ]

### *Distribution of video games*

2.38 Activision Blizzard distributes video games digitally. PC games are distributed through its digital storefront *Battle.net*, an app store on PCs, which facilitates downloads of Blizzard content and select Activision content. *Battle.net* is also an app for mobile devices, however the mobile app does not provide for the downloading of mobile games, but rather serves as a platform for gamers to connect and communicate with other gamers. Activision Blizzard does not sell third-party video games (*i.e.*, games developed and published by third-parties) on *Battle.net*, or otherwise.

2.39 Activision Blizzard does not offer a multi-game subscription service similar to Microsoft's Xbox Game Pass. However, Activision Blizzard's *World of Warcraft* operates on a pay-to-play subscription model.

2.40 Activision Blizzard does not operate brick-and-mortar retail locations, nor does it retail physical copies of its video games through its digital storefronts.<sup>24</sup>

### *Online display advertising*

2.41 Activision Blizzard is active in display advertising within its "*freemium*" games, primarily through games developed and published through its King division. King predominantly delivers content through free-to-play offerings and [ ]. Activision Blizzard's in-game advertising function is managed through its Activision Blizzard Media division, a media network connecting advertisers to the company's in-game advertising posts. Activision Blizzard's total global revenue from display advertising in 2021 was [ ].<sup>25</sup>

2.42 [ ]

2.43 Given Activision Blizzard's focus on mobile game advertising, there is only limited overlap with Microsoft in relation to in-game display advertising within games.

2.44 Activision Blizzard works with a range of partners to fill its inventory, including ad networks, supply-side platforms ("**SSPs**"), demand-side platforms ("**DSPs**"), exchanges and local resellers. The list of partners includes [ ] [ ]<sup>26</sup> In 2021, only [ ] [ ] of [ ] in New Zealand. [ ]

2.45 [ ]<sup>27</sup> [ ].

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<sup>23</sup> Activision Blizzard's 2021 10-K filing page 20 (link available [here](#)).

<sup>24</sup> [ ].

<sup>25</sup> Activision Blizzard Media and King accounted for [ ] of this revenue, with Activision accounting for the remaining [ ].

<sup>26</sup> [ ]

<sup>27</sup> [ ].

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### *Merchandising*

- 2.46 Activision Blizzard sells video game-related merchandise through its online store, gear.blizzard.com, which sells merchandise relating to Blizzard's titles, including *World of Warcraft*, *Overwatch* and *StarCraft*.<sup>28</sup> In addition, Activision Blizzard's Consumer Products Group works with licensees around the world to create merchandise relating to its video game franchises, with Activision Blizzard earning royalties from these licensees.

### *Cloud services*

- 2.47 Activision Blizzard is not active in the provision of cloud computing services ("**cloud computing services**") (see section 7.1 for an outline of these services, including with respect to gaming). [ ].<sup>29</sup> [ ].

### *Other activities*

- 2.48 For completeness, Activision Blizzard also operates professional e-sports leagues,<sup>30</sup> which generate revenues from live in-person and online events, including from programmatic video advertising during commercial breaks of events. However, this does not give rise to any horizontal overlaps or vertical relationships with Microsoft (which does not operate e-sports events).<sup>31</sup>

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<sup>28</sup> The merchandise is distributed from the US or UK for the New Zealand market.

<sup>29</sup> [ ]

<sup>30</sup> [ ] the Overwatch League and the Call of Duty League launched in 2020.

<sup>31</sup> As noted above Microsoft sponsors three official "e-sports communities" through their respective studios: Halo Championship, Gears ESports and 2022 Quake Pro League. [ ].

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**3. THE PROPOSED TRANSACTION**

**Structure of the Proposed Transaction**

- 3.1 On 18 January 2022, Microsoft entered into an agreement ("**Merger Agreement**") with Activision Blizzard for Microsoft, through its wholly owned subsidiary Anchorage Merger Sub Inc, to acquire 100% of the common stock of Activision Blizzard, with Activision Blizzard surviving as a wholly owned, direct subsidiary of Microsoft.
- 3.2 Completion of the Proposed Transaction is conditional on the receipt of regulatory approvals in a number of jurisdictions, including New Zealand (see paragraph 5.1). The Proposed Transaction was approved by the Board of Activision Blizzard and is subject to approval of Activision Blizzard shareholders.
- 3.3 The Parties expect completion to occur as soon as practicable following shareholder approval, and when all conditions precedent (including regulatory approvals) have been satisfied. At this stage, the Parties are targeting completion of the Proposed Transaction in Microsoft's fiscal year 2023.<sup>32</sup>

**Proposed Transaction documents**

- 3.4 Copies of the documentation that bring about the Proposed Transaction are **enclosed** on a confidential basis as **Confidential Attachment Three**.

**Microsoft's commercial rationale for the Proposed Transaction**

[ ]

- 3.5 [ ]<sup>33</sup>

- 3.6 [ ]

- 3.7 [ ]<sup>34</sup> [ ]

- 3.8 [ ]<sup>35</sup> [ ]

(a) [ ]<sup>36</sup> [ ]

(b) [ ]<sup>37</sup> [ ]<sup>38</sup> [ ]

- 3.9 [ ]

- 3.10 [ ]<sup>39</sup> [ ]

3.11 [ ]<sup>40</sup>

3.12 [ ]<sup>41</sup>

<sup>32</sup> Microsoft's fiscal year 2023 ends on 30 June 2023.

<sup>33</sup> [ ]  
<sup>34</sup> [ ]  
<sup>35</sup> [ ]  
<sup>36</sup> [ ]  
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<sup>41</sup> [ ]

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3.13 [ ].<sup>42</sup>

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3.14 [ ]

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3.17 [ ]<sup>43</sup> [ ]<sup>44</sup>

3.18 [ ]

(a) [ ]<sup>45</sup> [ ]

(b) [ ]<sup>46</sup> [ ]

(c) [ ]

3.19 [ ].<sup>47</sup> [ ]

3.20 [ ]

[ ]

3.21 [ ]<sup>48</sup> [ ]<sup>49</sup>

3.22 [ ]

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3.26 [ ]

3.27 [ ]<sup>50</sup> [ ]<sup>51</sup>

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<sup>42</sup> [ ].

<sup>43</sup> [ ].

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<sup>46</sup> [ ].

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<sup>51</sup> [ ].

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### 4. RECENT ACQUISITIONS BY THE PARTIES

4.1 The Parties have made the following acquisitions in the past three years in potentially relevant markets.

#### **Microsoft**

4.2 Microsoft acquired two US game development studios, Obsidian Entertainment and Double Fine Productions in 2019. Microsoft announced the acquisition of ZeniMax on 19 September 2020.<sup>52</sup> ZeniMax is active in game development, primarily through the ZeniMax Studios. The acquisition of ZeniMax followed approval by competition authorities in the US, EU, and Brazil.<sup>53</sup>

4.3 A list of press releases associated with Microsoft's acquisitions is available [here](#).<sup>54</sup>

#### **Activision Blizzard**

4.5 Activision Blizzard acquired a Swedish mobile games developer, Hatrabbitt AB, through its subsidiary King Digital on 2 September 2019, and a Spanish games developer, Digital Legends on 28 October 2021.

### 5. NOTIFICATION OF OTHER COMPETITION AGENCIES

5.1 **Confidential Appendix One** sets out the Commission's required information in relation to notification of other competition agencies.

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<sup>52</sup> For completeness, ZeniMax acquired Alpha Dog Games, which develops games for mobile devices, in October 2019.

<sup>53</sup> See *Microsoft/ZeniMax*.

<sup>54</sup> For completeness, Microsoft announced the acquisition of: (i) Two Hat, a content moderation solution provider offering protection measures for online communities with a vision to build better experiences for consumers on 29 October 2021; and (ii) Xandr, AT&T's ad tech business which operates, primarily, as a demand side platform and supply side platform in the digital advertising intermediation sector on 21 December 2021. The Xandr acquisition is subject to certain merger control approvals.



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### PART B: THE COUNTERFACTUAL

#### 6. COUNTERFACTUAL

- 6.1 From Microsoft's perspective, if the Proposed Transaction does not proceed, it considers that []
- 6.2 From Activision Blizzard's perspective, if the Proposed Transaction does not proceed<sup>55</sup>, []:<sup>56</sup>
- (a) []
  - (b) []
  - (c) []

### PART C: INDUSTRY BACKGROUND

#### 7. OVERVIEW OF VIDEO GAMING INDUSTRY

##### The video gaming industry

##### Video gaming is a highly dynamic and competitive industry

- 7.1 Gaming is a highly dynamic and competitive industry, and the fastest growing portion of the media and entertainment sector. It is today larger in size than paid TV, home video (including streaming), cinema, music, books or newspapers and magazines. Today, 3 billion consumers around the world play games, a number that is expected to reach 4.5 billion by 2030. Microsoft estimates that gamers play over [] games on Microsoft's gaming platform each week. There are more gaming titles, more game publishers and more choices and value being offered to gamers than ever before.

*Figure 1 []*<sup>57</sup>

[]

- 7.2 The gaming sector is generally considered to be highly fragmented, and includes traditional participants (e.g., Sony, Nintendo, Tencent, Valve, etc.), new entrants (e.g., Amazon, Mediatonic, Moon Studios, Purple Lamp, Hello Games, etc.), and new services such as the gaming offerings of Amazon, Apple, Google, Meta (Facebook Gaming), Netflix, and Nvidia GeForce Now. The Entertainment Software Association estimates that there were more than 1,600 game developers in the US alone in 2019.<sup>58</sup>
- 7.3 Gamers play a number of games in different genres interchangeably and there is evidence of switching gaming behaviours. Gamers select games to purchase, and play, based on a large number of factors – the most important of which is the quality of the game. Each new game has its own chance of success and failure, even if it is part of a well-known pre-existing franchise. It is difficult to predict which games will succeed. There is a high turnover of new games year-on-year and previously successful publishers may be pushed aside by new entrants offering more attractive games. Small “indie” companies can become rapidly very

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<sup>55</sup> []

<sup>56</sup> []

<sup>57</sup> []

<sup>58</sup> Entertainment Software Association, “Video Games in the 21st Century: The 2020 Economic Impact Report”, 3.12.21, page 8 (link available [here](#)).

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successful with a release of one game. Conversely, large and established companies can perform poorly due to a bad game release – even of a popular franchise.

- 7.4 All developers – large or small, established or start-up – need to continuously innovate to produce games which will appeal to gamers, including by creating improved games with more advanced characteristics. As a result, the number of games released each year has been increasing, offering a greater variety of choice to gamers. In 2021, there were around 1,700 unique titles launched on Nintendo Switch, over 980 on Sony PlayStation and around 725 on Microsoft Xbox.<sup>59</sup>
- 7.5 Similarly, the dynamism of the video gaming industry has resulted in innovation with respect to not only content, but also its distribution. Traditionally, games have been monetised on a “buy-to-play” model in which games are bought for an upfront price. Over time, and especially on mobile and PC, publishers have offered their games using a “free-to-play” or “F2P” model, whereby games are offered for free and then monetised via in-app purchases or advertising. Microsoft estimates that the free-to-play model accounts for around [ ] of revenue across all devices in 2021: around [ ] on mobile, around [ ] on PC, and around [ ] on console.
- 7.6 The gaming sector has also seen the expansion of certain business models such as subscription-based gaming. For example, in line with the emergence and expansion of subscription services in other industries (e.g., Netflix, Amazon Prime Video, and others in the video/movie industry; and Spotify, Apple Music, and others in the music industry), many gaming companies are augmenting their offerings with subscription services that allow gamers to play with each other online and to access a curated library of games for a fixed monthly fee.
- 7.7 Microsoft’s Game Pass competes vigorously with other competitors’ investment in subscription services,<sup>60</sup> including Sony (which has recently announced a new PlayStation Plus product “with 700+ games and more value than ever” as a “rival to Game Pass”),<sup>61</sup> Amazon (which has released a number of highly successful games and recently expanded its game streaming service, Amazon Luna),<sup>62</sup> Apple (which launched Apple Arcade in September 2019 and was estimated to have 12 million users as of 2020)<sup>63</sup>, Google (which launched its Stadia subscription service in November 2019), and Netflix (which is ramping up its gaming platform with the acquisition of three development studios, Boss Fight Entertainment, Night School

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<sup>59</sup> NPD estimates, 04.01.22 (link available [here](#)). Gamespot, “Here’s How Many Video Games Released In 2021--And How Few Had Physical Editions”, 04.01.22 (link available [here](#)). Steam is reported to have launched 10,696 games in 2022, Statista, “Number of games released on Steam worldwide from 2004 to 2021”, 25.2.22 (link available [here](#)).

<sup>60</sup> Examples of multi-game subscription service payment models can be found in **Appendix Two**, and examples of gaming service providers offering cloud gaming delivery of content can be found in **Appendix Three**. Further details on Game Pass can be found in **Appendix Six**.

<sup>61</sup> PlayStation Blog, “All-new PlayStation Plus launches in June with 700+ games and more value than ever”, 29.03.22 (link available [here](#)); PlayStation Trophies “Rumoured PlayStation ‘Project Spartacus’ Game Pass Rival to Reportedly Feature Classic Games as ‘Major Part’ of Subscription”, 24.2.22 (link available [here](#)), Eurogamer, “PlayStation Plus’ Project Spartacus overhaul reportedly “pretty close” to launching”, 24.02.22 (link available [here](#)); Bloomberg, “PlayStation Plans New Service to take on Xbox Game Pass”, 03.12.21 (link available [here](#)); VGC “Sony ‘pulling PS Now retail cards’ ahead of expected launch of Game Pass rival”, 12.01.22 (link available [here](#)); PlayStation Lifestyle “PlayStation Continued to Dominate the 2021 Worldwide Console Market”, 02.03.22 (link available [here](#)); Comicbook, “Huge PlayStation Now Changes May Be Coming Very Soon”, 03.03.22 (link available [here](#)); PlayStation Lifestyle, “Project Spartacus Gets Closer as PlayStation Plus and PS Now Merge for Some”, 04.03.22 (link available [here](#)); Giant Freakin Robot “PlayStation Now is Being Replaced”, 04.03.22 (link available [here](#)).

<sup>62</sup> The Verge, “Amazon Luna launches for anyone in the US, adds free games for Prime members and Twitch integration”, 1.3.22 (link available [here](#)); Pocket-lint “Amazon Luna launches in the US with Twitch and free games for Prime members”, 2.3.22 (link available [here](#)).

<sup>63</sup> Thegamer “Apple Arcade Projected To Hit 12 Million Subscribers This Year”, 7.01.20 (link available [here](#)). The Apple website describes Apple Arcade as follows: “Apple Arcade is a game subscription service that offers unlimited access to a growing collection of over 200 premium games — featuring new releases, award winners, and beloved favourites from the App Store, all without ads or in-app purchases. You can play Apple Arcade games on iPhone, iPad, iPod touch, Mac and Apple TV” (link available [here](#)).

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Studio and Next Games, and the hire of a new head of gaming strategy from Sony PlayStation), among others.<sup>64</sup>

### Video gaming activities

7.8 From a supply side perspective, from a video game's conception until the moment it is played by consumers, there are two main activities:

- (a) **Video game development and publishing:** Video games are developed for PCs, game consoles, and mobile devices (such as smartphones). Video game software development and publishing comprises the development (including design, art, programming, and testing, usually taking place in a development studio) and the making available to the public, for purchase, rental or free of charge, of a video game; and
- (b) **Video game distribution:** Games are distributed to the public in either physical form (**physical distribution**) or digital form (**digital distribution**), through physical retail (online and "brick-and-mortar" retailers) and online download or streaming, via digital storefronts, app stores and subscription services.

7.9 From a gamer's perspective, one can play a video game on a given electronic device in two forms:

- (a) purchased in physical or digital format, where the software is executed locally on the player's device. The three principal electronic devices for game play are PCs, game consoles, and mobile devices, including smartphones and tablets; or
- (b) by game streaming, where the software is typically executed on the game provider's dedicated infrastructure, and streamed to the player's end-device. Cloud-based game streaming is a new mechanism for game delivery and is still very much in its infancy.<sup>65</sup>

### Video game development

7.10 Game development relates to the development and production of a game. This is typically done by a development studio and entails several steps, including design, art, programming and testing.

#### *Development for different video game devices*

7.11 There are different gaming experiences between PC and console video games, on the one hand, and native mobile games, on the other. PC and console games typically offer a more advanced gaming experience in terms of graphics, music, available options, gameplay, scope and depth of the storyline, compared to mobile games. These games tend to require technologically more advanced game development compared to native mobile games. As mobile devices generally do not deliver the computing power or storage capacity of current generations of PCs or consoles, mobile games tend to be technically less advanced with lower

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<sup>64</sup> Netflix "Game Developer Boss Fight Entertainment Joins Netflix", 24.03.22 (link available [here](#)); Financial Times, "Netflix buys Next Games for EUR 65mn", 2.3.22 (link available [here](#)); Netflix, "Let the Games Begin: A New Way to Experience Entertainment on Mobile", 02.11.21 (link available [here](#)) and "Developing Games Around the World: Netflix to Acquire Next Games", 01.03.22 (link available [here](#)); Night School, "We are joining the Netflix team", 28.09.21 (link available [here](#)); Gamesindustry.biz, "Netflix hires VP of game studios", 23.11.21 (link available [here](#)); "Netflix names Roberto Barrera as new head of gaming strategy: Games industry veteran departs PlayStation after 11 years to join streaming platform's growing games division", 08.03.22 (link available [here](#)).

<sup>65</sup> With streaming the game software can be executed on either the player's device located elsewhere, or on the provider's dedicated infrastructure, and streamed to the player.

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performance in terms of graphics, music, gaming options, and content. Even where console/PC games are also available as native mobile games, they typically do not share the same technical and game characteristics.<sup>66</sup>

- 7.12 However, the distinction between PC, console and mobile games is increasingly blurred, as:
- (a) many of the most-played video games are available on all three device types, especially because the technical capabilities of mobile devices are improving;
  - (b) the emergence of cross-platform play ("**cross-play**") allows gamers to play together even when using different gaming devices;<sup>67</sup>
  - (c) cross-progression features allow gamers to play a game on one platform (e.g., console) and continue their progression on another (e.g., mobile), and are increasingly present in recent releases; and
  - (d) the delivery of games to devices via cloud gaming may further blur the distinction between gaming platforms in the future.

### *Classification of video games*

- 7.13 Consistent with the European Commission's ("**EC**") analysis in *Microsoft/ZeniMax*, the distinctions between video game genre or type are highly subjective and differ greatly depending on who is doing the classification.<sup>68</sup>
- 7.14 Classifications of video games by "type" are generally imprecise and challenging to apply consistently. For example, video games may be classified as "AAA"<sup>69</sup> or casual games based on their budget, complexity, popularity, or some combination of the three. Such classifications by "type" vary across the video gaming industry and amongst consumers.
- 7.15 Video games are also sometimes classified by genre, which can include action, adventure, role-playing games ("**RPG**"), shooter, sport, strategy, open world, and resource management.<sup>70</sup> Genres are not rigid, stable, or mutually exclusive, but rather loosely grouped and fluid categories. Many video games combine aspects of multiple genres and each genre of game can contain multiple sub-genres. Additionally, a game can start out in one genre area and then add features of other genres as it is updated.

