

## **Analysis of Proposed Consent Order to Aid Public Comment**

### ***In the Matter of Sony Computer Entertainment America LLC, File No. 122-3252***

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing consent order from Sony Computer Entertainment America LLC (“SCEA” or “respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves respondent’s advertising of the PlayStation Vita (“PS Vita”), a gaming console. Respondent first offered the PS Vita for sale in the United States on February 22, 2012, for approximately \$250. The PS Vita is part of respondent’s line of game consoles, including the PlayStation 3 video game console (“PS3”), which allows consumers to play video games on their television sets. Unlike the PS3, the PS Vita is a handheld, portable game console that allows consumers to play games away from their television sets. In addition to selling game consoles, respondent is one of the many game developers writing game titles for use on its PS3 and PS Vita game consoles. At the time the PS Vita was launched, “MLB 12: The Show,” and “Killzone 3,” were popular SCEA game titles for the PS3.

According to the complaint, respondent advertised several notable features of the PS Vita. First, respondent promoted the “remote play” feature of the PS Vita as a way that consumers could access games already residing on their PS3 consoles and play them remotely on the PS Vita anywhere with a Wi-Fi connection. Second, advertisements represented that, with the “cross platform gaming” or “cross save” feature, consumers could begin playing a game on a PS3 console, save their progress at any point in the game, and then continue that game where they left off on the PS Vita. Third, with the “3G version” the PS Vita, available for an extra \$50 and monthly fees, advertisements represented that consumers could access a 3G network to play games live with others (“multiplayer gaming”). The complaint alleges that respondent’s advertising of these features was false or misleading and thus violates the FTC Act.

With respect to the remote play feature, the FTC’s complaint alleges that respondent misrepresented that, with this feature, PS Vita users can easily access their PS3 games on the PS Vita. According to the complaint, PS Vita users could not easily access their PS3 games on the PS Vita. Indeed, most PS3 games are not remote playable on the PS Vita, and respondent did not specifically design the PS3 system to support remote play functionality. In addition, the complaint alleges as false or misleading respondent’s claim that PS Vita users can, with remote play, easily access Killzone 3 and other similar, data-rich PS3 games. Respondent never enabled remote play on its Killzone 3 title, and very few, if any, data-rich PS3 games of similar size and complexity to Killzone 3 were remote play compatible on the PS Vita.

The complaint also alleges that the respondent made false or misleading claims about the cross save feature of the PS Vita. Contrary to respondent's advertisements, PS Vita users are not able to pause any PS3 game they are playing on their PS3 consoles at any point in the game, and continue to play that game where they left off on the PS Vita. The complaint states that this feature is available only for a limited number of PS3 game titles, and that the pause and save feature varies significantly by game. For example, with respect to "MLB 12: The Show," consumers are able to pause and save the game to the PS Vita only after they have finished the entire baseball game (all nine innings) on the PS3. The complaint also alleges that with respect to this feature, respondent failed to disclose that, with games such as MLB 12: The Show, consumers would have to own two versions of the same game, one for the PS3 and one for the PS Vita, to use this feature.

Finally, the complaint addresses advertising claims made for features relating to the 3G version of the PS Vita. Specifically, the complaint alleges as false or misleading the representation that PS Vita users who own the 3G version are able to engage in live, multiplayer gaming through a 3G network. According to the complaint, PS Vita users are restricted to asynchronous or "turn-based" multiplayer gaming with the 3G version of the PS Vita.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future, as well as a provision to redress certain consumers. Part I of the order prohibits respondent from misrepresenting any material gaming feature or capability of any Handheld Game Console Product, when used as a standalone device to play video games.

Part II of the proposed order prohibits respondent from making any representation about the material capability of any Handheld or Home Game Console Product to interact with, or connect to, any other Handheld Game Console Product during gaming, unless at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

Part III of the proposed order prohibits respondent from making any representation about the material capability of any Handheld or Home Game Console Product to interact with, or connect to, any other Handheld or Home Game Console Product during gaming, unless it discloses, clearly and prominently, and in close proximity to the representation, that consumers must purchase two versions of the same video game, one for each console, if such is the case.

Part IV of the proposed order provides for consumer redress to "eligible purchasers" of the PS Vita. The proposed order defines "eligible purchasers" as consumers who purchased the PS Vita before June 1, 2012, and did not return it for a full refund. SCEA will offer these consumers \$25 dollars in cash or credit or the alternative of a voucher (or other entitlement) for merchandise, video games, and/or services with a retail value of \$50 or more.

Part V of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Parts VI through VIII of the proposed order require the company to: deliver a copy of the order to certain personnel having managerial responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part IX of the proposed order provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.