NON-PLAYABLE CHARACTER: COMPETITION LAW ENFORCEMENT IN THE VIDEO GAME MARKET

BY ROBIN S. CRAUTHERS[1]

1 Robin Crauthers is an antitrust partner at McCarter & English. She previously served as a trial attorney at the Department of Justice Antitrust Division.

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The global video game industry is now one of the largest entertainment sectors, eclipsing film and music combined. Its evolution into a multi-sided digital ecosystem—consoles, PC storefronts, mobile operating systems, subscription libraries, and cloud streaming—has drawn the sustained attention of competition authorities worldwide. This Article examines how competition law has adapted to this sector by comparing the treatment of the Microsoft–Activision merger and platform governance litigation such as *Epic Games v. Apple*, with consumer-protection initiatives against exploitative monetization. The analysis focuses on three comparative dimensions: (1) jurisdictional market definition, (2) theories of anti-competitive harm, and (3) the overlap between antitrust and consumer-protection enforcement. By situating enforcement in the United States, European Union, United Kingdom, and Asia-Pacific jurisdictions, the Article argues that remedies in video games increasingly resemble digital access regulation and that divergent national approaches threaten regulatory fragmentation in a truly global industry.

I. INTRODUCTION

Few industries embody the globalization of competition law as vividly as video games. With global revenues surpassing $400 billion annually, the sector represents a critical test case for merger control, platform conduct, and digital consumer protection.[2] Competition authorities from Washington to Brussels to Seoul have now developed theories of harm specifically targeting video games' distinctive features: cross-platform content, ecosystem effects, and cloud distribution.

The most salient illustration is the *Microsoft–Activision Blizzard* merger, reviewed by more than a dozen jurisdictions. The transaction provoked divergent responses: the U.S. courts denied preliminary relief to the Federal Trade Commission ("FTC"),[3] the European Commission cleared the transaction subject to licensing commitments,[4] and the United Kingdom's Competition and Markets Authority ("CMA") insisted upon a structural divestiture of cloud streaming rights.[5] Parallel investigations in Brazil, China, and South Korea reached still different conclusions.

Meanwhile, platform conduct litigation (Epic Games v. Apple) and consumer-protection settlements (*FTC v. Epic*, loot-box regulation in Belgium) show that the legal scrutiny of video games transcends classical antitrust. The convergence of competition policy and consumer law is particularly visible in cases targeting "dark patterns," exploitative monetization, and app-store steering.

This Article offers a comparative law review of competition law enforcement in video games. It proceeds in the following sections. Section II examines market-definition disputes and jurisdictional reach. Section III explores the *Microsoft–Activision* merger as a global case study. Section IV analyzes platform conduct, with particular attention to app-store governance. Section V considers consumer-protection enforcement as an adjunct to competition law. Section VI develops a comparative synthesis of harms and remedies. Finally, VII draws normative conclusions for global convergence and regulatory coordination.

II. MARKET DEFINITION AND JURISDICTION

A. Market Definition in Digital Games

Market definition is central to modern competition law, and video games have forced authorities to refine their analytic tools. Traditional product-market definition relies on the hypothetical monopolist test and the small but significant nontransitory increase in price ("SSNIP") analysis.[6] Yet in digital games, where many products are distributed at zero marginal price, market power often turns on non-price dimensions: latency in cloud streaming, interoperability between consoles, and cross-platform network effects.

The CMA's initial prohibition of *Microsoft–Activision* exemplifies this approach. The agency identified cloud gaming services as a distinct market, even though cloud represented a nascent form of distribution. The CMA concluded that Microsoft's integration of Activision's popular content (notably *Call of Duty*) with its Azure-powered Xbox Game Pass could foreclose rival cloud platforms.[7]

By contrast, the European Commission employed a broader market definition but imposed interoperability-based remedies. The Commission accepted Microsoft's commitments to license Activision games to competing cloud providers, effectively treating access rights as the functional equivalent of structural separation.[8]

The U.S. courts took yet another path. In denying the FTC's request for a preliminary injunction, the court in the northern district of California emphasized that the agency had not demonstrated a likelihood of substantial foreclosure in console, subscription, or cloud markets. The court also credited Microsoft's public commitments and third-party contracts as mitigating incentives to foreclose.[9]

2 Statista, Global Video Game Market Revenue (2024).

3 *FTC v. Microsoft Corp.*, 2023 WL 4443412 (N.D. Cal. July 10, 2023), aff'd, No. 23-15944 (9th Cir. 2024).

