

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

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

In the Matter of	)	
	)	
	)	
<b>Intercontinental Exchange, Inc.,</b>	)	<b>ORDER TO MAINTAIN ASSETS</b>
a corporation, and	)	Docket No. 9413
	)	
<b>Black Knight, Inc.,</b>	)	
a corporation.	)	
	)	

**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”) issued its Complaint charging Respondent Intercontinental Exchange, Inc. (“ICE”) and Respondent Black Knight, Inc. (“Black Knight”) (collectively “Respondents”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The Commission served Respondents with a copy of that Complaint together with a notice of contemplated relief. Respondents answered the Complaint and denied the charges.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. In further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Intercontinental Exchange, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 5660 New Northside Drive, Atlanta, Georgia 30328.

2. Respondent Black Knight, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204.
3. Constellation Software, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Province of Ontario, Canada with its executive offices and principal place of business located at 20 Adelaide Street East, Suite 12000, Toronto, Ontario, M5C 2T6, Canada.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

### I. Definitions

IT IS ORDERED that the definitions used in the Consent Agreement and the Decision and Order shall be incorporated into this Order to Maintain Assets by reference and made a part hereof and, further, that the following definitions shall apply:

- A. "Decision and Order" means the proposed Decision and Order contained in the Consent Agreement.
- B. "Orders" means this Order to Maintain Assets and the Decision and Order.

### II. Asset Maintenance

IT IS FURTHER ORDERED that Respondents shall ensure that the Divestiture Assets are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divested Businesses and related Divestiture Assets, to minimize the risk of any loss of their competitive potential, operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear);
- B. Not sell, transfer, encumber, or otherwise impair the Divested Businesses and related Divestiture Assets (other than in the manner prescribed in the Order) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of the Divested Businesses and related Divestiture Assets, and shall conduct or cause to be conducted the operations of the Divested Businesses and related Divestiture Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Divested Businesses and related Divestiture Assets; and

- D. Use reasonable best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Divested Businesses and related Divestiture Assets. In Respondents' first 30-day Compliance Report under Paragraph XIV.B.1, they shall identify all confirmed terminations that occurred from when Respondents signed the Consent Agreement to the Divestiture Date.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Divestiture Assets and consistent with the purposes of the Orders.

### III. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Divestiture Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Divestiture Assets to the Acquirer and (2) assist the Acquirer in operating the Divestiture Businesses in all material respects in

#### IV. Employees

IT IS FURTHER ORDERED that:

- A. Until 1 year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Divestiture Assets to evaluate independently and offer employment to any Relevant Employee.
- B. Until 1 year after the Divestiture Date, Respondents shall:
1. No later than 20 days after a request from the Acquirer, provide a list of all Relevant Employees and provide Employee Information for each;
  2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Relevant Employees outside the presence or hearing of any employee or agent of any Respondent;
  3. After the Acquirer informs Respondents in writing or a Relevant Employee informs Respondents orally or in writing that Constellation has made an offer to the Relevant Employee, remove any impediments within the control of Respondents that may deter such Relevant Employee from accepting employment with the Acquirer, including, but not limited to, removal of any noncompete provisions of employment or other contracts with Respondents that may affect the ability or incentive of such Relevant Employee to be employed by the Acquirer, and not make any counteroffer to such Relevant Employee,  
  
Provided, however, that nothing in the Orders shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
  4. Continue to provide Relevant Employees with compensation and benefits through the Divestiture Date, including regularly scheduled raises and bonuses and the vesting of benefits; and
  5. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Acquirer.
- C. Respondents shall not, for a period of 2 years following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any former Black Knight employee who is employed by the Acquirer to work in the Divested Businesses to terminate their employment with the Acquirer; provided, however, Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;



disclosure or use of Confidential Divestiture Information except as permitted by the Orders. Further, if, despite Respondents' reasonable best efforts, an employee refuses to execute an NDA, Respondents will:

