

**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

REDACTED PUBLIC VERSION

**ANSWER AND DEFENSES OF RESPONDENT
INTERCONTINENTAL EXCHANGE, INC.**

Pursuant to Rule 3.12 of the Federal Trade Commission’s (the “Commission’s” or “FTC’s”) Rules of Practice for Adjudicative Proceedings (“Proceedings”), Respondent Intercontinental Exchange, Inc. (“ICE”), by and through its attorneys, responds to the Commission’s complaint (“Complaint”) concerning the transaction (“Transaction”) between ICE and Respondent Black Knight, Inc. (“Black Knight”) as follows.

INTRODUCTION

The proposed Transaction between ICE and Black Knight will result in substantial procompetitive benefits, including merger-specific quality improvements, pricing efficiencies, increased access by U.S. consumers to residential mortgages, and other procompetitive effects—all of which will directly benefit mortgage borrowers, existing and potential homeowners, and mortgage lenders in the United States. These benefits are tangible, and the efficiencies that will be realized by the proposed transaction will particularly benefit first-time homebuyers, who are often cash-constrained and account for a quarter to a third of U.S. home sales. The FTC is wrong to claim that the Transaction will cause any substantial lessening of competition in any relevant market.

The FTC’s Complaint seeks to protect competitors—not competition—and does so at the expense of lenders and consumers who will be denied the substantial benefits of the proposed transaction. The FTC’s allegations ignore the full nature and extent of the intense competition that exists in the provision of LOS and PPE solutions, ignore the business realities in which ICE and Black Knight operate, and are based on a misconception of the underlying facts. Contrary to the FTC’s allegations and as this proceeding will show: (1) many strong companies compete in the sale of LOSs and still other companies can and have entered or expanded recently in connection with LOS services; (2) ICE and Black Knight have executed a definitive agreement to divest the Black Knight LOS business to Constellation Web Solutions Inc. (“Constellation”), which fully remedies any alleged harm in any purported LOS market; (3) ICE and Black

Knights' PPE solutions are not close substitutes and do not competitively constrain each other; (4) the FTC misunderstands the basic market realities and facts behind ICE's and Black Knight's business decisions; and (5) the FTC ignores ICE's commitment to invest [REDACTED] to improve Black Knight's business post-closing.

As an example of how the FTC misunderstands market realities, competition in the sale of LOSs is intense and only increasing. Many LOS providers (*e.g.*, Blue Sage, Byte, Calyx, Finastra, Fiserv, Integra, Mortgage Cadence, and Wipro) have won—and continue to win—business from lenders of every size. In fact, of the thousands of lenders that are in the FTC's alleged market, Black Knight serves less than [REDACTED], far fewer than many of its competitors arbitrarily ignored by the FTC.

Perhaps the most troublesome aspect of the Complaint is what the FTC failed to do in its investigation of the transaction: The FTC chose not to investigate whether the divestiture of Empower and a broad package of other assets to Constellation remedied the agency's purported concerns with LOS competition before rushing to file this Complaint. Despite ICE and Black Knight's strong belief that the Transaction will not harm competition, the parties communicated their intent to the FTC to divest the LOS business of Black Knight in December 2022 and divested these assets following a robust auction in an effort to address the FTC's misplaced concerns and move forward with the transaction. Put simply, the divestiture of Empower and related assets to Constellation fully remedies any alleged harm in either of the claimed LOS markets. Constellation is a highly qualified buyer, with substantial experience in software generally and mortgage technology specifically. Constellation has strong financials and is even better capitalized than Black Knight to invest in Empower and ensure that Empower not only continues to be an active competitor in the LOS space, but will grow and innovate to be a stronger competitor than it is today. Rather than account for these realities, the FTC would rather pretend the divestiture does not exist and is intent on challenging a pre-divestiture version of the transaction that will never materialize. This is not only incorrect as a matter of law, it also overlooks the reality that there will be no substantial lessening of competition in any LOS market after the proposed transaction is complete.

The FTC's failure to account for market realities is further revealed in the allegations directed to PPE. ICE's PPE solution, EPPS, is a native feature of Encompass and available only to Encompass LOS customers. By contrast, Black Knight's Optimal Blue PPE is a standalone commercial PPE available on more than a dozen LOS platforms. EPPS provides only the most basic functionalities of aggregating and displaying mortgage rate pricing. In contrast, the Optimal Blue PPE provides much broader functions and automation aimed at lenders active in the secondary mortgage market. The stark differences between EPPS and Optimal Blue are shown by their significantly different pricing (Optimal Blue PPE is substantially more expensive than EPPS) and different customer bases (Optimal Blue PPE customers are generally closing many more loans than EPPS customers). In an attempt to create the illusion that the transaction will harm competition between Optimal Blue and EPPS, the FTC contorts ICE's decision to [REDACTED]

[REDACTED] Had the FTC more closely examined the facts, it would have seen that

this decision was not connected to the proposed transaction and, thus, it in no way reflects any alleged “lost feature and price competition” between Optimal Blue and EPPS “that is likely to occur as a result of the Acquisition.”

Nor does the proposed transaction present any meaningful vertical concerns. ICE’s Encompass LOS has always maintained an open platform, which is the driving force behind its success. Encompass’s open platform is integrated with hundreds of third-party vendors, many of which provide solutions that compete with ICE. The proposed transaction will have no effect on Encompass’s continuing to maintain an open platform for PPEs that compete with EPPS and Optimal Blue. Limiting or degrading third-party vendors, including PPE vendors’ access, would be contrary to Encompass’s interests, irrational, and entirely inconsistent with how Encompass has always been designed and marketed.

Ultimately, the facts at trial will show that consumer welfare and the public interest will be best served by denying the FTC’s requested relief and permitting ICE and Black Knight to proceed with a transaction that will provide home buyers and lenders alike with substantial benefits.

PRELIMINARY STATEMENT

All allegations not expressly admitted herein are denied. ICE does not interpret the headings and sub-headings throughout the Complaint as well-pleaded allegations to which any response is required. To the extent such a response is required, ICE denies all allegations in the headings and sub-headings of the Complaint. Use of certain terms or phrases defined in the Complaint is not an acknowledgment or admission of any characterization the Commission may ascribe to the defined terms. Unless otherwise defined, capitalized terms shall refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgment or admission of any characterization the Commission may ascribe to the capitalized terms. ICE does not concede the truthfulness of sources quoted or referenced in the Complaint. To the extent that a response is required and unless otherwise indicated, ICE denies all allegations of sources quoted in or referenced in the Complaint. ICE additionally denies that the Commission is entitled to any of the relief sought in the Notice of Contemplated Relief on page 25 of the Complaint. ICE reserves the right to amend and/or supplement this Answer at a later stage of the proceedings as permitted by the Rules.

I. NATURE OF THE CASE

1. ICE denies the general characterizations framed as allegations in Paragraph 1.
2. ICE denies the general characterizations framed as allegations in Paragraph 2.
3. ICE denies the general characterizations framed as allegations in Paragraph 3.
4. ICE denies the allegations in Paragraph 4, except to admit only that ICE’s Encompass LOS operates in the United States and processes residential mortgages originated across the nation. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 4 concerning Black Knight.

5. ICE avers that the Complaint’s selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 5 to the extent they are inconsistent therewith. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 5 concerning Black Knight. ICE denies the remaining allegations in Paragraph 5.

6. ICE admits only that it offers services used to process, underwrite, fund, and close a loan. ICE lacks sufficient knowledge or information regarding the vague or undefined term “ancillary services,” and denies any allegations relating thereto.¹ ICE lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 6 concerning Black Knight. ICE denies the remaining allegations in Paragraph 6.