### **Video game publishing**

- 7.16 A video game publisher makes video games available to the public for sale (potentially using different monetisation models) or for free. A video game publisher is responsible for licensing the rights, the concept on which the game is grounded, as well as for managing the advertising, marketing, and distribution.

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<sup>66</sup> For example, it is common that the mobile and console versions of games are developed by different engineering teams and studios often hire third-party developers to work with them to create the mobile versions of their console and PC games. See also phonearena.com, "*Fortnite mobile compared to the home console and PC versions: What are the differences?*" 22.03.2018 (link available [here](#)).

<sup>67</sup> Cross-save and cross-progression means that progress on one platform can be carried over to another platform if the gamer switches. Titles such as Ubisoft's *Rainbow Six*, launched in January 2022 and the most recent *Call of Duty* titles (e.g., *Call of Duty: Vanguard*) have these features.

<sup>68</sup> Case M.10001, *Microsoft/ZeniMax ("Microsoft/ZeniMax")*, 05.03.21, paragraph 11.

<sup>69</sup> In the video-game industry, AAA (pronounced and sometimes written Triple-A) is an informal classification used to categorise games produced and distributed by a mid-sized or major publisher, which typically have higher development and marketing budgets than other tiers of games.

<sup>70</sup> *Microsoft/ZeniMax*, paragraph 11.

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7.17 Video game publishers may publish video games which they develop internally, through a first-party developer or studio, or which are developed by a second-party or third-party developer. A first-party developer refers to development completed internally by the game publisher, a subsidiary, or a fully integrated studio. A second-party developer is ordinarily a video game studio that enters into development contracts with device manufacturers such as Sony or Nintendo and develops video games exclusively for that device. A third-party developer is an independent developer, that develops and owns video games that are then published by a video game software publisher and can appear on multiple hardware platforms.

### **Video gaming hardware devices**

7.18 Video gaming hardware devices include:

- (a) PCs (e.g. desktops, laptops and gaming-specific PCs);
- (b) dedicated video gaming consoles (e.g., Sony PlayStation, Nintendo Wii and Switch, Microsoft Xbox);
- (c) handheld dedicated portable video game devices with a built-in screen (e.g., Nintendo's Game Boy or DS line; Sony's PlayStation Portable and the new Valve Steam Deck (which launched on 25 February 2022));<sup>71</sup> and
- (d) other hardware devices used for gaming, including smartphones and tablets running Apple iOS and Google Android.

7.19 Improved technological capabilities on mobile devices such as smartphones and tablets mean that they have become more attractive for gaming, driving significant growth in this area. Mobile is now the largest and fastest growing video gaming segment. This trend is also now expanding into other "smart devices", including smart watches (e.g., Apple Watch) and voice-controlled devices (e.g., Amazon's Alexa).

7.20 The first video game consoles were released by Atari and Nintendo in the 1970s and 1980s, followed by Sony in 1995 and lastly Microsoft in 2001. Today, consoles are in their so-called "ninth generation," which began in November 2020 with the releases of Microsoft's Xbox Series X and Series S consoles and Sony's PlayStation 5. A generation of console has, in the past, generally been supported for around five to seven years before a new generation is launched.

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<sup>71</sup> Steam Deck's website (link available [here](#)).

Table 1 Console generations from 1972 – 2022 by developer

Console generation	Year	Console developers		
		Microsoft	Sony	Nintendo
1 <sup>st</sup>	1972 – 1980	n/a	n/a	n/a
2 <sup>nd</sup>	1976 – 1992	n/a	n/a	n/a
3 <sup>rd</sup>	1983 – 2003	n/a	n/a	NES
4 <sup>th</sup>	1987 – 2004	n/a	n/a	Super NES
5 <sup>th</sup>	1993 – 2006	n/a	PlayStation	Nintendo 64
6 <sup>th</sup>	1998 – 2013	Xbox	PlayStation 2	Game Cube
7 <sup>th</sup>	2005 – 2017	Xbox 360	PlayStation 3	Wii
8 <sup>th</sup>	2012 – 2020	Xbox One	PlayStation 4	Wii U / Nintendo Switch
9 <sup>th</sup>	2020 – present	Xbox Series X, Xbox Series S	PlayStation 5	Not yet announced

- 7.21 Success in earlier generations of console releases often leads to success in later generations. Sony, in particular, has an established base of gamers loyal to its brand.<sup>72</sup> [ ]. This has continued into 2021, with Sony having so far outsold Microsoft in the latest console generation and recent press reports stating that “Sony’s PlayStation brand dominates 2021’s worldwide console market” and noting that “[b]etween console and game sales, as well as their online services like PlayStation Plus and PlayStation Now, Sony has claimed just under 50% of the console market with the remainder being shared between Nintendo and Xbox”.<sup>73</sup>

### Video game distribution

- 7.22 Video games are distributed either in physical or digital form, through physical retail (both online and brick-and-mortar) and online download/streaming, respectively.

#### Physical distribution

- 7.23 Video games were traditionally distributed on physical media like cartridges and compact discs in brick-and-mortar stores. Retailers of video games in physical form include a variety of brick-and-mortar locations, (e.g., EB Games),<sup>74</sup> electronic retailers (e.g., Noel Leeming,<sup>75</sup> Harvey Norman,<sup>76</sup> and JB Hi-Fi),<sup>77</sup> general merchandise retailers (e.g., The Warehouse)<sup>78</sup> and online stores (i.e., online stores operated by brick-and-mortar locations and pure online retailers, e.g., Mighty Ape).<sup>79</sup> Brick-and-mortar stores also sell digital download codes which gamers can redeem to download games from digital storefronts. Physical distribution has declined significantly for both PC and console games.

#### Digital distribution

- 7.24 Digital distribution of games, via digital storefronts, has become increasingly important, enabled by the increased broadband speeds available to consumers. Digital distribution is a

<sup>72</sup> Thegamer, “Study claims PlayStation fans most loyal”, 23.01.20 (link available [here](#)).

<sup>73</sup> PlayStation Lifestyle “PlayStation Continued to Dominate the 2021 Worldwide Console Market”, 02.03.22 (link available [here](#)); Ampere Analysis “Console market reaches new heights with growth to \$60 billion”, 01.03.22 (link available [here](#)); Gamesindustry.biz, “Ampere Analysis: Console market grew to record \$60bn in 2021”, 01.03.22 (link available [here](#)).

<sup>74</sup> <https://www.ebgames.co.nz/>

<sup>75</sup> <https://www.noelleeming.co.nz/c/gaming>

<sup>76</sup> <https://www.harveynorman.co.nz/gaming/games/>

<sup>77</sup> <https://www.jbhifi.co.nz/gaming/>

<sup>78</sup> <https://www.thewarehouse.co.nz/c/electronics-gaming/gaming>

<sup>79</sup> <https://www.mightyape.co.nz/games>



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quicker and more convenient mode of game distribution for many gamers compared to physical distribution. More than 90% of all video games sold globally are now in digital form.<sup>80</sup>

- 7.25 The Parties provide an overview below of digital distribution on different devices (*i.e.*, console, PC and mobile), different payment models (*i.e.*, purchase and subscription), and different delivery mechanisms for games (*i.e.*, download and cloud streaming).

### *Digital distribution on different devices*

- 7.26 **PC video games:** Gamers using PCs can access games through publisher-owned storefronts and multi-publisher storefronts, which can either be operated by publishers or by non-publisher digital storefront owners. In 2021, 98% of PC gaming content was distributed online.<sup>81</sup> Multi-publisher storefronts are the most well-known method of digital PC game distribution. For example, the leading multi publisher storefront is Valve Corporation's Steam<sup>82</sup> which offers over 50,000 video games and has more than 120 million monthly active users<sup>83</sup> (and sells into New Zealand). The Epic Games Store<sup>84</sup> is another significant multi-publisher storefront, with over 62 million monthly active users<sup>85</sup> (and sells into New Zealand).

- 7.27 **Console video games:** Console video games are distributed through console-owned app stores, which are a form of publisher-owned storefront.

(a) Sony, Nintendo, and Microsoft each publish first-party video games through their app stores (PlayStation Store, Nintendo eShop, and Xbox Store, respectively), in addition to offering video games published by third-parties. Gamers can access console app stores through their consoles and PCs.<sup>86</sup>

(b) Publisher-owned storefronts can advertise console versions of their video games. However, they cannot offer these video games for download to the console, as the console-owning storefronts are the centralised distribution channel for their respective consoles. To illustrate, gamers using Microsoft Xbox consoles can purchase console video games from the Xbox Store or from digital storefronts accessible via a web browser. If the gamer selects an Xbox video game for purchase on a developer-owned storefront, they will be redirected to the Xbox Store to complete the purchase.

- 7.28 **Mobile games:** Mobile app stores, used to download native mobile games, are operating system-centric.<sup>87</sup>

(a) For Apple devices, the Apple App Store is pre-installed and is the de facto method of delivery of native mobile games to Apple's iOS devices.<sup>88</sup>

(b) For Android-based devices, the Google Play Store is generally pre-installed and the original equipment manufacturer may also offer an app store alongside it (*e.g.*, Samsung devices run on Android and its users can access video games in both the Google Play Store and Samsung Galaxy Store). In practice, the Play Store is the

<sup>80</sup> Game Rant, "91% 2020's Game Industry Revenue Was Digital", 24.12.20 (link available [here](#)).

<sup>81</sup> Newzoo Global Games Market Data estimates that less than 2% of the revenue from the sale of PC gaming content was generated by sales of physical copies. The share includes sales of in-game content, but in any event excluding in-game content leads to a similarly small proportion (ca. 7% was generated by physical sales).

<sup>82</sup> See Steam website (link available [here](#)).

<sup>83</sup> Backlinko, "Steam Usage and Catalog Stats for 2022", 13.04.2021 (link available [here](#)).

<sup>84</sup> See Epic Games Store website (link available [here](#)).

<sup>85</sup> Statista, "Number of active users of Epic Games Store worldwide from 2019 to 2021", 3.2.22 (link available [here](#)).

<sup>86</sup> Both Sony and Microsoft offer "all digital" versions of their consoles that do not include a Blu-ray reader or other physical means for video game consumption.

<sup>87</sup> For further information see CMA, *Mobile Ecosystem: Interim Report*.

<sup>88</sup> CMA *Mobile Ecosystem Interim Report*, paragraphs 4.16, 4.30 and 4.57.

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predominant app store on Android devices and faces only limited constraint from alternative Android app stores.<sup>89</sup>

- (c) Gamers may also use their mobile device's web-browsers to find video games for their device, which will redirect them to the appropriate app store (*i.e.*, if players visit [www.minecraft.net](http://www.minecraft.net) on a smartphone for purposes of acquiring the *Minecraft* game app, the device redirects them to the appropriate app store to complete the purchase and download).
- (d) There are additional publisher-owned storefronts which distribute video games for devices using the Android operating system (Apple does not allow users to sideload native apps on its devices).<sup>90</sup> Gamers can sideload video games from these app stores on to their Android devices, although only a small proportion of downloads on Android devices are downloaded in this way.<sup>91</sup> For example, to play *Fortnite* players must download the Epic Games App (either via mobile web-browser or the Samsung Galaxy Store), from which they can download *Fortnite* directly; neither *Fortnite* nor the Epic Games App are available on the Google Play Store.<sup>92</sup>
- (e) PC and console games are also available on iOS and Android devices through browser-based web apps, which provide access to cloud gaming services. As the games provided via cloud gaming services are typically designed to run on a range of devices and are not designed specifically for mobile devices, they are not included within the definition of mobile games for the purposes of this submission.

### *Payment models for gaming content*

7.29 There are a range of ways to monetise game content and related services distributed in digital form, including:

- (a) **Buy-to-play:** The traditional buy-to-play model means customers pay a one-time upfront fee for each individual video game. Some developers also offer additive buy-to-play content, such as expansion packs with additional playable content, such as new locations or missions, or in-game purchases of content such as costumes or upgrades.
- (b) **Free-to-play/Freemium:** Video games can be offered with a zero upfront fee and monetised exclusively via expansion packs and in-game purchases.<sup>93</sup>
- (c) **Subscriptions:** Video gaming subscription services take different forms and may enable gamers to access individual video games through the models below:
  - (i) **Free-to-play games with pay-to-play elements:** Gamers make periodic subscription payments to access additional game content (*e.g.*, different worlds, content and/or features).<sup>94</sup>
  - (ii) **Pay-to-play games:** Periodic payments allow gamers to access the game, its content, and other gamers with whom they can play. This model is commonly used in MMORPGs, such as Activision Blizzard's *World of*

<sup>89</sup> CMA Mobile Ecosystem Interim Report, paragraphs 4.17, 4.22, 4.31 and 4.63-4.90.

<sup>90</sup> CMA, Mobile Ecosystems Interim Report, paragraphs 4.91-4.96.

<sup>91</sup> CMA Mobile Ecosystem Interim Report, paragraphs 4.97-4.112.

<sup>92</sup> The Verge, "Fortnite for Android has also been kicked off the Google Play Store", 13.08.21 (link available [here](#)).

<sup>93</sup> Prominent examples include *Warframe* (PC and console), *Apex Legends* (PC and console), *Genshin Impact* (PC, console, and mobile), and *Fortnite* (PC, console, and mobile).

<sup>94</sup> For example, Jagex's RuneScape and Microsoft's Elder Scrolls Online use such a model.



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*Warcraft*. The game is played locally on the gaming device, but the device communicates with remote servers to enable online multi-player experiences.

- (iii) **Multi-game services:** Multi-game subscription services take a variety of formats and may enable gamers to:
  - (aa) access a curated catalogue of games that gamers can download or stream, effectively renting access to the game; and/or
  - (bb) play with each other online in the form of multi-player experiences across multiple games. Multi-game services may provide both the subscription services described above, *i.e.*, access to a set of games as well as multi-player experiences.
- (iv) Multi-game subscription services offer gamers a range of different payment options which are summarised in **Appendix Two** and include Microsoft Xbox (Xbox Game Pass and Xbox Live Gold), Sony PlayStation (PlayStation Plus), Nintendo (Nintendo Switch Online), EA (EA Play and EA Pro), Apple (Apple Arcade), Ubisoft (Ubisoft +), Google (Play Pass), and Utomik, which are all available in New Zealand, along with a number of other providers overseas that could readily expand their offering to New Zealand consumers, including Google (Stadia), Amazon Luna, Nvidia GeForce Now, Blacknut.

### *Form of access to gaming content*

- 7.30 Gamers can either download video games (and additional content) or stream them via cloud gaming delivery:
- (a) **Video game downloads:** Downloading remains the most common form of distribution of games in digital form. Downloads are offered by a wide range of digital storefronts and app stores, including publisher/developer-owned storefronts (including console app stores), third-party multi-publisher app stores, and mobile app stores.<sup>95</sup> Once downloaded, video games are stored, run, processed, and displayed locally on the gamer's device.<sup>96</sup>
  - (b) **Video game streaming:**<sup>97</sup> Cloud gaming enables gamers to stream games on demand from the cloud to their device of choice. Gamers can stream games already purchased (also known as Bring-Your-Own-Game, or BYOG), or access (without buying) a range of games that are included in the catalogue. These services remain in their infancy but cloud gaming is evolving rapidly (both in terms of the number of services available and the size of the relevant catalogues), and is expected to grow in the short- to medium-term.<sup>98</sup>

For example, Xbox Cloud Gaming has over 400 games available as part of the Game Pass Ultimate subscription, as compared to rivals such as Nvidia GeForce Now (over 1,000 games), Sony PlayStation Plus (around 700 games), Google Stadia (around

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<sup>95</sup> If the video game is bought, the gamer acquires a licensing right to play it. If obtained through a subscription, the video game is usually accessible until it is removed from the catalogue or the subscription expires.

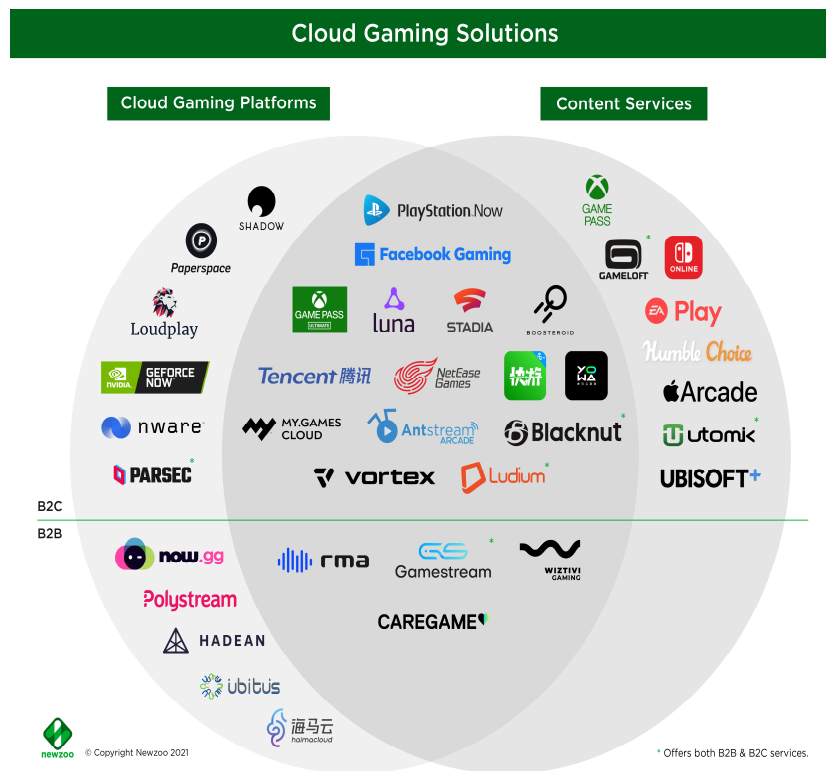
<sup>96</sup> Even with game downloads, some elements of the game may be processed in and delivered via the cloud, such as multi-player elements or other features.

<sup>97</sup> Game streaming is distinct from live game streaming, which involves live streams of individuals/teams playing games.

<sup>98</sup> pnewswire.com, "Cloud gaming market size worth \$7.24 billion by 2027 CAGR: 47.9% grand view research inc", 17.08.20 (link available [here](#)).

400), Amazon Luna (around 200), and Facebook Gaming (less than 100). Further details and examples of gaming service providers offering cloud gaming delivery of content are set out in **Appendix Three**.

Figure 2: Cloud Gaming Solutions Ecosystem<sup>99</sup>



### Ancillary video gaming activities

7.31 Activision Blizzard also sells game-related merchandising and operates professional e-sports leagues (i.e., the *Overwatch League* and the *Call of Duty League* launched in 2020), which generate revenues from live in-person and online events.

### Online display advertising

7.32 Online display advertising is online advertising that is not search ads or classified ads and which appears on webpages, videos, in mobile apps and alongside social media content. Online advertising includes banner ads on webpages, video ads, native / sponsored content, and rich media ads.<sup>100</sup>

<sup>99</sup> Newzoo, Cloud Gaming Business Ecosystem, 10.08.21 (link available [here](#)). In this diagram, Microsoft understands that:

- "Cloud gaming platforms" primarily provide hardware that enables streaming of compatible games already purchased by gamers, rather than provide access to a library of games (e.g., Nvidia GeForce Now, Nware, Shadow, Paperspace). In effect "cloud gaming platforms" sell remote streaming capabilities that allow users to run a game on one piece of hardware, but play it remotely through another device; and
- "Content services" refers to businesses that provide access to a library of games for a flat monthly fee (e.g., Xbox Game Pass, Nintendo Online, Apple Arcade, EA Play, Ubisoft+), and includes those providers that allow games to be played "natively" on the user's device, and those that offer cloud-based streaming services. See Appendix Three for examples of content service providers that offer cloud delivery of their content (under the heading "Appendix Three - Examples of Gaming Service Providers Offering Cloud Gaming Delivery of Content").