4 European Commission, Case M.10646—*Microsoft/Activision Blizzard*, Commission Decision (May 15, 2023).

5 Competition & Markets Authority, *Anticipated acquisition by Microsoft of Activision Blizzard, Inc.* (Apr. 2023).

6 U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 4 (2010).

7 CMA, *Final Report*, Microsoft/Activision (Apr. 2023).

8 European Commission, Commission Decision, *supra* note 4.

9 *FTC v. Microsoft Corp., supra* note 3.

These divergent approaches illustrate how market definition in video games is as much about policy preference as economic method. Agencies willing to recognize nascent markets (CMA) will identify foreclosure risk more readily, whereas courts demanding high evidentiary thresholds (U.S.) may find harm speculative.

B. Jurisdiction and Extraterritorial Reach

Video games are global products, distributed digitally across borders. Jurisdictional reach therefore produces complex mosaics of obligations.

Brazil's Administrative Council for Economic Defense ("CADE") cleared the *Microsoft–Activision* transaction unconditionally, reasoning that consumer welfare — not competitor protection — was the relevant benchmark.[10] China's State Administration for Market Regulation ("SAMR") approved the deal in May 2023, while the Korea Fair Trade Commission ("KFTC") found limited risk of foreclosure in its domestic ecosystem.[11]

These divergent outcomes reflect both institutional philosophy and developmental context. Where cloud gaming remains embryonic (Brazil, China), regulators hesitate to intervene. In Europe, where regulators embrace forward-looking competition concerns, remedies proliferate.

The practical result is remedy fragmentation: Ubisoft holds global streaming rights under the CMA settlement, while the European Commission relies on contractual commitments, and U.S. courts imposed no remedies at all. Game publishers must therefore comply with the most restrictive jurisdiction or risk geo-fencing features across markets.

For global game publishers, the prospect of geo-fencing — restricting features or access to comply with the strictest jurisdiction's rules — poses a serious business risk. Because digital distribution operates on inherently borderless networks, implementing geo-fencing can fragment online communities, create inconsistent user experiences, and undermine cross-platform play. It also imposes significant compliance costs, as publishers must engineer different versions of the same game to meet national requirements, ranging from loot-box restrictions to licensing obligations. A well-known example is Electronic Arts' FIFA series, where paid loot boxes were disabled in Belgium to comply with gambling law while remaining available in other markets, leaving Belgian players with a reduced version of the game.[12] Over time, such fragmentation risks eroding economies of scale and stifling innovation, effectively penalizing global consumers for regulatory divergence rather than safeguarding competition.

III. THE *MICROSOFT–ACTIVISION* CASE STUDY

The *Microsoft–Activision* merger was among the most widely scrutinized video game transactions, undergoing review in over a dozen jurisdictions. The merger featured novel markets not central to other video game reviews including cloud gaming, subscription models, and app-store ecosystems. It also illuminated the various enforcement philosophies across jurisdictions. Several jurisdictions cleared the deal without conditions while others conditioned approval on licensing commitments or divestiture remedies. Still other jurisdictions litigated to block the merger altogether.

These contrasting outcomes set the stage for examining the specific theories of harm that regulators advanced and the extent to which courts and agencies embraced or rejected them.

A. Theories of Harm

Authorities advanced three principal theories of harm:

1. Foreclosure of rival consoles and subscriptions through exclusive or degraded access to Activision titles.

2. Ecosystem leveraging, where Microsoft could integrate content with Windows and Azure to entrench a vertically integrated platform.

3. Nascent market tipping in cloud gaming, where early foreclosure could prevent rivals from achieving scale.[13]

10 CADE, Administrative Proceeding 08700.003601/2022-46 (Oct. 2022).

11 SAMR, *Microsoft/Activision Review* (May 2023).

12 Electronic Arts, FIFA Ultimate Team—Belgium Update (Apr. 2019), https://www.ea.com/news/fifa-ultimate-team-belgium-update.