7. ICE lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 7 concerning Black Knight. ICE admits only the second sentence in Paragraph 7 and that EPPS is currently available only to lenders who use Encompass. ICE denies the remaining allegations in Paragraph 7.

8. ICE denies the allegations in Paragraph 8.

9. ICE only admits that [REDACTED]. ICE denies the remaining allegations in Paragraph 9.

10. ICE denies the allegations in Paragraph 10.

11. The allegations in Paragraph 11 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 11.

12. ICE lacks sufficient knowledge or information regarding the vague or undefined term “ancillary services,” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 12.

13. ICE lacks sufficient knowledge or information regarding the vague or undefined terms “origination costs” and “proportionally larger price increase” and denies any allegations relating thereto. In fact, the Acquisition will decrease costs and improve quality for homebuyers, particularly for those who have historically been underserved by the mortgage industry. ICE denies the remaining allegations in Paragraph 13.

14. ICE lacks sufficient knowledge or information regarding the vague or undefined terms “ancillary service providers,” “ancillary services portfolio,” and “third-party providers,” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 14.

¹ Similarly, ICE lacks sufficient knowledge or information regarding the vague term “ancillary services” throughout the Complaint and denies each and every allegation in which it appears.

15. The allegations in Paragraph 15 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 15.

16. The allegations in Paragraph 16 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 16.

II. JURISDICTION

17. The allegations in Paragraph 17 are legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 17 are denied.

18. The allegations in Paragraph 18 are legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 18 are denied.

III. RESPONDENTS AND ACQUISITION

19. ICE admits only the first, second, fourth, and sixth sentences of the allegations in Paragraph 19. The remaining allegations in Paragraph 19 are denied.

20. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 20 concerning Black Knight.

IV. THE ACQUISITION

21. ICE admits only the allegations in Paragraph 21. ICE and Black Knight have since reduced the purchase price to approximately \$11.7 billion.

V. RESIDENTIAL MORTGAGE ORIGINATION

22. ICE admits only that many homeowners utilize mortgages to finance the purchase of a home. ICE lacks sufficient knowledge or information regarding the vague and undefined phrases “most important,” “financially significant,” and “overwhelming majority,” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 22.

23. ICE admits only that LOS technology is used by mortgage lenders to originate home mortgages and to automate residential loan manufacturing. ICE lacks sufficient knowledge or information regarding the vague and undefined phrases “foundational technology” and “vast majority” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 23.

24. ICE lacks sufficient knowledge or information regarding the vague or undefined phrases “vast majority,” “compliance requirements,” and “outsourcing,” and denies any allegations relating thereto. ICE lacks sufficient knowledge or information to admit or deny the allegations regarding any decisions that lenders make. ICE denies the remaining allegations in Paragraph 24.

25. ICE lacks sufficient knowledge or information regarding the first, second, and fourth sentences of Paragraph 25, particularly regarding any decisions that lenders make, and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 25.

26. ICE lacks sufficient knowledge or information regarding the vague or undefined terms “interoperate,” “ancillary services,” and “bundle,” and denies any allegations relating thereto. ICE denies the remaining characterizations in Paragraph 26.

27. ICE lacks sufficient knowledge or information regarding the characterization of PPEs generally, and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 27.

28. ICE lacks sufficient knowledge or information to form a belief as to the truth of the general allegations contained in Paragraph 28, and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 28.

VI. THE RELEVANT ANTITRUST MARKETS

29. The allegations in Paragraph 29 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 29.

A. The Commercial LOS Market

30. The allegations in Paragraph 30 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 30.

31. The allegations in the first sentence of Paragraph 31 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the first sentence of Paragraph 31. ICE lacks sufficient knowledge or information regarding the vague or undefined term “peculiar” and denies any allegations relating thereto. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 31 concerning Black Knight. ICE denies the remaining allegations in Paragraph 31.

32. The allegations in Paragraph 32 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 32.

33. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 33 regarding Black Knight. ICE avers that the Complaint’s selective characterization and quotation of Black Knight’s Form 10-K for 2021, offered without context, are incorrect or misleading as framed, and further avers that the document speaks for itself. ICE denies any allegations in Paragraph 33 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 33.

