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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)	
In the Matter of)	
)	
Microsoft Corp.,)	
a corporation, and)	
)	Docket No. 9412
Activision Blizzard, Inc.,)	
a corporation,)	
)	
Respondents.)	
_____)	

**ORDER GRANTING RESPONDENTS’ MOTION FOR
SECOND REVISED SCHEDULING ORDER**

I.

On June 26, 2023, Microsoft Corporation and Activision Blizzard, Inc. (“Respondents”) filed a Motion for Second Revised Scheduling Order (“Motion”). The scheduling order was first issued in this case on January 4, 2023 and later revised on May 12, 2023 at the joint request of the parties (collectively, “Scheduling Order”). Complaint Counsel filed an opposition to the Motion on June 28, 2023. For the reasons set forth below, the Motion is GRANTED.

II.

Respondents state that the evidentiary hearing on the Federal Trade Commission’s action for a preliminary injunction, pending before the United States District Court for the Northern District of California, commenced on June 22, 2023 and is scheduled to conclude on June 29, 2023, and that the parties’ final Proposed Findings of Fact and Conclusions of Law must be filed by 5:00 p.m. on June 30, 2023. *See* Docket No. 1, *Federal Trade Commission v. Microsoft Corporation et al.*, 3:23-cv-2880 (N.D. Cal.). Respondents note the numerous upcoming deadlines in the Scheduling Order and assert that it would be both inefficient and highly inconvenient to require the parties to meet the upcoming June 29, 2023 deadline for notice of intent to offer confidential materials in this matter – to which two other deadlines (motions and responses regarding *in camera* treatment of those materials) are tied – while simultaneously litigating the preliminary injunction case. Respondents further argue that these considerations also apply to non-parties, who remain engaged in responding to the parties’ ongoing notifications of intent to offer confidential materials in the district court hearing. Respondents assert that the requested revisions to the Scheduling Order would not delay any other deadlines in this

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administrative matter, nor would it affect the commencement of the evidentiary hearing currently scheduled for August 2, 2023.

Complaint Counsel asserts that Respondents' proposed Second Revised Scheduling Order would unduly constrict this Court's window to consider and rule upon motions for *in camera* treatment of confidential material and motions *in limine* in advance of the hearing in this matter on August 2, 2023. Complaint Counsel argues that this significant compression of the pre-trial schedule is unwarranted.

III.

The proposed extensions will not delay any other deadlines. Motions *in limine* rarely have merit in a bench trial and are highly disfavored. In the event there is not sufficient time to rule on motions for *in camera* treatment in advance of the hearing, provisional *in camera* treatment may be granted so as not to delay the evidentiary hearing. 16 C.F.R. § 3.45(g). In consideration of the burden on the non-parties, good cause exists to amend the schedule set forth in the Scheduling Order. The Scheduling Order is hereby revised as follows:

- July 14, 2023 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).¹ See Additional Provision 17.
- July 14, 2023 - Complaint Counsel files pretrial brief supported by legal authority.
- July 24, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- July 24, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence. See Additional Provision 18.
- July 26, 2023 - Exchange proposed stipulations of law, facts, and authenticity.
- July 27, 2023 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. The Parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits and raise only objections that are necessary and valid.

¹ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

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- July 27, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- July 27, 2023 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- July 28, 2023 - Respondents' Counsel files pretrial brief supported by legal authority.
- August 1, 2023 - Final prehearing conference to begin at 1:00 p.m. ET.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the final prehearing conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. All trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

- August 2, 2023 - Commencement of Hearing, to begin at 10:00 a.m. ET.

All other Additional Provisions in the Scheduling Order remain in place.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: June 29, 2023