



In contrast, the district court's original decision denying a preliminary injunction effectively prevented any finding that the transaction was illegal. The district court found that the Commission had established no likelihood of success on the merits. If that finding— that there was no likelihood of success on the merits – was correct, the Commission's action was not unlawful. The Commission's action was not unlawful.

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It is certainly true that the current discovery schedule is a demanding one. Notwithstanding that, when we issued the scheduling order in September, we believed that this schedule would be a feasible one. The Commission has made it clear – in issuing the September scheduling order and in its recent actions to revise its Rules of Practice relating to Part 3 proceedings – that it is committed to resolving adjudicative proceedings expeditiously as is required by law. We also recognize that this case is in a unique procedural posture because at the time it was filed there was no foreshadowing that the Commission would revise its rules to expedite proceedings, the transaction has since been consummated, and this administrative litigation was stayed for a year. Under these unique circumstances, we believe that the reasons for expedited deadlines do not apply with quite the same force as they will in future cases. Thus, although we find that Respondent has failed to support its assertion that a lengthy seven-month delay in the hearing is warranted, we will extend the commencement of the administrative hearing to April 6, 2009, with the attendant deadlines to be adjusted accordingly.<sup>1</sup> We wish to emphasize, however, that we will not lightly depart from this schedule, and if Respondent believes that any further extension is required it will need to make a particularized showing, with factual support rather than mere unsupported assertions. Accordingly,

**IT IS ORDERED THAT** Respondent’s request to stay this administrative proceeding is **denied;**

**IT IS FURTHER ORDERED THAT** Respondent’s request to amend the Scheduling Order to postpone the commencement of the administrative hearing

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<sup>1</sup> With the new hearing date – which is approximately eight months from the date that the Commission lifted the stay in these proceedings, pretrial discovery and preparation will be longer than the roughly five months that the federal district courts allowed in the *Oracle* and *Microsoft* cases. See, *U.S. v. Oracle Corp.*, 331 F. Supp.2d 1098 (N.D. Cal. 2004); *U.S. v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001).

- c. January 15, 2009 is changed to March 2, 2009;
- d. January 22, 2009 is changed to March 9, 2009;
- e. January 27, 2009 is changed to March 16, 2009;
- f. January 30, 2009 is changed to March 19, 2009;
- g. February 4, 2009 is changed to March 24, 2009; and
- h. February 11, 2009 is changed to March 31, 2009; and

**IT IS FURTHER ORDERED THAT** Part 11(e) of the September 10, 2008 Scheduling Order is deleted.

By the Commission, Commissioner Rosch dissenting.

Donald S. Clark  
Secretary

SEAL  
ISSUED: December 19, 2008