

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

_____)	
In the Matter of)	
)	
Microsoft Corp.,)	
a corporation, and)	
)	Docket No. 9412
Activision Blizzard, Inc.,)	
a corporation,)	
)	
Respondents.)	
_____)	

ORDER GRANTING JOINT MOTION FOR FIRST REVISED SCHEDULING ORDER

On May 10, 2023, Complaint Counsel and Respondents Microsoft Corporation and Activision Blizzard, Inc. (“Respondents”) filed a joint motion to amend the Scheduling Order issued in this case on January 4, 2023 (“Joint Motion”). The parties seek to extend the deadlines for the final proposed exhibit lists for both Complaint Counsel and Respondents by one week – to May 19, 2023 for Complaint Counsel and to June 6, 2023 for Respondents. The parties assert that good cause for the extension exists because of the complexity of the matter and the large volume of documents produced.

The parties have not sought any prior extensions, and the proposed extensions will not delay any other deadlines. Good cause exists to amend the schedule set forth in the Scheduling Order. Accordingly, the Joint Motion is GRANTED. The Scheduling Order is hereby revised as follows:

May 12, 2023 - Complaint Counsel provides to Respondents’ Counsel the final proposed witness list. The final proposed witness list will include no more than 20 fact witnesses total, with no more than 3 witnesses who did not appear on Complaint Counsel’s updated witness list, and a brief summary of the testimony of each witness. No witness may be added to the final witness list who did not appear on that party’s updated witness list unless such witnesses have been deposed in this litigation.

Complaint Counsel serves courtesy copies on the Administrative Law Judge (“ALJ”) of the final proposed witness list and a brief summary of the testimony of each witness, including expert witnesses.

- May 19, 2023 - Complaint Counsel provides to Respondents' Counsel the final proposed exhibit list. The final proposed exhibit list shall include depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), and Complaint Counsel's basis of admissibility for each proposed exhibit.
- Complaint Counsel serves courtesy copies on the ALJ of the final proposed exhibit list and the basis of admissibility for each proposed exhibit.
- May 26, 2023 - Deadline for Respondents' Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondents' expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- May 30, 2023 - Respondents' Counsel provides to Complaint Counsel the final proposed witness list. The final proposed witness list will include no more than 20 fact witnesses total, with no more than 3 witnesses who did not appear on Respondents' updated witness list, and a brief summary of the testimony of each witness. No witness may be added to the final witness list who did not appear on that party's updated witness list unless such witnesses have been deposed in this litigation.
- Respondents' Counsel serves courtesy copies on the ALJ of the final proposed witness list and a brief summary of the testimony of each witness, including expert witnesses.
- June 2, 2023 - Complaint Counsel identifies any rebuttal experts not previously identified.
- June 6, 2023 - Respondents' Counsel provides to Complaint Counsel the final proposed exhibit list. The final proposed exhibit list shall include depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), and Respondents' basis of admissibility for each proposed exhibit.
- Respondents' Counsel serves courtesy copies on the ALJ of the final proposed exhibit list and the basis of admissibility for each proposed exhibit.
- June 9, 2023 - Complaint Counsel provides rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair

rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel’s rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).

- June 23, 2023 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- 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).¹ See Additional Provision 17.
- July 10, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- July 12, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence. See Additional Provision 18.
- July 14, 2023 - 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 14, 2023 - Complaint Counsel files pretrial brief supported by legal authority.
- July 17, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- July 19, 2023 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- July 26, 2023 - Exchange proposed stipulations of law, facts, and authenticity.
- July 28, 2023 - Respondents’ Counsel files pretrial brief supported by legal authority.

¹ 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.

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.

All other Additional Provisions in the Scheduling Order remain in place.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 12, 2023