34. The allegations in the first sentence of Paragraph 34 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the first sentence of Paragraph 34. ICE denies any allegations resting on the Complaint’s selective characterization and quotation of unidentified documents and/or transcripts, which are asserted without attribution or context, and are misleading as framed. ICE further avers that the

documents and/or transcripts, once identified, speak for themselves. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 34 regarding Black Knight. ICE denies the remaining allegations in Paragraph 34.

35. The allegations in Paragraph 35 constitute legal conclusions to which no response is required. To the extent a response is required, ICE lacks sufficient knowledge or information regarding the vague or undefined phrase “commercially reasonable substitute,” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 35.

36. ICE lacks sufficient knowledge or information regarding the vague or undefined phrases “highly regulated” and “substantial risk,” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 36.

37. ICE denies the allegations in Paragraph 37.

38. The allegations in Paragraph 38 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 38.

39. ICE denies the allegations in Paragraph 39.

B. The LOS Market

40. The allegations in Paragraph 40 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 40.

41. The allegations in the first sentence of Paragraph 41 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the first sentence of Paragraph 41. ICE lacks sufficient knowledge or information regarding the vague or undefined phrases “distinct group” and “types” and denies any allegations relating thereto. ICE avers that the Complaint’s selective characterization and quotation of transcripts, offered without context, are incorrect or misleading as framed, and further avers that the transcript speaks for itself. ICE denies any allegations in Paragraph 41 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 41.

42. The allegations in the first sentence of Paragraph 42 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the first sentence of Paragraph 42. ICE lacks sufficient knowledge or information to form a belief regarding the general background allegations about all LOSs and mortgage lenders generally and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 42.

43. The allegations in Paragraph 43 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 43.

44. The allegations in Paragraph 44 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 44.

45. The allegations in Paragraph 45 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 45.

46. The allegations in Paragraph 46 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 46.

C. The Market for PPEs for Users of Encompass

47. The allegations in Paragraph 47 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 47.

48. The allegations in the first sentence of Paragraph 48 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the first sentence of Paragraph 48. ICE lacks sufficient knowledge or information regarding the vague or undefined terms “peculiar,” “prohibitively expensive,” and “time-consuming,” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 48.

49. ICE denies the allegations in Paragraph 49. ICE can and regularly does integrate additional PPEs into its Encompass platform. Lenders are not limited to those PPEs already integrated into the Encompass platform.

50. The allegations in Paragraph 50 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 50.

51. ICE avers that the Complaint’s selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 51 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 51.

52. The allegations in Paragraph 52 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 52.

53. ICE lacks sufficient knowledge or information regarding the vague or undefined phrases “significant share” and “small share” and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 53.

D. The PPE Market

54. The allegations in Paragraph 54 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 54.

55. The allegations in the first sentence of Paragraph 55 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the first sentence of Paragraph 55. ICE lacks sufficient knowledge or information regarding the vague or undefined term “peculiar,” “functionality,” and “manually,” and denies any allegations relating thereto. ICE avers that the Complaint’s selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are

incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 55 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 55.

56. ICE lacks sufficient knowledge or information to form a belief regarding the general background allegations about PPEs and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 56.

57. The allegations in Paragraph 57 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 57.

58. The allegations in Paragraph 58 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 58.

59. ICE denies the allegations in Paragraph 59.

E. The Relevant Geographic Market Is the United States

60. The allegations in Paragraph 60 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

VII. MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

61. The allegations in Paragraph 61 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in Paragraph 61.

62. The Merger Guidelines speak for themselves and ICE denies any allegations in Paragraph 62 to the extent they are inconsistent therewith. ICE further denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, including providing a presumption of unlawfulness. The remaining allegations in Paragraph 62 are denied.

