



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Concurring Statement of Commissioner Rebecca Kelly Slaughter
Regarding United States v. Cognosphere, LLC
Commission File No. 2223152
January 17, 2025

Acting on a referral from the Federal Trade Commission, the United States Department of Justice has filed a complaint against and proposed settlement with Cognosphere, LLC and Cognosphere Pte. Ltd., publishers of a widely downloaded online video game, Genshin Impact. If entered, the settlement would resolve allegations that the defendants violated section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506, and its implementing rule, 16 C.F.R. pt. 312. This law-enforcement action is the first by the United States to address the growing scourge of so-called “loot boxes” in video games, a problem with which many parents and all gamers are likely familiar. I extend my heartfelt thanks to the diligent staff at the FTC whose tireless efforts investigating the defendants’ conduct and commendable resolve in negotiations led to this historic complaint and settlement, with its robust remedies that include significant protections for kids under 16, as well as to our partners at the Department of Justice for filing the case. Because of their stellar work, we have sent a strong message to the video-game industry—a massive and growing part of our economy—and everyone in it who would exploit the developing minds of our children and teens with unfair or deceptive schemes just to turn a buck: GAME OVER.

I also convey my profound gratitude to United States Senator Maggie Hassan, who sounded an early alarm about the risks of loot boxes.¹ Her call to action prompted the Commission to hold a daylong workshop to explore this topic in 2019, at which we heard from representatives of the video-game industry, consumer advocates, trade associations, economists, psychologists, and others.² In conjunction with the workshop, the Commission received 116 relevant comments from the public.³ This work set the stage for investigations and enforcement. Although I am confident that Senator Hassan will welcome this action, I know that she will not be satisfied unless we continue to build on it. Nor should she be. Indeed, in the time since her public advocacy around the risks of loot boxes began, jurisdictions across the world have taken

¹ Press Release, Sen. Maggie Hassan, National Coverage of Senator Hassan Securing Guarantee from FTC Chairman to Investigate Loot Boxes in Video Games (Nov. 29, 2018), <https://www.hassan.senate.gov/news/in-the-news/national-coverage-of-senator-hassan-securing-guarantee-from-ftc-chairman-to-investigate-loot-boxes-in-video-games>.

² Fed. Trade Comm’n, Public Workshop, Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes (Aug. 7, 2019), <https://www.ftc.gov/news-events/events/2019/08/inside-game-unlocking-consumer-issues-surrounding-loot-boxes>.

³ Fed. Trade Comm’n, Request for Comment on Public Workshop on Video Game Loot Box (Apr. 5, 2019), <https://www.regulations.gov/docket/FTC-2019-0021>.

action to regulate loot boxes, especially when targeting children and teens.⁴ If she is successful in persuading her colleagues in Congress to do the same, our action against Cognosphere shows that the Federal Trade Commission is prepared to vigorously enforce any new requirements. Even without new laws, I believe that the Commission should continue to prioritize protecting children and teens from unfair or deceptive practices in video games.

In future work on loot boxes, I urge the Commission to consider investigating whether certain ways they are used may constitute not only unfair or deceptive acts or practices but also unfair methods of competition. The Commission has a unique dual mandate from Congress, which charged us with both competition and consumer-protection authorities, and I have long believed that we can best fulfill that mandate by deploying both sets of tools as powerful complements to improve Americans' lives. Specifically, I have called on the Commission to plead in appropriate cases both consumer-protection and competition counts in the same action,⁵ and I am gratified that we have recently done so.⁶

Could the deployment of loot boxes be one such area that implicates not only the FTC Act's consumer-protection mission but also its competition mission? The Supreme Court's decision in *FTC v. R.F. Keppel & Bro., Inc.*, 291 U.S. 304 (1934), though more than ninety years old, provides a strikingly robust analogy to today's loot boxes. Back then, it was "break and take" packages, a profitable method of selling "penny candy" to children that turned each purchase into a game of chance—only sometimes did the candy that a kid bought for a penny contain within its wrapper its own penny. *Jackpot!* And often, the penny candy from manufacturers using "break and take" packages was smaller or of inferior quality when compared with penny candy sold by manufacturers who refused to sell those packages, typically on moral grounds. The Commission found and the Supreme Court affirmed that this sales tactic was a "method of competition" that was unfair because it sold penny candy by employing a gambling device that "exploit[ed] consumers, children, who are unable to protect themselves"⁷ and "result[ed] in a substantial diversion of trade" from rivals who refused to use "break and take" packages.⁸ Today, many loot boxes may operate, as these defendants' are alleged to have

⁴ See Brendan Sinclair, *China to Ban Some Monetization and Engagement Tactics in Games*, Games Industry (Dec. 22, 2023) (discussing China's proposed set of regulations aimed at restricting certain video game monetization practices, including loot box sales to minors), <https://gamesindustry.biz/china-to-ban-some-monetization-andengagement-tactics-in-games>; Leon Y. Xiao, *Loot Box State of Play 2023: A Global Update on Regulation*, Games Industry (Dec. 5, 2023) (discussing how European Union member nations, the United Kingdom, Taiwan, South Korea, and Australia, among others, have also considered or adopted more stringent laws and regulations focused on loot boxes), <https://www.gamesindustry.biz/loot-box-state-of-play-2023-a-global-update-on-regulation>; Karol Laskowki and Marcin Przybysz, *Loot Box Regulation in the EU – Loading Status*, Dentons (June 28, 2023) (discussing various regulatory proposals and enactments in the EU), <https://www.dentons.com/en/insights/guides-reports-andwhitepapers/2023/june/28/loot-box-regulation-in-the-eu-loading-status>; U.K. Dep't for Culture, Media, and Sport, *Loot Boxes in Video Games: Update on Improvements to Industry-Led Protections* (July 18, 2023) (providing the U.K. government's perspectives on self-regulatory efforts of the video-game industry), <https://www.gov.uk/guidance/loot-boxes-in-video-games-update-on-improvements-to-industry-led-protections>.

⁵ Fed. Trade Comm'n, Concurring Statement of Comm'r Rebecca Kelly Slaughter, *In re Care.com* (Aug. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/slaughter-care-statement.pdf.

⁶ See, e.g., Compl. ¶¶ 188–93, *FTC v. GrubHub Inc.*, No. 1:24-cv-12923 (N.D. Ill. filed Dec. 17, 2024) (pleading as Count IV the defendant's engaging in unfair methods of competition amid eight other federal consumer-protection counts), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-12-17-GrubhubComplaint.pdf.

⁷ *Keppel*, 291 U.S. at 313.

⁸ *Id.* at 308.

done, to separate gamers from their (or their parents') money, and section 5's prohibition against unfair or deceptive practices is likely to be the most useful tool in such cases. But, as *Keppel* makes clear, section 5's prohibition against unfair methods of competition is another potentially relevant tool, especially in circumstances in which loot boxes operate to keep gamers hooked on their own game instead of competitors' games.

When the facts support competition as well as consumer-protection theories, the Commission should fully execute our Congressional mandate by pleading all law violations we uncover. In short, the gaming industry should be on notice that wanton use of loot boxes may create exposure to multiple theories of liability. Children may be unable to assess low-probability events, but responsible video-game publishers would be well advised not to take the chance of getting themselves hooked on loot boxes.