

**UNITED STATES OF AMERICA
BEFORE THE 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

JOINT MOTION FOR THIRD REVISED SCHEDULING ORDER

Complaint Counsel and Counsel for Respondents Microsoft Corporation and Activision Blizzard, Inc. (collectively, “Respondents’ Counsel”) respectfully move the Court for an order revising and adding certain deadlines to the Court’s June 29, 2023 Second Revised Scheduling Order. On September 26, 2023, the Commission issued an order returning the matter to adjudication and setting the hearing to commence twenty-one days after the United States Court of Appeals for the Ninth Circuit rules on Complaint Counsel’s appeal from the district court’s ruling denying a preliminary injunction. *See* Commission Order Returning Matter to Adjudication (Sept. 26, 2023). On October 26, this Court reopened limited fact discovery for eight weeks after entry of the order, ending on December 21, 2023. *See* Order on Complaint Counsel’s Motion to Allow Discovery Regarding Respondents’ Agreements with Ubisoft Entertainment SA and Sony Interactive Entertainment LLC (Oct 26, 2023). The original deadlines were suspended when the matter was withdrawn from adjudication, and no deadlines

currently exist with regards to supplemental discovery other than the date supplemental discovery ends.

Respondents have filed a Motion to Modify Order Setting Hearing Date, seeking to amend the Commission's September 26 Order Returning Matter to Adjudication by setting the evidentiary hearing for May 6, 2024, or 21 days from the Ninth Circuit's decision on Complaint Counsel's appeal, whichever comes later. Because that Motion remains pending, the parties seek to set certain deadlines now in order to avoid uncertainty and potential prejudice.¹

Complaint Counsel and Respondents' Counsel therefore respectfully request that the Court enter the jointly proposed attached Third Revised Scheduling Order.

Dated: December 14, 2023

Respectfully submitted,

By: s/ James H. Weingarten

By: s/ Beth Wilkinson

James H. Weingarten
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3570
jweingarten@ftc.gov

Counsel Supporting the Complaint

Beth Wilkinson
Rakesh Kilaru
Alysha Bohanon
Anastasia Pastan
Grace Hill
Sarah Neuman
Kieran Gostin
Wilkinson Stekloff LLP
2001 M Street, NW
Washington, DC 20036
(202) 847-4010
bwilkinson@wilkinsonstekloff.com
rkilaru@wilkinsonstekloff.com
abohanon@wilkinsonstekloff.com
apastan@wilkinsonstekloff.com
ghill@wilkinsonstekloff.com
sneuman@wilkinsonstekloff.com

¹ Complaint Counsel reserves the right to seek the ability to file additional briefing to account for any new evidence developed from the supplemental discovery ordered by the Court on October 26, 2023. Respondents reserve the right to seek further revisions to this Scheduling Order in light of intervening events that could affect any remaining deadlines.

kgostin@wilkinsonstekloff.com

Mike Moiseyev
Megan Granger
Weil, Gotshal & Manges LLP
2001 M Street, NW
Washington, DC 20036
(202) 682-7235
michael.moiseyev@weil.com
megan.granger@weil.com

Counsel for Microsoft Corporation

Steven Sunshine
Julia K. York
Jessica R. Watters
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave, NW
Washington, DC 20005
(202) 371-7860
steve.sunshine@skadden.com
julia.york@skadden.com
jessica.waters@skadden.com

Maria Raptis
Matthew M. Martino
Michael Sheerin
Evan R. Kreiner
Bradley J. Pierson
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001
(212) 735-2425
maria.raptis@skadden.com
matthew.martino@skadden.com
michael.sheerin@skadden.com
evan.kreiner@skadden.com
bradley.pierson@skadden.com

Counsel for Activision Blizzard, Inc.

