

**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**

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENTS’ MOTION TO SET  
STATUS CONFERENCE**

Complaint Counsel submits that a status conference is unnecessary and, respectfully, Respondents’ motion should be denied. Respondents’ motion asserts that the schedule regarding the Federal Trade Commission’s motion for a preliminary injunction under Section 13(b) of the FTC Act “conflicts with the schedule in this matter in several material respects” and that the “two proceedings now completely overlap.” Neither assertion is true, and there are no scheduling conflicts for this Court to resolve. As Respondents note, Rule 3.21(f) calls for a status conference to “ensure the just and expeditious disposition of the proceeding and to avoid unnecessary cost.” *See* 16 C.F.R. § 3.21(f). Given the lack of conflicts for this Court to resolve, a status conference itself is an unnecessary cost to your Honor’s time.

*First*, the parties were working to resolve the few discrepancies between the two proceedings’ respective pre-hearing schedules when Respondents filed their motion. Complaint Counsel reached out to Respondents on Wednesday, May 24, 2023, to discuss conforming the pre-hearing schedules, and Respondents sent proposed changes to the Part 3 pre-hearing

schedule that same day. Respondents' changes were limited to (1) the deadlines for expert reports, (2) the schedule for motions *in limine*, and (3) the schedule for the parties' pre-hearing briefs. Only a little more than an hour after proposing these changes, Respondents filed their motion to set a status conference. Complaint Counsel has subsequently informed Respondents that Complaint Counsel is not opposed to Respondents' proposed changes. Complaint Counsel thus expects that, within the next few days, the parties will submit for this Court's approval a proposed amended scheduling order that addresses all the pre-hearing scheduling issues raised Respondents' motion.

*Second*, no conflict exists with the merits hearing in this matter, which is set to begin on July 12, and the evidentiary hearing in federal court on July 25-26. As Complaint Counsel has explained to Defendants, with respect to the Part 3 merits hearing, the parties should endeavor to complete as much live evidence as possible (and maybe even conclude the hearing) by July 19; to the extent that the hearing is not complete by the end of the day on July 19, the parties can request that this Court pause the proceedings until August 1. While Complaint Counsel cannot predict Respondents' presentation of evidence, the risk of carryover to August 1 does not create a conflict. The federal court hearing is over only two days, with a limit of eight hours per side, creating minimal disruption, even should the parties need additional time to complete the Part 3 hearing after July 19. For those reasons, Complaint Counsel intends to oppose any motion to the Commission by Respondents to move the Part 3 hearing date and/or stay the Part 3 proceedings.

Complaint Counsel is mindful of your Honor's time and busy schedule and, in light of the foregoing, does not see a need for a status conference. We thus respectfully request that this Court deny Respondents' motion.

Dated: May 25, 2023

By: /s/ Abby L. Dennis  
Abby L. Dennis  
Federal Trade Commission  
600 Pennsylvania Ave., NW

## CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
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:

Harry T. Robins  
Susan Zhu  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178  
(212) 309-6728  
harry.robins@morganlewis.com  
susan.zhu@morganlewis.com

Ryan Kantor  
J. Clayton Everett, Jr.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 739-5343  
ryan.kantor@morganlewis.com  
clay.everett@morganlewis.com

Kenneth Kliebard  
Morgan, Lewis & Bockius LLP  
110 North Wacker Drive, Suite 2800  
Chicago, IL 60606  
(312) 324-1774  
kenneth.kliebard@morganlewis.com

John C. Dodds  
Zachary M. Johns  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-5000  
john.dodds@morganlewis.com  
zachary.johns@morganlewis.com

Kalpana Srinivasan  
Michael Gervais  
Jess-Justin Cuevas  
Jennifer Haines  
Susman Godfrey LLP  
1900 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067-6029  
(310) 789-3100  
ksrinivasan@susmangodfrey.com  
mgervais@susmangodfrey.com

Shawn L. Raymond  
Alexander L. Kaplan  
Adam Carlis  
Abigail Noebels  
Alejandra C. Salinas  
Susman Godfrey LLP  
1000 Louisiana Street, Suite 5100  
Houston, TX 77002-5096

jcuevas@susmangodfrey.com  
jhaines@susmangodfrey.com

Danielle L. Rose  
Benjamin Sirota  
Kobre & Kim LLP  
800 Third Avenue  
New York, New York 10022  
(212) 488-1209  
danielle.rose@kobrekim.com  
benjamin.sirota@kobrekim.com

*Counsel for Intercontinental Exchange,  
Inc.*

Nelson O. Fitts  
Jonathan M. Moses  
Sarah K. Eddy  
Adam L. Goodman  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
(212) 403-1361  
NOFitts@WLRK.com  
JMMoses@WLRK.com  
SKEddy@WLRK.com  
ALGoodman@WLRK.com

*Counsel for Black Knight, Inc.*

Date: May 25, 2023

By: s/ Abby L. Dennis  
Abby L. Dennis

*Counsel Supporting the Complaint*