<sup>100</sup> ACCC Digital Advertising Inquiry Report, page 26.

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- 7.33 Online display advertising is sold through two channels: closed channels wherein online publishers sell ad inventory directly to advertisers and not ad tech services; and open channels wherein ad tech services sell ad inventory from a range of publishers to advertisers.<sup>101</sup>
- 7.34 The Commission is familiar with online display advertising through previous merger decisions – for example, *NZME/Fairfax*.<sup>102</sup> More recently, the Australian Competition and Consumer Commission ("**ACCC**") considered this sector closely in its Digital Advertising Services Inquiry, and concluded that "*Google is the largest supplier of ad tech services across the entire ad tech supply chain; no other provider has the scale or reach across the ad tech supply chain that Google does.*"<sup>103</sup>
- 7.35 A number of publishers (including Activision Blizzard and, to a more limited degree and Microsoft) offer digital advertising within some of their video game content. This in-game advertising can be integrated directly into the game by rewarding users for watching video ads (e.g., in-game currency, unlocking new levels, or receiving unique items) or the ads can appear as traditional interstitial ads, which appear between in-game activities or levels, or banner ads at the bottom of the game screen.
- 7.36 As with other forms of online display advertising, advertising within mobile games is typically provided via ad networks. Ad networks work with app developers and game publishers to allow them to post openings for ads, whilst at the same time allowing advertisers to bid on ad space inventory within a game, with the advertising slot being allocated to the highest bidder. The leading in-game advertising networks for mobile apps include: Unity Ads, Facebook, Apple, AppLovin, ironSource, Google, Mintegral, TikTok, Vungle, MOLOCO, and Liftoff.<sup>104</sup>
- 7.37 In-game advertising is less common in relation to console and PC video games, and the opportunities to place ads are more limited.<sup>105</sup> This reflects the fact that gamers typically pay to play these games and are much less accepting of ads as a result.<sup>106</sup> The opportunities for display advertising within such games is limited to, for example, product placements or advertising in "real-life" locations, such as on sports kits in FIFA. There has also been a recent trend towards brands and artists making virtual appearances in video games, like Ariana Grande's Fortnite-only concert.<sup>107</sup>

### Cloud computing services

- 7.38 Gaming developers and publishers, like many businesses, use cloud computing services. Most of these cloud services are not gaming-specific, e.g., they can be used by companies in any industry. At a high level, these services enable organisations to shift their computing needs to third-party infrastructure, rather than managing their own on-premises computing environments and infrastructure.<sup>108</sup>

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<sup>101</sup> ACCC Digital Advertising Inquiry Report, page 26.

<sup>102</sup> *NZME Limited and Fairfax New Zealand Limited* [2017] NZCC 8.

<sup>103</sup> ACCC, *Digital Advertising Inquiry Final Report (ACCC Digital Advertising Inquiry Report)*, 28.09.21 (link available [here](#)), page 5.

<sup>104</sup> Udonis, "*Top 15 Mobile Game Ad Networks to Acquire Players*", 9.12.21 (link available [here](#)).

<sup>105</sup> For example, in September 2020, EA disabled full screen ads in EA Sports UFC 4 following negative customer feedback, and in July 2021 EA denied reports it was planning to introduce in-game advertising for console video games.

<sup>106</sup> IDG, "IDG Console Gaming Market – Quarterly Update", 31.03.21, pages 12-13.

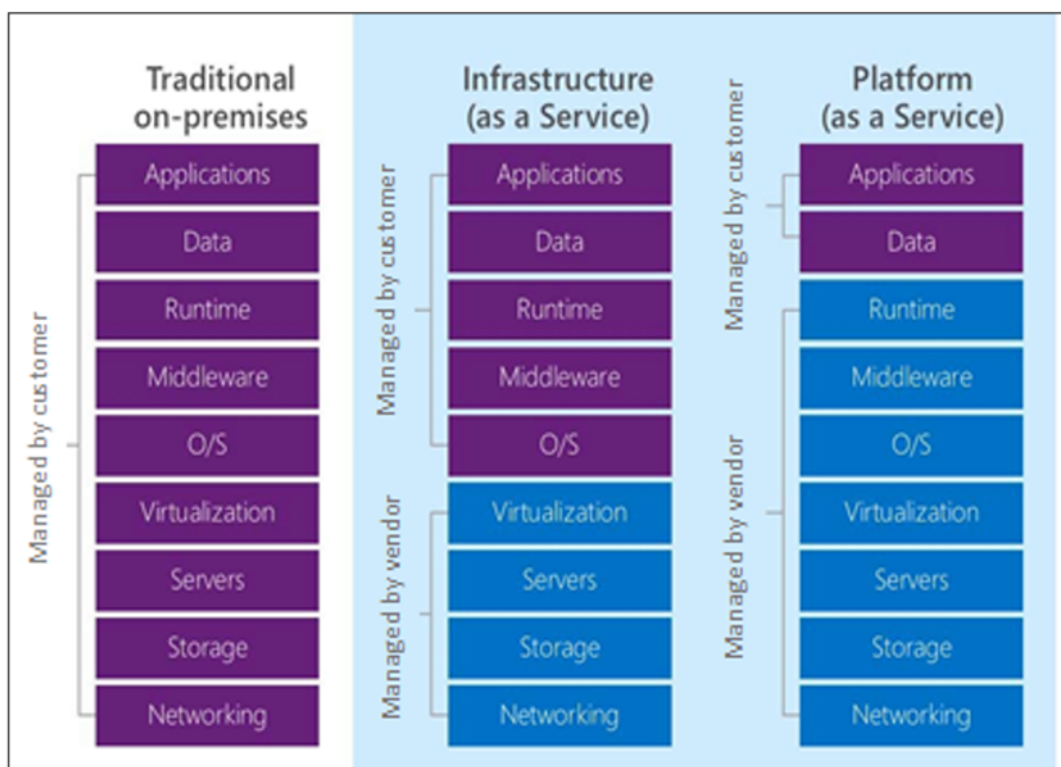
<sup>107</sup> Fortnite, "*Fortnite Presents...The Rift Tour Featuring Ariana Grande*", 08.09.21 (link available [here](#)).

<sup>108</sup> These services allow customers to avoid the costs related to the purchase, configuration, and maintenance of on-premises data centres and software licenses, while benefiting from the most advanced hardware and software solutions and the ability to easily scale up and down (i.e., add or subtract resources when needed, for instance due to a sudden increase or decrease in traffic to a hosted website).

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7.39 Public clouds deliver two main categories of services: IaaS and PaaS. IaaS and PaaS providers offer a stack of hardware and software components and functionalities on-demand to customers. IaaS typically comprises the basic capabilities provided by a physical server, namely data processing (or computing), data storage and networking. PaaS typically comprises the additional software capabilities running on the physical infrastructure required to execute applications *i.e.*, runtimes,<sup>109</sup> operating systems, databases and middleware, as well as tools used to develop applications.<sup>110</sup> The main distinction between IaaS and PaaS services is how much responsibility for management of the service the customer retains. Figure 3 below illustrates the allocation of management responsibility between the customer and the cloud service provider in the main cloud service models compared to the traditional on-premises model.

Figure 3: On premises – SaaS/PaaS comparison



7.40 In practice, the distinction between IaaS and PaaS is blurred. Providers offer a wide and rapidly expanding range of services across IaaS and PaaS, pushing into new areas to cater to customer needs.

7.41 Game developers and publishers may use a wide array of third-party IaaS and PaaS services when developing, hosting, and running games. This includes backend services, tools managing multi-player features, maintaining servers, hosting and analysing gamers' data, and running live, multi-player games. All major cloud service providers offer a range of services to game developers including the market leaders AWS<sup>111</sup> and GCP,<sup>112</sup> Microsoft's Azure, as well

<sup>109</sup> Runtime operating system refers to the development platform for which a piece of software has been developed, for instance, Microsoft's .NET platform (<https://www.microsoft.com/net>) or Java. Note that Microsoft's development platform .NET is compatible with numerous programming languages.

<sup>110</sup> Middleware refers to a wide category of software products sitting between the operating system and application software, providing the infrastructure for applications to run or be accessed. Drivers for printers, for instance, are middleware.

<sup>111</sup> AWS, "AWS for Games" (link available [here](#)).

<sup>112</sup> GCP, "Google Cloud for gaming" (link available [here](#)).

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as other providers including Alibaba<sup>113</sup>, IBM Cloud<sup>114</sup>, and Oracle Cloud Infrastructure.<sup>115</sup> Most of these services are not gaming-specific and are used by customers in a wide array of industries. Some cloud services are, however, gaming-specific and are used by game developers for a particular purpose. Gaming-specific cloud services include AWS's Open 3D Engine, a AAA-capable, cross-platform open-source game engine that can be used to build games.<sup>116</sup>

### PART D: COMPETITIVE ASSESSMENT

#### 8. OVERVIEW OF RELEVANT MARKETS

8.1 In New Zealand, Microsoft and Activision Blizzard are both active in the supply of the below services:

- (a) the development and publishing of video games for PCs, consoles and mobile devices;
- (b) video game distribution (only in relation to digital distribution of PC and console video games, as neither party is active in physical distribution of any video games,<sup>117</sup> nor in the digital distribution of mobile games);
- (c) online display advertising; and
- (d) video game-related merchandising.

8.2 Microsoft also supplies video gaming hardware and cloud computing services but Activision Blizzard does not provide these products or services.

8.3 Microsoft is not aware of any prior Commission public consideration of market definition in the video gaming industry. Based on the areas of overlap and previous analysis of the gaming industry by other competition agencies, the Parties consider the relevant markets for the Commission's assessment of the Proposed Transaction to be:

- (a) the supply of video game development and publishing on PCs and consoles;
- (b) the supply of video game development and publishing on mobile devices (*i.e.*, mobile games);
- (c) the supply of digital video game distribution services;
- (d) the supply of online display advertising services; and
- (e) the supply and licensing of video game-related merchandising.

8.4 In addition to the markets above, the markets for the sale of gaming hardware and supply of cloud computing services are also relevant for the purposes of analysing the Proposed Transaction for any potential vertical effects.

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<sup>113</sup> Alibaba Cloud, "Gaming Solutions" (link available [here](#)).

<sup>114</sup> IBM, "IBM Cloud for game developers" (link available [here](#)).

<sup>115</sup> Oracle, "Oracle Cloud Powers New Video, Gaming, and Sports Streaming Services", 17.03.20 (link available [here](#)); "Cloud Gaming – Game on for 5G", 16.11.21 (link available [here](#))

<sup>116</sup> AWS Game Tech Blog, "Built for Builders: The Story of AWS and Open 3D Engine – Developer Preview". 06.07.21 (link available [here](#)).

<sup>117</sup> See footnote 1 for more information.

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8.5 These markets are truly global because supply and demand side substitutability are not limited by national borders, but Microsoft appreciates that the Commission will also want to analyse the Proposed Transaction for potential impacts in New Zealand.

8.6 Accordingly, the Parties have analysed these markets and provided share data on both a global and national basis. The Parties note that many of the estimated shares are based on calendar year 2020 data, being the most recent full year data available from third-party sources.

### Video game development and publishing

8.7 The Commission has not previously considered the potential for a market for the supply of video game development and publishing on PC, console and mobile.

8.8 The EC has previously considered an overall market for video game software development and publishing ("**game publishing**"), which refers to the development (including design, art, programming, and testing, usually in a development studio) and the making available to the public, for sale or free of charge, of a video game.<sup>118</sup>

8.9 The Parties submit that the relevant markets are global markets for the supply of video game development and publishing on (1) PCs and consoles and, separately, (2) mobile devices, on the basis that:

- (a) There is meaningful substitutability between games developed for PCs and different console platforms:<sup>119</sup>
  - (i) Analysts have noted that the distinction between PC and console games, in particular, has blurred, as game publishers are increasingly launching games for both PCs and consoles.<sup>120</sup> The majority of video games published by the Parties and other independent game publishers are launched for both PCs and consoles. This trend has been reinforced by the launch of next generation consoles (*i.e.*, the Xbox Series X and PlayStation 5) in 2020, which are "*becoming more and more PC-like than ever before*".<sup>121</sup>
  - (ii) The emergence of cross-play and cross-progression has further blurred the boundaries between console and PC, with the number of games incorporating cross-play and cross-progression across console and PC set to increase.<sup>122</sup> For example, Activision Blizzard's Battle.net platform allows video gamers to keep in-game progress/level-ups across multiple devices through their online account.
  - (iii) The introduction of device-agnostic video gaming subscription services and cloud-based streaming services (*e.g.*, Xbox Game Pass, PlayStation Now, Google Stadia, Nintendo Switch Cloud, Amazon Luna, Nvidia GeForce Now, Facebook Gaming and others) are continuing to erode any

<sup>118</sup> *Microsoft/ZeniMax*; see also Case M.7866, *Activision Blizzard/King*, EC decision, 12.02.16 (**Activision Blizzard/King**).

<sup>119</sup> In its 2016 decision in *Activision Blizzard/King*, the EC accepted that the lines between different platforms were at the time had blurred, because video games are often released on several platforms, and there is substantial substitutability between video games developed for different platforms. See *Activision Blizzard/King*, paragraph 26.

<sup>120</sup> Even Sony, which has historically focused only on console games given its console business, has started releasing titles on PC in the last two years. See, for example, NME "*Ex-Sony CEO explains why he brought PlayStation exclusives to PC*", 4.10.21 (link available [here](#)). See also: cheatsheet.com, "*PC vs. Console: How Gaming's Lines Are Getting Blurry*", 21.10.15 (link available [here](#)).

<sup>121</sup> Android Authority, "*Console vs gaming PC: Which one should you buy?*" 30.08.21 (link available [here](#))

<sup>122</sup> Gamerant, "*The 22 Best Crossplay Games*", January 2022 (link available [here](#)).

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remaining differences between video games published for PCs and consoles.

- (iv) From a supply-side perspective, developers can, and often do, develop games that are available across multiple different console / platform types. That is because the bulk of the development effort for a particular game is spent in creating and refining the experiential part of the game (such as generating underlying art, animation and audio content). Once the game exists in its final form, making it available on an additional platform (e.g. an additional console type or for, say, PC) is primarily an engineering effort to integrate the game with any required console / platform infrastructure or features that differ from the original game.<sup>123</sup> While it is an approximate estimate, Microsoft estimates that generally speaking [ ] of the original game could be directly reused to expand the game functionality to an additional platform. Furthermore, the widespread and increasingly common use by developers of third party "game engines"<sup>124</sup> to develop games (with those game engines often platform agnostic or able to support multi-platform development), further assists developers to develop games that are available across multiple different console / platform types. For these reasons it is common for developers:
- (aa) at the start of the game development process, to decide whether they are developing a game for a single platform, or for multiple platforms. If the developer intends to support multiple platforms, efforts will be made to write as much of the code in a way that can be shared and common to all versions across different platforms.
  - (bb) to reuse a game developed for one platform on another platform.
  - (cc) to look for efficiencies in the development process by reusing or adapting the same game engine to aid in porting games to multiple platforms.
  - (dd) to increasingly adopt a multi-platform approach (unless they are, say, second-party developers that develop video games exclusively for a particular device, or they have scarce/limited resources that require them to focus on a single platform), so that they can more easily expand to additional platforms in the future and more easily update the game with new content across the various platforms.

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<sup>123</sup> For a game to port to a different platform, there is some re-engineering required and some amendments to content. This is because platforms have different services and different ways of handling certain features, which requires an element of re-engineering. However, this typically does not involve a full rewrite of the code, but rather amendments so that the game can run on new hardware with regards to services, input controls or other features. In addition, the content (art and audio) may need to be adjusted to support different hardware.

<sup>124</sup> A "game engine" is a specialised piece of software that developers can use to assist in developing games. At a high-level, a game engine is an abstracted set of code and tools that provide a developer a framework upon which to build their game. It takes care of common elements/systems found in games (animation, UI, world authoring, lighting, rendering and more), and allows developers to access functionality of libraries that expose features of a given platform / hardware. In short, game engines provide a flexible and reusable software platform that provides many of the core functionalities needed to develop a game, while reducing costs and complexities.



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- (b) There remain significant limits on substitutability between PC/console games and native mobile games:<sup>125</sup>
- (i) At present, mobile devices generally do not deliver the computing power or storage capacity of current generations of PCs or consoles, and mobile games tend to be less technically advanced with lower performance in terms of graphics, music, gaming options, and content. However, the development of streaming subscription services should eventually enable gamers to play more sophisticated PC and console video games to be played on mobile devices (part of the transaction rationale), although at present providers offering cloud gaming have also faced challenges in providing a fully functioning cloud gaming experience on mobile devices. In particular, restrictions imposed by the Apple App Store, in particular, that limit the ability to cross-play, use fully functioning subscription services and launch suggest that video games playable on mobile devices still fall into distinct segments.
  - (ii) From a demand-side perspective, native mobile games typically differ from PC and console games, since mobile games: (i) are often offered for free or at a significantly lower price than PC and console video games;<sup>126</sup> (ii) provide gamers with the flexibility to “play on-the-go”; (iii) are technically less advanced, making lower performance demands in terms of graphics, music and gameplay; and (iv) differ from console and PC video games in respect of game selection, content and gaming experience.<sup>127</sup>
  - (iii) On the supply side, PC and console video games remain distinct from native mobile games since the development of PC and console video games often requires considerably greater investment, in terms of money, time and resources. Further, PC and console video games often entail more extensive marketing than mobile games.
- (c) It is not appropriate to make distinctions based on genre or game type:<sup>128</sup>
- (i) From a demand-side perspective, gamers often buy and play video games across several video game genres/types, with their game choices motivated by content, gameplay, and their personal tastes. For example, during the course of 2021, almost [ ].<sup>129</sup> Further, a significant number of gamers switch their purchases or playing time to other genres or types of

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<sup>125</sup> This was recognised by the EC in the Microsoft/Zenimax decision, where the EC found indications that mobile games constitute a distinct market, given their nature, technical features, different pricing structure, different production costs, and different distribution channels (native mobile games being largely distributed through app stores). The ACCC made similar public statements in its 2021 Digital Platform Services Inquiry Interim Report at pages 32-33 (link available [here](#)), where it stated that there are reasons to believe that consumers do not consider fixed and mobile devices as close substitutes: “First, the use of mobile devices to play many games is likely to occur when the user does not have access to a fixed device [includes PCs and consoles]. At these times, fixed devices are not a substitute for apps on mobile devices even if there is some scope for consumers to delay playing a game until they are at home. Second, it appears that consumers are increasingly using the apps on mobile devices to play games.”

<sup>126</sup> While free-to-play or freemium is the prevailing model of choice for mobile games, the model of PC/console video games is mostly based on upfront payments or subscriptions..

<sup>127</sup> CMA, *Ecosystems Interim Report*, paragraph 4.213.

<sup>128</sup> This is consistent with findings of the EC who has consistently held that the game publishing market should not be segmented by genre or type. For example, in Microsoft/ZeniMax at paragraphs 18 and 20, the EC found that “amongst video game publishers and distributors (including both physical and digital distributors), there is no clear majority supporting either a segmentation according to genres”, nor types of games. Further, the EC added that a distinction by genre was “subjective” as there are “games with multi-types of gaming activity inside the same game”. Similarly, in Activision Blizzard/King at paragraphs 13-16, the EC found that segmentation by reference to game genre or type was not appropriate.

<sup>129</sup> [ ].



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video games in response to a significant price rise or the launch of a popular new video game in a different genre.<sup>130</sup> [ ].<sup>131</sup>

- (ii) From a supply-side perspective, a publishing studio can create many different types of video games, as well as video games that involve elements of a number of genres.<sup>132</sup> For example, *Grand Theft Auto* involves elements of action (shooter), simulation (racing), and other genres. Moreover, there is significant fluidity in relation to genres, with studios intentionally combining different video game elements to create new formats (e.g., battle royale video games, such as *Fortnite*, which blend shooter and survival elements).<sup>133</sup>
- (d) The relevant geographic market is global, which is supported by the fact that many publishers typically produce one version of a video game for distribution worldwide (subject to possible localisations), and there are no significant price differences.<sup>134</sup> Video game publishers are increasingly incorporating localisation of their games as part of the game development process, rather than after the fact as they had historically done. Today, most major video game titles are released globally, with availability in 40+ languages, clearly demonstrating the global nature of the gaming industry.<sup>135</sup>

### Market shares for development and publishing

#### *PC and console video games*

- 8.10 Table 2 in **Confidential Appendix Four** provides the Parties' estimates of global shares in development and publishing of PC and console games in 2020.
- 8.11 The Parties do not consider the console and PC segments of the video game development and publishing market should be considered separately. Nevertheless, to assist the Commission with its assessment, **Confidential Appendix Four** provides the shares for PC and console separately at Table 6 to Table 9.
- 8.12 Further, although the Parties consider the relevant geographic scope of the market to be global, to the extent that the Commission wishes to consider New Zealand-specific dynamics, the Parties have provided estimates of the New Zealand shares for the development and publishing of PC and console video games at Table 3 in **Confidential Appendix Four**.

#### *Mobile video games*

- 8.13 Table 4 in **Confidential Appendix Four** provides the Parties' estimates of global shares in development and publishing of mobile games in 2020. The Parties understand there to be a total of around [ ] mobile game publishers globally.<sup>136</sup>

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<sup>130</sup> *Vivendi/Activision*, paragraph 23.

<sup>131</sup> [ ].

<sup>132</sup> The EC reached the same conclusion in *Vivendi/Activision*, where it noted that "from a demand-side perspective, most gamers appear to buy games across several game genres" and "from a supply-side perspective, publishers appear generally to publish games across multiple genres". Further, the EC added that a distinction by genre was "subjective", as there were "games with multi-types of gaming activity inside the same game". See: Case M.5008, *Vivendi/Activision*, EC decision, 16.04.08 (**Vivendi/Activision**), paragraph 23.

<sup>133</sup> Industry analysts have noted that the original *Fortnite* was not a commercial success until Epic Games mixed battle royale mechanics with elements from another of Epic Games' games, *Unreal Tournament*, at which point *Fortnite* became one of the biggest video games in the world.

<sup>134</sup> *Microsoft/ZeniMax*, paragraphs 25-28.

<sup>135</sup> IDG Consulting, "Spotlight on the Opportunity Markets", 6 May 2021, page 10.

<sup>136</sup> Source: App Annie data.

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- 8.14 Although the Parties consider the relevant geographic scope of the market to be global, to assist the Commission with its assessment, the Parties have also estimated shares in the development and publishing of mobile games in New Zealand in Table 5 **Confidential Appendix Four**, and note that there are likely to be thousands of mobile game publishers that sell into New Zealand.

### Video game distribution

- 8.15 The Commission has not previously considered video game distribution.
- 8.16 In *Microsoft/ZeniMax*, the EC considered a market for video gaming distribution and left open the question of whether the video game distribution market should be further segmented according to (1) physical and digital distribution channels; and (2) in relation to digital distribution, by platform (PC, console and mobile), payment model (upfront payment vs subscription) and access (download vs streaming).
- 8.17 The EC also found that the geographic scope of both physical and digital video game distribution was at least EEA-wide, and possibly worldwide.<sup>137</sup>
- 8.18 The Parties consider the relevant market to be the global market for digital video game distribution. The Parties submit that this is the appropriate market definition because digital distribution provides gamers with immediate access to games, which cannot be lost or destroyed, compared to the accessibility and storage of physical buy-to-play games. There are also differences in the supply chain of physical and digital distribution, with the shorter supply chain for digital distribution making the cost of digital distribution lower.
- 8.19 The Parties consider that the market for digital distribution of video games is worldwide, supported by the fact that the same digital distribution channels are available anywhere in the world without cross-border restrictions, and the same video game publishers compete across all major regions.

### Market shares for video game distribution

- 8.20 The Parties provide shares on an overall basis (PC, console, mobile), as well by device for PC and console as neither of the Parties is a distributor of mobile games – see Table 10 – Table 13 in **Confidential Appendix Four**.
- 8.21 Although the Parties consider the relevant geographic scope of the market to be global, to assist the Commission with its assessment, the Parties have also provided estimates of shares for New Zealand – see Table 14 – Table 17 in **Confidential Appendix Four**.

### Video game-related merchandising

- 8.22 The Parties are not aware of cases considering the relevant product market for the supply of video game-related merchandise by the Commission or other competition authorities. However, the Parties submit the relevant market should include all merchandise containing all types of content, noting that:
- (a) Licensors of rights for video game-related merchandising also compete with manufacturers and/or retailers of merchandise that either use their own rights or content in the public domain.

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<sup>137</sup> *Microsoft/ZeniMax*, paragraphs 45-47.

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- (b) Further, video game rights licensors compete with content of other types, including licensed rights relating to motion pictures, television, sports clubs and personalities.<sup>138</sup> For example, certain popular rights, such as *Star Wars*, are present across many segments of the entertainment industry, including movies, TV series and gaming, among others.

### Online display advertising

- 8.23 In *NZME/Fairfax*,<sup>139</sup> the Commission considered that the relevant online (digital) advertising market in assessing that proposed merger was the "market for digital advertising, encompassing video, search, social media, display, programmatic, homepage takeovers, native advertising, and mobile interstitials."<sup>140</sup> Microsoft notes that more recently, the Commission<sup>141</sup> has referred to the market definitions adopted by the ACCC in its July 2019 Digital Platforms Inquiry Report, with the Commission observing the ACCC's analysis of market for "the supply of search advertising" and "the supply of display advertising".
- 8.24 That approach by the ACCC (and referred to by the Commission more recently) is consistent with the ACCC's analysis in the authorisation of *Gumtree/Cox*.<sup>142</sup> Although the ACCC did not consider it necessary to reach a precise definition of the market, it assessed the transaction in the context of (i) the national market for the supply of online display advertising on digital automotive content providers; and (ii) a broader national market for the supply of online display advertising.<sup>143</sup>
- 8.25 Accordingly, the Parties have analysed the market for online display advertising in New Zealand and submit that the Proposed Transaction does not raise any concern regardless of the geographic scope of the market – see Table 18 in **Confidential Appendix Four**.
- 8.26 For completeness, the Parties also provide the global shares in online display advertising – see Table 19 in **Confidential Appendix Four**.

### Cloud computing services (vertical relationship only)

#### *Market definition*

- 8.27 Microsoft is not aware of any public Commission decision in which it has formed a view on the relevant market in relation to the supply of cloud computing services. However, the EC has assessed cloud computing services in a number of previous cases and considered possible distinctions within IT outsourcing services.<sup>144</sup> [ ].<sup>145</sup>

<sup>138</sup> Further, content is increasingly common to games and motion pictures and TV content, as games are turned into motion pictures (e.g., *Super Mario Bros.*, *The Animated Movie*), motion pictures into games (e.g., *Aliens*), games into TV series (e.g., *Angry Birds*), and TV series into games (e.g., *Game of Thrones*).

<sup>139</sup> *NZME Limited and Fairfax New Zealand Limited* [2017] NZCC 8.

<sup>140</sup> *NZME Limited and Fairfax New Zealand Limited* [2017] NZCC 8 at 285.

<sup>141</sup> Commerce Commission. (21 December 2021). Statement of Preliminary Issues. News Publishers' Association: Application seeking Authorisation for Collective Bargaining. Retrieved from: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0027/273951/News-Publishers-Association-of-New-Zealand-Incorporated-Statement-of-Preliminary-Issues-21-December-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0027/273951/News-Publishers-Association-of-New-Zealand-Incorporated-Statement-of-Preliminary-Issues-21-December-2021.pdf)

<sup>142</sup> Gumtree AU Pty Ltd's acquisition of Cox Australia Media Solutions Pty Ltd, ACCC determination, 20 April 2020 (**Gumtree/Cox**), available at: [https://www.accc.gov.au/system/files/public-registers/documents/Determination%20-%2030.04.20%20-%20PR%20-%20MA100019%20Gumtree%20Cox\\_0.pdf](https://www.accc.gov.au/system/files/public-registers/documents/Determination%20-%2030.04.20%20-%20PR%20-%20MA100019%20Gumtree%20Cox_0.pdf).

<sup>143</sup> *Gumtree/Cox* p.23.

<sup>144</sup> M.7458 – *IBM / INFBusiness of Deutsche Lufthansa*; EC decision of 15 December 2014, paragraph 20; M.8180 – *Verizon/Yahoo*, EC decision of 21 December 2016, paragraph 72; M.8994 – *Microsoft/GitHub*, EC decision of 19 October 2018, paragraph 61, M.9660 - *Google/Fitbit*, EC decision of 17 December 2020, paragraphs 273-274 (**Google/Fitbit**)

<sup>145</sup> [ ]

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- 8.28 Consistent with the above consideration by the EC, the Parties submit that cloud computing services should not be segmented, *i.e.*, that IaaS and PaaS form part of a single market due to both demand-side and supply-side substitution. All major public cloud computing service providers, including AWS, GCP, Azure, Alibaba, IBM Cloud, and Oracle Cloud Infrastructure, and New Zealand providers such as Spark<sup>146</sup> and Datacom,<sup>147</sup> offer a full range of IaaS and PaaS services to customers. For example, AWS (Amazon's market leading cloud computing platform) initially focused on IaaS but subsequently expanded its services to offer a fully-fledged developer platform typically associated with PaaS. In a similar vein, Microsoft's Azure service initially built a market presence in PaaS and subsequently positioned itself as a provider of a broad range of IaaS and PaaS services.<sup>148</sup>
- 8.29 All major cloud computing service providers offer a full range of IaaS and PaaS services which are suitable for the needs of game developers and publishers. The Parties submit that it would not be appropriate to define a separate market for gaming-related cloud computing services, due to both demand-side and supply-side substitution. In line with the approach taken by the EC in *Google/Fitbit* [ ], the Parties consider that the Proposed Transaction should be assessed on the market for cloud computing services.<sup>149</sup>
- 8.30 As set out above, only Microsoft is active in the market for cloud computing services. While Activision Blizzard does not provide cloud computing services, the market is vertically related to the downstream game publishing market in which both Parties are active. However, given that Microsoft is only one of a large number of providers of cloud computing services and Activision Blizzard's demand for cloud computing services is very limited, the precise scope of the relevant product market may be left open for the purposes of the present case.
- 8.31 Estimated global market shares are set out in Table 20 in **Confidential Appendix Four** below.
- 8.32 [ ] publicly available share estimates for New Zealand for just the IaaS sub-segment, which demonstrates that local competitors Spark and Datacom are both also significant competitors in New Zealand – see Table 21 in **Confidential Appendix Four**.

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<sup>146</sup> See [https://investors.sparknz.co.nz/FormBuilder/Resource/module/gXbeer80tkeL4nEaF-kwFA/doc/Spark-Digital\\_Connect.pdf](https://investors.sparknz.co.nz/FormBuilder/Resource/module/gXbeer80tkeL4nEaF-kwFA/doc/Spark-Digital_Connect.pdf)

<sup>147</sup> See <https://datacom.com/nz/en/solutions/cloud/cloud-technology/managed-platform-as-a-service>; <https://datacom.com/nz/en/solutions/cloud/cloud-solutions/infrastructure-as-a-service>

<sup>148</sup> [ ]

<sup>149</sup> [ ], the EC assessed the transaction on the basis of the overall market for cloud services and did not consider a narrower 'vertical' of digital healthcare cloud services]. See *Google/Fitbit*, paragraph 274 [ ]

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### PART D: COMPETITION ANALYSIS

#### 9. NO POTENTIAL FOR HORIZONTAL EFFECTS

##### NO SUBSTANTIAL LESSENING OF COMPETITION IN THE MARKET FOR VIDEO GAME DEVELOPMENT AND PUBLISHING

###### Low combined shares and no material increase in concentration

###### *PC/console video game development and publishing*

9.1 PC/console video game development and publishing is highly fragmented with many participants competing vigorously. The Parties have only a limited combined share of this sector suggesting that market dynamics are unlikely to change. The Proposed Transaction would not result in any likely lessening of competition in the supply of video game development and publishing services on PCs and consoles, separately or combined. This is because:

- (a) **Post-merger, the Parties' combined global share for PC/console video game development and publishing will remain less than or about [ ]**. The Parties' combined share of game development and publishing (at [ ], globally, and at [ ] in New Zealand will remain very low, and [ ].<sup>150</sup>

These market shares remain well within the Commission's concentration indicators shares and are well below any level that could potentially raise any competition concerns.

- (b) **Unconcentrated market:** Globally and in New Zealand, there are numerous competitors in the market for console and PC video game development and publishing. In New Zealand, competitors include Epic Games ([ ]), EA ([ ]), Sony ([ ]), Valve Corporation ([ ]), Ubisoft ([ ]), Tencent ([ ]), Take-Two ([ ]), and Nintendo ([ ]), as well as a myriad of smaller developers and publishers – including a number of New Zealand-based developers such as RocketWerkz (which Tencent is understood to have progressively purchased up to a ~46% shareholding in); Grinding Gear Games (which was acquired by Tencent in 2018); A44 (which became part of Kepler Interactive in 2021); and Ninja Kiwi (which was acquired by Modern Times Group in 2021), amongst others.<sup>151</sup> Further detail on the key competitors is at section 9.5 below.

###### *Mobile game development and publishing*

9.2 The Proposed Transaction does not increase concentration to the point that the combined entity could unilaterally or in coordination effect the supply of video game development and publishing services in the mobile device segment.

<sup>150</sup> This is the case even if PC and console game development and publishing were to be considered separately on a hypothetical basis. Post-Transaction, the Parties' combined shares would be only [ ] for PC ([ ] in New Zealand) and [ ] for console ([ ] in New Zealand). However, for the reasons set out above, the Parties do not consider that such narrow segments reflect the true functioning of competition in this sector.

<sup>151</sup> See the following media in relation to each of the New Zealand-based developers specifically identified:

- RocketWerkz: <https://www.stuff.co.nz/business/115690832/rocketwerkz-looks-for-60-staff-and-waterfront-office-for-auckland-games-studio>
- Grinding Gear Games: <https://www.nbr.co.nz/article/behind-scenes-grinding-gear-games-diy-success-story-ck-215989>
- A44: <https://www.stuff.co.nz/business/126541094/wellington-video-game-developer-joins-collective-as-part-of-175m-deal#:~:text=Acclaimed%20Lower%20Hutt%2Dbased%20video.co%2Downers%20of%20Kepler%20Interactive.>
- Ninja Kiwi: <https://www.nzherald.co.nz/business/new-zealand-game-developer-ninja-kiwi-sold-offshore-for-203-million/7FMNGEYCUK3XKRWZ4NVWCTC3G4/>

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- 9.3 The Parties' combined share, at less than [ ] globally and [ ] in New Zealand, is also well below the level at which horizontal competition concerns could arise. Microsoft's share is [ ] (and well below [ ]), and [ ]
- 9.4 The market is highly fragmented, where [ ], the largest participant globally, [ ], has [ ] market share, and a large number of other companies have market shares well under [ ] including Playtika, Playrix, Netease, and Zynga, among many others. Further detail on these competitors is in section 9.7 below.

### Significant number of competitors of all sizes

#### *Key competitors in PC and console video game development and publishing*

- 9.5 Post-Transaction, there would remain a significant number of competitors of all sizes, including industry heavyweights such as the following, along with a vibrant long tail of smaller competitors:
- (a) **Tencent**, a Chinese multinational technology and entertainment conglomerate which is currently the largest player in the video game industry globally, with 2021 gaming-related revenue of USD 33 billion.<sup>152</sup> Tencent commands [ ] of the share in video game development and publishing for PC and console, and [ ] for mobile game development and publishing globally. Tencent owns Riot Games, the developer of the PC multi-player online battle arena game *League of Legends*. Tencent also owns stakes in Epic Games (the developer of *Fortnite*), Supercell (the developer of mobile game *Clash of Clans*) and in PUBG Corporation (the developer of the battle royale title *PUBG: Battlegrounds*). As noted above, Tencent has stakes in several New Zealand-based developers, such as RocketWerkz (which Tencent is understood to have progressively purchased up to a ~46% shareholding in) and Grinding Gear Games (which was acquired by Tencent in 2018).
  - (b) **Sony**, the second largest company in the gaming industry. In 2021, Sony's revenue totalled nearly USD 85 billion.<sup>153</sup> Sony has [ ] of the share in video game development and publishing for PC and console globally. Sony owns Naughty Dog, the developer of the *Uncharted* and *The Last of Us* titles. On 31 January 2022, Sony announced that it would acquire Bungie, the developer of the *Destiny* series (which is available on PC and console), for USD 3.6 billion and Haven Studios on 21 March 2022.<sup>154</sup>
  - (c) **Nintendo**, which has sold over 5.2 billion copies of its games. Nintendo's 2021 revenue was almost USD 16 billion.<sup>155</sup> Nintendo has [ ] of the share in console video game development and publishing globally, which amounts to [ ] of the share in PC and console development and publishing even though Nintendo is not involved in PC video games. Its key video game titles include *Mario Kart*, which has sold over 150 million copies worldwide, *Pokémon*, which is developed by Game Freak (a developer in which Nintendo has a 32% stake) and published by Nintendo, and *The Legend of Zelda* franchise, which totals 27 titles and has sold 50 million copies worldwide.

<sup>152</sup> Pocketgamer.biz, "Tencent games revenue up 9.9% in 2021 to almost \$33 billion", 23.03.22 (link available [here](#)).

<sup>153</sup> Statista, "Sony's total revenue from fiscal year 2007 to 2020", April 2021 (link available [here](#)).

<sup>154</sup> Washington Post, "Sony to buy 'Destiny'-maker Bungie for \$3.6 billion", 31.01.22 (link available [here](#)) and PlayStation, "Welcoming Haven Studios to the PlayStation Studios family", 21.03.22 (link available [here](#)).

<sup>155</sup> Statista, "Nintendo's net sales from fiscal 2008 to 2021", July 2021 (link available [here](#)).

