

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

In the Matter of

**Meta Platforms, Inc.,
a corporation,**

**Mark Zuckerberg,
a natural person,**

and

**Within Unlimited, Inc.,
a corporation.**

DOCKET NO. 9411

ORDER GRANTING CONTINUANCE

On December 27, 2022, Complaint Counsel and Respondents Meta Platforms, Inc. (“Meta”), Within Unlimited, Inc. (“Within”), and Mark Zuckerberg jointly moved to continue the commencement of the administrative hearing in this proceeding from its current date of January 19, 2023 to February 13, 2023, which is approximately two weeks after a decision is expected on the FTC’s request for a preliminary injunction in a parallel federal court proceeding. *See* Joint Expedited Motion to Continue the Evidentiary Hearing Until February 13, 2023 (“Joint Motion”). The Commission filed its federal complaint in the U.S. District Court for the Northern District of California on July 27, 2022, seeking to enjoin Meta and Mark Zuckerberg from consummating the proposed acquisition of Within until the Commission has had an opportunity to issue an administrative complaint and adjudicate the merger’s legality in an administrative proceeding. Complaint, *FTC v. Meta Platforms, Inc.*, No. 5:22-cv-04325-EJD (N.D. Cal. July 27, 2022), ECF No. 1. Soon thereafter, on August 11, 2022, the Commission issued the administrative complaint, and the administrative hearing is currently set to begin on January 19, 2023. On August 26, 2022, Meta filed a Motion to Stay this Administrative Proceeding, which seeks to stay the administrative proceeding until after a ruling on the preliminary injunction in

the federal district court (“Meta Motion to Stay”). Complaint Counsel opposed the Meta Motion to Stay.¹

Meta filed a Petition for Recusal on July 25, 2022, requesting that Chair Khan be recused from participating in any decisions concerning the Commission’s review of the proposed acquisition. Noting that the Meta Motion to Stay was contested, the Commission determined that the Petition for Recusal should be decided before the stay motion. Order Extending Deadline to Rule on Respondent’s Motion to Stay (Oct. 21, 2022). The Commission has not yet ruled on the Petition for Recusal, prompting the Commission to extend its deadline to decide the Meta Motion to Stay three times.² The current motion seeks a 25-day continuance of the evidentiary hearing rather than an open-ended stay of the entire administrative proceeding, and Complaint Counsel have joined this motion. Because the current motion is joint, our ruling at this time will not prejudice either party.

In December of 2022, the federal district court held an evidentiary hearing on the Commission’s preliminary injunction request and, according to the parties, indicated that a decision would be forthcoming by January 31, 2023. Joint Motion at 2.³ On December 22, 2022, the Chief Administrative Law Judge (“ALJ”) in this administrative matter directed the parties to “confer about filing a joint motion to the Commission, requesting expedited review and seeking a continuance or extension of the trial date until 2 weeks after a ruling by the district court in the pending preliminary injunction proceeding.” Joint Motion, Ex. A. The parties have now filed this Joint Motion.

The parties state that “the federal court’s decision may well result in withdrawal of [the administrative] case.” Joint Motion at 4 (internal quotation deleted). They argue that proceeding with the January 19, 2023 hearing date would require the parties, the ALJ and his staff, and third parties to expend substantial resources given the various upcoming deadlines, pending motions, and the need to prepare for the hearing, but all of these expenditures would be unnecessary if the district court’s decision obviates the need for this proceeding. *Id.* at 4. At the same time, if the district court’s decision does not obviate the need for the administrative proceeding, continuing the evidentiary hearing until February 13, 2023, would not unduly delay resolution of this matter. *Id.* Respondents also state that, to avoid potentially duplicative motions practice, if this Joint Motion is granted, they will withdraw the pending Meta Motion to Stay. Joint Motion at 3 n.1.

¹ Complaint Counsel’s Opposition to Respondent Meta Platforms, Inc.’s Motion to Stay this Administrative Proceeding (Sept. 6, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/D09411%20-%20COMPLAINT%20COUNSEL_S%20OPPOSITION%20TO%20RESPONDENT%20META%20PLATFORMS%20C%20INC._S%20MOTION%20TO%20STAY%20THIS%20ADMINISTRATIVE%20PROCEEDING%20-%20PUBLIC.pdf.

² The deadline for the Commission to issue its decision on the Meta Motion to Stay was October 21, 2022. On October 21, 2022, the Commission extended its own deadline to decide the Meta Motion to Stay until November 30, 2022. On November 30, 2022, the Commission extended the deadline for a second time to December 21, 2022. On December 21, 2022, the Commission extended the deadline for a third time to January 17, 2023.

³ The parties have stipulated to extend a temporary restraining order preventing the consummation of the proposed acquisition to the earlier of January 31, 2023 or the first business day after the district court issues its decision. Joint Stipulation and Order, *FTC v. Meta Platforms, Inc.*, No. 5:22-cv-04325-EJD (N.D. Cal. Dec. 21, 2022), ECF No. 508.

Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f). This provision reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative hearings. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41(b).

Yet, as we have explained in the past, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. *See, e.g., In re Sanford Health*, Docket No. 9376, 2017 WL 5845596, at *1 (F.T.C. Nov. 21, 2017). Commission Rule 3.41(b) authorizes the Commission to delay a hearing date, upon a showing of good cause. 16 C.F.R. § 3.41(b). Under the circumstances presented, we find that the requested continuance is justified. Deferring the start of trial date until February 13, 2023, will provide time for resolution of the district court action, which could obviate the need for an administrative hearing, without unduly delaying the Commission proceeding. We have granted continuances under comparable circumstances in the past. *See, e.g., In re Hackensack Meridian Health, Inc.*, No. 9399, 2021 WL 2379546, at *2 (F.T.C. May 25, 2021); *In re Thomas Jefferson Univ.*, No. 9392, 2020 WL 7237952 (F.T.C. Nov. 6, 2020); *In re RAG-Stiftung*, No. 9384, 2020 WL 91294 (F.T.C. Jan. 2, 2020); *In re Sanford Health*, No. 9376, 2017 WL 6604532 (F.T.C. Dec. 21, 2017); *Sanford Health*, 2017 WL 5845596; *In re The Penn State Hershey Med. Ctr.*, No. 9368, 2016 WL 3345405 (F.T.C. June 10, 2016); *In re Advocate Health Care Network*, No. 9369, 2016 WL 3182774 (F.T.C. June 2, 2016). Accordingly,

IT IS HEREBY ORDERED THAT the Joint Expedited Motion to Continue the Evidentiary Hearing Until February 13, 2023 is **GRANTED**; and

IT IS FURTHER ORDERED THAT the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on February 13, 2023.

By the Commission, Chair Khan not participating.

April J. Tabor
Secretary

SEAL:
ISSUED: January 11, 2023