13 CMA Final Report, *supra* note 7.

The CMA emphasized the third theory, finding that Activision's premium content was uniquely positioned to drive adoption of cloud services. The European Commission focused on interoperability, while the FTC advanced all three but failed to satisfy judicial standards of proof.

B. Remedies and Global Divergence

The CMA required Microsoft to divest global cloud streaming rights for Activision games to Ubisoft for fifteen years.[14] The European Commission accepted time-bound licensing commitments, monitorable by a trustee.[15] The U.S. courts imposed no remedies, allowing closing to proceed after denial of preliminary relief.[16]

This divergence reveals three models of remedy: structural (UK), conduct/interoperability (EU), and litigation non-intervention (U.S.). For global companies, structural divestiture in one jurisdiction may dictate worldwide strategy, even if other regulators are more permissive.

C. Competitor and Consumer Voice

A striking feature of the *Microsoft–Activision* review was the prominent role of Sony and other rival stakeholders. Sony argued that Microsoft would have strong incentives to withhold *Call of Duty* from PlayStation or degrade parity.[17] Although the FTC and CMA initially credited this narrative, the district court ultimately rejected it, emphasizing Microsoft's contractual commitments and economic incentives.

This tension illustrates how competitor complaints often drive digital merger investigations, raising questions about the balance between protecting consumers versus rivals.

IV. PLATFORM CONDUCT AND APP-STORE GOVERNANCE

A. Epic Games v. Apple in the United States

Epic Games v. Apple is the defining U.S. litigation on platform governance in games. The Ninth Circuit upheld most of Apple's restrictions under federal antitrust law but affirmed a California Unfair Competition Law injunction against Apple's "anti-steering" provisions, which prevented developers from directing users to alternative payment systems.[18] The Supreme Court denied certiorari in 2024, cementing the mixed result.

The case reveals the limits of U.S. antitrust law in addressing platform conduct. Federal claims faltered, but state unfair-competition law supplied an alternative vehicle for relief. The result is a fragmented regime where remedies depend on the interplay of federal and state law.

B. The European Commission and the Digital Markets Act

The European Commission has taken a more aggressive stance. In 2024 it fined Apple €1.8 billion for anti-steering in music-streaming apps, finding a violation of Article 102 TFEU.[19] The Digital Markets Act ("DMA"), effective in 2024, further imposes ex-ante obligations on designated gatekeepers, including prohibitions on self-preferencing and anti-steering.[20]

For video game developers, the DMA ensures the ability to inform consumers about off-platform payment options and may force alternative billing mechanisms. Enforcement has already begun, with the Commission imposing early fines for non-compliance in 2025.

14 Id.

15 European Commission, *supra* note 4.

16 *FTC v. Microsoft Corp.*, *supra* note 3.

17 *Ibid.*

18 *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946 (9th Cir. 2023), cert. denied, 144 S. Ct. 478 (2024).

19 Commission Press Release IP/24/1161 (Mar. 2024).

20 Regulation (EU) 2022/1925 (Digital Markets Act).

C. Japan and Korea: Regional Models

Japan enacted the Act on Promotion of Competition for Specified Smartphone Software in 2024, targeting mobile OS, app stores, browsers, and search services.[21] The statute resembles the DMA but is tailored to domestic innovation concerns.

South Korea amended its Telecommunications Business Act in 2021 to ban mandatory in-app payment systems. The Korea Communications Commission has since investigated Apple and Google for non-compliance, issuing fines and corrective orders.[22]

These regimes illustrate how ex-ante regulation is emerging as the preferred tool in Asia-Pacific, contrasting with the U.S.'s litigation-based approach.

V. CONSUMER PROTECTION AS A COMPETITION ADJUNCT

Consumer protection and antitrust, often treated as distinct domains, intersect sharply in the video game industry. Practices such as loot boxes, "dark patterns," and manipulative monetization schemes raise traditional consumer law concerns about deception and exploitation, but they also reinforce market power by locking in users and distorting competition among publishers and platforms. Enforcement actions in this space demonstrate that consumer protection can operate as a functional complement to antitrust, addressing harms to players that simultaneously implicate competitive dynamics in digital markets.