1. Within 30 days of first asking the employee to sign an NDA, prohibit the employee from working on an LOS or PPE product;
  2. Inform the employee of their confidentiality obligations to ensure ICE's compliance with the Orders; and
  3. Within 30 days of the employee's refusal to execute an NDA, provide to the Commission the employee's name, job title and responsibilities before the Acquisition date; job title and prospective responsibilities after the Acquisition Date; Respondents' efforts undertaken to have the employee sign the NDA; a copy of the NDA the employee was requested to sign; and verification that Respondents informed the employee of their confidentiality obligation under the Orders.
- D. If disclosure or use of any Confidential Information is made to Respondents' employees or to any other Person under Paragraph V.A or Paragraph V.B of this Order to Maintain Assets, Respondents shall limit such disclosure or use (1) only to the extent such information is required, and (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A.
- E. Respondents shall enforce the terms of this Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

## VI. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints William E. Berlin to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
  1. Shall be subject to the approval of the Commission;
  2. Shall not limit, and the signatories shall not construe it to limit, the terms of Section VIII of the Decision and Order or Section VI of this Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement

varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and

9. Unless the Commission or its staff determine otherwise, the Monitor shall serve



shall select the substitute Monitor, subject to the consent of the Respondents.  
Respondents:



employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order;

6. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by the Decision and Order; and
7. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

Respondents:

1. May require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;
2. Shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from fraud, gross negligence or willful misconduct by the Divestiture Trustee; and
3. Shall assist any potential Acquirer in conducting a due diligence investigation of the Divested Businesses and Divestiture Assets, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the Divested Businesses, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section VII.

The Commission may on its own initiative or ~~the~~ request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by the Decision and Order.

#### VIII. Seller Note

IT IS FURTHER ORDERED that:

The Commission will appoint a Seller Note Trustee no later than one day after the Divestiture Date to sell the Seller Note within 6 months after the Seller Note Trustee's appointment.

The Commission shall select the Seller Note Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Seller Note Trustee shall be a Person with experience and expertise in buying and selling negotiable instruments. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Seller Note Trustee within 10 days after notice by the Commission to Respondents of the identity of any proposed Seller Note Trustee, Respondents shall be deemed to have consented to the selection of the proposed Seller Note Trustee.

Not later than 10 days after the appointment of a Seller Note Trustee, Respondents shall transfer their rights, title, and interest in the Seller Note to the Seller Note Trustee in a manner consistent with the requirements of this Section VIII and execute a trust agreement that, subject to the prior approval of the Assistant Director of Compliance, transfers to the Seller Note Trustee all rights and powers necessary to permit the Seller Note Trustee to effect the sale of the Seller Note required by the Orders. Any failure by Respondents to comply with a trust agreement approved by the Assistant Director of Compliance shall be a violation of the Orders.

1. The Seller Note Trustee shall have the exclusive power and authority to sell the Seller Note as required by the Orders;
2. The Seller Note Trustee shall have 6 months from the date the Assistant Director of Compliance approves the trustee agreement described herein to accomplish the sale of the Seller Note, which shall be subject to the prior approval of the Commission. If, however, at the end of the 6-month period, the Seller Note

6. The Seller Note Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Director of the Bureau of Competition, or their designee, may set. The Seller Note Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Seller Note Trustee's duties and responsibilities. The Seller Note Trustee shall account for all monies derived from the sale of the Seller Note and all expenses incurred. After approval by the Commission of the account of the Seller Note Trustee, including fees for the Seller Note Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Seller Note Trustee's power shall be terminated. The compensation of the Seller Note Trustee shall be based in whole or in part on a commission arrangement contingent on the sale of the Seller Note that is required to be sold by the Orders; and
7. The Seller Note Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Seller Note Trustee's efforts to accomplish the sale of the Seller Note.

Respondents:

1. Shall indemnify the Seller Note Trustee and hold the Seller Note Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Seller Note Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from fraud, gross negligence or willful misconduct by the Seller Note Trustee; and
2. May require the Seller Note Trustee and each of the Seller Note Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Seller Note Trustee from providing any information to the Commission.