63. The first sentence of Paragraph 63 purports to characterize the Home Mortgage Disclosure Act (the "HMDA"), and ICE respectfully refers the Commission to the HMDA for a complete and accurate statement of its contents. To the extent the allegations set forth in the first sentence of Paragraph 63 are inconsistent with the HMDA, ICE denies the allegations. ICE further denies any allegations that rest on an improper market definition. The remaining allegations in Paragraph 63 are denied.

64. The allegations in Paragraph 64 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 64 are denied. ICE further denies any allegations that rest on an improper market definition.

65. The allegations in Paragraph 65 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 65 are denied. ICE further denies any allegations that rest on an improper market definition.

66. The allegations in Paragraph 66 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 66 are denied. ICE further denies any allegations that rest on an improper market definition.

67. The allegations in Paragraph 67 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 67 are denied. ICE further denies any allegations that rest on an improper market definition.

VIII. EVIDENCE OF REASONABLY PROBABLE ANTICOMPETITIVE EFFECTS

A. Anticompetitive Effects in LOS Markets

68. The allegations in Paragraph 68 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 68 are denied. ICE further denies any allegations that rest on an improper market definition.

69. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 69 regarding Black Knight. ICE denies the remaining allegations in Paragraph 69.

70. ICE denies the allegation in the first sentence of Paragraph 70. The allegations in the second sentence of Paragraph 70 constitute legal conclusions to which no response is required. To the extent a response is required, ICE denies the allegations in the second sentence of Paragraph 70.

i. ICE and Black Knight Are Each Other's Closest Head-to-Head Competitors

71. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 71 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 71.

72. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 72 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 72.

73. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 73 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 73.

74. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 74 regarding Black Knight.

75. ICE denies the allegations in Paragraph 75.

76. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 76 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 76 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 76.

ii. There Is a Reasonable Probability That the Acquisition Will Eliminate LOS Price Competition Between ICE and Black Knight

77. ICE denies the allegations in Paragraph 77.

78. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 78 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 78 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 78.

79. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 79 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 79.

iii. There Is a Reasonable Probability That the Acquisition Will Eliminate Competition for LOS Features and Integrations

80. ICE denies the allegations in Paragraph 80.

81. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 81 regarding Black Knight. ICE denies the remaining allegations in Paragraph 81.

82. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 82 regarding Black Knight.

83. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 83 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 83.

84. The allegations in Paragraph 84 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 84 are denied.

B. Anticompetitive Effects in PPE Markets

85. The allegations in Paragraph 85 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 85 are denied.

86. ICE denies the allegations in Paragraph 86.

87. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 87 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 87.

88. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 88 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 88.

i. There Is a Reasonable Probability That the Acquisition Will Eliminate Head-to-Head PPE Competition Between ICE and Black Knight

89. The allegations in Paragraph 89 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

90. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 90 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 90 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 90.

91. The allegations in Paragraph 91 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 91 are denied.

92. ICE denies the allegations in Paragraph 92.

93. ICE admits only the second sentence of Paragraph 93. ICE denies the remaining allegations in Paragraph 93.

94. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 94 regarding Black Knight.

95. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 95 regarding Black Knight.

96. ICE lacks knowledge sufficient or information to admit or deny the allegations in Paragraph 96 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 96 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 96.

97. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 97 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 97 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 97.

98. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 98 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 98 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 98.

99. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 99 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 99.

100. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 100 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 100.

101. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 101 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 101.

102. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 102 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 102.

103. ICE admits that on May 4, 2022, ICE announced its agreement to acquire Black Knight. ICE further avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 103 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 103.

104. The allegations in Paragraph 104 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 104 are denied.

105. ICE denies the allegations in Paragraph 105.

ii. There Is a Reasonable Probability That the Acquisition Will Increase ICE's Ability and Incentive to Foreclose Competition from Other PPE Providers

106. The allegations in Paragraph 106 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 106 are denied. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 106 regarding Black Knight.

a. ICE Can Disadvantage PPE Competitors by Degrading or Restricting LOS Integration

107. ICE lacks sufficient knowledge or information to form a belief regarding the general background allegations about PPEs and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 107.