A. Dark Patterns and Youth Privacy

In 2022 the FTC announced a $520 million settlement with Epic Games, including $275 million in civil penalties for violations of the Children's Online Privacy Protection Act ("COPPA") and $245 million in consumer refunds for deceptive design practices that led to unwanted in-game purchases.[23]

Although formally a consumer-protection case, the settlement reshaped industry norms by prohibiting manipulative interface design and mandating privacy-protective defaults for minors. The case demonstrates how consumer law can indirectly discipline market power by removing exploitative monetization tools.

B. Loot Boxes as Gambling and Consumer Products

Belgium classifies paid loot boxes as gambling, effectively banning their sale under its 1999 Gaming Act.[24] The Netherlands initially attempted a similar approach, but its highest administrative court overturned a fine against Electronic Arts in 2022, holding that FIFA's loot boxes were not an independent game of chance.[25]

The United Kingdom opted for industry self-regulation, relying on the Advertising Standards Authority to monitor disclosures rather than reclassifying loot boxes as gambling.[26] Australia has pursued a hybrid strategy, using consumer-law tools to mandate refund rights and truth-in-advertising compliance.[27]

These approaches reveal deep jurisdictional divergence. For global publishers, uniform product design is impossible; regional compliance requires tailoring monetization mechanics to national law.

21 Act on Promotion of Competition for Specified Smartphone Software, Act No. 58 of 2024 (Japan).

22 Kate Park, "Google, Apple Face Fines in South Korea for Breaching in-App Rules," Yahoo Finance, Oct. 6, 2023.

23 *FTC v. Epic Games,* Consent Order, FTC File No. 192-3203 (2022).

24 Belgium Gaming Commission, *Loot Box Report* (2018).

25 *EA v. Kansspelautoriteit*, ECLI:NL:RVS:2022:690 (Council of State).

26 UK DCMS, *Loot Boxes in Video Games* (2022).

27 ACCC *Digital Platform Services Inquiry Final Report* (Mar. 2025).

VI. COMPARATIVE SYNTHESIS

The preceding sections highlight a striking reality: while regulators around the world are scrutinizing the same industry and often reacting to the same transactions, their approaches diverge in ways that can fundamentally reshape how games are developed and delivered. The purpose of a comparative synthesis is to step back from the doctrinal detail and ask what these differences mean for the industry, consumers, and the evolution of competition law.

Across jurisdictions, authorities tend to converge on three core concerns: foreclosure of rivals from must-have content, ecosystem leveraging through integration with broader digital platforms, and consumer exploitation through manipulative monetization practices. The *Microsoft–Activision* merger, *Epic Games v. Apple*, and the loot box investigations illustrate these themes repeatedly, albeit in different doctrinal guises. But while the theories of harm are familiar across borders, the regulatory tools used to address them are anything but uniform.

In the United States, courts have set a high evidentiary bar for antitrust enforcement, leaving much of the practical regulation to consumer-protection law and state unfair-competition statutes. The European Union has proven more willing to impose conduct remedies and to deploy ex-ante tools such as the Digital Markets Act. The United Kingdom has demonstrated a preference for structural solutions, such as divestiture of cloud streaming rights. In Asia, Japan and South Korea have leaned toward statutory regulation of app stores, while China and Brazil have tended to adopt a lighter touch in merger control. Consumer-law enforcement adds yet another layer of variation, with Belgium banning loot boxes outright, the Netherlands and the UK relying on regulatory or self-regulatory mechanisms, and Australia using consumer-law frameworks to achieve similar ends.

Together, these approaches paint a picture of fragmentation. For global publishers, the challenge is not merely to comply with competition law in the abstract, but to manage a patchwork of obligations that may demand structural remedies in one jurisdiction, licensing commitments in another, and outright feature removals in a third. This synthesis underscores the tension at the heart of global video game regulation: while regulators articulate similar harms, their chosen remedies can produce incompatible outcomes. Understanding this divergence is therefore essential for anticipating the future trajectory of enforcement and for assessing whether international coordination, or at least convergence on guiding principles, will be necessary to preserve both innovation and consumer welfare in an increasingly globalized market.

These enforcement contrasts reveal not just the current state of enforcement but the deeper question of whether global regulators can find common ground. It is to these normative challenges of convergence, coordination, and proportionality that Section VII now turns.

