

The M&A Playbook

Navigating mergers in the gaming industry

15 June 2026

The recent surge in gaming M&A activity¹ has been matched by a sharp increase in regulatory complexity and unpredictability. No deal illustrates this better than the proposed USD 55 billion buyout of Electronic Arts by a consortium led by Saudi Arabia's Public Investment Fund; a transaction simultaneously navigating merger control, screening by the US Committee on Foreign Investment in the United States (*CFIUS*) and FDI scrutiny. This convergence of three distinct regulatory regimes on a single transaction is no anomaly: It reflects a structural shift in how gaming deals are regulated. Companies pursuing transactions in this environment must navigate an increasingly dense web of regulatory hurdles, including merger control, FDI and potentially even the Foreign Subsidies Regulation (*FSR*), depending on the scale of the transaction and whether or not it involves state-backed parties. As authorities tighten their scrutiny, successful deal planning hinges on aligning transaction strategy with the current regulatory landscape.

Here is everything you need to know about current enforcement trends with regard to the gaming industry.

Merge and conquer – the recent wave of gaming mergers

The largest deal in gaming history thus far was the acquisition of Activision Blizzard by Microsoft for close to USD 70 billion. The transaction brought some of the most successful global franchises, such as *Call of Duty*, *Candy Crush* and *World of Warcraft*, into the Microsoft ecosystem. The deal faced significant hurdles across multiple jurisdictions, including from the US Federal Trade Commission (FTC), the UK Competition and Markets Authority (*CMA*) and from the European Commission (*Commission*). The Commission ultimately cleared the transaction in 2023 following an in-depth phase II investigation on the condition that Microsoft distribute Activision Blizzard games to cloud streaming services in the EEA.

The deal that best captures the current regulatory environment is the proposed acquisition of Electronic Arts by a consortium of investors comprising Saudi Arabia's Public Investment Fund, PE firm Silver Lake and investment firm Affinity Partners for USD 55 billion. The leveraged buyout is expected to close in Q2 of 2026 subject to approval by multiple competition authorities, including the Commission and the CFIUS. It is expected

¹ See Drake Star Report, available [here](#).

to face considerable scrutiny given the involvement of a sovereign wealth fund and the sensitive data held by EA.

However, gaming mergers do not have to be this challenging. Despite an estimated deal value of close to USD 10 billion, Microsoft's acquisition of Zenimax received unconditional phase I clearance in 2021.

Competition authorities adapt to platform-agnostic ecosystems

The first step in any merger assessment is defining the relevant markets. In the gaming industry, market delineations are often flexible and less straightforward than in other industries. In previous decisions, the Commission has differentiated between development and publishing of video games (noting that game developers and game publishers are usually separate actors), as well as distribution of video games. Moreover, these can be further segmented by platform (PC, console, mobile), game genre (action and adventure, shooter, role-playing games, sports, racing, fighting, strategy), or game type (AAA, non-AAA). The geographic scope is usually at least EEA-wide, if not global. In practice, however, the Commission has shown a tendency to take a more pragmatic approach and instead focussed more on how a transaction actually affects competitive dynamics, particularly in cloud gaming and ecosystem competition. This means that formal market definitions often provide limited guidance. Deal strategy should focus less on segmentation debates than on identifying and addressing potential competitive theories of harm at an early stage.

Key watchpoints in gaming mergers

Competition authorities increasingly focus on potential future competitive effects of a transaction. Rather than strictly looking at market shares they are broadening their view to also include new theories of harm based on cloud gaming or ecosystem control. The *Microsoft/Activision Blizzard* deal was even blocked entirely by the UK CMA due to concerns with regard to the nascent cloud game streaming market.

Cloud gaming

The first watchpoint for dealmakers in the gaming industry is whether the transaction has any competitive effects in cloud gaming. Cloud gaming has grown significantly over the past few years and has started to become an alternative to gaming on consoles and PCs. Cloud gaming allows players to stream video games over the internet instead of running them locally on a console or PC. The hardware device only displays the streamed video and sends the player's input.

