

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

In the Matter of)	
)	
Intercontinental Exchange, Inc.,)	
a corporation, and)	
)	Docket No. 9413
Black Knight, Inc.,)	
a corporation,)	
)	
Respondents.)	

**ORDER DENYING MOTION TO SET STATUS CONFERENCE,
GRANTING JOINT MOTION TO AMEND SCHEDULING ORDER, AND
ISSUING REVISED SCHEDULING ORDER**

The Complaint in this matter, issued by the Federal Trade Commission (“FTC”) on March 9, 2023, challenges a proposed merger between Intercontinental Exchange, Inc. and Black Knight, Inc. (“Respondents”). The Complaint set July 12, 2023 as the date of the evidentiary hearing before an FTC Administrative Law Judge. A prehearing scheduling order was issued on March 29, 2023 (the “Part 3 Scheduling Order”).

On April 10, 2023, pursuant to Section 13(b) of the FTC Act, the FTC filed an action in the United States District Court for the Northern District of California (the “District Court”) seeking a preliminary injunction to prevent the challenged merger from closing, pending resolution of the administrative case (the “Section 13(b) Action”). The District Court in the Section 13(b) Action issued an order setting a pretrial, briefing, and hearing schedule (the “Section 13(b) Scheduling Order”).

On May 24, 2023, Respondents filed a Motion to Set Status Conference, pursuant to FTC Rule 3.21(f). 16 C.F.R. § 3.21(f). Respondents assert that the Part 3 Scheduling Order conflicts with the Section 13(b) Scheduling Order in several material respects. Respondents request a status conference to address these asserted conflicts.¹

On May 25, 2023, Complaint Counsel filed an opposition to Respondents’ Motion to Set Status Conference. Complaint Counsel asserted that there is no need for a status conference because any alleged scheduling conflicts would likely be resolved by the parties. Specifically,

¹ A copy of the Section 13(b) Scheduling Order was attached as Exhibit A to Respondents’ Motion to Set Status Conference.

Complaint Counsel stated that the parties were then working on resolving scheduling conflicts and expected that the parties would submit a joint motion to amend the Part 3 Scheduling Order.

Subsequently, on May 31, 2023, the parties filed a Joint Motion to Modify Prehearing Schedule (“Joint Motion”). The parties request to modify certain prehearing deadlines in the Part 3 Scheduling Order to conform to the deadlines in the Section 13(b) Scheduling Order. The parties assert that aligning the deadlines will promote “the just and expeditious disposition of the proceeding” and “avoid unnecessary cost.” *See* 16 C.F.R. § 3.21(f).

The Joint Motion is GRANTED. It is hereby ORDERED that the Part 3 Scheduling Order is amended as set forth below. All other provisions of the Part 3 Scheduling Order remain in effect.

Because the Joint Motion is granted, there is no need for a status conference to address prehearing deadlines. To the extent Respondents seek a status conference to address the date of the evidentiary hearing, pursuant to Rule 3.21(c)(2), requests to change the date of the evidentiary hearing must be addressed to the Commission. *See* 16 C.F.R. § 3.21(c)(2) (“The Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing.”); *see also* 16 C.F.R. § 3.41(b) (“The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . .”). Accordingly, Respondents’ Motion to Set Status Conference is DENIED.

The remaining deadlines of the Part 3 Scheduling Order are revised as follows:

- June 8, 2023 - Complaint Counsel provides to Respondents’ Counsel final proposed witness list, comprised of no more than 25 witnesses that Complaint Counsel anticipates will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Complaint Counsel’s preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel’s basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel provides courtesy copies to ALJ of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- June 15, 2023 - Respondents’ Counsel provides to Complaint Counsel final proposed witness list, comprised of no more than 25 witnesses that Respondents anticipate will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Respondents’ Counsel’s preliminary or updated witness lists, and exhibit lists,

including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondents' Counsel provides ALJ with final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

- June 16, 2023 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- June 23, 2023 - Complaint Counsel and Respondents' Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s) and all material required to be produced pursuant to Additional Provision 21 of this Order. Any such reports are to be limited to rebuttal of matters set forth in Complaint Counsel's expert reports and Respondents' expert reports, respectively. If material outside the scope of fair rebuttal is presented, the parties will have the right to seek appropriate relief (such as striking the other side's rebuttal expert reports or seeking leave to submit surrebuttal expert reports).
- June 26, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- June 29, 2023 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- June 29, 2023 - Exchange and serve courtesy copy on ALJ of objections to final proposed witness lists and exhibit lists. The parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits and raise only objections that are necessary and valid.
- June 30, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence.
- June 30, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- June 30, 2023 - Complaint Counsel and Respondents' Counsel file pretrial briefs supported by legal authority.

- July 6, 2023 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- July 7, 2023 - Exchange proposed stipulations of law, facts, and authenticity.
- July 11, 2023 - Final prehearing conference to begin at 1:00 p.m. EDT.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. All trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

- July 12, 2023 - Commencement of Hearing, to begin at 10:00 a.m. EDT.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 31, 2023