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FEDERAL TRADE COMMISSION

In re:)
INTERCONTINENTAL EXCHANGE)
and) Docket No. 9413
BLACK KNIGHT)
)

Prehearing Scheduling Conference
Via Teleconference
Tuesday, March 28, 2023
1:30 p.m.

BEFORE: THE HONORABLE D. MICHAEL CHAPPELL

Deborah Wehr, RPR, Reporter

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Intercontinental Exchange and Black Knight

3/28/2023

1 P R O C E E D I N G S

2 - - - - -

3 (Proceeding called to order, 1:30 p.m.)

4 THE COURT: This is the prehearing scheduling
5 conference in Docket Number 9413 in the matter of
6 Intercontinental Exchange, Inc., and Black Knight, Inc.

7 I'm Judge Chappell. This scheduling conference
8 is being conducted telephonically and is being
9 transcribed by a court reporter, who is on the line
10 with us. I have chosen to conduct this scheduling
11 conference telephonically. This choice will save time
12 and resources for a short scheduling conference which
13 is merely procedural and is not evidentiary.

14 Will the court reporter please state your name
15 for the record.

16 THE REPORTER: My name is Deborah Wehr.

17 THE COURT: Thank you. Welcome, Deborah.

18 I need everyone to mute your phones when you
19 are not speaking to prevent feedback and echoes. Also,
20 before you speak on the call, I need you to identify
21 yourself for the court reporter, just in case she
22 doesn't identify your voice.

23

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1 start with the government and complaint counsel.

2 MS. DENNIS: Good afternoon, Your Honor. My
3 name is Abby Dennis for complaint counsel, and on the
4 call with me, I have my colleague, Ashley Masters.

5 THE COURT: Thank you. And for respondent,
6 Intercontinental Exchange?

7 MR. EVERETT: Good afternoon, Your Honor. Clay
8 Everett from Morgan Lewis for Intercontinental
9 Exchange. And also on the line for Intercontinental
10 Exchange are my partners, Jack Dodds and Ryan Kantor.

11 THE COURT: All right. And for respondent,
12 Black Knight?

13 MR. MOSES: Good afternoon, Your Honor. This
14 is Jonathan Moses from Wachtell, Lipton, Rosen & Katz
15 for Black Knight. And with me on the call is my
16 partner, Adam Goodman.

17 THE COURT: Thank you. Also on the line with
18 me are my attorney advisors.

19 In addition, the press and the public have
20 access to this scheduling conference through a
21 toll-free telephone connection that allows them to
22 listen in. Therefore, you are cautioned not to reveal
23 any confidential information that should not be made
24 public.

25 Let's talk about the scheduling order. The

1 parties were provided a proposed scheduling order in
2 advance of this scheduling conference. They have
3 jointly proposed several changes to dates and to
4 additional provisions. Most of those provisions will
5 be incorporated.

6 I have a question regarding the parties'
7 proposed changes to the deadline for issuing document
8 requests, interrogatories and subpoenas, which appears
9 to be duplicated as falling on both May 2nd and
10 May 12th. That's May 2 and May 12. I don't need a
11 resolution on this now. Please e-mail my staff by the
12 end of the day providing your suggested language for
13 May 2 or May 12. I will issue a scheduling order
14 thereafter.

15 Is there a parallel federal action or do you
16 contemplate there being one?

17 MS. DENNIS: Good afternoon, Your Honor. This
18 is Abby Dennis for complaint counsel. There is
19 currently no parallel federal proceeding because
20 respondents cannot close the proposed merger at this
21 time. They cannot do so because certain conditions
22 have not been satisfied, including the vote of Black
23 Knight's shareholders regarding certain amendments to
24 the merger agreement concerning the proposed
25 divestiture of Black Knight's Empower business to

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1 Constellation. The shareholder vote cannot occur until
2 the Securities & Exchange Commission concludes its
3 review of the proposed proxy statement prospectus that
4 respondents filed with the FTC on March 15th.

5 Complaint counsel is moderating that process and will
6 be prepared to proceed in federal court if necessary.

7 I'll note that complaint counsel added a

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1 system, Empower, as well as certain ancillary products,
2 but not Optimal Blue, to Constellation. As detailed in
3 the complaint, we do not think this proposed remedy is
4 sufficient. But again, we are happy to engage with
5 respondents if they have any additional proposals for
6 us.

7 THE COURT: And for respondents, keep in mind
8 the public and press are monitoring this conference,
9 why did you think that proposal would remedy the
10 situation, to settle this matter? Can you let me know
11 that?

12 MR. EVERETT: Yes, Your Honor. And just to be
13 clear, so we do have, at this point, an agreement in
14 place to sell the Black Knight LOS product and various
15 other ancillary products to a third party,
16 Constellation Software. We do think that that's the
17 only real horizontal overlap between the parties that
18 is in any way relevant and believe that it remedies any
19 issues that legitimately can be raised about the
20 merger.

21 THE COURT: So if I heard the government's
22 attorney correctly, what is happening is pretty much
23 what you offered, right, that they said was

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1 insufficient. I will say that that agreement, we were
2 transparent about what the agreement would contain and
3 the process for actually selling the assets. The
4 agreement to sell to Constellation was finalized only
5 right before the Commission -- their complaint counsel

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1 fruitful, I'll be glad to do anything that I can to
2 assist.

3 As said, I will be getting the scheduling order
4 out shortly. I'll need to hear from you, the parties,
5 on these two dates that are conflicting. And with
6 that, I think that's all I have. Is there anything
7 further from the government?

8 MS. DENNIS: No, Your Honor. Thank you for
9 your time.

10 THE COURT: Anything further from respondent,
11 Intercontinental Exchange?

12 MR. EVERETT: No, Your Honor.

13 THE COURT: From respondent Black Knight?

14 MR. MOSES: No, Your Honor. Thank you very
15 much.

16 THE COURT: All right. Thank you all for your
17 time. And hearing nothing further, we are adjourned.
18 Thank you.

19 (Whereupon, the proceedings at 1:42 p.m., were
20 adjourned.)

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CERTIFICATE OF REPORTER

I, Deborah Wehr, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Deborah Wehr, RPR

Notary Public