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- (d) **Take-Two**, an American video game company which is the third largest publicly traded game company in the Americas and Europe. It owns two major publishing labels: Rockstar Games, the developer of the *Grand Theft Auto* title (which has sold more than 350 million copies worldwide) and the *Red Dead Redemption* title (which has sold more than 60 million copies worldwide); and Visual Concept, the developer of the NBA 2K series (which has sold more than 90 million units worldwide). Take-Two had revenue of USD 3.4 billion in 2021.<sup>156</sup> Take-Two has [ ] of the share in PC and console video game development and publishing globally. It also announced in January 2022 its acquisition of Zynga, the developer of the Farmville mobile game, for USD 12.7 billion, bringing together its console and PC video game titles with Zynga's mobile game titles.<sup>157</sup>
- (e) **EA**, an American video game company which is the second largest in the Americas and Europe based on revenue and market capitalisation. In 2021 its revenue totalled USD 5.6 billion.<sup>158</sup> EA has [ ]% of the share in PC and console video game development and publishing globally. EA's top video game titles include *FIFA*, which totals 29 games and has sold over 325 million copies, and *The Sims*, which has sold over 200 million copies.
- (f) **Valve**, an American video game developer, publisher and digital distribution company. It operates the PC video game digital storefront Steam, and develops major video game titles including *Half-Life*, *Counter-Strike* and *DotA 2*.
- (g) **Bandai Namco**, which develops and publishes game titles for PC and consoles, including titles and franchises like *Tekken*, *Pac-Man* and *Galaxian*. Bandai Namco has been a developer for several titles in Nintendo-owned franchises, such as *Mario SuperSluggers*, *Mario Sports Superstars* and *Super Mash Bros. Ultimate*. Bandai Namco also owns licenses to several franchises such as *Dragon Ball*.
- (h) **CD Projekt RED**, whose video games include *The Witcher* and *Cyberpunk 2077*, and with market capitalisation of USD 8.13 billion was Europe's most valuable game company as at 2020.<sup>159</sup>
- (i) **Roblox**, a US headquartered company founded in 2004. It develops and publishes PC, Xbox and mobile games, including the popular, free-to-play online game platform and game creation system Roblox (which averaged around 190 million average monthly players in 2021).<sup>160</sup>

9.6 There are also a number of new entrants, including Amazon, which released two highly successful games in the last six months, namely *Lost Ark*, one of the break-out hits of 2022 gaining 1.3 million players less than 24 hours after launch and reaching 20 million registered gamers, and *New World* which was developed by Amazon Games and launched in September 2021.<sup>161</sup>

### *Key competitors in mobile game development and publishing*

<sup>156</sup> Statista, "Revenue generated by Take-Two Interactive from fiscal year 2006 to 2021", May 2021 (link available [here](#)).

<sup>157</sup> Tech Crunch, "Take-Two to acquire mobile gaming giant Zynga for \$12.7B", 10.01.22 (link available [here](#)).

<sup>158</sup> EA, "Electronic Arts Reports Q4 and FY21 Financial Results", 11.05.21 (link available [here](#)).

<sup>159</sup> Video Games Chronicle, "CD Projekt has become Europe's most valuable video game company with a market capitalisation of \$8.13 billion", 20.05.20 (link available [here](#)).

<sup>160</sup> Dexerto, "How many people play Roblox? Player count tracker", January 2022 (link available [here](#)).

<sup>161</sup> See Amazon's announcement "*Lost Ark* shatters records at launch", 18.02.22 (link available [here](#)) which states that "Less than a week after launch, *Lost Ark* has become Steam's highest-played MMORPG ever", and The Washington Post, "Amazon Games execs explain how past failures helped fuel *Lost Ark*'s success", 08.03.22 (link available [here](#)) refers to the game as "one of the most successful game launches in history".



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9.7 Native mobile game publishing is highly fragmented, even more so than PC and console publishing. The Parties compete with a broad range of strong competitors, such that their shares are limited, on their own and in combination. There are around [ ] mobile game publishers globally (with there being likely thousands that sell into New Zealand),<sup>162</sup> including key competitors such as:

- (a) **Bandai Namco:** Bandai Namco recently launched Bandai Namco Mobile, a mobile game studio in Barcelona, Spain with the goal of accelerating the growth of its mobile business in Europe and North America.<sup>163</sup> Its mobile game titles include *Dragon Ball Legends*, *Pac-Man Party Royale* and *One Piece Treasure Cruise*.
- (b) **FunPlus:** FunPlus is a mobile game developer headquartered in Switzerland and founded in 2010.<sup>164</sup> Its mobile game titles include *State of Survival*, *King of Avalon*, *Guns of Glory*, and *Family Farm Seaside*.
- (c) **NetEase:** NetEase is a Chinese company founded in 1997, which develops and publishes PC games and, in particular, online games. In mobile games, its titles include games such as *Marvel Super War*, *Knives Out*, *The Lord of the Rings*, and *LifeAfter*, among others.
- (d) **Niantic Inc.:** A U.S. company which was spun out of Google as an independent company in 2015, Niantic is best known for developing the augmented reality mobile games *Ingress* and *Pokémon GO* in collaboration with The Pokémon Company and Nintendo.
- (e) **Playrix:** Playrix is a Russian-Irish game studio founded in 2004 and specialises in free-to-play mobile games. Playrix is the creator of the *Scapes* series of mobile games (e.g., *GardenScapes*, *HomeScapes*), as well as other popular mobile games such as *Township*.
- (f) **Playtika:** An Israeli company founded in 2010, Playtika specialises in the development and publishing of mobile casino games. Its mobile titles include *Slotomania*, *Bingo Blitz*, *House of Fun*, *Solitaire Grade Harvest* and *June's Journey*.
- (g) **Roblox:** Roblox is a U.S. headquartered company founded in 2004. It develops and publishes PC, Xbox and mobile games, including the popular, free-to-play online game platform and game creation system Roblox (which averaged around 190 million average monthly players in 2021).<sup>165</sup>
- (h) **Tencent:** Tencent is a Chinese company founded in 1998. It develops and publishes PC, console and mobile games through its four internal game development studios. In mobile games, Tencent is active through game studio SuperCell, acquired in 2016, and developer of popular mobile game such as *Clash of Clans*, *Clash Royale*, *Brawl Stars*, among others. Tencent is also active directly with popular mobile games such as *PUBG Mobile*, *Arena of Valor*, among others.
- (i) **Zynga:** Zynga is a gaming studio headquartered in San Francisco, California, U.S. which specialises in social media and mobile games. Popular mobile game titles from Zynga include the *Farmville* series, *Harry Potter: Puzzles & Spells*, as well as

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<sup>162</sup> App Annie data.

<sup>163</sup> Pocketgamer.biz, "Building Better: Bandai Namco Mobile's new approach to development", 17.06.2021 (link available [here](#)).

<sup>164</sup> FunPlus website (link available [here](#)).

<sup>165</sup> Dexerto, "How many people play Roblox? Player count tracker", January 2022 (link available [here](#)).



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a number of *Casino* mobile games. Take-Two Interactive announced an agreement to acquire Zynga on 10 January 2022.<sup>166</sup>

### Dynamic and competitive market

9.8 As described in section 7, video game development and publishing is highly dynamic and fragmented with a significant number of competitors competing vigorously on different platforms, using different business models and innovating to stay competitive. Previously successful publishers may be pushed aside by new entrants offering more attractive games. As the EC has noted, “[p]ublishers constantly need to develop and publish new games containing innovative features in order to meet gamers’ increasing expectations notably resulting from the constant improvement of the hardware devices on which games are played”.<sup>167</sup> As a result, there are more gaming titles, more game publishers and more choices and value being offered to gamers than ever before; and this is only increasing each year. Video gamers constantly demand new titles, and even popular franchises need to regularly release titles with innovations to remain relevant.

9.9 In particular, native mobile games<sup>168</sup> have been the largest driver of growth in game publishing revenues for several years, and are expected to continue to be the fastest-growing category of games.<sup>169</sup> [ ]

### Low barriers to entry

#### *Low barriers to PC and console video game development and publishing*

9.10 As recognised by the EC in *Microsoft/ZeniMax*, the development and publishing of PC and console video games as a general matter involve low barriers to entry, as reflected by the great number of video games that are released.<sup>170</sup> The Parties submit that there are indeed low barriers to entry, as:

- (a) **There is evidence of recent entry:** Recent entry in the distribution of games in digital form during the last five years include major players like Amazon’s Luna (announced September 2020 and recently launched in the US), Epic Games Store (March 2020), Google’s Stadia (November 2019), Verizon Gaming (2019), Apple’s Apple Arcade (September 2019), and others.

Many non-gaming companies are also increasingly looking at gaming as an attractive opportunity (including Facebook, Amazon and Netflix).<sup>171</sup> As noted above, Amazon has also released games through its own game publishing studios, including the *New World* and *Lost Ark* titles.<sup>172</sup> Similarly, Netflix recently announced its acquisition of Night School Studio and Next Games, the publisher of the *Walking Dead* and *Stranger Things* mobile games – consistent with Netflix’s stated intention to further its expansion into the gaming sector.<sup>173</sup>

<sup>166</sup> Take-Two news release “*Take-Two and Zynga to Combine, Bringing Together Best-in-Class Intellectual Properties and a Market-Leading, Diversified Mobile Publishing Platform, to Enhance Positioning as a Global Leader in Interactive Entertainment*”, 10.01.22 (link available [here](#)).

<sup>167</sup> M.5008 – *Vivendi/Activision*, paragraph 67.

<sup>168</sup> As set out in Section 6 above, native mobile games are games that are specifically produced for and played on mobile devices, such as mobile phones or tablets.

<sup>169</sup> Newzoo, *Global Games Market Report*, April 2020 Update, page 28.

<sup>170</sup> *Microsoft/ZeniMax* at paragraph 72.

<sup>171</sup> Facebook website, *Cloud Gaming, Meet Facebook Gaming*, 26.10.20 (link available [here](#)).

<sup>172</sup> See Amazon’s announcements, “Launch of *New World*” and “Amazon Games and Smilegate RPG’s ‘*Lost Ark*’ launches” (link available [here](#) and [here](#)).

<sup>173</sup> See Netflix’s announcement, *Developing Games Around the World: Netflix to Acquire Next Games* (link available [here](#)).

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- (b) **The success of a video game does not depend on resources and investment by the developer/publisher:** Low-budget and low-resource games have also proven to be strong competitors. For instance, *Minecraft*, which was developed by a single developer incurring relatively limited costs has become one of the best-selling and most-played games worldwide. Moreover, technically less advanced games (in terms of graphics, music and gaming options) may also become viable competitors, as proven by PUBG Studios' *Player Unknown's Battleground* game which was expected to flop due to its low-quality graphics and its focus on sub-genre (battle royale) that had historically been niche in nature.<sup>174</sup>
- (c) **Mature software development tools are readily available:** The technical inputs necessary for video game R&D (e.g., specialised software development tools, game engines) may be developed internally or can be purchased externally. A large number of console game developers and publishers use various commercially-available software development tools, such as game engines and tools such as audio and video middleware. These tools are typically made available to as many developers as possible, with their providers competing to deliver their services to publishers and developers. Many studios use licensed third-party game engines, whilst more mature studios often have their own bespoke game engines.

Further, R&D investment is not necessarily decisive for the success or failure of a console game. Video games with limited technological development have been successful. R&D investments required to develop console games may also be reduced by "porting", by making a game developed for one device playable on another (e.g., console to PC and vice versa), or between different devices of the same type (e.g., between different consoles). While porting may in some cases require investment, porting normally requires considerably less investment than creating a game from scratch.

### *Low barriers to mobile game development and publishing*

- 9.11 Similarly, with respect to mobile game publishing, one of the key drivers of growth in native mobile games is the low barriers to entry. In particular, native mobile game development is relatively low cost compared to game development for PCs and consoles, although entry of new players is also observed in these segments.<sup>175</sup> Developing mobile games requires significantly less capital investment, smaller teams of developers and generally less technological innovation. There are prominent examples of successful native mobile games developed and published relatively quickly and with a low budget. Indeed, a large number of small "indie" game studios are active in the development of mobile games. For example, the native mobile versions of *Minecraft* and *Flappybird* were developed and published by a single individual.<sup>176</sup>
- 9.12 As regards distribution of native mobile games, the Apple App Store is the only way to publish native mobile games for iOS devices, and the Google Play Store accounts for the vast majority of downloads of native mobile apps on Android devices. Players are able to access tens of thousands of native mobile games offered by thousands of publishers in these app stores,

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<sup>174</sup> IDG Consulting, *State of the Game Industry 2020 Annual White Paper*, 13.04.20, page 25.

<sup>175</sup> *Activision Blizzard/King*, paragraph 48 (link available [here](#)).

<sup>176</sup> *Activision Blizzard/King*, paragraph 49 (link available [here](#)). *Wordle* is another example of a hugely popular game that was developed by a single individual, although it is web-browser based game, rather than a native mobile app.

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often using a free-to-play model.<sup>177</sup> There were reportedly over 300,000 native mobile game apps in the Apple App Store and the Google Play Store as of the first quarter of 2021.<sup>178</sup>

- 9.13 Growth of native mobile gaming has also been driven by entry from PC and console game developers, as well as from other related sectors.<sup>179</sup> In addition, games that were initially developed for PCs and/or consoles are increasingly being restructured and released for mobile (e.g., Epic Games created *Fortnite* first for PC and console in 2017 before releasing the game a year later for mobile devices; and Activision Blizzard launched a mobile version of *Call of Duty*, *Call of Duty: Mobile*, in 2019 [ ]).
- 9.14 Finally, the growth of mobile gaming is also being facilitated by increased mobile Internet speed, including as a result of the roll-out of 5G networks and unlimited data plans, enabling faster downloads and reduced latency for online games (i.e., response times as low as five milliseconds, resulting in “smoother” in-game action).<sup>180</sup> These factors are also expected to facilitate the adoption of cloud gaming on mobile devices.

### NO SUBSTANTIAL LESSENING OF COMPETITION IN THE SUPPLY OF VIDEO GAME DISTRIBUTION

#### No material change in concentration or market dynamics

- 9.15 The Proposed Transaction does not raise horizontal concerns in relation to the digital distribution of PC and console video games, given the fragmented market and limited increment to Microsoft’s market share. As set out in Table 10 in **Confidential Appendix Four**, the Parties’ combined share of digital distribution across all devices would be [ ] globally post-Transaction, taking into account the [ ] increase resulting from Activision Blizzard’s share of [ ] globally in 2020, with Apple and Google accounting for the largest shares of distribution in this market, at [ ] and [ ] globally, respectively.
- 9.16 When looking at hypothetical segments for each platform (specifically, just PC and console), the Parties only overlap in the digital distribution of PC games. The Parties’ combined share is only [ ] on a global basis. The [ ] of Microsoft’s sales relate to console video games, where Microsoft is one of three major participants globally. Sony and Nintendo are the other large participants in this segment, and Sony is [ ] with over [ ] share both globally and in New Zealand). Activision Blizzard does not distribute its games via console.
- 9.17 In New Zealand, the merged entity would have a low share post-merger [ ] in distribution of games for all devices. Given the small shares [ ] [ ], the Proposed Transaction is highly unlikely to change market dynamics. There also remain other significant distributors of video games digitally on PCs and consoles in New Zealand, including Sony ([ ] in New Zealand), Valve ([ ] in New Zealand), Nintendo ([ ] in New Zealand), Tencent ([ ] in New Zealand), that will continue to compete vigorously and effectively with the merged entity.
- 9.18 Even if PC and console are considered separately, there is similarly low shares and fragmentation. The Parties’ combined share of the PC distribution segment is [ ] in New Zealand, and Activision does not distribute console games.

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<sup>177</sup> There is limited switching of users between the App Store and the Play Store. See CMA, *Mobile Ecosystems Interim Report*, 14.12.21, page 124.

<sup>178</sup> Statista, *Number of available gaming apps in the Apple App Store from 1st quarter 2015 to 1st quarter 2021*, (link available [here](#)); Statista, *Number of available gaming apps in the Google Play Store from 1st quarter 2015 to 1st quarter 2021* (link available [here](#)).

<sup>179</sup> For example, Konami announced its plans in 2015 to expand into mobile gaming and mobile gaming is now one of its most successful business divisions. Gamesindustry.biz, *Mobile, PES and esports: The three pillars of Konami* (link available [here](#)).

<sup>180</sup> Wire.co.uk, “*How 5G will revolutionise the future of mobile gaming*”, 17.09.2020 (link available [here](#)).

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9.19 Further, the Parties both offer digital storefronts (*i.e.*, Microsoft’s Microsoft Store, Xbox Store, and Bethesda.net, as well as Activision Blizzard’s Battle.net). These are clearly differentiated in that the Microsoft digital storefront offers a range of first- and third-party content, whereas Battle.net only offers content relating to Activision Blizzard’s first-party games. Moreover, while Battle.net is limited to offering PC games, Microsoft also sells console games through its digital storefronts.<sup>181</sup> [ ]<sup>182</sup>

### *Subscription services for PC and console games*

9.20 The Parties do not overlap in any hypothetical segment for multi-game “subscription services”, whereby gamers pay a periodic fee (*e.g.*, monthly) for being able to play several games. As discussed in 7.29(c)(iii) above, multi-game subscription services (*e.g.*, Xbox Game Pass, Xbox Live, PlayStation Now and Plus, Google Stadia, EA Play and others) offer gamers access to a number of games, as well in some cases multi-player games, that gamers can download or stream onto their devices and (in some cases) keep even after their subscription expires.<sup>183</sup>

9.21 Activision Blizzard does not offer a subscription service of this kind. It is only in relation to individual game subscription services that the Proposed Transaction gives rise to a limited overlap between the Parties. *World of Warcraft* gamers pay a monthly subscription to access the game, but this is different in that this is the way Blizzard chose to monetise a single game, it is not a subscription service to a library of games. *World of Warcraft* is distributed through Battle.net, and Activision Blizzard does not offer a multi-game subscription service.<sup>184</sup> Microsoft offers optional subscription services for *Elder Scrolls Online* and *Fallout 76* (both of which were acquired as part of the ZeniMax acquisition). However, the Parties’ services are clearly differentiated as they relate to different gaming content with different gameplay elements and subject matter. Moreover, their subscription business models are also different: *World of Warcraft* requires a subscription service in order to access the game, whereas the subscription services for *Elder Scrolls* and *Fallout 76* are limited to accessing additional in-game content (*i.e.*, gamers do not have to subscribe in order to access the game).

9.22 Shares of revenues in these subscription services are estimated at [ ] for Sony (PlayStation Now and PlayStation Plus) globally and [ ] in New Zealand, followed by Microsoft with [ ] globally and [ ] in New Zealand.<sup>185</sup> Other providers include Nintendo (Nintendo Switch Online) at [ ] globally and [ ] in New Zealand, EA (EA Play) at [ ] globally and [ ] in New Zealand, and Apple (Arcade) at [ ] globally and [ ] in New Zealand. These estimates are likely to overestimate Microsoft’s position in this rapidly developing space because they do not include the new subscription services recently announced by Sony and the more recent entrants in the market such as Amazon Luna and Prime Gaming, Ubisoft+. Further detail on multi-game subscription services is in **Appendix Two**.

9.23 Sony will continue to compete vigorously and effectively in subscription services. On 29 March 2022, Sony announced an “*all new PlayStation Plus*” product with “700+ games and more value than ever”. The news “*follows months of speculation that Sony was looking to revamp its gaming subscription service to take on Microsoft’s popular Xbox Game Pass offering*”. The new PlayStation Plus builds on Sony’s existing subscription offer and “*will include the best quality content that sets us apart. At launch, we plan to include titles such as Death Stranding, God of War, Marvel’s Spider-Man, Marvel’s Spider-Man: Miles Morales,*

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<sup>181</sup> The Xbox Store offers console games while the Microsoft Store offers PC games.

