

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya

In the Matter of

**Microsoft Corp.,
a corporation,**

and

**Activision Blizzard, Inc.,
a corporation.**

DOCKET NO. 9412

**ORDER DENYING RESPONDENTS' MOTION TO MODIFY ORDER
SETTING HEARING DATE**

On December 8, 2022, the Commission issued an administrative complaint seeking to block the acquisition of Activision Blizzard, Inc. by Microsoft Corp. On June 12, 2023, Commission staff filed a Complaint in the United States District Court for the Northern District of California seeking to enjoin the transaction pending completion of the administrative proceeding. The district court held an evidentiary hearing and denied the request for preliminary injunction. *FTC v. Microsoft Corp.*, 2023 WL 4443412 (N.D. Cal. July 10, 2023). The Commission appealed the district court's decision to the United States Court of Appeals for the Ninth Circuit, and oral argument was held on December 6, 2023. The evidentiary hearing in the administrative proceeding is set to commence twenty-one days after the Ninth Circuit issues its opinion on the Commission's appeal. *See* Order Returning Matter to Adjudication (Sept. 26, 2023) ("Sept. 26 Order").

On November 16, 2023, Respondents filed a Motion to Modify Order Setting Hearing Date requesting that the evidentiary hearing before the Administrative Law Judge commence twenty-one days after the Ninth Circuit's decision or on May 6, 2024, whichever is later. Respondents request the modification to avoid a potential conflict for Microsoft's trial counsel, who have a scheduled federal trial in *In re NFL's Sunday Ticket Antitrust Litigation*, No. 2:15-ml-02668 (C.D. Cal). That trial is scheduled to begin on February 22, 2024 and could last six weeks or more. Motion at 2.

We find Respondents' Motion premature. Respondent's Motion is predicated on two uncertain events, the timing of the Ninth Circuit's decision on the Commission's appeal and the length of the trial in the *Sunday Ticket* litigation. Currently, a possible conflict for Microsoft's trial counsel between the evidentiary hearing in this proceeding and the *Sunday Ticket* litigation is only hypothetical. There is no good cause to modify the hearing date. Consequently, we will not reschedule the evidentiary hearing in this proceeding at this time. As we have previously explained, "the public interest warrants that this matter be resolved fully and expeditiously." Sept. 26 Order at 1. In the event that an actual conflict becomes imminent, Respondents may renew their request that the hearing date be modified.

Accordingly,

IT IS HEREBY ORDERED THAT Respondents' Motion to Modify Order Setting Hearing Date is DENIED, without prejudice, and that the evidentiary hearing in this proceeding is scheduled to commence at 10:00 a.m., twenty-one 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.*

By the Commission.

April J. Tabor
Secretary



SEAL:
ISSUED: 1/11/2024