

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

December 21, 2022

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan:

I write to express concerns regarding potential consolidation in the mortgage market through the proposed \$13 billion purchase of Black Knight by Intercontinental Exchange (ICE). This deal requires careful scrutiny to ensure consumers, the mortgage market, and the U.S. housing system overall are not harmed by the consolidation of the two largest players in the mortgage technology market. In particular, I am concerned about the negative outcomes that may be passed on to consumers, such as higher prices, if such consolidation were to lead to decreased competition.

Today, ICE and Black Knight each play a dominant role in the technology market that powers America's mortgage originations (more than \$2 trillion per year), servicing (\$12 trillion in loans outstanding), consumer rate pricing, registry and consumer data repository, and consumer data and marketing activities. Combined, this merger would make ICE the largest mortgage services company in the housing ecosystem based on market capitalization. If this deal closed as proposed, the resulting conglomerate could exert significant market power over loan pricing for consumers, access to and sale of consumer data, and mortgage software pricing. Moreover, a combined ICE and Black Knight could harm small lenders that rely on vendors for their technology needs by significantly disincentivizing responsible innovation and inhibiting vendor competition given the dominant market share of ICE. This is not a theoretical concern. ICE, which owns New York Stock Exchange (NYSE) and more than a dozen other equity and options exchanges and clearing houses across the world, has shown a pattern of increasing the price it charges for data and connectivity. For example, since being acquired by ICE in 2013, data prices on NYSE increased over 1,000% in just over five years.<sup>1</sup>

As the FTC looks to examine the implications of the proposed ICE-Black Knight transaction, I would like to highlight six areas I believe require review by your agency, including corresponding questions for each:

1. *Mortgage Originations*: ICE's Encompass loan origination product has 50 percent market share while Black Knight's Empower product has approximately 10 to 15 percent market share. The combined entity would provide technology services relating to two-thirds of all mortgage originations in the U.S. As this market share has grown since 2008, the Mortgage Bankers Association reports that origination costs per loan have risen to a record-high of \$10,637 per loan. Given this trend, how will the proposed ICE-Black Knight merger affect origination costs and what assurances can be provided that lenders, especially small and mid-size companies, will not face onerous pricing increases or

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<sup>1</sup> See "An Analysis of Market Data Fees," SIFMA (August 2018), available at <https://www.sifma.org/wp-content/uploads/2019/01/Expand-and-SIFMA-An-Analysis-of-Market-Data-Fees-08-2018.pdf>.

prolonged service delays if the deal is approved? As we know, increased industry costs are often passed on to the consumer and can restrict equitable, affordable access to credit. Therefore, if approved, what effect would this merger have on the cost of borrowing for consumers and ultimately, their access to wealth-building opportunities through homeownership?

2. *Mortgage Servicing*: Black Knight's Mortgage Servicing Platform (MSP) mortgage servicing system has approximately 65 percent market share of the \$12 trillion U.S. servicing market. Black Knight has also been accused of engaging in anticompetitive practices. For example, in 2019, PennyMac, one of Black Knight's biggest clients, filed antitrust complaints against Black Knight, claiming that Black Knight's alleged history of anticompetitive tactics have made it harder to develop its business independent of Black Knight services. Given these allegations and Black Knight's significant servicing market share, how will Black Knight's MSP system interface with mortgage origination systems not owned by ICE? What claims may be made to servicer and consumer data?
3. *Mortgage Registry and Consumer Data Repository*: ICE currently owns the Mortgage Electronic Registry System (MERS), which is the leading database of consumer mortgage records in the United States. Given the aforementioned dominance in originations and servicing technology, will alternative "system of record" platforms containing consumer mortgage data be allowed to operate in the mortgage market without threat of being blocked from integrating with ICE-owned products? Will this stifle lender competition and access to consumer data? Will MERS be able to use its market dominance to cherry-pick consumers during the next refinance wave or otherwise provide more favorable pricing and terms to certain segments of the market?
4. *Consumer Mortgage Loan Pricing Engines*: Black Knight's Optimal Blue loan pricing engine was reported to have 35 percent market share when the company bought Optimal Blue in 2020. Given this market share, combined with ICE, will dominance of loan pricing and loan approval guideline data stifle lenders' ability to provide customers with the best possible loans and terms? Given their current market positions, would an ICE-Black Knight merger allow other pricing engines to integrate into its products?
5. *Consumer Loan Data and Marketing*: Loan origination and servicing systems contain data that are vital to the consumer engagement process. Both ICE and Black Knight currently own dominant systems in customer relationship management (CRM), marketing automation, consumer acquisition and lead management, and home search and valuation. Will the systems under the proposed ICE-Black Knight merger provide clients with ready access to data for loans that they originate and service? Will they create onerous processes or charge extra money for lenders and servicers to access consumer data (that the lenders or servicers already own) from these systems?
6. *Market Risks and Data Privacy*: It is also critical to consider the systemic risk of a single software firm powering more than 70% of America's mortgage originations and servicing. If it failed or was compromised, risk could cascade throughout the mortgage market. For example, millions of homeowners would not be able to make payments on trillions of dollars in mortgages, lenders could not process new loans, investors could not receive payments, and consumer rates would spike as bond markets sold off, leading to broad based economic risks. Will you consult with the Financial Stability Oversight Council (FSOC) in light of how this merger may contribute to systemic risk? Related, will you consult with the Board of Governors of the Federal Reserve System (Fed), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB) in light of their oversight of third-party service providers of

banks and non-bank financial institutions? Additionally, it is important to consider the possible risks of consolidation to consumer data privacy. Accordingly, will you also consult with the CFPB on consumer financial protection concerns, including with respect to consumer financial data privacy?

I appreciate your attention to this matter and consideration of the concerns outlined above. As families across the country face worsening barriers to housing access and affordability, I urge you to carefully consider the potential effects of further consolidations and decreased competition in the housing market through the major proposal by ICE to acquire Black Knight.

Sincerely,



Maxine Waters  
Chairwoman

House Committee on Financial Services

cc: The Honorable Patrick McHenry, Ranking Member  
The Honorable Janet Yellen, Secretary, U.S. Department of the Treasury, and  
Chairperson, Financial Stability Oversight Council (FSOC)  
The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau (CFPB)  
The Honorable Jerome Powell, Chair, Board of Governors of the Federal Reserve System  
The Honorable Martin Gruenberg, Acting Chairman, Federal Deposit Insurance Corporation (FDIC)  
The Honorable Todd Harper, Chairman, National Credit Union Administration (NCUA)  
The Honorable Sandra Thompson, Director, Federal Housing Finance Agency (FHFA)  
The Honorable Julia Gordon, Assistant Secretary for Housing and the Federal Housing (FHA)  
Commissioner, U.S. Department of Housing and Urban Development (HUD)  
The Honorable Alanna McCargo, President, Government National Mortgage Association (Ginnie Mae)  
The Honorable Gary Gensler, Chairman, U.S. Securities and Exchange Commission (SEC)  
Mr. Michael Hsu, Acting Comptroller, Office of the Comptroller of the Currency (OCC)  
The Honorable Jonathan Kanter, Assistant Attorney General for the Antitrust Division, Department of  
Justice (DOJ)