Constellation, if reasonably requested by the Seller Note Trustee:

1. Shall provide information maintained in the ordinary course of business relating to the Optimal Blue Business to the Seller Note Trustee and prospective purchasers of the Seller Note of the type customarily made available to potential debt financing sources in connection with the potential sale of similar debt instruments, including historical financial statements, budgets and projections, basic corporate information regarding the legal entities operating the Optimal

Blue Business (including legal names, jurisdictions of organization and beneficial ownership information), description of material operating agreements, descriptions of any other indebtedness (including payor and payee, principal amount, collateral and maturity date); and descriptions of any material (potential) liabilities (including with respect to litigation and/or tax matters) (“customary due diligence information”);

2. Shall reasonably cooperate with the Respondents’ development of customary due diligence information in a manner that is consistent with confidentiality obligations under Section V of this Order to Maintain Assets;
3. Shall reasonably cooperate with the Seller Note Trustee; and
4. Shall take no action to interfere with or impede the Seller Note Trustee’s accomplishment of the sale of the Seller Note.

The Assistant Director of Compliance may, among other things, require the Seller Note Trustee and each of the Seller Note Trustee’s consultants, accountants, attorneys, and other representatives and assistants to go on appropriate code related to Commission materials and information received in connection with the performance of the Seller Note Trustee’s duties.

If the Director of the Bureau of Competition, or their designee, determines that a Seller Note Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Seller Note Trustee in the same manner as provided in this Section VIII.

The Commission may on its own initiative or at the request of the Seller Note Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the sale of the Seller Note and other obligations or action required by the Orders.

#### IX. Respondents Prior Approval

IT IS FURTHER ORDERED

Respondents give notice to the Commission of the acquisition within 30 days after the Respondents first learn of the acquisition or proposed acquisition.

#### X. Respondents Prior Notice

IT IS FURTHER ORDERED that:

- A. Respondents shall not, without prior notice, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any PPE business,

Provided however prior notice to the Commission is not required for an acquisition by a third party in which Respondents have an existing non-controlling interest if the acquisition was made without Respondents' knowledge so long as Respondents give notice to the Commission of the acquisition within 30 days after the Respondents first learn of the acquisition or proposed acquisition.

- B. Until the second anniversary of the date the Commission issued the Decision and Order, Respondents shall provide the notice required in Paragraph X.A at least 15 days before acquiring any PPE business and thereafter Respondents shall provide such notice at least 30 days prior to acquiring any PPE business. The notice must identify the person from whom Respondents are acquiring the PPE, the PPE being acquired and describe the transaction,

Provided, however that nothing in this Section X will require the parties to delay the proposed transaction.

#### XI. Acquirer Prior Approval

IT IS FURTHER ORDERED that:

For a period of 3 years after the Divestiture Date, the Acquirer shall not sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the Divestiture Assets divested pursuant to Section II of the Decision and Order to any Person; and

For a period of 7 years after the term of Paragraph XI.A ends, Constellation or any other Acquirer shall not sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the assets divested pursuant to Section II of the Decision and Order to any Person who competes in the LOS or PPE markets,

Provided, however Constellation is not required to obtain prior approval of the Commission under this Section XI Commission Order 2019-258.2 ( Commission Order 2019-258.2 )



## XII. Compliance Reports

- A. Respondent ICE shall:
1. Notify Commission staff via email at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and
  2. Submit the complete Divestiture Agreements to the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) no later than 30 days after the Divestiture Date.
- B. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:
1. Respondent ICE shall file interim Compliance Reports 30 days after this Order to Maintain Assets is issued and every 60 days thereafter until the Commission issues the Decision and Order;
  2. Respondents shall file additional Compliance Reports as the Commission, or its staff may request;
  3. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Orders; and
  4. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent’s obligations under the Orders during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.
- C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file its compliance reports with the Secretary of the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and the Compliance Division at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XIII. Change in Respondent ICE

IT IS FURTHER ORDERED

XVI. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order becomes final if the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

April J. Tabor  
Secretary

SEAL:

ISSUED: