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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya
 Melissa Holyoak
 Andrew N. Ferguson

In the Matter of

FACEBOOK, Inc.,
a corporation

Respondent.

Docket No. C-4365

**RESPONDENT'S OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR
ORDER REQUIRING PARTIES TO MEET-AND-CONFERENCE AND SUBMIT JOINT
PROPOSED SCHEDULING ORDER**

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Inc.*

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Respondent Meta Platforms, Inc. (f/k/a Facebook, Inc.) (“Meta”) respectfully opposes Complaint Counsel’s motion (the “Motion”).¹

On its face, Complaint Counsel’s Motion presents what seems like a reasonable request—i.e., “a 90-day meet-and-confer period for the parties to review the filings, negotiate appropriate stipulations, and narrow the factual disputes for resolution,” following which the parties would submit detailed scheduling orders (Mot. at 3). However, the formal, binding process proposed is not contemplated by Commission rules, nor is it likely to realize the described efficiencies for this proceeding. As a result, while Meta is certainly amenable to continuing voluntary discussions with Complaint Counsel with respect to timing and procedural issues, it objects to the entry of Complaint Counsel’s proposed order.

As a threshold matter, the Motion invokes no authority for the process Complaint Counsel asks the Commission to impose. As the Motion notes, Rule 3.72(b) sets forth several options for how the Commission may proceed where, as here, an order to show cause is opposed. None of them includes the process requested in the Motion. On the contrary, Rule 3.72(b) states that the Commission will determine how to proceed based on “the pleadings,” i.e., “the order to show cause and answer thereto.” 16 C.F.R. § 3.72(b). It does not contemplate any further submissions by Respondent or *any* submission by Complaint Counsel before the Commission makes that determination. The Motion should be denied for that reason alone.

Even if Commission rules authorized the relief sought, it would be unwarranted here.

To start, in focusing on the nature and extent of some of the parties’ factual disputes, the Motion elides the context in which those disputes arise. As set forth in Meta’s OTSC Response,

¹ Meta makes this submission subject to and without waiving the arguments and defenses set forth in its Response to the Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order (“OTSC Response”) and related filings.

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Meta has raised numerous threshold arguments why the Commission should not (and, indeed, cannot) modify the Order as it has proposed to do—even if the facts found by the Commission were entirely accurate in all respects (which they are not) or if Complaint Counsel stipulated in full to the facts set forth in Meta’s response. For those reasons, Meta’s OTSC Response argues that the Commission should not reopen the Order and, in any event, that a litany of factual issues require resolution. (OTSC Response at 130.)

With respect to those factual issues, the Commission’s preliminary factual findings and Meta’s response reveal serious disagreements over a wide range of facts spanning several years. The formal cumbersome process and submissions Complaint Counsel proposes are unlikely to materially narrow the scope of those factual disputes or deliver the efficiencies predicted in the Motion. The Motion speculates that “many” of the facts “may not actually be in dispute” following Complaint Counsel’s initial review of Meta’s “668-page detailed response to the Preliminary Findings of Fact.” (Mot. at 2.) While Meta welcomes Complaint Counsel’s apparent agreement with such facts, substantial disputes about those facts are certain to remain and require resolution. As a result, the benefits of any potential narrowing, at this “pleadings” stage of the proceeding, are limited and unlikely to warrant the substantial efforts required for both parties to parse through voluminous and granular factual details to confirm precisely what facts are disputed and to “negotiate appropriate stipulations” (Mot. at 3) for any that are not.

In any case, any such narrowing would necessarily have limited utility because the Commission’s Preliminary Finding of Facts and Meta’s response relate only to the Commission’s assertions of noncompliance—a subset of the relevant factual issues that require resolution. Indeed, even if the parties agreed to every one of those facts, Complaint Counsel must also show, for example, that those facts were “unforeseeable,” and reflect that “conditions

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of fact . . . have so changed,” *see* 15 U.S.C. § 45(b), as the law and Commission precedent require for order modification (*see* OTSC Response at Point II). Meta has shown cause that Complaint Counsel cannot meet those burdens as a matter of law. But, to the extent the Commission disagrees, Meta’s response has raised substantial factual issues as to those questions such that Meta is entitled to discovery about them, even if the parties were somehow to agree to *all* of the facts covered by the Commission’s Preliminary Finding of Facts and Meta’s response.

As the Motion recognizes, Meta’s response included “a 179-page brief in response [to the Commission’s OTSC], along with a 668-page detailed response to the Preliminary Findings of Fact, three expert reports, and hundreds of pages of additional exhibits.” (Mot. at 2.) Meta understands that Complaint Counsel may need time to review and assess these submissions and has no objection to affording it time to do so. And, consistent with its long and demonstrated record of cooperation, Meta is willing to continue its voluntary dialogue with Complaint Counsel with respect to timing and process issues.

However, for the reasons set forth above, the formal process proposed in the Motion is neither appropriate nor warranted and the Motion should be denied.

Dated: April 22, 2024

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**[PROPOSED] ORDER DENYING COMPLAINT COUNSEL'S MOTION FOR ORDER
REQUIRING PARTIES TO MEET-AND-CONFER AND SUBMIT JOINT PROPOSED
SCHEDULING ORDER**

Having considered Complaint Counsel's Motion for Order Requiring Parties to Meet-
And-Confer and Submit Joint Proposed Scheduling Order, and Respondent's Opposition thereto,
it is HEREBY ORDERED that Complaint Counsel's motion is DENIED.

By the Commission.

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2024, I caused a true and correct copy of the foregoing Opposition to Complaint Counsel’s Motion for Order Requiring Parties to Meet-And-Confer and Submit Joint Proposed Scheduling Order to be filed and served as follows:

One electronic copy via the Administrative E-Filing System and one electronic courtesy copy to the Office of the Secretary via email to ElectronicFilings@ftc.gov.

One electronic courtesy copy to the Office of the Administrative Law Judge via email to OALJ@ftc.gov.

One electronic copy via email to Complaint Counsel:

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