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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Intercontinental Exchange, Inc.,
a corporation;

and

Black Knight, Inc.,
a corporation.

Docket No. 9413

RESPONDENTS' MOTION TO SET STATUS CONFERENCE

Intercontinental Exchange, Inc. and Black Knight, Inc. (together, “Respondents”) respectfully request, pursuant to Rule 3.21(f), a status conference to address the schedule in this matter. The FTC filed an action pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), in the United States District Court for the Northern District of California (the “District Court”) seeking a preliminary injunction preventing the transaction at issue here from closing and obtained a Temporary Restraining Order in that matter. *See Fed. Trade Comm’n v. Intercontinental Exch., Inc.*, No. 23-cv-1710 (N.D. Cal.) (the “Section 13(b) Action”). The District Court in the Section 13(b) Action issued an order last week setting a pretrial, briefing, and hearing schedule (the “Section 13(b) Schedule”), attached at Exhibit A. The Section 13(b) Schedule conflicts with the schedule in this matter in several material respects. Respondents seek a status conference at your Honor’s earliest convenience to discuss and address the prehearing schedule in this matter, given the order in the Section 13(b) Action and those conflicts.

As an initial matter, the Section 13(b) Schedule set by the District Court conflicts with the merits hearing set by the Commission. The two proceedings now completely overlap. The Section

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13(b) hearing effectively starts on June 30 when the parties are to submit direct testimony by declaration. There is then a pretrial conference on July 20 and live testimony on July 25 and 26. The Part 3 proceeding has a pretrial conference on July 11 and live testimony beginning on July 12. The parties are required to submit evidence and pretrial findings of fact and conclusions of law in the Section 13(b) Action in close proximity to but at different times than are set here, imposing substantial burden on the parties, their counsel, and witnesses who face the prospect of litigating, in parallel, two proceedings on opposite sides of the country. A few dates also directly conflict. Specifically, the Section 13(b) Schedule has an in-person prehearing conference on July 20 in the District Court, and live testimony is set to be presented on July 25-26, both right in the middle of the merits hearing presently scheduled in this matter. *Compare* Ex. A (Section 13(b) Schedule) (pretrial hearing July 20; cross-examination and re-direct of witnesses July 25 and 26), *with* Part 3 Scheduling Order (merits hearing beginning July 12, which the parties have discussed lasting at least 3-4 weeks). Respondents intend to seek from the Commission a stay of the merits hearing or continuance of that hearing to a time that will not conflict with the Section 13(b) Action, which takes precedence over the Part 3 action. *See* 16 C.F.R. § 3.1. We understand that Complaint Counsel opposes that relief.

Respondents have opened a dialogue with Complaint Counsel about conforming the Section 13(b) Schedule and the prehearing schedule here, which is within your Honor's discretion to adjust, and we are hopeful that we will be able jointly to propose adjustments to the prehearing schedule that will reduce inefficiency, duplication, and prejudice. The first of the prehearing schedule deadlines that depart from the Section 13(b) Schedule is next week. Under the prehearing schedule in this matter, Complaint Counsel must serve expert reports and related materials next Tuesday, May 30, with Respondents' expert reports due on June 13, and rebuttal reports from

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Complaint Counsel due on June 23. In the Section 13(b) Schedule, all parties are required to submit opening expert reports simultaneously on May 30, and then all parties are required to submit Rebuttal reports on June 23. This is but one example. The Section 13(b) Schedule sets parallel, but different, deadlines for many other prehearing submissions by the parties.

Rule 3.21(f) authorizes your Honor to hold additional status conferences and enter additional scheduling orders “as may be needed to ensure the just and expeditious disposition of the proceeding and to avoid unnecessary cost.” *See* 16 C.F.R. § 3.21(f). The conflicts and inconsistencies between the Section 13(b) Schedule and the current schedule in this matter need to be resolved to fulfill those goals. Respondents respectfully request a status conference at your Honor’s earliest convenience to address these issues.

* * *

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Dated: May 24, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to the following:

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By: /s/ John C. Dodds
John C. Dodds

*Counsel for Respondent Intercontinental
Exchange, Inc.*

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EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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FEDERAL TRADE COMMISSION,

,

v.

**INTERCONTINENTAL
EXCHANGE, INC.**

and

BLACK KNIGHT, INC.,

s.