108. ICE lacks sufficient knowledge or information regarding the characterization of lenders, PPEs, and PPE providers generally, and denies any allegations relating thereto. ICE denies the remaining allegations in Paragraph 108.

109. ICE denies the allegations in Paragraph 109.

110. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 110 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 110.

111. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 111 regarding Black Knight.

112. ICE denies the allegations in Paragraph 112.

113. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when

identified, speak for themselves. ICE denies any allegations in Paragraph 113 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 113.

114. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 114 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 114.

115. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 115 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 115.

b. Post-Acquisition, ICE Will Have a Greater Incentive to Foreclose Competition for PPEs

116. The allegations in Paragraph 116 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 116 are denied.

117. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 117 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 117.

118. The allegations in Paragraph 118 based on the definition of a PPE market constitute legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 118 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 118.

119. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 119 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 119.

120. ICE denies the allegations in Paragraph 120.

C. Anticompetitive Effects in Other Relevant Antitrust Markets for Ancillary Services

121. ICE denies the allegations in Paragraph 121.

122. ICE denies the allegations in Paragraph 122.

123. ICE denies the allegations in Paragraph 123.

124. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 124 regarding Black Knight. ICE denies the remaining allegations in Paragraph 124.

125. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 125 regarding Black Knight. ICE denies the remaining allegations in Paragraph 125.

IX. LACK OF COUNTERVAILING FACTORS

126. The allegations in Paragraph 126 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 126 are denied.

127. The allegations in the first two sentences of Paragraph 127 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in the first two sentences of Paragraph 127 are denied. ICE lacks knowledge or information sufficient to admit or deny the allegations in the third sentence of Paragraph 127 regarding Black Knight.

128. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 128 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 128 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 128.

129. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 129 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 129.

130. The first sentence of Paragraph 130 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in the first sentence of Paragraph 130 are denied. ICE denies the remaining allegations in Paragraph 130.

131. The first sentence of Paragraph 131 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in the first sentence of Paragraph 131 are denied. ICE denies the remaining allegations in Paragraph 131.

132. The first sentence of Paragraph 132 contains legal conclusions to which no response is required. To the extent a response is required, the allegations in the first sentence of Paragraph 132 are denied. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 132 regarding Black Knight. ICE avers that the Complaint's selective

characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 132 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 132.

133. ICE denies the allegations in Paragraph 133.

134. ICE lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 134 regarding Black Knight. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 134 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 134.

135. The allegations in Paragraph 135 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 135 are denied.

X. RESPONDENTS' PROPOSED REMEDY WILL NOT FIX THE ACQUISITION'S ANTICOMPETITIVE EFFECTS

136. ICE admits only that ICE and Black Knight have signed a definitive agreement to divest Empower to Constellation as part of the proposed transaction. ICE avers that the Complaint's selective characterization and quotation of unidentified documents and/or transcripts, offered without attribution or context, are incorrect or misleading as framed, and further avers that the documents and/or transcripts, if and when identified, speak for themselves. ICE denies any allegations in Paragraph 136 to the extent they are inconsistent therewith. ICE denies the remaining allegations in Paragraph 136.

137. The allegations in Paragraph 137 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 137 are denied.

XI. VIOLATION

Count I – Illegal Agreement

138. Except where specifically admitted above, the allegations in Paragraphs 1 through 137 of the Complaint are denied.

139. The allegations in Paragraph 139 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 139 are denied.

Count II – Illegal Acquisition

140. Except where specifically admitted above, the allegations in Paragraphs 1 through 137 of the Complaint are denied.

141. The allegations in Paragraph 141 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 141 are denied.

AFFIRMATIVE AND OTHER DEFENSES RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

ICE asserts the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof or persuasion where such burden rests on the Commission. ICE has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. ICE reserves the right to amend, or seek to amend, its Answer, including its affirmative and other defenses.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The alleged market definitions fail as a matter of both fact and law.