**UNITED STATES OF AMERICA
BEFORE THE 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

[PROPOSED] THIRD REVISED SCHEDULING ORDER

The dates in the Second Revised Scheduling Order, as ordered on June 29, 2023 are hereby revised as follows:

Thursday, December 21, 2023

Close of Supplemental Discovery. *See* October 26, 2023 Order reopening limited discovery.

Friday, January 12, 2024

Deadline for both parties' Supplemental Exhibits, limited to documents produced in supplemental discovery or admitted as exhibits in *FTC v. Microsoft Corp.*, 3:23-cv-2880 (N.D. Cal.).

Friday, January 19, 2024

Parties that intend to offer confidential materials of an opposing party as evidence at the hearing must provide renewed notice to the opposing party, pursuant to 16 C.F.R. § 3.45(b), as well as a copy of

this Scheduling Order. *See* Additional Provision 17.

Friday, January 26, 2024

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.

Monday, January 29, 2024

Parties that intend to offer confidential materials of a non-party as evidence at the hearing must provide renewed notice to the non-party, pursuant to 16 C.F.R. § 3.45(b), as well as a copy of this Scheduling Order.

Friday, February 2, 2024

Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 18.

Monday, February 12, 2024

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

1 week after the issuance of the Ninth Circuit's opinion on the Commission's appeal of the district court decision in *Federal Trade Commission v. Microsoft Corp.*

Deadline for filing motions for *in camera* treatment of proposed trial exhibits.

2 weeks after the issuance of the Ninth Circuit's opinion on the Commission's appeal of the district court decision in *Federal Trade Commission v. Microsoft Corp.*

Respondents' Counsel files pretrial brief supported by legal authority.

2 weeks after the issuance of the Ninth Circuit's opinion on the Commission's appeal of the district court decision in *Federal Trade Commission v. Microsoft Corp.*

Exchange proposed stipulations of law, facts, and authenticity.

2 weeks after the issuance of the Ninth Circuit’s opinion on the Commission’s appeal of the district court decision in *Federal Trade Commission v. Microsoft Corp.*

Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.

2 days before commencement of the evidentiary hearing

Final prehearing conference to begin at 1:00 p.m. ET.

By Order of the Commission, 21 days after the issuance of the Ninth Circuit’s opinion on the Commission’s appeal of the district court decision in *Federal Trade Commission v. Microsoft Corp.*

Commencement of Hearing, to begin at 10:00 a.m. ET.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Dated: December [], 2023

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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

Beth Wilkinson
Rakesh Kilaru
Alysha Bohanon
Anastasia Pastan
Grace Hill
Sarah Neuman
Kieran Gostin
Wilkinson Stekloff LLP
2001 M Street, NW
Washington, DC 20036
(202) 847-4010
bwilkinson@wilkinsonstekloff.com
rkilaru@wilkinsonstekloff.com
abohanon@wilkinsonstekloff.com
apastan@wilkinsonstekloff.com
ghill@wilkinsonstekloff.com
sneuman@wilkinsonstekloff.com
kgostin@wilkinsonstekloff.com

Mike Moiseyev
Megan Granger
Weil, Gotshal & Manges LLP
2001 M Street, NW
Washington, DC 20036
(202) 682-7235

Steven Sunshine
Julia K. York
Jessica R. Watters
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave, NW
Washington, DC 20005
(202) 371-7860
steve.sunshine@skadden.com
julia.york@skadden.com
jessica.watters@skadden.com

Maria Raptis
Matthew M. Martino
Michael Sheerin
Evan R. Kreiner
Andrew D. Kabbes
Bradley J. Pierson
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001
(212) 735-2425
maria.raptis@skadden.com
matthew.martino@skadden.com
michael.sheerin@skadden.com
evan.kreiner@skadden.com

michael.moiseyev@weil.com
megan.granger@weil.com

Counsel for Microsoft Corporation

andrew.kabbes@skadden.com
bradley.pierson@skadden.com

Counsel for Activision Blizzard, Inc.

By: s/ James H. Weingarten
James H. Weingarten

Counsel Supporting the Complaint