3:23-cv-01710-AMO

SCHEDULING ORDER

A case management conference was held on May 12, 2023. Having considered the parties' proposals, the Court **SETS** the following deadlines with respect to the FTC's claim for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act and any defenses to that claim pursuant to Federal Rule of Civil Procedure 16 and Civil Local Rule 16-10:

| Event | Deadline |
|--|------------------------|
| Close of fact discovery, other than depositions of experts, and discovery for purposes of authenticity of exhibits; provided that this deadline will not preclude the parties from completing discovery of third-parties pursuant to timely served subpoenas whose document productions have not been completed by May 23, 2023 and/or who did not make themselves reasonably available for deposition pursuant to a timely subpoena within the fact discovery period. | May 23, 2023 [agreed] |
| Deadline for parties to provide opening expert witness reports and all materials required by Additional Provision 21 of Chief Administrative Law Judge Chappell's March 29 Scheduling Order in Dkt. No. 9413. | May 30, 2023 [agreed] |
| Deadline for Plaintiff to file its memorandum in support of its request for a preliminary injunction, which shall not exceed 30 pages. | June 2, 2023 |
| Deadline for Defendants to file memorandum(s) in opposition to the Plaintiff's request for a preliminary injunction. Defendants' memorandum(s) shall cumulatively not exceed 30 pages. | June 16, 2023 |
| Deadline for parties to identify rebuttal expert(s) and provide rebuttal expert report(s) and all materials required by Additional Provision 21 of Chief Administrative Law Judge Chappell's March 29 Scheduling Order in Dkt. No. 9413. Any such reports are to be limited to rebuttal of matters set forth in the parties' opening expert reports. If material outside the scope of fair rebuttal is | June 23, 2023 [agreed] |

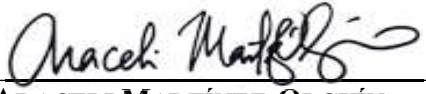
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|----|---|------------------------|
| 1 | presented, parties will have the right to seek appropriate relief (such as striking rebuttal expert reports or seeking leave to submit surrebuttal expert reports). | |
| 2 | | |
| 3 | | |
| 4 | Deadline for Plaintiff to file its reply memorandum in support of its request for a preliminary injunction. The FTC’s reply memorandum shall not exceed 15 pages. | June 23, 2023 |
| 5 | | |
| 6 | | |
| 7 | Parties that intend to offer as evidence materials designated as confidential by an opposing party or non-party shall provide notice to the opposing party or non-party by this date. | June 26, 2023 |
| 8 | | |
| 9 | | |
| 10 | Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits. | June 29, 2023 [agreed] |
| 11 | | |
| 12 | Deadline to file motions for in camera treatment of proposed hearing exhibits. | June 30, 2023 |
| 13 | | |
| 14 | Deadline to file motions <i>in limine</i> . Any briefs in support of, or opposition to, motions <i>in limine</i> , including Daubert motions, shall not exceed 10 pages. | June 30, 2023 |
| 15 | | |
| 16 | | |
| 17 | Deadline to file proposed pre-hearing findings of fact and conclusions of law. Each side’s proposed pre-hearing findings of fact and conclusions of law shall not exceed 50 pages. | June 30, 2023 |
| 18 | | |
| 19 | | |
| 20 | Deadline to submit direct evidence through declarations, deposition designations, and exhibits. | June 30, 2023 |
| 21 | | |
| 22 | Deadline to file responses to motions for in camera treatment of proposed hearing exhibits. | July 6, 2023 |
| 23 | | |
| 24 | Deadline to file opposition to motions <i>in limine</i> . | July 6, 2023 |
| 25 | Pre-hearing conference. | July 20, 2023 at 11 am |

| | |
|---|------------------------------|
| <p>Evidentiary hearing on Plaintiff’s Motion begins. The parties will cross-exam witnesses, as well as redirect them. The parties are limited to 8 hours per side.</p> | <p>July 25, 2023 at 9 am</p> |
| <p>Deadline to submit post-hearing proposed findings of fact and conclusions of law. Each side’s post-hearing proposed findings of fact and conclusions of law shall not exceed 75 pages.</p> | <p>July 31, 2023</p> |

Any party may seek modification of this Order for good cause, except that the parties may also modify discovery and expert disclosure deadlines by agreement.

IT IS SO ORDERED.

Dated: May 16, 2023


 ARACELI MARTÍNEZ-OLGUÍN
 UNITED STATES DISTRICT JUDGE
 NORTHERN DISTRICT OF CALIFORNIA