<sup>182</sup> [ ].

<sup>183</sup> This is the case, for example, for the free games offered each month via the “games with gold” feature of Xbox Live Gold.

<sup>184</sup> [ ]

<sup>185</sup> [ ]

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Mortal Kombat 11, and Returnal”.<sup>186</sup> The new PlayStation Plus will also include back catalogue games going back to PS1, some of which are available for cloud streaming.<sup>187</sup> According to Sony, “[b]uilding upon more than 25 years of expertise in gaming innovation, this change to our subscription services highlights our continued efforts to evolve our network services business to match our customer’s preferences”.<sup>188</sup>

### *Digital distribution of mobile games*

- 9.24 There is also no horizontal overlap in digital distribution of mobile games, as neither Party is active in this market.
- 9.25 Apple and Google are the largest distributors of digital games globally and in New Zealand. The Parties distribute their first-party native mobile games through the Apple App Store and Google Play Store (as well as other Android app stores). Neither Party offers an app store on iOS or Android devices.
- 9.26 As noted at section 3.18, Apple and Google have rules in place that limit Microsoft’s ability to distribute a fully functioning Game Pass Ultimate service through Apple’s App Store and the Google Play Store. Apple in particular places strong restrictions on multi-game streaming services like Game Pass, which in practice means Microsoft cannot distribute its service through the App Store. Google allows a native Game Pass app in its Play Store, but only with limited functionality and no ability to make in-game purchases. Gamers can access Game Pass as a browser-based web app on iOS and Android devices and use cloud gaming to play console games from their mobile device. As the games provided via cloud gaming are not designed specifically for mobile devices, they are not included within the definition of mobile games for the purposes of this filing.

### **Significant global competitors in digital distribution of video games**

- 9.27 As shown in the above share estimates, in the market for digital game distribution, there will remain significant global competitors post-Transaction that will continue to compete against the merged entity by offering alternatives to the Parties’ digital storefronts for the purchase of PC and console video games.
- 9.28 There are two main digital storefronts/app stores associated with console games, in addition to Microsoft’s Xbox Store, namely:
- (a) **Sony, through its PlayStation Store and its PlayStation Plus subscription:** Gamers can download video games and additional content onto their PlayStation from the PlayStation Store. Sony also offers access to console video games through the PlayStation Plus subscription (which has just been announced and will build on the previous offers, including PlayStation Now).
  - (b) **Nintendo, through its Nintendo eShop:** Gamers can download video games and additional content from the Nintendo eShop onto their Nintendo device. Certain console games are also available as part of Nintendo’s subscription service, Nintendo Switch Online.

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<sup>186</sup> PlayStation blog, “All-new PlayStation Plus launches in June with 700+ games and more value than ever”, 29.03.22 (link available [here](#)).

<sup>187</sup> PlayStation blog, “All-new PlayStation Plus launches in June with 700+ games and more value than ever”, 29.03.22 (link available [here](#)).

<sup>188</sup> PlayStation blog, “All-new PlayStation Plus launches in June with 700+ games and more value than ever”, 29.03.22 (link available [here](#)).

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9.29 There are a significant number of digital storefronts through which gamers can access PC games, including both storefronts enabling the purchase of games as well as subscription services. The following is a non-exhaustive list of digital storefronts available on PC:

- (a) **Valve (Steam):** Valve is a U.S. company established in 1996. Valve offers the digital storefront Steam through which it publishes its own and other games. Steam can be accessed on web-browsers at <https://store.steampowered.com/> or through the Steam desktop app. Games must be played through the Steam desktop app. Steam is accessible in New Zealand.
- (b) **Epic Games (Epic Games Store):** Epic Games is a U.S. headquartered company founded in 1991. Epic's digital storefront is Epic Games Store, available on web-browsers at <https://www.epicgames.com/store/en-US/> or as the Epic Games Launcher desktop app, where users may browse and obtain games. Downloaded games must be played on the desktop app. The Epic Games Store is accessible in New Zealand.
- (c) **Tencent (We Game X):** Tencent offers the WeGame X digital storefront, which is accessible by web-browser at <https://www.wegame.com.hk/>. It is understood that WeGame X is not yet accessible in New Zealand.
- (d) **CD Projekt (GOG):** Polish public company CD Projekt operates through its subsidiary GOG sp. z o.o. its digital storefront <https://www.gog.com/> and its desktop app GOG Galaxy 2.0. Games can be played through the launcher or as stand-alone desktop files. GOG Galaxy 2.0 allows users to play Epic Games titles through the launcher.<sup>189</sup> GOG.com and GOG Galaxy 2.0 are both accessible from New Zealand.
- (a) **EA (EA website):** EA is a U.S. headquartered company founded in 1982. EA operates its digital storefront <https://www.ea.com> and its desktop EA App.<sup>190</sup> Downloaded games must be played on the desktop app. EA also offers the EA Play multi-game subscription service, providing access to over 90 first-party EA games. EA is accessible in New Zealand.
- (b) **Google (Google Stadia):** Google is a U.S. company that specialises in online-related services including its search engine, online advertising technologies and cloud computing services. Google launched Google Stadia, a multi-game subscription service for PC games which includes multi-player elements, in 2019. Google Stadia offers over 200 games on subscription. Google Stadia is not yet accessible in New Zealand.
- (c) **NetEase (game-specific websites):** NetEase is a Chinese company founded in 1997. NetEase's website <https://www.neteasegames.com/game/hot/> lists their games which can then be purchased through game specific websites. NetEase game-specific websites are accessible in New Zealand as a catalogue of NetEase branded games.
- (d) **Nexon (Nexon website, launcher and game-specific websites):** Nexon is a Korean company established in 1994. Nexon's games can be downloaded directly through [www.nexon.com/main/en](http://www.nexon.com/main/en), through the Nexon launcher available at <https://games.nexon.net/nexonlauncher>, alternatively through their games' websites. Nexon games are accessible in New Zealand.

<sup>189</sup> GOG.com, "Community discussions - GOG galaxy 2.0 is now enhanced with Epic Games Store official integration", 20.07.20 (link available [here](#)).

<sup>190</sup> The Verge, "EA's Origin client to become the EA Desktop app", 15.09.20 (link available [here](#)).



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- (e) **NCSOFT (game-specific websites):** NCSOFT is a Korean company established in 1997. NCSOFT's games can be purchased directly through game-specific websites and are accessible in New Zealand.
- (f) **Ubisoft (Ubisoft Store):** Ubisoft is a French public company founded in 1986 and traded on Euronext Paris. Ubisoft's web-browser digital storefront is the Ubisoft Store at <https://store.ubi.com/anz/> and the desktop app Uplay. Games purchased from either location must be played on the Uplay desktop app. The storefront is accessible in New Zealand.

### Dynamic and competitive market

- 9.30 As noted in section 7 above, the video gaming industry is highly dynamic in terms of developing and publishing games; likewise, video game distribution calls for innovation. Video game distributors are developing new monetisation models as they offer not only the traditional "buy-to-play" model in which games are bought for an upfront price, but also games on a "free-to-play" or "F2P" model, whereby games are offered for free and then monetised via in-app purchases or advertising, and the emerging subscription service models.

### NO SUBSTANTIAL LESSENING OF COMPETITION IN MERCHANDISING

- 9.31 With respect to the market for the sale and licensing of merchandise, comprising merchandise of all content types including non-gaming related merchandise, the Parties submit there would be no material change in concentration:

- (a) **The Parties consider their market shares to be small and the increment to be *de minimis*:** Publicly available sources report that the global revenue generated by the manufacturing and distribution of all licensed merchandise and services amounted to USD 292.8 billion in 2019.<sup>191</sup> Of this, licensed entertainment and character merchandise (which includes game-related merchandising, movie-related merchandising etc.) was estimated to have generated worldwide sales of USD 128.4 billion in 2019.<sup>192</sup> [ ]

While the Parties [ ] the Parties' combined share on the market relating to the sale of merchandising, including non-game-related content, is *de minimis*. For example, based on a report by License Global, the Parties' combined revenues account for well below [ ] of the revenues earned by the top 75 global licensors of merchandising rights.<sup>193</sup>

Moreover, in relation to the retail sale of video game-related merchandise, the Parties' activities are *de minimis*. The Parties expect that their combined shares are limited [ ] in any possible segment relating to the sale of merchandise, given the presence of several other large providers, including (in the gaming industry alone) Sony, Nintendo, SEGA, Epic and Ubisoft, among others (as indeed suggested by the License Global report referred to above).<sup>194</sup>

[ ].<sup>195</sup>

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<sup>191</sup> Licenseglobal.com, *Sales of licensed goods and services up 4.5 percent*, 8 June 2020 (link available [here](#)).

<sup>192</sup> Statista, *Annual global retail sales of licensed entertainment and character merchandise from 2014 to 2019* (link available [here](#)).

<sup>193</sup> Licenseglobal.com, *The Top Global Licensors*, June 2021 (link available [here](#)).

<sup>194</sup> Licenseglobal.com, *The Top Global Licensors*, June 2021 (link available [here](#)).

<sup>195</sup> [ ]

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[ ].

While Microsoft and Activision Blizzard are both active in merchandise licensing, [ ]. Nevertheless, they expect their market share to be [ ].

- (b) **There are numerous game developers and publishers that distribute (and in some cases, manufacture) a broad range of consumer game merchandising and generate material revenues related to the sale of merchandise**, including Nintendo, Sony, Epic, among others.
- (c) **Other entertainment companies' merchandising revenues dwarf the Parties' revenues**: The merchandising revenues of other entertainment companies is significant, for example: Walt Disney Company (USD 54 billion), Warner Media (USD 11 billion), Hasbro (USD 7.8 billion) and The Pokémon Company (which, among others, has a successful video game franchise) (USD 5.1 billion).<sup>196</sup>

### NO SUBSTANTIAL LESSENING OF COMPETITION IN THE MARKET FOR ONLINE DISPLAY ADVERTISING

#### No material change in concentration

- 9.32 The Proposed Transaction does not give rise to horizontal issues in the market for online display advertising. At the global level, the combined market share of the Parties is [ ]. The display advertising market is estimated to have generated around [ ] billion in revenues worldwide in 2021.<sup>197</sup> As shown in Table 19 in **Confidential Appendix Four**, the overall ad spend on Microsoft's display advertising activities (including Microsoft's revenues as well as an estimate of the fees accruing to ad intermediaries) were around [ ] (*i.e.*, a [ ] market share), while Activision Blizzard's figure was around [ ] (*i.e.*, a [ ] market share).
- 9.33 In New Zealand, as shown in Table 18 in **Confidential Appendix Four**, Microsoft estimates that the overall advertising spend on its ad activities was around [ ] (*i.e.*, a [ ] market share) comprising advertising from LinkedIn, Microsoft News, Outlook, MSAN 3P, and Xbox dashboard and Studio in-game advertising. In 2021 in New Zealand, Activision Blizzard estimates that the overall spend on its ad activities amounted to [ ] (*i.e.*, a [ ] market share) comprising advertising from [ ].
- 9.34 In any event, the Parties' offerings are differentiated, with Activision Blizzard focussing on in-game advertising within mobile games, where Microsoft only has a very limited presence (see market shares for mobile game publishing above). Even if one were to consider a (hypothetical) narrow segmentation just for in-game advertising, the Parties estimate that their combined market share would be [ ] given Microsoft's limited presence; it is focused on display advertising more generally and within games has only limited advertising activities with respect to casual games and the Xbox console dashboard pages.
- 9.35 It is therefore not likely that the Proposed Transaction could materially reduce competition in the online display advertising market, or in any possible segment of that market.

#### Numerous competitors

- 9.36 Advertisers looking specifically to target gamers would continue to have numerous alternatives. The display advertising market is highly fragmented, with a wide range of

<sup>196</sup> Licenseglobal.com, *The Top Global Licensors*, June 2021 (link available [here](#)).

<sup>197</sup> Parties' internal estimates based on data from eMarketer and Statista.



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alternative providers, including Facebook (including Instagram), which is by far the largest player as well as Google (including YouTube), which the ACCC has recognised as a dominant player in the ad tech supply chain.<sup>198</sup> Other providers that will continue to constrain the merged entity post-Transaction include Unity Ads,<sup>199</sup> Apple, AppLovin, ironSource, Mintegral, TikTok, Vungle, MOLOCO, Liftoff and many others.

### 10. NO POTENTIAL FOR VERTICAL OR PORTFOLIO EFFECTS

10.1 There are vertical relationships between the Parties' video game publishing activities and the Parties' digital distribution channels, though a number of distributors are also competitors to Microsoft's video games console business.<sup>116</sup>

10.2 The Parties submit that these relationships would not result in vertical or portfolio effects for the following reasons:

#### **No likelihood of input foreclosure**

10.3 The merged entity will not have the ability or incentive to foreclose rival console and PC video game distributors from accessing content that enables them to compete in relation to game distribution:

- (a) given the fragmentation of the market for the development and publication of video games (where the Parties' combined share for PC and console video games is [ ] globally / [ ] in New Zealand) the vast majority of games are developed and published by parties other than the merged entity, such as Sony, Nintendo, EA and Take-Two), and the low barriers to entry present in the space, a vibrant market for content will remain available for distribution to rival PC, console and mobile distributors;
- (b) specifically, with respect to Activision Blizzard video games, there is nothing unique about the video games developed and published by Activision Blizzard that is a "must have" for rival PC and console video game distributors that could give rise to a foreclosure concern;
- (c) Microsoft has made a public commitment to apply a new set of Open App Store Principles that will apply to the Microsoft Store on Windows and to the next-generation marketplaces it will build for games.<sup>200</sup> These principles focus on providing fair and transparent treatment of apps and developer choice, to ensure that gamers are able to play any game on any device anywhere, including by streaming from the cloud. Microsoft recognises that app stores are the most relevant on popular everyday devices like mobile phones; PCs, including Windows PCs; and, in time, the cloud, are important to realising this outcome; and
- (d) Microsoft has demonstrated that it is not withdrawing content from other platforms, having made multiple public statements that it will continue to make *Call of Duty* and other popular Activision Blizzard titles available on PlayStation through the term of

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<sup>198</sup> ACCC, Digital Advertising Services Inquiry, page 88.

<sup>199</sup> In November 2021 Unity announced that it had "entered into a definitive agreement to acquire [New Zealand-based] Weta Digital, specifically its artist tools, core pipeline, intellectual property, and award-winning engineering talent. See: <https://blog.unity.com/news/welcome-weta-digital>

<sup>116</sup> Vertical issues are not expected to arise in relation to Microsoft's downstream activities relating to digital distribution of PC video games, given its relatively limited market shares in this market and the range of alternatives available to customers.

<sup>200</sup> Microsoft media release, "Adapting ahead of regulation: a principled approach to app stores", 09.02.22 (link available [here](#)).

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any existing agreement and beyond. Microsoft has also publicly stated that it is interested in taking similar steps to support Nintendo's platform.<sup>201</sup>

### No likelihood of customer foreclosure

- 10.4 The merged entity will not have the ability or incentive to foreclose rival video game developers and publishers by restricting distribution through limiting access to Microsoft's digital storefronts, including the Xbox Store (or other Xbox console-specific digital storefronts):
- (a) In light of the wide range of alternative distributors there is not an ability to foreclose rival video game developers. These alternatives include Sony and Nintendo with significantly larger shares of the global console distribution channel; Tencent, Valve and many others on PC; and a vibrant range of well-resourced new entrants including Google, Amazon, and Meta (Facebook);
  - (b) In relation to consoles in particular, it would be self-defeating and commercially irrational for any console manufacturer to limit or restrict the distribution of third-party games from their consoles. For Microsoft, [ ]. Microsoft relies heavily on being able to offer third-party content; it publishes around [ ] PC and console games but only [ ] ([ ]) were developed by Microsoft-owned developers, and currently around [ ] of Microsoft's Game Pass games are third-party games. [ ], comprising [ ] of its total global gaming revenues. Accordingly, Microsoft [ ] and will continue to rely on third-party games to [ ] of its Xbox content. It will have every incentive to continue to attract the most popular third-party content to Xbox; and
  - (c) Given the significant growth of mobile gaming, any attempted self-preferencing strategy would simply result in game developers and publishers focusing their efforts on mobile game development. In mobile, Apple and Google are dominant, and the merged entity would have no ability to foreclose distribution through this rapidly growing channel.

### No risk of vertical effects with respect to cloud computing services or foreclosure of video game publishers

- 10.5 Microsoft provides cloud computing services as part of Microsoft Azure (including industry-agnostic cloud computing services, as well as a video gaming-specific service called Azure PlayFab).
- 10.6 The Proposed Transaction does not give rise to anti-competitive concerns arising from the vertical relationship between the Parties as regards cloud computing services and video game publishing at the downstream level, with no likelihood of foreclosure of rival video game publishers that are using or may wish to rely on Azure,<sup>202</sup> given that:
- (a) Microsoft does not have the ability to foreclose rival publishers given the range of competitors that act as a significant constraint on Azure. Table 20 in **Confidential Appendix Four** sets out the Parties' best estimates and IDC data on worldwide shares in 2019 and 2020. AWS is by far the leading player with a share in 2019 of [ ] in IaaS and PaaS on a global basis.

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<sup>201</sup> Microsoft media release, "Adapting ahead of regulation: a principled approach to app stores", 09.02.22 (link available [here](#)).

<sup>202</sup> Including specific tools such as Azure Cognitive Services and Azure DevOps, which are only available to Azure customers.

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- (b) [ ], if Microsoft were to degrade its cloud computing services to rival publishers, they would have a range of alternative cloud providers to whom they could switch.<sup>203</sup> Video game publishers use a wide array of cloud computing services, most of which are not gaming-specific and are used by a wide array of industries.
- (c) Microsoft has only recently started offering Azure PlayFab as a video gaming-specific cloud service but it is very new and video game developers [ ]. For example, AWS Game Tech has “*has everything you need to build faster, run smarter, and grow your games*” and notes that “*90% of the world’s biggest public game companies are using AWS*”.<sup>204</sup> More than 90% of the world’s largest gaming companies are reported to use AWS.<sup>205</sup> Video game studios which use Game Tech include Sony PlayStation, Epic Games, Gearbox, Rovio, Capcom, Zynga, Ubisoft, Ankama, Gung Ho, Untold, SundayToz, Gameloft and others.<sup>206</sup>
- (d) Post-Transaction, the merged entity would not have any incentive to stop offering cloud computing services to gaming industry customers. [ ].<sup>207</sup> Microsoft will continue to offer Azure services to third parties post-Transaction, including rival game publishers. Azure is built as an open, extensible, and neutral cloud platform<sup>208</sup> which supports Microsoft’s own technology and services, as well as a broad range of open-source operating systems, technologies, and programming languages to provide users and developers alike with choice.
- (e) Any (hypothetical) foreclosure strategy which Microsoft may attempt would negatively impact Azure’s business. As most game publishers multi-source cloud computing services, customers would lose trust in Azure as a neutral provider of cloud computing services and move their workloads and/or applications to competing cloud infrastructure. [ ]<sup>209</sup> This risk is particularly acute, as any (hypothetical) foreclosure strategy can have no impact on the vast majority of game publishers that already use AWS, GCP or other providers.

