PUBLIC

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lina M. Khan, Chair Rebecca Kelly Slaughter Alvaro M. Bedoya

In the Matter of

Intuit Inc., a corporation.

DOCKET NO. 9408

ORDER DENYING RESPONDENT'S MOTION TO CONTINUE ORAL ARGUMENT

On October 31, 2023, the Commission issued an order setting oral argument on Respondent Intuit Inc.'s appeal of the Initial Decision in this proceeding for November 20, 2023. On November 10, 2023, Respondent moved to continue oral argument until 30 days after the Senate confirms two additional Commissioners whose nominations are currently pending. See Respondent Intuit's Expedited Motion to Continue Oral Argument to Accommodate the Impending Senate Confirmation of Two Commissioners at 1, 3. Respondent further requests that, if the nominees are not confirmed by December 31, 2023, the Commission continue oral argument until January 2024. Id. at 1. Respondent asserts that "there is a strong likelihood" that the nominated Commissioners will be confirmed "in the coming days or weeks" and that good cause exists to reschedule the argument to allow the newly seated Commissioners to participate. Id. at 2. It further argues that rescheduling oral argument would facilitate the Commission's functioning as a bipartisan body. Id. Complaint Counsel oppose the motion, arguing inter alia that nothing requires the Commission to cease work pending the confirmation of appointees and that a delay is not justified and contrary to the public interest. See Complaint Counsel's Opposition to Respondent's Expedited Motion to Continue Oral Argument to Accommodate the Impending Senate Confirmation Hearing of Two Commissioners (Nov. 13, 2023).

Commission rules expressly provide that a Commissioner absent from oral argument may participate in the appellate decision if the argument is stenographically reported. 16 C.F.R. 3.52(h); *see also Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 802 (D.C. Cir. 1965) ("The decisions of numerous courts and administrative agencies establish that . . . a member of an administrative agency who did not hear oral argument may nevertheless participate in the

decision where he has the benefit of the record before him."). If the pending nominees are confirmed before the Commission issues its decision and choose to participate, they will be able to do so based on the well-developed record in this case, including a transcript of the oral argument. Respondent has failed to show good cause to delay oral argument by what could be over two months, and the Commission therefore denies the motion.

Accordingly,

IT IS HEREBY ORDERED THAT Respondent Intuit's Expedited Motion to Continue Oral Argument to Accommodate the Impending Senate Confirmation of Two Commissioners is **DENIED**.

By the Commission.

April J. Tabor Secretary

