

**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**

**RESPONDENTS' MOTION FOR SECOND REVISED SCHEDULING ORDER**

In light of the parallel preliminary injunction hearing that is currently underway in federal district court, Respondents Microsoft Corporation (“Microsoft”) and Activision Blizzard, Inc. (“Activision”) respectfully move this Court for an Order pursuant to Rule 3.21(c)(2) revising certain deadlines in this Court’s First Revised Scheduling Order. The relief requested in this Motion does not affect the August 2, 2023 commencement date of this Court’s own evidentiary hearing in this matter.

On June 12, 2023, the FTC filed a Complaint in the United States District Court for the Northern District of California pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), seeking a temporary restraining order and preliminary injunction to prevent Microsoft from completing its proposed acquisition of Activision pending this Court’s administrative review of that transaction. *See* Docket No. 1, *Federal Trade Commission v. Microsoft Corporation et al.*, 3:23-cv-2880 (N.D. Cal.). The district court granted the temporary restraining order and scheduled an evidentiary hearing on the FTC’s motion for a preliminary injunction, which commenced on June 22, 2023, and is scheduled to conclude on June 29, 2023. *See id.* Docket Nos. 37, 76. The district court

has also ordered the parties to submit their final Proposed Findings of Fact and Conclusions of Law by 5:00 p.m. on June 30, 2023.

This Court's First Revised Scheduling Order sets the following deadlines regarding the treatment of confidential materials of an opposing party or non-party:

- June 29, 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).
- July 10, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- July 17, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.

The First Revised Scheduling Order also sets the following deadlines regarding motions *in limine* to preclude admission of evidence:

- July 12, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence.
- July 19, 2023 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.

Finally, the current deadline for the parties' objections to the final proposed witness and exhibit lists is July 14, 2023.

Respondents respectfully request that the Court extend each of these deadlines, as set forth in the Proposed Second Revised Scheduling Order accompanying this Motion.

Good cause exists to amend the schedule set forth in the First Revised Scheduling Order. 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 keyed—while simultaneously litigating the preliminary injunction motion in district court. These considerations apply equally to non-parties, who remain heavily engaged in responding to the parties'

ongoing notifications of intent to offer confidential materials in the district court hearing. Respondents' request for relief would not delay any other deadlines in this administrative matter, nor would it affect the commencement of the evidentiary hearing currently scheduled for August 2, 2023.

This is the second request to amend the Scheduling Order originally entered on January 4, 2023. The Court's May 12, 2023 Order granting the parties' Joint Motion for First Revised Scheduling Order resulted in a one-week extension of the deadlines for the final proposed exhibit lists for both Complaint Counsel and Respondents.

Respondents have conferred with Complaint Counsel, who have declined to join this motion.

A proposed Second Revised Scheduling Order is attached, laying out Respondents' proposed deadlines going forward.

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	)	
Respondents.	)	

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**[PROPOSED] SECOND REVISED SCHEDULING ORDER**

- 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).<sup>1</sup> See Additional Provision 17.
- Complaint Counsel files pretrial brief supported by legal authority.
- July 24, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- 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.

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<sup>1</sup> 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.

July 27, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.

Deadline for filing responses to motions *in limine* to preclude admission of evidence.

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.

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.

Dated: June 26, 2023

Respectfully submitted,

By: Steven C. Sunshine

By: /s/ Grace L. Hill

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2023, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System and served the following via email:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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I also certify that I caused the forgoing document to be served via email to:

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