10.7 There are also no customer foreclosure concerns with regards to Microsoft’s cloud computing competitors. The hosting of Activision Blizzard’s gaming platforms cannot be considered important to cloud computing providers, given the wide range of large enterprise customers using cloud computing services. [ ]. [ ] to continue to compete in the market for cloud computing services, which is worldwide in scope. [ ]. Despite this, Azure has been able to continue to compete effectively in the market.

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<sup>203</sup> [ ].

<sup>204</sup> AWS Game Tech (link available [here](#)).

<sup>205</sup> Venturebeat.com, “*Amazon powers cloud servers for 90% of large game companies*”, 19.03.18 (link available [here](#)).

<sup>206</sup> AWS Game Tech (link available [here](#)).

<sup>207</sup> [ ]

<sup>208</sup> [ ]

<sup>209</sup> [ ]

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### **11. CONCLUSION**

- 11.1 For the reasons set out above, the Proposed Transaction is unlikely to substantially lessen competition in any market in New Zealand.

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### 12. FURTHER DOCUMENTATION / INFORMATION

#### Copies / links of recent financial statements, management accounts, and internal documents

##### *Microsoft*

12.1 Microsoft's Annual Reports can be found at the following links:

- (a) [2021 Annual Report / Form 10-K \(Year Ended 30 June 2021\)](#)
- (b) [2020 Annual Report / Form 10-K \(Year Ended 30 June 2020\)](#)
- (c) [2019 Annual Report / Form 10-K \(Year Ended 30 June 2019\)](#)

12.2 Microsoft New Zealand Limited's audited financial statements are available on the New Zealand Companies Office website. For the Commission's convenience, links to the relevant accounts are as follows:

- (d) [2021 Financial Statement](#)
- (e) [2020 Financial Statement](#)
- (f) [2019 Financial Statement](#)

12.3 Microsoft New Zealand Limited's management accounts are attached as **Confidential Attachment Four** on a confidential basis.<sup>210</sup>

12.4 [ ]<sup>211</sup>

##### *Activision Blizzard*

12.5 Activision Blizzard's Annual Reports can be found at the following links:

- (g) [2021 Annual Report / Form 10-K \(Year Ended 31 December 2021\)](#)
- (h) [2020 Annual Report / Form 10-K \(Year Ended 31 December 2020\)](#)
- (i) [2019 Annual Report / Form 10-K \(Year Ended 31 December 2019\)](#)

12.6 Sledgehammer Games New Zealand Limited's audited financial statements and management accounts are attached as **Confidential Attachment Eight** on a confidential basis.

12.7 [ ].

#### Each party's sales revenues and volumes

##### *Microsoft*

12.8 Microsoft's revenue / units in New Zealand by product / service, as relevant, is set out in **Confidential Appendix Five**.

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<sup>210</sup> [ ]

<sup>211</sup> [ ].

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*Activision Blizzard*

12.9 Activision Blizzard's total NZ (in-country) sales revenues for the past three financial years are as follows:

Year	Revenue (USD)
2019	[ ]
2020	[ ]
2021	[ ]

12.10 Activision Blizzard's revenue / units in New Zealand by product / service, as relevant, is set out in **Confidential Appendix Five**.

**Names and contact details of key customers in New Zealand**

*Microsoft*

12.11 [ ]<sup>212</sup>

Digital Distribution			
Customer	2021 Revenue (USD)	Contact Person	Contact Details
1. [ ]	[ ]	[ ]	[ ]
2. [ ]	[ ]	[ ]	[ ]
3. [ ]	[ ]	[ ]	[ ]
4. [ ]	[ ]	[ ]	[ ]
5. [ ]	[ ]	[ ]	[ ]

Game development			
Customer	2021 Revenue (USD)	Contact Person	Contact Details
1. [ ]	[ ]	[ ]	[ ]
2. [ ]	[ ]	[ ]	[ ]

Gaming hardware devices			
Customer	2021 Revenue (USD)	Contact Person	Contact Details

<sup>212</sup> [ ]

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1. []	[]	[]	[]
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Online display advertising			
Customer	2021 Revenue (USD)	Contact Person	Contact Details
1. []	[]	[]	[]
2. []	[]	[]	[]
3. []	[]	[]	[]
4. []	[]	[]	[]
5. []	[]	[]	[]

*Activision Blizzard*

12.12 []

PC Games			
Customer	2021 Revenue (USD)	Contact Person	Contact Details
1. []	[]	[]	[]
2. []	[]	[]	[]
3. []	[]	[]	[]
4. []	[]	[]	[]

Console			
Customer	2021 Revenue (USD)	Contact Person	Contact Details
1. []	[]	[]	[]
2. []	[]	[]	[]
3. []	[]	[]	[]

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Mobile			
Customer	2021 Revenue (USD)	Contact Person	Contact Details
1. []	[]	[]	[]
2. []	[]	[]	[]
3. []	[]	[]	[]
4. []	[]	[]	[]
5. []	[]	[]	[]

**Names and contact details of key suppliers in New Zealand**

*Microsoft*

12.13 []

*Activision Blizzard*

12.14 []:

Supplier	2021 Expenditure (USD)	Contact Details
1. []	[]	[]
2. []	[]	[]
3. []	[]	[]
4. []	[]	[]
5. []	[]	[]

**Names and contact details of key competitors**

12.15 The contact details of key competitors in the relevant markets in New Zealand are as follows:



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<b>Key NZ Competitors - Game Development and Publishing (PC, Console, &amp; Mobile Combined)</b>		
<b>Competitor</b>	<b>Contact Person</b>	<b>Contact Details</b>
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

<b>Key NZ Competitors - PC and Gaming Consoles</b>		
<b>Competitor</b>	<b>Contact Person</b>	<b>Contact Details</b>
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

<b>Key NZ Competitors – Digital Distribution (PC, Console, &amp; Mobile Combined)</b>		
<b>Competitor</b>	<b>Contact Person</b>	<b>Contact Details</b>
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

<b>Key NZ Competitors – Display Advertising<sup>213</sup></b>	
<b>Competitor</b>	<b>Contact Details</b>
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]

<sup>213</sup> []

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[]	[]
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<b>Key NZ Competitors – Cloud Computing</b>	
<b>Competitor</b>	<b>Contact Details</b>
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]

**12.16 Name and contact details of any New Zealand trade/industry associations that the Parties are members of**

*Microsoft*

<b>Association</b>	<b>Contact Name</b>	<b>Contact Details</b>
NZ Tech <sup>214</sup>	[]	[]
BusinessNZ	[]	[]
AmCham NZ	[]	[]
NZ Health IT	[]	[]
Interactive Games & Entertainment Association	[]	[] []

*Activision Blizzard*

<b>Association</b>	<b>Contact Name</b>	<b>Contact Details</b>
Interactive Games & Entertainment Association	[]	[] []

<sup>214</sup> NZTech is an umbrella organization, and as part of membership in NZTech, Microsoft is automatically a member of numerous daughter associations. This includes NZ Game Developers Association (<https://nzgda.com>), but Microsoft is not active in this particular association.

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### **13. CONFIDENTIALITY**

13.1 Confidentiality is sought in respect of the information in this application that is contained in [square brackets]. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

(a) the information is commercially sensitive and valuable information which is confidential to the participants; and

(b) disclosure would be likely unreasonably to prejudice the commercial position of the participants, as the Parties providing the information.

13.2 The Parties request that they are notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information.

13.3 The Parties also request that the Commission seek and consider the Parties' views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.

13.4 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.

## **PUBLIC VERSION**

### **DECLARATION**

I, [ ] have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all the information specified by the Commission has been supplied;
- if the information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of Microsoft Corporation and am duly authorised to submit this notice.

[ ]

---

**Signature**

**Date**



## APPENDIX TWO

## EXAMPLES OF MULTI-GAME SUBSCRIPTION SERVICE PAYMENT MODELS

Gaming subscription service provider	Model	Content
Microsoft	<ul style="list-style-type: none"> <li>• <b>Xbox Live Gold</b> subscription of USD 9.99/month (NZD 12.95)/month for multi-player and multi-game subscription.</li> <li>• <b>Xbox Game Pass</b> for PC / Xbox Game Pass for Console subscriptions of USD 9.99/month (NZD 12.95/month) for multi-game subscriptions with larger catalogue of games available on either PC or console (excludes multi-player experience) (for PC includes EA Play membership).</li> <li>• <b>Xbox Game Pass Ultimate</b> subscription of USD 14.99/month (NZD 19.95/month) (including Xbox Live Gold and EA Play membership) for multi-player and multi-game subscription with larger catalogue of games available on console, PC and cloud gaming.</li> </ul>	<ul style="list-style-type: none"> <li>• Up to 500+ first- and third-party games<sup>217</sup></li> <li>• Console and PC games<sup>218</sup></li> </ul>
Sony	<ul style="list-style-type: none"> <li>• <b>PlayStation Plus</b> subscription of USD 9.99/month, USD 24.99/3 months or USD 59.99/year (NZD 13.95/month, NZD 39.95/3 months or NZD 89.95/year) for multi-player and multi-game subscription.</li> <li>• <b>PlayStation Now</b> subscription of EUR 9.99 / month for multi-game subscription with larger catalogue of games available on console, PC and cloud gaming.<sup>219</sup> (This is not currently available in New Zealand).</li> <li>• Sony shortly plans to merge PlayStation Now with PlayStation Plus and to launch a new subscription service.<sup>220</sup> The new multi-game service will offer subscription tiers with multi-player experience, varying levels of access to its catalogue of games, and cloud gaming.<sup>221</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Around 700 first- and third-party games</li> <li>• Games available on PlayStation console and PC</li> </ul>

<sup>217</sup> A list of the unique games available on Game Pass (link available [here](#)).

<sup>218</sup> Xbox Game Pass does not offer native mobile games.

<sup>219</sup> PlayStation Now is available in 19 countries: Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, Norway, Portugal, Spain, Sweden, Switzerland, the Netherlands, the UK, and the USA.

<sup>220</sup> Bloomberg, "PlayStation Plans New Service to take on Xbox Game Pass", 03.12.21 (link available [here](#)); VGC "Sony 'pulling PS Now retail cards' ahead of expected launch of Game Pass rival", 12.01.22 (link available [here](#)); PlayStation Lifestyle "PlayStation Continued to Dominate the 2021 Worldwide Console Market", 02.03.22 (link available [here](#)); Comicbook, "Huge PlayStation Now Changes May Be Coming Very Soon", 03.03.22 (link available [here](#)); PlayStation Lifestyle, "Project Spartacus Gets Closer as PlayStation Plus and PS Now Merge for Some", 04.03.22 (link available [here](#)); Giant Freakin Robot "PlayStation Now is Being Replaced", 04.03.22 (link available [here](#)).<sup>221</sup> PlayStation blog, "All-new PlayStation Plus launches in June with 700+ games and more value than ever", 29.03.22 (link available [here](#)).<sup>222</sup> Pocket-lint, "What is EA Play, how much does it cost and what games do you get?", 17.02.22 (link available [here](#)).

<sup>221</sup> PlayStation blog, "All-new PlayStation Plus launches in June with 700+ games and more value than ever", 29.03.22 (link available [here](#)).<sup>222</sup> Pocket-lint, "What is EA Play, how much does it cost and what games do you get?", 17.02.22 (link available [here](#)).

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<p><b>Nintendo</b></p>	<ul style="list-style-type: none"> <li>• <b>Nintendo Switch Online:</b> Subscription provides access to online play, cloud saving, as well as a catalogue of Nintendo Entertainment System (“NES”) and Super NES games for USD 3.99/month, USD 7.99/3 months or USD 19.99/year (NZD 6.55/month, NZD 13.15/3 months or NZD 32.95/year).</li> <li>• Family membership, providing up to eight accounts, available for USD 34.99/year (NZD60.45/year)</li> </ul>	<ul style="list-style-type: none"> <li>• 100+ classic first-party NES and Super NES games</li> <li>• Available on Nintendo Switch only</li> </ul>
<p><b>Apple Arcade</b></p>	<ul style="list-style-type: none"> <li>• <b>Apple Arcade</b> subscription service available for USD 4.99/month (NZD 8.99/month).</li> </ul>	<ul style="list-style-type: none"> <li>• 200+ third-party games</li> <li>• Available on Apple mobile and PC devices</li> </ul>
<p><b>EA Play</b></p>	<ul style="list-style-type: none"> <li>• <b>EA Play</b><sup>222</sup> subscription service to access back catalogue of games for USD 6.99/month or USD 39.99/year (NZD 6.99/month or NZD 39.99/year) on PC, Xbox and PlayStation.</li> <li>• Also available as a channel through Game Pass Ultimate and Xbox Game Pass for PC.</li> <li>• <b>EA Play Pro</b> subscription service on PC for USD 19.99/month or USD 129.99/year or NZD 20.99/month or NZD 139.99/year) access to new games as they are released.</li> </ul>	<ul style="list-style-type: none"> <li>• 90+ games first-party EA games</li> <li>• Games available on PC, Xbox and PlayStation</li> </ul>
<p><b>Google</b></p>	<ul style="list-style-type: none"> <li>• <b>Google Play Pass</b> subscription available for USD 4.99/month or 29.99/year or NZD 8.99/month or NZD 54.99/year, includes hundreds of games and apps on Android devices.</li> <li>• <b>Google Stadia</b><sup>223</sup> subscription service available (USD 9.99/month) on PC, smart TV, Android and iOS devices. Ubisoft+ and a la carte games also available for purchase. Cloud-based service (see further Appendix Three). (This is not currently available in New Zealand).</li> </ul>	<ul style="list-style-type: none"> <li>• 200+ third-party games available on subscription, further games available à la carte</li> </ul>
<p><b>Amazon</b></p>	<ul style="list-style-type: none"> <li>• <b>Amazon Luna:</b> Base subscription service (from USD 9.99/month).<sup>224</sup> (This is not currently available in New Zealand).</li> <li>• Paid subscription to “channels” to get access to more games (from USD 2.99/month for the Family channel to USD 17.99/month for Ubisoft+).</li> <li>• Rotating selection of free games to play for Amazon Prime members.</li> </ul>	<ul style="list-style-type: none"> <li>• 100+ games available with the base subscription</li> <li>• 100+ games that can be unlocked through channel subscriptions</li> </ul>

<sup>222</sup> Pocket-lint, “What is EA Play, how much does it cost and what games do you get?”, 17.02.22 (link available [here](#)).

<sup>223</sup> Stadia is available in the US, Canada, UK, France, Italy, Germany, Austria, Spain, Sweden, Switzerland, Denmark, Norway, Finland, Belgium, Ireland, the Netherlands, Poland, Portugal, Czech Republic, Slovakia, Romania and Hungary.

<sup>224</sup> Luna is currently available to mainland US.

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<p><b>Ubisoft</b></p>	<ul style="list-style-type: none"> <li>• <b>Ubisoft+:</b> Subscription required to access catalogue of games USD 14.99/month (NZD 20.95/month).</li> </ul>	<ul style="list-style-type: none"> <li>• 100+ first-party Ubisoft games</li> <li>• PC games</li> </ul>
<p><b>Nvidia</b></p>	<ul style="list-style-type: none"> <li>• <b>Nvidia GeForce Now:</b> Subscription enables streaming of compatible games already purchased by gamer through digital storefronts (e.g., Steam, Epic Games). (This is not currently available in New Zealand).</li> <li>• Three subscription options: (i) free, enabling one hour of play at a time; (ii) priority USD 9.99/month or USD 99.99/ year), enabling up to 6 hours of play; and (iii) RTX 3080 (USD 19.99/month or USD 99.99/6 months), enabling up to 8 hours of play at a time and access to more powerful servers and reduced latency.</li> </ul>	<ul style="list-style-type: none"> <li>• 1,000+ games</li> </ul>
<p><b>Utomik</b></p>	<ul style="list-style-type: none"> <li>• <b>Utomik:</b> Worldwide gaming subscription services on PC and Smart TV (through a partnership with Samsung).</li> <li>• Subscriptions for USD 6.99/month (NZD 8.99/month) or family plan (up to four users) for USD 9.99/month (NZD 11.99/month).</li> </ul>	<ul style="list-style-type: none"> <li>• 1300+ games</li> </ul>
<p><b>Blacknut</b></p>	<ul style="list-style-type: none"> <li>• <b>Blacknut:</b> Cloud gaming subscription service for USD 15.99/month.<sup>225</sup> (This is not currently available in New Zealand).</li> <li>• Blacknut is available across Europe, Asia &amp; North America on a wide range of devices, including PC, mobiles, set-top-boxes and Smart TVs.</li> <li>• Blacknut collaborates with mobile operators to provide gaming subscription services.</li> </ul>	<ul style="list-style-type: none"> <li>• 500+ games</li> </ul>

<sup>225</sup> Blacknut website (link available [here](#)). Blacknut is available across Europe, Asia and North America.



## APPENDIX THREE

EXAMPLES OF GAMING SERVICE PROVIDERS OFFERING CLOUD GAMING DELIVERY OF CONTENT<sup>226</sup>

Gaming service provider	Offer including cloud gaming delivery of content	Content
<b>Microsoft Xbox</b>	<ul style="list-style-type: none"> <li>• <b>Game Pass Ultimate:</b><sup>227</sup> subscription required to access catalogue for USD 14.99/month (NZD 19.95/month).</li> <li>• Gamers able to download or use cloud gaming as a means of game-delivery.</li> </ul>	<ul style="list-style-type: none"> <li>• 400+ games first- and third-party games</li> </ul>
<b>Sony</b>	<ul style="list-style-type: none"> <li>• <b>Sony PlayStation Now:</b><sup>228</sup> subscription required to access catalogue of games (USD 9.99/month).</li> <li>• Shortly to be replaced by new <b>PlayStation Plus</b> service.<sup>229</sup></li> <li>• Gamers able to download or use cloud gaming as a means of game-delivery.</li> </ul>	<ul style="list-style-type: none"> <li>• Around 700 first- and third-party games</li> </ul>
<b>Google</b>	<ul style="list-style-type: none"> <li>• <b>Google Stadia:</b><sup>230</sup> Subscription service available (USD 9.99/month). (This is not currently available in New Zealand).</li> <li>• A la carte games also available for purchase.</li> </ul>	<ul style="list-style-type: none"> <li>• 200+ games available on subscription, further games available à la carte</li> <li>• Includes third-party AAA games</li> </ul>
<b>Nintendo</b>	<ul style="list-style-type: none"> <li>• <b>Nintendo Switch Cloud:</b><sup>231</sup> Price per game (price equivalent to price of physical or digital game). (This is not currently available in New Zealand).</li> <li>• Gamers able to download or use cloud gaming as a means of game-delivery.</li> </ul>	<ul style="list-style-type: none"> <li>• 10 games</li> </ul>
<b>Amazon</b>	<ul style="list-style-type: none"> <li>• <b>Amazon Luna:</b><sup>232</sup> Base subscription service (from USD 9.99/month). (This is not currently available in New Zealand).</li> <li>• Paid subscription to “channels” to get access to more games (from USD 2.99/month for the Family channel to USD</li> </ul>	<ul style="list-style-type: none"> <li>• 100+ games available with the base subscription</li> <li>• 100+ games that can be unlocked through channel subscriptions</li> </ul>

<sup>226</sup> This table is based on Table 6.2 of CMA, *Mobile Ecosystems Interim Report*, 14 December 2021.

<sup>227</sup> A list of unique games available on Game Pass to play via cloud gaming (link available [here](#)).

<sup>228</sup> Sony PlayStation Now (link available [here](#)).