VII. NORMATIVE IMPLICATIONS

The comparative analysis reveals both the promise and the peril of global enforcement in the video game industry. On the one hand, regulators have identified broadly similar harms, suggesting a shared understanding of how market power can be exercised in digital ecosystems. On the other hand, the divergence in remedies — structural divestitures in the United Kingdom, interoperability commitments in the European Union, litigation-driven non-intervention in the United States, and statutory regulation in Asia — creates a patchwork that is difficult for publishers and players alike to navigate. This fragmentation raises normative questions about the proper balance between national sovereignty and global coordination, and whether international soft-law mechanisms or more formal agreements should play a greater role in shaping enforcement consistency.

At the heart of these questions lies a tension between proportionality and precaution. Authorities such as the CMA justify early and aggressive remedies on the ground that cloud gaming and subscription services are nascent markets susceptible to tipping. Others, such as U.S. courts and Brazilian regulators, view the same markets as too speculative to warrant intervention. Neither approach is inherently unreasonable; each reflects a different calibration of risk tolerance. But for global industries like gaming, inconsistent calibrations force publishers to design products around the strictest jurisdiction, thereby exporting one regulator's policy preferences worldwide.

Another challenge is the role of consumer protection as a de facto competition tool. Cases involving loot boxes and dark patterns demonstrate that consumer law can discipline exploitative design practices that both harm players directly and entrench incumbents indirectly. Yet here too, divergent approaches — from Belgium's outright prohibition to the UK's preference for industry self-regulation — highlight the lack of international consensus. Without a baseline understanding of when consumer protection concerns rise to the level of competition harms, enforcement risks duplicating efforts in some places while leaving gaps in others.

The natural venue for addressing these tensions is international coordination. Soft-law frameworks, such as those developed by the International Competition Network ("ICN") and the Organisation for Economic Co-operation and Development ("OECD"), have already begun to harmonize analytic methods in merger control and market studies. Expanding these dialogues to encompass digital platform governance and consumer-protection overlaps would reduce compliance costs and help ensure that remedies imposed in one jurisdiction do not undermine innovation globally. Even absent binding agreements, transparency in reasoning and mutual recognition of commitments could mitigate the risks of fragmentation.

Finally, there is the broader normative question of how far regulators should go in reshaping industry architecture. When agencies require structural divestitures or impose mandatory interoperability, they are not merely policing competition but also setting the design parameters of the industry itself. In the case of video games this raises sensitive questions about diversity of expression, creative control, and consumer access. Proportionality should therefore remain a guiding principle: interventions must be carefully tailored to remedy demonstrable harms without foreclosing beneficial experimentation in game development and distribution.

In sum, the normative implications of the global video game cases extend beyond the industry itself. They highlight the need for measured intervention, principled coordination, and integrated enforcement that bridges antitrust and consumer protection. Without such efforts, the risk is not simply that compliance will be costly, but that regulatory dissonance will compromise innovation and consumer welfare.

VIII. CONCLUSION

The regulation of the video game industry offers a vivid case study in the globalization of competition law and the risks of regulatory fragmentation. The *Microsoft–Activision* merger, the *Epic Games v. Apple* litigation, and the regulation of loot boxes together demonstrate that enforcers around the world are converging on common concerns, foreclosure, ecosystem leveraging, and consumer exploitation, but deploying radically different tools to address them. The result is a patchwork of remedies that forces publishers to design for the strictest regime, undermines the efficiencies of digital distribution, and exposes consumers to uneven levels of protection.

The lessons extend beyond video games. As digital markets increasingly blur the boundaries between entertainment, commerce, and social interaction, the challenge for competition law is to remain effective without becoming balkanized. The path forward should not be one of unilateral overreach or laissez-faire inaction, but of principled coordination, through soft-law frameworks like the ICN and OECD, reciprocal recognition of remedies, and a commitment to proportionality in intervention.

The video game sector underscores that competition law cannot be siloed from consumer protection or digital regulation. Players care little whether competition authorities label harms as antitrust violations or deceptive practices; what matters is that markets remain open, innovation thrives, and consumers retain meaningful choice. If regulators can learn from the divergences in this sector and move toward greater coherence, the global gaming industry may become not only a laboratory for enforcement but also a model for coordinated governance in the digital economy.

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