FTC won’t appeal court decision permitting Meta to buy Within

The Federal Trade Commission will not appeal a recent federal court order allowing Meta to purchase VR startup Within, an agency official told reporters on Monday.

The FTC sued to stop Meta’s acquisition of Within, the company behind the popular fitness app Supernatural, last July. The agency argued that the purchase would expand Meta’s dominance in the VR market, pointing to the Oculus maker’s previous 2019 merger with the company behind *Beat Saber*. Meta fought the suit but later agreed to delay closing the deal until January 31st.

Shortly after the court greenlit the impending merger on Friday, Meta spokesperson Stephen Peters told *The Verge* the company is looking “forward to closing the transaction soon.” Meta declined to comment on the FTC’s choice not to appeal the order.

The FTC’s failure to stop the merger marks one of Chair Lina Khan’s first major losses as head of the agency. Khan, a tech antitrust pioneer, has doggedly gone after large tech companies over alleged anticompetitive conduct since she was confirmed to the post in 2021. Last July, *Bloomberg* reported that Khan overruled FTC staff advice not to intervene in Meta’s proposed merger with Within. FTC commissioners voted 3–2 to file the suit.

In Monday’s call with reporters, FTC officials were optimistic that its failure to stop Meta’s merger wouldn’t harm its

abilities to improve competition in the broader tech industry. An FTC official noted how Friday's ruling agreed with the agency that courts should consider a merger's potential to harm competition in the future when litigating merger cases.

The FTC is currently embroiled in a separate case opposing Microsoft's merger with Activision. While Microsoft and Meta's mergers would both affect the gaming industry, the size of the deals differs tremendously. Meta's merger targeted a startup in the budding VR industry. Microsoft, two decades into building the Xbox platform and an owner of multiple game developers already, has proposed a takeover of Activision, the company behind the *Call of Duty* series that also owns Blizzard, which makes titles like *Overwatch 2,* and King, the maker of mobile games like *Candy Crush.*

The size and scope of Microsoft's proposal are already being challenged by regulators in the European Union. On Friday, the European Commission issued a formal warning against the company closing its deal with Activision. The European Commission opened its own investigation into the proposed merger in November to "ensure that opportunities remain for future and existing distributors of PC and console video games."

Updated February 6th, 2022 at 5:29 PM ET: *Updated to clarify that the FTC declined to comment on its case opposing Microsoft's merger with Activision.*

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