<sup>229</sup> PlayStation blog, “All-new PlayStation Plus launches in June with 700+ games and more value than ever”, 29.03.22 (link available [here](#)).

<sup>230</sup> Google Stadia (link available [here](#)). Stadia is available in the US, Canada, UK, France, Italy, Germany, Austria, Spain, Sweden, Switzerland, Denmark, Norway, Finland, Belgium, Ireland, the Netherlands, Poland, Portugal, Czech Republic, Slovakia, Romania and Hungary.

<sup>231</sup> Cnet “Switch Cloud Streaming: How to Play Dying Light 2, Control and More”, 16.02.22 (link available [here](#)). Nintendo Switch Cloud is not currently available in New Zealand.

<sup>232</sup> See Amazon Luna website (link available [here](#)). Amazon Luna is currently available to mainland US.

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	<p>17.99/month for Ubisoft+).</p> <ul style="list-style-type: none"> <li>Rotating selection of free games to play for Amazon Prime members. Currently only available as an early access version in the US.</li> </ul>	
<b>Nvidia</b>	<ul style="list-style-type: none"> <li><b>Nvidia GeForce:</b><sup>233</sup> Subscription enables streaming of compatible games already purchased by gamer through digital storefronts (e.g., Steam, Epic Games). (This is not currently available in New Zealand).</li> <li>Three subscription options: (i) free, enabling one hour of play at a time; (ii) priority (USD 9.99/month or USD 99.99/year) enabling up to 6 hours of play; and (iii) RTX 3080 (USD 19.99/month or USD 99.99/6 months), enabling up to 8 hours of play at a time and access to more powerful servers and reduced latency.</li> </ul>	<ul style="list-style-type: none"> <li>1,000+ games</li> </ul>
<b>Meta</b>	<ul style="list-style-type: none"> <li><b>Facebook Gaming:</b><sup>234</sup> Free for users to access.</li> </ul>	<ul style="list-style-type: none"> <li>Large number of third-party HTML5 and web games</li> <li>Limited number of third-party AAA games<sup>235</sup></li> </ul>
<b>Blacknut</b>	<ul style="list-style-type: none"> <li><b>Blacknut:</b><sup>236</sup> Cloud gaming subscription service for USD 14.99/month. (This is not currently available in New Zealand).</li> </ul>	<ul style="list-style-type: none"> <li>500+ games</li> </ul>
<b>Blade Shadow</b>	<ul style="list-style-type: none"> <li><b>Blade Shadow</b><sup>237</sup>: Cloud gaming service developed by Blade that allows users to remotely access a powerful Windows 10 machine from any PC, Mac or Android device for a “lag-free” gaming experience. (This is not currently available in New Zealand).</li> <li>Three pricing tiers of USD 11.99/month, USD 24.99/month, and USD 39.99/month.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable (BYOG)</li> </ul>

<sup>233</sup> See Nvidia GeForce Now website (link available [here](#)). Nvidia GeForce Now is not currently available in New Zealand.

<sup>234</sup> See Facebook Gaming website (link available [here](#)).

<sup>235</sup> HTML5 games accessed within the app with AAA games cloud streamed in enabled areas (currently North America, parts of Western Europe and Singapore).

<sup>236</sup> See Blacknut website (link available [here](#)). Blacknut is not currently available in New Zealand.

<sup>237</sup> Shadow Frequently Asked Questions (link available [here](#)); Digital Trends “*Everything we know about Blade’s Shadow game streaming service*”, 30.03.21 (link available [here](#)). Blade Shadow is not currently available in New Zealand.

**CONFIDENTIAL APPENDIX FOUR  
SHARE ESTIMATES**

*Table 2 Global shares by value in video game development and publishing - PC and console (2020)*

Publisher	PC and Console (2020)	
	USD mil	%
<b>Activision Blizzard</b>	[]	[]
<b>Microsoft</b>	[]	[]
<b>Combined</b>	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
Others	[]	[]
<b>Total Market Size</b>	[]	<b>100.0%</b>

*Table 3 New Zealand shares by value in video game development and publishing - PC and console (2020)<sup>238</sup>*

Publisher	PC and Console (2020)	
	USD mil	%
<b>Activision Blizzard</b>	[]	[]
<b>Microsoft</b>	[]	[]
<b>Combined</b>	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

<sup>238</sup> Source: App Annie data.

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[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
Others	[]	[]
<b>Total Market Size</b>	<b>[]</b>	<b>100%</b>

*Table 4 Global shares by value in video game development and publishing - Native mobile games (2020)<sup>239</sup>*

Vendor	Mobile (2020)	
	USD mil	%
<b>Microsoft</b>	[]	[]
<b>Activision Blizzard</b>	[]	[]
<b>Combined</b>	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
Others <sup>240</sup>	[]	[]
<b>Total Market Size</b>	<b>[]</b>	<b>100%</b>

<sup>239</sup> Source: App Annie data.

<sup>240</sup> []

Table 5 New Zealand shares by value in video game development and publishing - native mobile games (2020)<sup>241</sup>

Vendor	(Mobile) 2020	
	USD mil	%
Microsoft	[ ]	[ ]
Activision Blizzard	[ ]	[ ]
Combined	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
Others <sup>242</sup>	[ ]	[ ]
<b>Total Market Size</b>	[ ]	<b>100.0%</b>

Table 6 Global shares by value in video game development and publishing - PC (2020)

Party	Revenue (\$, Mn)	Share (%)
Activision Blizzard	[ ]	[ ]
Microsoft	[ ]	[ ]
Combined	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

<sup>241</sup> Source: App Annie data.

<sup>242</sup> [.]



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[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
Others	[ ]	[ ]
<b>Total Market Size</b>	<b>[ ]</b>	<b>100%</b>

Table 9 New Zealand shares by value of video game development and publishing - Console (2020)

Publisher	Console (2020)	
	USD mil	%
<b>Activision Blizzard</b>	[ ]	[ ]
<b>Microsoft</b>	[ ]	[ ]
<b>Combined</b>	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ] <sup>243</sup>	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Total Market Size</b>	<b>[ ]</b>	<b>100%</b>

Table 10 Global shares by value in digital distribution of video games - All devices (PC, console and mobile) (2020)<sup>244</sup>

Vendor	All devices (2020)	
	USD (mil)	%
<b>Microsoft</b>	[ ]	[ ]
<b>Activision Blizzard</b>	[ ]	[ ]
<b>Combined</b>	[ ]	[ ]
[ ]	[ ]	[ ]

<sup>243</sup> [ ]

<sup>244</sup> [ ]





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[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Total</b>	[ ]	<b>100.0%</b>

Table 12 Global shares of digital distribution of video games - Console (2020)<sup>246</sup>

Vendor	Console (2020)	
	USD (mil)	%
<b>Microsoft</b>	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Total</b>	[ ]	<b>100.0%</b>

Table 13 Global shares of digital distribution of video games – all devices (PC, console and mobile) – Subscription services (2020)<sup>247</sup>

Product	All devices (2020)	
	USD (mil)	%
[ ] <sup>248</sup>	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
Others	[ ]	[ ]
<b>Total</b>	[ ]	<b>100%</b>

Table 14 Shares of New Zealand digital distribution of video games - All devices (PC, console, mobile) (2020)<sup>249</sup>

Vendor	All devices (2020)	
	USD (mil)	%
<b>Microsoft</b>	[ ]	[ ]
<b>Activision Blizzard</b>	[ ]	[ ]
<b>Combined</b>	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

<sup>246</sup> [ ].

<sup>247</sup> [ ].

<sup>248</sup> [ ].

<sup>249</sup> [ ].

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[]	[]	[]
[ ] <sup>250</sup>	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
Others	[]	[]
<b>Total</b>	[]	<b>100%</b>

*Table 15 Shares of New Zealand digital distribution of video games - PC (2020)*

Vendor	PC (2020)	
	USD (mil)	%
<b>Microsoft</b>	[]	[]
<b>Activision Blizzard</b>	[]	[]
<b>Combined</b>	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
<b>Total</b>	[]	<b>100.0%</b>

---

<sup>250</sup> [].

Table 16 Shares of New Zealand digital distribution of video games - Console (2020)

Vendor	Console (2020)	
	USD (mil)	%
Microsoft	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100.0%</b>

Table 17 Shares of New Zealand digital distribution of video games – All devices – Subscription services (2020)<sup>251</sup>

Product	All devices (2020)	
	USD (mil)	Share (%)
Microsoft	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
Others	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100%</b>

Table 18 New Zealand shares of online display advertising (2020-2021)<sup>252</sup>

Party	2020		2021	
	USD (mil)	%	USD (mil)	%
Microsoft <sup>253</sup>	[ ]	[ ]	[ ]	[ ]
Activision Blizzard <sup>254</sup>	[ ]	[ ]	[ ]	[ ]
Combined	[ ]	[ ]	[ ]	[ ]
Others	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100%</b>	<b>[ ]</b>	<b>100%</b>

Table 19 Global shares of online display advertising (2020-2021)<sup>255</sup>

Party	2020		2021	
	USD mil	%	USD mil	%
Microsoft <sup>256</sup>	[ ]	[ ]	[ ]	[ ]

<sup>251</sup> [ ]

<sup>252</sup> [ ]

<sup>253</sup> [ ]

<sup>254</sup> [ ]

<sup>255</sup> [ ]

<sup>256</sup> [ ]

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<b>Activision Blizzard</b> <sup>257</sup>	[ ]	[ ]	[ ]	[ ]
<b>Combined</b>	[ ]	[ ]	[ ]	[ ]
Others	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	[ ]	<b>100%</b>	[ ]	<b>100%</b>

Table 20 Shares of cloud computing services (IaaS and PaaS), worldwide (2019-2020)<sup>258</sup>

Cloud provider	2019	2020
<b>Microsoft</b>	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
Others	[ ]	[ ]

Table 21 New Zealand Shares of IaaS sub-segment, New Zealand (2019-2020)<sup>259</sup>

Party	2019		2020	
	NZD mil	%	NZD mil	%
Spark NZ	125	33.5	142	31.6
Amazon	103	27.6	123	27.3
Datacom	70	18.8	72	16.0
Microsoft	42	11.3	66	14.7
Others	33	8.8	47	10.4
<b>Total</b>	<b>373</b>	<b>100.0</b>	<b>450</b>	<b>100</b>

<sup>257</sup> [ ]

<sup>258</sup> Source: Microsoft and IDC.

<sup>259</sup> Source: Gartner. See: <https://www.reseller.co.nz/article/689411/spark-nz-continues-beat-amazon-kiwi-iaas-arena/>

## CONFIDENTIAL APPENDIX FIVE

## NEW ZEALAND REVENUE / UNITS BY PRODUCT / SERVICE

	2019	2020	2021
<b>Video game development and publishing, console in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Activision (USD \$M)	[]	[]	[]
<b>Video game development and publishing, PC in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Activision (USD \$M)	[]	[]	[]
<b>Video game development and publishing, PC and console in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Activision (USD \$M)	[]	[]	[]
<b>Video game development and publishing, native mobile games in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Microsoft (Units, no. of downloads)	[]	[]	[]
Activision (USD \$M)	[]	[]	[]
Activision (Units, no. of downloads)	[]	[]	[]
<b>Console Hardware installed base in New Zealand</b>			
Microsoft (Units, no. of console hardware)	[]	[]	[]
<b>Console Hardware new sales in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Microsoft (Units, no. of console hardware)	[]	[]	[]
<b>Multi-game Subscription Services Revenue - All devices (PC, console and mobile) in New Zealand<sup>260</sup></b>			
Microsoft (USD \$M)	[]	[]	[]
Microsoft (Units, no. of subscribers)	[]	[]	[]
<b>Multi-game Subscription Services Revenue - Console in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Microsoft (Units, no. of subscribers) <sup>261</sup>	[]	[]	[]
<b>Multi-game Subscription Services Revenue – PC in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Microsoft (Units, no. of subscribers)	[]	[]	[]
<b>Sale of PC Hardware in New Zealand</b>			
Microsoft (USD \$M)	[]	[]	[]
Microsoft (Units, no. of PC hardware)	[]	[]	[]
<b>Digital Storefront ("Buy-to-Play") – All Platforms (PC, Console &amp; Mobile) in New Zealand</b>			

<sup>260</sup> []<sup>261</sup> []

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Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Digital Storefront ("Buy-to-Play") - PC &amp; Console, 2019-2020 in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Digital Storefront ("Buy-to-Play") – PC in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Digital Storefront ("Buy-to-Play") - Console in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
<b>Digital distribution of video games - All devices (PC, console and mobile) in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Digital distribution of video games – PC in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Digital distribution of video games – Console in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
<b>Digital distribution of video games – PC and console in New Zealand</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Online digital display advertising in New Zealand (overall ad spend)</b>			
Microsoft (USD \$M)	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Game-related merchandising in New Zealand</b>			
Microsoft (USD \$) <sup>262</sup>	[ ]	[ ]	[ ]
Activision (USD \$M)	[ ]	[ ]	[ ]
<b>Cloud computing services in New Zealand</b>			
Microsoft (USD \$)	[ ]	[ ]	[ ]

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<sup>262</sup> [ ]

## APPENDIX SIX

### FURTHER DETAIL ON GAME PASS AND COMPETITORS

The following sets out some key milestones in how Microsoft's Game Pass has changed over time:

- (a) On 1 June 2017, Microsoft launched its Game Pass subscription service on Xbox. It launched with a curated catalogue of over 100 games.<sup>263</sup> Examples of games available at that time is in the link in the footnote.<sup>264</sup>
- (b) On 23 January 2018 Xbox Game Pass expanded to include new releases from Microsoft Studios.<sup>265</sup>
- (c) On 9 June 2019, Microsoft expanded Game Pass to PC (i.e., "Xbox Game Pass for PC").<sup>266</sup> At the same time, Microsoft launched Xbox Game Pass Ultimate, which included:<sup>267</sup>
  - (i) Xbox Game Pass for Console, with over 100 games.
  - (ii) Xbox Live Gold, an online multiplayer network.
  - (iii) Xbox Game Pass for PC.

A list of games available at that time is in the link in the footnote.<sup>268</sup>

- (d) On 15 September 2020, Microsoft added cloud gaming as a feature of its top-tier subscription service offer, Game Pass Ultimate.<sup>269</sup> At this time, Game Pass had more than 150 games available to Game Pass Ultimate members.<sup>270</sup> A list of games available at that time is in the link in the footnote.<sup>271</sup>
- (e) On 12 March 2021, following the closing of Microsoft's *ZeniMax* acquisition,<sup>272</sup> Microsoft added 20 Bethesda games on 12 March 2021,<sup>273</sup> followed by 10 additional Bethesda games on 13 June 2021.<sup>274</sup>

[].

*Figure 4: Total Game Pass Subscriptions - Global*

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<sup>263</sup> <https://news.xbox.com/en-us/2017/05/24/xbox-game-pass-available-june-1/>

<sup>264</sup> <https://news.xbox.com/en-us/2017/05/24/xbox-game-pass-available-june-1/>

<sup>265</sup> <https://news.xbox.com/en-us/2018/01/23/xbox-game-pass-expands/>

<sup>266</sup> <https://news.xbox.com/en-us/2019/06/09/xbox-game-pass-ultimate-now-available/>

<sup>267</sup> <https://news.xbox.com/en-us/2019/06/09/xbox-game-pass-ultimate-now-available/>

<sup>268</sup> <https://news.xbox.com/en-us/2019/06/09/xbox-game-pass-ultimate-now-available/>

<sup>269</sup> <https://news.xbox.com/en-us/2020/09/14/cloud-gaming-with-xbox-game-pass-ultimate/>

<sup>270</sup> <https://news.xbox.com/en-us/2020/09/14/cloud-gaming-with-xbox-game-pass-ultimate/>

<sup>271</sup> <https://news.xbox.com/en-us/2020/09/14/cloud-gaming-with-xbox-game-pass-ultimate/>

<sup>272</sup> See *Microsoft/ZeniMax*.

<sup>273</sup> <https://news.xbox.com/en-us/2021/03/11/20-bethesda-games-now-on-xbox-game-pass/>

<sup>274</sup> <https://www.videogameschronicle.com/news/10-more-bethesda-titles-are-coming-to-game-pass-today/>

Figure 5: Total Game Pass Subscribers – New Zealand

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The pricing of third-party subscription services is as set out in **Appendix Two** and **Three**.

In terms of the games available on competing third party subscription platforms, please refer to the links contained in the footnotes provided in Table 22.<sup>275</sup>

Table 22 Games available on competing third party subscription platforms are set out in the links contained in the footnotes in the following table

Gaming subscription service provider	Model
Sony	PlayStation Plus <sup>276</sup>
	PlayStation Now <sup>277</sup> (This is not currently available in New Zealand).
Nintendo	Nintendo Switch Cloud <sup>278</sup> (This is not currently available in New Zealand).
Apple Arcade	Apple Arcade <sup>279</sup>
EA Play	EA Play <sup>280</sup>
Google	Google Play Pass <sup>281</sup>
	Google Stadia <sup>282</sup> (This is not currently available in New Zealand).
Amazon	Amazon Luna <sup>283</sup>
Ubisoft	Ubisoft+ <sup>284</sup>
Nvidia	Nvidia GeForce <sup>285</sup> (This is not currently available in New Zealand).
Utomik	Utomik <sup>286</sup>
Meta	Facebook Gaming <sup>287</sup>
Blacknut	Blacknut <sup>288</sup> (This is not currently available in New Zealand).

<sup>275</sup> Microsoft does not in the ordinary course of its business, track data to assess the impact third-party services have had on Game Pass in New Zealand.

<sup>276</sup> <https://www.playstation.com/en-nz/ps-plus/this-month-on-ps-plus/>

<sup>277</sup> <https://www.playstation.com/en-us/ps-now/ps-now-games/>

<sup>278</sup> <https://www.cnet.com/tech/gaming/switch-cloud-streaming-how-to-play-dying-light-2-control-and-more/>

<sup>279</sup> <https://support.apple.com/en-nz/HT212261>

<sup>280</sup> <https://www.ea.com/ea-play/games>

<sup>281</sup> [https://play.google.com/intl/en\\_nz/about/play-pass/](https://play.google.com/intl/en_nz/about/play-pass/)

<sup>282</sup> <https://stadia.google.com/games>

<sup>283</sup> [https://www.amazon.com/luna/primegaming?ref=tmp\\_Amz\\_PG\\_Channel](https://www.amazon.com/luna/primegaming?ref=tmp_Amz_PG_Channel)

<sup>284</sup> [https://store.ubi.com/anz/games?lang=en\\_NZ](https://store.ubi.com/anz/games?lang=en_NZ)

<sup>285</sup> <https://www.nvidia.com/en-eu/geforce-now/>

<sup>286</sup> <https://www.utomik.com/games>

<sup>287</sup> [https://www.facebook.com/gaming/play/?store\\_visit\\_source=left\\_rail\\_navigation](https://www.facebook.com/gaming/play/?store_visit_source=left_rail_navigation)

<sup>288</sup> <https://www.blacknut.com/en/games>



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Blade Shadow	Blade Shadow <sup>289</sup> (This is not currently available in New Zealand).
Netflix	Netflix Games <sup>290</sup>

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<sup>289</sup> <https://www.digitaltrends.com/gaming/shadow-game-streaming-price-availability-features/#dt-heading-what-is-shadow>

<sup>290</sup> <https://help.netflix.com/en/node/121442>