THIRD DEFENSE

The Complaint fails to allege any plausible harm to competition, consumers, or consumer welfare.

FOURTH DEFENSE

The Complaint fails to allege undue share in any plausibly defined relevant market.

FIFTH DEFENSE

Any alleged harm to potential competition is not actionable.

SIXTH DEFENSE

The Complaint fails to state a claim because new entrants to the relevant market were (and are) timely, likely, and sufficient to offset any alleged anticompetitive effects of the Transaction.

SEVENTH DEFENSE

The Transaction is procompetitive, and will result in merger-specific efficiencies, cost synergies, product-quality improvements, and other procompetitive effects that benefit consumers. The benefits outweigh any alleged anticompetitive effects.

EIGHTH DEFENSE

The combination of Respondents' businesses is not likely to substantially lessen competition under the analytical framework set forth in the Merger Guidelines promulgated by the FTC and Department of Justice.

NINTH DEFENSE

ICE and Black Knight's agreement with Constellation to divest Empower as well as certain other products to Constellation would address any purported anticompetitive effects alleged in the Complaint and, consistent with Section 7 of the Clayton Act, 15 U.S.C. § 18, and the decision in *United States v. UnitedHealth Grp. Inc.*, No. 1:22-cv-0481, 2022 WL 4365867, at *9 (D.D.C. Sept. 21, 2022), it is inappropriate to consider the Transaction in the absence of the divestiture.

TENTH DEFENSE

Neither the filing of this administrative action nor the contemplated relief is in the public interest, pursuant to 15 U.S.C. § 45.

ELEVENTH DEFENSE

The Commission's claims under Section 5 of the Federal Trade Commission Act are unlawful to the extent the Commission purports to apply Section 5 beyond the metes and bounds of the Clayton Act.

TWELFTH DEFENSE

The Commission fails to allege a time frame for the alleged anticompetitive effects.

THIRTEENTH DEFENSE

The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint against ICE, having prejudged the merits of the action, violates ICE's Fifth Amendment Due Process right to adjudication before a neutral arbiter.

FOURTEENTH DEFENSE

The Commission's procedures violate ICE's right to procedural due process under the Due Process Clause of the Fifth Amendment.

FIFTEENTH DEFENSE

The Commission's procedures arbitrarily subject ICE to administrative proceedings rather than to proceedings before an Article III judge in violation of ICE's right to Equal Protection under the Fifth Amendment.

SIXTEENTH DEFENSE

These Proceedings are invalid because the constraints on removal of the Commissioners and the Administrative Law Judge violate Article II of the Constitution and the separation of powers.

SEVENTEENTH DEFENSE

These administrative proceedings are invalid because Congress unconstitutionally delegated legislative power to the Commission by failing to provide an intelligible principle by which the Commission would exercise the delegated power.

EIGHTEENTH DEFENSE

The adjudication of the Complaint against ICE through these administrative proceedings violates ICE's Seventh Amendment right to a jury trial.

NINETEENTH DEFENSE

Granting the relief sought would constitute a taking of ICE's property in violation of the Fifth Amendment to the Constitution.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, ICE requests that the Commission enter judgment in its favor as follows:

- A. That the Complaint be dismissed with prejudice;
- B. That none of the requested relief issue to the Commission;
- C. That costs incurred in defending this action be awarded to ICE; and
- D. That the Commission grant ICE any and all further relief that is just and proper.

MORGAN, LEWIS & BOCKIUS LLP

Dated: March 20, 2023

/s/ John C. Dodds

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 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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Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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

Catherine Bill
Steven Couper
Caitlin Cipicchio
Kurt Herrera-Heintz
Ashley Masters
Lauren Silman
Nicolas Stebinger
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By: /s/ John C. Dodds
John C. Dodds

Counsel for Intercontinental Exchange, Inc.