

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

In the Matter of

Microsoft Corp.

a corporation;

and

Activision Blizzard, Inc.,

a corporation.

Docket No. 9412

**COMPLAINT COUNSEL’S MEMORANDUM IN OPPOSITION TO RESPONDENTS’
MOTION FOR SECOND REVISED SCHEDULING ORDER**

Complaint Counsel hereby submits under Rule 3.22¹ its opposition to Respondents’ Motion for Second Revised Scheduling Order, filed on June 26, 2023 (“the Motion”). Good cause does not exist to further revise the deadlines in the Court’s First Revised Scheduling Order. Respondents’ proposed Second Revised Scheduling Order, if adopted, 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.

As Respondents note in the Motion, the parallel federal court proceeding in this matter (“the PI hearing”) concludes on June 29, 2023, with proposed Findings of Fact and Conclusions of Law due the following day. Motion at 1–2. Accordingly, the only deadline in the Court’s First Revised Scheduling Order that overlaps with the PI hearing is the June 29, 2023 deadline for

¹ Citations to “Rules” refer to the Commission’s Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 1 *et seq.*

parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing to provide notice to the opposing party or non-party pursuant to 16 C.F.R. § 3.45.

See Order Granting Joint Motion for First Revised Scheduling Order at 3.

Contrary to Respondents' claim that this deadline—which binds only Complaint Counsel and Respondents—is “inefficient and highly inconvenient,” Motion at 2, Complaint Counsel anticipates no difficulty meeting its obligations under the First Revised Scheduling Order. Indeed, Complaint Counsel has already sent the required notice to several affected non-parties. Accordingly, Respondents have not shown that good cause exists for a second delay in the pre-hearing deadlines. Instead, Respondents have delayed in bringing this motion. The first Scheduling Order in this matter was filed on January 2, 2023, and Respondents have known about the PI hearing scheduling for almost two weeks, since June 14, 2023.

The deadlines in Respondents' proposed Second Revised Scheduling Order severely limit the time reserved to the Court to consider and rule upon motions seeking *in camera* treatment of confidential material. Under the First Revised Scheduling Order, responses to motions for *in camera* treatment are due on July 17, 2023, more than two weeks before the start of the evidentiary hearing and more than two weeks after the end of the PI hearing. Order Granting Joint Motion for First Revised Scheduling Order at 3; Motion at 1–2. Under Respondents' Second Revised Scheduling Order, by contrast, such responses would be due on July 27, leaving the Court just five days to consider and rule on them before the start of the evidentiary hearing. Given the large volume of confidential material in this case,² the amount of time called for in the Second Revised Scheduling Order is insufficient. The timelines for motions *in limine* are similarly unnecessarily shortened. Under the Second Revised Scheduling Order, Respondents

² Complaint Counsel's Final Proposed Exhibit List listed more than 2,600 exhibits, most of which were marked as confidential by Respondents and non-parties.

give the Court only five days to rule on motions *in limine*, from an original deadline of two weeks. This significant compression of the pre-trial schedule is unwarranted. *See* Rule 3.21(c)(2).

For these reasons, the Court should deny the Motion.

Dated: June 28, 2023

Respectfully submitted,

By: *s/James Weingarten*

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that I caused the foregoing document to be served via email to:

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