



March 1, 2023

Via Email: foia@ftc.gov

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
Washington, DC 20580

Re: Freedom of Information Act Request; Fee Waiver and Expedited Processing Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“Chamber”) hereby requests the following information:

1. All records related to communications between the FTC and any and all foreign jurisdictions regarding Microsoft Corp.’s acquisition of Activision Blizzard, Inc. This request includes, but is not limited to, all such communications between or among the FTC and any and all non-U.S. agencies or authorities, and any press statements or drafts of press statements. The timeframe for the Chamber’s request is December 1, 2021 to the present.

The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and any other electronic or hard copy records stored on official or personal devices or in official or personal accounts.

I further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

To facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, the Chamber requests that those records be produced first, and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest, as it is likely to contribute significantly to public understanding of the operations or activities of the government. The public has a significant interest in understanding how the FTC coordinates with or otherwise interacts with foreign jurisdictions regarding transactions between US companies. This is especially true in light of recent revelations that the FTC coordinated with European antitrust authorities to engineer roadblocks for the merger of Illumina and GRAIL, two US companies.¹ In addition, popular news outlets are already speculating as to whether and to what degree the FTC coordinated with foreign antitrust authorities regarding the Microsoft/Activision transaction.²

The request seeks information that “concerns the operations or activities of the Federal government, 16 C.F.R. §§ 4.8(e)(2)(i)(A), because the request seeks information relating to whether and to what degree the FTC’s operations or activities involve coordination with foreign antitrust authorities. The FTC’s enforcement of US antitrust laws, and its coordination with any foreign authorities, indisputably are “operations or activities of the Federal government.”³ And the records sought are “likely to contribute to an understanding of these operations or activities,” 16 C.F.R. §§ 4.8(e)(2)(i)(B), because they will show whether any such coordination has taken place with respect to the Microsoft/Activision transaction. Any relevant records would contribute to an understanding of the FTC’s practices generally and their actions with respect to this transaction in particular.

The request will increase public understanding of the FTC’s operations and activities, and not just the understanding of the Chamber or a narrow segment of interested persons. 16 C.F.R. §§ 4.8(e)(2)(i)(C). The Chamber has a longstanding and demonstrated expertise in the operations and activities of the FTC, and the Chamber can use that expertise to enhance the public understanding of the FTC’s practices using these documents. For example, the Chamber previously received FTC records relating to the FTC’s coordination with foreign authorities in attempting to block the Illumina/GRAIL merger, and the Chamber publicly disseminated those records and

¹ WSJ article; Letter from Reps. Jim Jordan & Darrell Issa to Lina Khan, Chair, FTC (Sept. 2, 2021), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/legacy_files/wp-content/uploads/2021/09/2021-09-02-JDJ-DEI-to-FTC-re-Illumina-GRAIL-Merger.pdf

² Ephrat Livni and Michael J. de la Merced, Microsoft’s Activision Deal Tests a New Global Alignment on Antitrust, New York Times (Feb. 4, 2023).

³ *Id.*

informed the public of those records' significance.⁴ The public interest relating to the FTC's coordination with foreign authorities has already been demonstrated.⁵ And there is specifically public interest in mainstream media outlets regarding whether the FTC and foreign authorities coordinated in reviewing the Microsoft/Activision transaction.⁶ And the contribution to public understanding is likely to be significant, 16 C.F.R. §§ 4.8(e)(2)(i)(D), because the FTC has previously resisted public disclosure of its coordination with foreign antitrust authorities and has apparently not disclaimed the existence of any coordination with respect to the Microsoft/Activision transaction.⁷ Production of these records to the Chamber thus will respond to significant public interest where there has been insufficient public disclosure.

This request further qualifies for a fee waiver because the request is not in the commercial interest of the Chamber. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber's commercial interest because it seeks to use this information to educate itself and the public about the FTC's ongoing activities.⁸ The FTC's activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC's recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

Expedited Processing Request

The Chamber requests the expedited processing of this request because of the compelling need for expedited release of these records. 16 C.F.R § 4.11(a)(1)(i)(G). The Chamber's primary purpose in requesting these records is to disseminate time-sensitive information about the FTC's activities, particularly with respect to ongoing proceedings and other activities relating to the Microsoft/Activision transaction. The Chamber's mission involves disseminating information—to both its membership and the public—regarding economic issues in the United States, especially as they relate to the federal government. The Chamber regularly publicly discloses the results of its FOIA requests online which it would do with these records as well.⁹

⁴ Chamber splash page on Illumina/GRAIL.

⁵ WSJ article; Letter from Reps. Jim Jordan & Darrell Issa to Lina Khan, Chair, FTC (Sept. 2, 2021)

⁶ Leah Nysten, US Filed Microsoft-Activision Suit to Head Off EU Settlement, Bloomberg Law (Jan. 26, 2023); Ephrat Livni and Michael J. de la Merced, Microsoft's Activision Deal Tests a New Global Alignment on Antitrust, New York Times (Feb. 4, 2023).

⁷ WSJ article; Chamber splash page on Illumina/GRAIL.

⁸ 16 C.F.R. § 4.8(e)(2).

⁹ Chamber splash page on Illumina/GRAIL—

It is urgent that these records be made available to inform the public concerning the federal government's activities. 16 C.F.R. § 4.11(a)(1)(i)(G). The FTC has already begun administrative proceedings to block the transaction, and foreign authorities are also reportedly poised to take action against the transaction.¹⁰ The requested records are significant to informing the public about any coordination between the FTC and foreign authorities relating to the Microsoft/Activision transaction, and about whether and to what degree in general the FTC coordinates with foreign authorities with respect to reviewing proposed transactions. Given the fast pace at which these proceedings and other actions may progress, it is urgent that the FTC expeditiously provide these records to the public.

By signing this request, I certify that the explanation why there is a “compelling need” for the requested records is true and correct to the best of my knowledge. 16 C.F.R. § 4.11(a)(1)(i)(G).

* * *

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days.¹¹ If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email at sheather@uschamber.com. Thank you for your prompt attention to this matter.

Sincerely



Sean Heather
Senior Vice President
International Regulatory Affairs and Antitrust
U.S. Chamber of Commerce

¹⁰ Foo Yun Chee, Microsoft faces EU antitrust warning over Activision deal – sources, Reuters (Jan. 17, 2023).

¹¹ 5 U.S.C. § 552(a)(6)(A)-(B) and 16 C.F.R. § 4.11(a)(1)(ii).