In its assessment of the *Microsoft/Activision Blizzard* deal, the Commission found that the deal raised concerns in the following areas:

- **Distribution of console and PC video games**, including multi-game subscription services and/or cloud game streaming services; and
- **Supply of PC operating systems.**

With regard to cloud gaming specifically, the Commission was concerned that Microsoft might foreclose other downstream game distributors from cloud game streaming if it made Activision games exclusive to its own cloud game streaming service, *Game Pass Ultimate*. Furthermore, Microsoft might be able to strengthen the position of Windows in the market for PC operating systems if it made Activision's games exclusive to its own cloud game streaming services, and deliberately degrade the streaming services of Activision's games on PCs using operating systems other than Windows. The CMA had similar concerns and even blocked the transaction entirely. The remedy proposed by Microsoft, which was behavioural in nature and very similar to the one the Commission accepted, was held not to sufficiently address the CMA's concerns. In practice, dealmakers should expect competition authorities to pay close attention to any activity and potential competitive risks on nascent markets, such as cloud gaming. It is vital to avoid any potential self-preferencing practices or foreclosure of competitors.

Foreclosure

Foreclosure is also a concern for competition authorities more generally. Risks of vertical foreclosure often arise where one party has a strong market position which can be used to foreclose competitors upstream or downstream. For example, post-transaction, Microsoft could use its increased market power on the upstream market for development and publishing to refuse supply (entirely or at materially worse terms) to rival distributors with access to Activision's *Call of Duty* or *World of Warcraft* downstream (in the distribution of games). Dealmakers with strong market positions upstream should make sure not to use this power to foreclose competitors on any downstream markets.

Ecosystem control

Another increasingly common pain point for competition authorities are ecosystem-based theories of harm. Gaming transactions often involve vertically integrated multi-product ecosystems, i.e. a wide range of products covering multiple facets of the gaming experience (e.g. hardware, software, cloud infrastructure). In *Microsoft/Activision Blizzard* the CMA assessed whether Microsoft would be able to leverage its strong gaming ecosystem (comprising Windows, Azure, the Xbox gaming catalogue), but dropped this concern later in phase II. For future deals, this signals increased focus of competition authorities on entire digital ecosystems, including adjacent markets. Dealmakers

should expect scrutiny across the entire lifecycle of gaming, including elements that were traditionally outside the scope of game development, such as hardware.

Acqui-hires – winning the war for talent

‘Acqui-hires’ has by now become a household antitrust buzzword that every dealmaker should be aware of. For many acquirers, the true value of a transaction lies not in the target’s projects or revenue but in securing development teams with experience in areas such as AI or emerging technologies (e.g. AR or VR). Acqui-hires refers to acquiring key personnel rather than entire businesses, which, to date, is a grey zone in merger control (see our previous [briefing](#)): Where target companies are startups that do not meet turnover thresholds, acqui-hires have the potential to fly under the radar. Under German merger control law, they may however be caught by the transaction value threshold. Deal makers should be aware that even simply taking on employees from another company – without acquiring shares or assets – can trigger a merger filing requirement.

Geopolitical impact: FDI screening

Antitrust aside, gaming transactions can also trigger an FDI filing obligation. While gaming infrastructure is not explicitly listed as a standalone category in the EU’s nor the German FDI frameworks, a foreign investment in the gaming sector triggering the general scrutiny thresholds could well be reviewed for its effects on the following:

- **Critical AI technology** (e.g. facial recognition AI due to its surveillance potential);
- **Access to sensitive information** (e.g. behavioural or geolocation data on its users);
- **Critical digital infrastructure** (e.g. large online platforms or cloud services that could be considered part of a Member State’s digital infrastructure); or
- **Dual-use items** (e.g. VR/AR systems that could be used for military training).

