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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTERCONTINENTAL EXCHANGE, INC.

and

BLACK KNIGHT, INC.,

Defendants.

Case No. 3:23-CV-01710-AMO

PLAINTIFF FEDERAL TRADE COMMISSION'S REQUEST TO RESPOND TO DEFENDANTS' SUBMISSION

Following the status conference on June 22, 2023, the Court asked the Defendants, Intercontinental Exchange, Inc. ("ICE") and Black Knight, Inc. ("Black Knight"), "to submit additional briefing on the matter of the Court's authority to supersede and/or stay administrative proceedings." Dkt. 154. Defendants then filed their submission. Dkt. 161.

The Court has not yet invited briefing from Plaintiff Federal Trade Commission ("FTC") on this topic. If the Court is considering taking any action with respect to Defendants' submission, the FTC respectfully requests the opportunity to respond to Defendants' arguments. To our knowledge, no district court in a Section 13(b) merger case has ever issued an order staying the Commission's administrative proceeding, and such an extraordinary measure is not appropriate here. Defendants also misinterpret the Commission's rules of practice, which govern *Commission* proceedings and do not expand or restrict district courts' powers. In any event, as Defendants acknowledge, FTC staff now have asked the Commission for a postponement of the start of the evidentiary hearing in the administrative proceeding, and if granted, that postponement should alleviate the scheduling concerns the Court expressed at the status conference. The FTC also believes the July 12, 2023 status conference that Defendants request is unnecessary in light of the pre-hearing conference set for July 20, 2023 (Dkt. 118 at 3), and the parties' joint statement of July 14, 2023 in advance of that conference (Dkt. 157 at 2).

Should the Court welcome briefing by the FTC on this matter, we request a response date of Wednesday, June 28.

Dated: June 24, 2023

Respectfully submitted,

/s/ Abby L. Dennis

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