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Antitrust Division Calls on Activision to Do Its Duty to eSports League Players

WRITTEN BY

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On April 3, the Department of Justice's Antitrust Division (DOJ) filed a complaint against and settlement with Activision Blizzard, Inc. (Activision), alleging the company violated Section 1 of the Sherman Act.^[1]

Activision is a leading video game developer that owns and operates multiple professional esports leagues, including the incredibly popular leagues for *Overwatch* and *Call of Duty* (collectively, the leagues).^[2] The complaint alleges that Activision and the independently owned teams that comprise the leagues agreed to a “competitive balance tax,” which acted as a salary cap for the leagues.^[3]

The competitive balance tax penalized any team that paid its esports players above a certain threshold by charging the team a dollar-for-dollar tax that was distributed to all other teams in the league.^[4] The DOJ distinguished the salary caps of other sports leagues, achieved through collective bargaining agreements, from the competitive balance tax since the latter was not the result of negotiations with the players.^[5] The complaint alleges that Activision’s competitive balance tax violated Section 1 because it restricted competition between the teams in the leagues for players and thus, suppressed the players’ wages.^[6]

Simultaneous with filing the complaint, the DOJ also filed a proposed final judgment (the consent decree) for the court’s approval.^[7] Under the consent decree, Activision agreed to no longer enforce the competitive balance tax in either of the leagues.^[8] Additionally, Activision agreed “not to impose any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players,” to issue a revised antitrust compliance policy and a whistleblower policy approved by the DOJ, and to make a series of initial and annual disclosures about the consent decree to the teams and players that make up the leagues, as well as to the DOJ.^[9]

Takeaway

As addressed in “[Executive Order Throws Down the Gauntlet for a New Era of Antitrust Enforcement](#),” this administration has been keenly focused on protecting workers from perceived overreach by powerful employers. Accordingly, the DOJ has pursued a series of civil and criminal actions targeting companies accused of wage suppression, including this action against Activision. Clients should be very careful when drafting or enforcing policies that could be interpreted to have a negative effect on employee wages.

[1] *USA v. Activision Blizzard, Inc.*, ECF 1, 1:23-cv-00895 (D.D.C. April 3, 2023).

[2] *Id.* at 1.

[3] *Id.* at ¶ 7.

[4] *Id.*

[5] Collective bargaining is exempt from the antitrust laws, known as the “labor exemption,” 15 U.S. Code § 17:

Nothing contained in the [antitrust laws](#) shall be construed to forbid the existence and operation of labor ... organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the [antitrust laws](#).

[6] *Id.* at ¶ 16-18.

[7] ECF. 2-2, 1:23-cv-00895 (D.D.C. April 3, 2023).

[8] *Id.* at 1. Activision stopped enforcing the “competitive balance tax” back in October of 2021 in response to the DOJ’s investigation into the tax. ECF 1, 1:23-cv-00895, at ¶ 10 (D.D.C. April 3, 2023).

[9] ECF. 2-2, 1:23-cv-00895, at 4-7 (D.D.C. April 3, 2023).

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