In the gaming sector, the main concern is usually the fact that the foreign investor would gain access to sensitive data. A current example, though not in the EU, is the proposed acquisition of Electronic Arts by Saudi Arabia’s Public Investment Fund which triggered rigorous screening by the US CFIUS. The main concern was that the Saudi investors would gain access to sensitive personal data, as well as to EA’s AI technology. A prominent example from the tech industry more broadly is CFIUS ordering the reversal of the acquisition of the queer dating app *Grindr* by a Chinese conglomerate in order for *Grindr* to continue its operations in the US. The US authority was concerned that the Chinese government could obtain access via *Grindr* to sensitive data of US military and government personnel, including their sexual orientation, private photos and geolocation,

which could be used, for example, to blackmail them. CFIUS also opened an investigation into the Chinese-owned social media platform *TikTok* for similar concerns regarding access to sensitive user data.

Notably, Germany proposes to consolidate its FDI screening regime in a single new FDI Act by mid-2026. In the EU, a provisional new FDI screening regulation has been published recently. EU FDI legislation does not create a screening mechanism for the EU itself but determines minimum requirements for Member States to implement in their respective screening regimes. The new EU FDI regulation will introduce a number of new sectors for which FDI screening will be mandatory, including advanced technology, such as AI, and critical digital infrastructure. Though ‘gaming’ is not listed as a stand-alone category in most FDI regimes, gaming dealmakers should not assume that they are off the hook, particularly where access to sensitive data is involved. Gaming is no longer viewed as entertainment only and may well raise concerns about data security or influence over digital infrastructure or critical technology.

FSR

Beyond merger control and FDI screening, gaming dealmakers must contend with a third regulatory layer in the EU. The FSR is likely to bite if the acquirer is linked to a non-EU state (such as a sovereign wealth fund or state-owned enterprise) and the foreign subsidy distorts the internal market by improving the recipient’s competitive position (see our previous briefings: [here](#) / [here](#)). An FSR filing is mandatory where:

- At least one of the parties has EU-wide turnover of at least **EUR 500 million**; and
- The parties together received aggregate foreign financial contributions (*FFCs*) exceeding **EUR 50 million** from non-EU countries in the three preceding years.

The Commission also holds call-in powers for below-threshold deals and dealmakers should not treat non-notifiability as a clean bill of health. Any gaming transaction involving non-EU state-backed investors and a party with EU revenues above EUR 500 million should be assessed for FSR notifiability. Given the information-gathering burden (FFC data must be collated across the entire group for three preceding years) early preparation is essential. Sovereign wealth funds, government-backed PE funds, and acquirers that received material government support should map their FFC exposure before signing. Failure to notify where required can result in fines of up to 10% of global turnover.

Gaming mergers – the current state of play

To summarise, gaming is far from a niche industry, a fact underscored by the wave of recent multi-billion-dollar deals reshaping the sector. Competition authorities remain alert to foreclosure risks, particularly on nascent markets such as cloud gaming, and are

increasingly looking into ecosystem-based theories of harm. Companies should also anticipate closer scrutiny of acqui-hires in the gaming sector as authorities look for new ways to capture talent-driven transactions below traditional merger control thresholds. Foreign investment in gaming is likely to attract FDI review where it involves access to sensitive data, critical AI, key digital infrastructure, or dual-use technologies. In the EU, FSR scrutiny is possible if the acquirer is linked to a non-EU state.

As competition authorities increasingly adopt pragmatic and interventionist approaches by broadening the scope of their review and scrutinising transactions more closely, gaming companies can no longer rely on traditional assumptions about merger clearance. A well-designed and robust deal strategy anticipating potential regulatory concerns is essential. BLOMSTEIN will help you navigate enforcement priorities, mitigate risk and ensure that transactions proceed smoothly in this increasingly complex environment.

BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions on European gaming regulation, [Leonard von Rummel](#), [Anna Blume Huttenlauch](#), [Philipp Trube](#) and the entire team are ready to assist you.

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