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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of:)
MICROSOFT CORP.)
a corporation,)
and) Docket No. 9412
ACTIVISION BLIZZARD, INC.,)
a corporation,)
Respondents.)

INITIAL PREHEARING TELEPHONIC SCHEDULING CONFERENCE
JANUARY 3, 2023
3:00 P.M.

BEFORE THE HONORABLE D. MICHAEL CHAPPELL
Administrative Law Judge

Reported by: Susanne Bergling, RMR-CLR

1 APPEARANCES:

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1 P R O C E E D I N G S

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3 JUDGE CHAPPELL: All right, we are on the record.
4 This is the prehearing scheduling conference in Docket
5 Number 9412 in the matter of Microsoft Corp. and
6 Activision Blizzard, Inc.

7 I'm Judge Chappell. This scheduling conference
8 is being conducted telephonically and is being
9 transcribed by a court reporter who is on the line with
10 us.

11 I will say that we have had an unexpected turnout
12 of people calling in to monitor. The operator has
13 doubled the number of lines available, and anyone else
14 who's tried to get in, we have done all we can at this
15 time.

16 I've chosen to conduct this scheduling conference
17 telephonically rather than via Zoom video. This choice
18 will save time and resources, as we can avoid engaging
19 an entire video trial team for a short scheduling
20 conference which is merely procedural and is not
21 evidentiary.

22 Could the court reporter state your name for the
23 record.

24 THE REPORTER: Susanne Bergling.

25 JUDGE CHAPPELL: Also, before you speak on the

1 JUDGE CHAPPELL: Please do so.

2 (Pause in the proceedings.)

3 MS. WILKINSON: Judge Chappell, this is Beth
4 Wilkinson.

5 JUDGE CHAPPELL: Good morning. You haven't
6 missed anything material. I was just taking the
7 appearances of the parties.

8 So I will now go to Respondent counsel for
9 Microsoft Corporation.

10 MS. WILKINSON: Thank you, Judge Chappell. Beth
11 Wilkinson for Microsoft Xbox.

12 JUDGE CHAPPELL: And for Respondent Activision?

13 MR. SUNSHINE: Good afternoon, Judge. Steve
14 Sunshine, Skadden Arps, for Respondent Activision.

15 JUDGE CHAPPELL: Thank you.

16 Now, anyone else on the call with either of you,
17 if you can identify the people on the call with you on
18 your end --

19 MS. WILKINSON: Yes, Your Honor --

20 JUDGE CHAPPELL: -- on your end, not the entire
21 call, of course.

22 MS. WILKINSON: Yes, Your Honor. I will have
23 them introduce themselves.

24 MR. KILARU: Rakesh Kilaru, also behalf of
25 Microsoft.

1 MS. BOHANON: Alysha Bohanon on behalf Microsoft.

2 MS. GRANGER: Megan Granger on behalf of
3 Microsoft.

4 MS. YORK: And Julia York from Skadden on behalf
5 of Activision.

6 JUDGE CHAPPELL: All right. And now everyone's
7 identified on that side of the call?

8 MS. WILKINSON: Yes, Your Honor.

9 JUDGE CHAPPELL: All right.
10 Let me first say thank you to the AT&T operator
11 who was able to handle this mess expertly and quickly.
12 I appreciate it. Thank you very much, ma'am.

13 OPERATOR: You're welcome.

14 JUDGE CHAPPELL: Also on the line with me are my
15 attorney-advisors. In addition, the press and the
16 public have access to this scheduling conference through
17 a toll-free telephone connection that allows them to
18 call in.

19 As I stated earlier, we have had many more
20 call-ins than we expected. The operator has doubled the
21 number of lines available, and we don't have the ability
22 to add any more lines, so a lot of people can't get in,
23 but the system is full at this point.

24 Because other people are listening in, you are
25 cautioned not to reveal any confidential information.

1 I have a question for the Government. As far as
2 I know, there is no parallel proceeding pending before
3 any U.S. District Court. Is there any update on that?

4 MR. WEINGARTEN: This is James Weingarten with
5 the Government, Your Honor. You are correct, sir, there
6 is no further update, no parallel proceeding.

7 JUDGE CHAPPELL: And is there any plan for one?

8 MR. WEINGARTEN: Not at this time, Your Honor,
9 only if it were to become necessary at some future date.

10 JUDGE CHAPPELL: All right.

11 The parties were provided a proposed scheduling
12 order in advance of this conference. The parties have
13 jointly proposed several changes to dates and to
14 additional provisions in the scheduling order. These
15 changes are acceptable and will be incorporated in a
16 scheduling order which I will issue shortly.

17 Let me ask about settlement discussions. I trust
18 the parties have attempted to settle this matter. Does
19 the Government want to go first and provide the status
20 of settlement discussions?

21 MR. WEINGARTEN: Yes, Your Honor. This is,
22 again, James Weingarten with the Government.

23 Leadership for the Bureau of Competition has
24 directed Respondents to engage with staff directly. We
25 are always open to any remedy or settlement proposal

1 either in litigation or before litigation. There are no
2 substantive conversations happening at this time.

3 JUDGE CHAPPELL: When you say to engage staff
4 directly, who do you mean by "staff"?

5 MR. WEINGARTEN: Me, Your Honor.

6 JUDGE CHAPPELL: Okay.

7 Any update on settlement or other information
8 from Respondents' side?

9 MS. WILKINSON: Yes, Your Honor. This is Beth
10 Wilkinson on behalf of Xbox.

11 Part of the reason we were able to engage with
12 Complaint Counsel and come up with a more expedited
13 schedule is, as you may know, we are undergoing -- the
14 deal is undergoing review over in Europe and in the
15 United Kingdom, and we're hoping that that will be
16 resolved, and if there are remedies that are
17 appropriate, that we can come back to Mr. Weingarten and
18 the FTC staff to talk about a resolution.

19 If not, as he was suggesting, and we have to
20 go -- the deal then could go forward and could close, we
21 assume that the FTC would make the decision to go to
22 Federal Court, and that's why we wanted to put -- kind
23 of front-load the discovery in case they were to move
24 it, because we have a termination date of July 18th,
25 2023.

1 So we kind of are preparing for all options,
2 either resolution, if we can, which would be ideal, or a
3 trial in front of you, which, of course, is fine and up
4 to the FTC, or Federal Court.

5 JUDGE CHAPPELL: Now, did I hear you mention the
6 United Kingdom and the European Union, one or both?

7 MS. WILKINSON: Both, Your Honor. There's a --

1 confirmed, which we've done.

2 Is there anything further from the Government
3 before I conclude the hearing?

4 MR. WEINGARTEN: This is James Weingarten.
5 Nothing further. Thank you, Your Honor.

6 JUDGE CHAPPELL: Anything further from Respondent
7 Microsoft Corporation?

8 MS. WILKINSON: No, Your Honor.

9 JUDGE CHAPPELL: And from -- anything further
10 from Respondent Activision Blizzard, Inc.?

11 MR. SUNSHINE: Nothing, Your Honor. Thank you
12 very much.

13 JUDGE CHAPPELL: All right.

14 Hearing nothing further, we are adjourned. Thank
15 you, all.

16 (Whereupon, at 3:21 p.m., the hearing was
17 concluded.)

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foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I ~~CERTIFICATE REPORTER~~ hereby certify that the am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

SUSANNE BERGLING, RMR-CRR-CLR
1/4/2023