

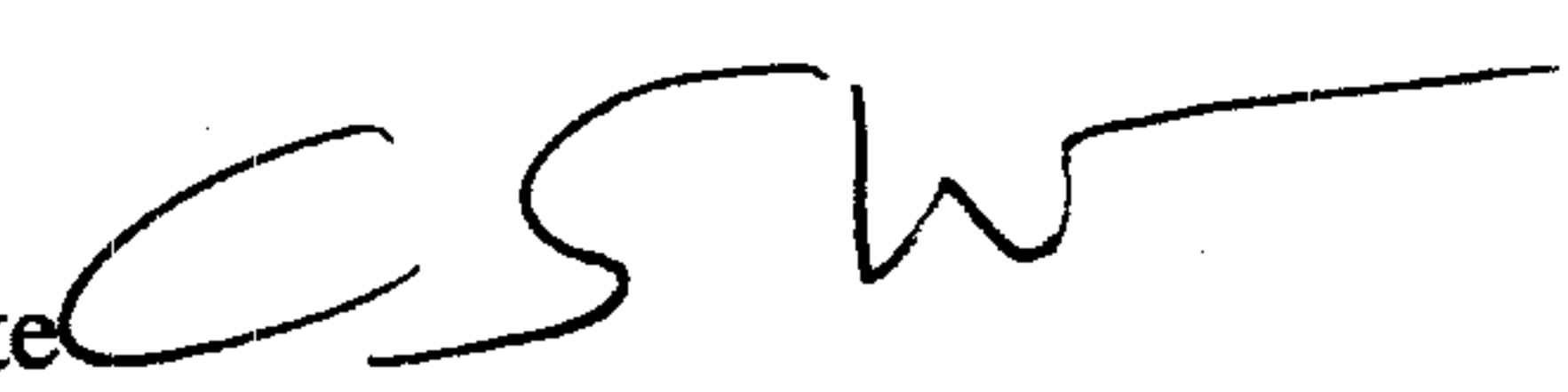


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

December 12, 2007

**MEMORANDUM**

**TO:** Deborah Platt Majoras  
Chairman

**FROM:** Christian S. White   
Designated Agency Ethics Official

**SUBJECT:** Your Participation in the Proposed Acquisition of Hellman & Friedman Capital Partners V, LP (DoubleClick Inc.) by Google, Inc., File No. 071-0170

This memorandum responds to your request for advice as to whether you may properly participate in the above referenced matter which involves Google, Inc.'s proposed acquisition of Click Holding Corp., which controls DoubleClick Inc. We learned yesterday that the law firm of Jones Day is representing Hellman & Friedman Capital Partners V, LP (DoubleClick) in the review of this transaction by the competition authorities of the European Commission ("EC"). Jones Day is not representing DoubleClick in the matter pending before the FTC.<sup>1</sup> However, because of Jones Day's involvement in this EC review, you thought it prudent to seek advice about appearance issues this might raise because your husband is currently affiliated with the Washington D.C. office of Jones Day. Your participation in this matter is authorized under Section 502(d) of the Standards of Conduct.

*Financial Interest*

As of January 1, 2006, your husband converted to a non-equity status and became a fixed participation partner in the firm. As a fixed participation partner, his compensation will not be increased or affected by changes in the firm's income. Further, all benefits received by Mr. Majoras from Jones Day will be the same as those earned by other similarly situated non-equity partners in the firm. As a non-equity partner, Mr. Majoras does not have a financial interest in the income of the firm and, hence, there is no financial interest attributable to you.<sup>2</sup> Therefore, any decisions that you

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<sup>1</sup>Kevin Arquit and Peter C. Thomas of the law firm of Simpson, Thatcher & Bartlett LLP represent DoubleClick in the FTC matter. The staff memo listing counsel participating in this matter does not list Jones Day. My inquiry indicates that no one from the FTC has had any contact with Jones Day regarding this matter.

<sup>2</sup>You would only have an imputed financial interest if the FTC's review of this transaction could affect Jones Day's ability or willingness to pay Mr. Majoras's compensation. This is clearly not a concern in this matter. Jones Day is a large law firm with more than 2,300 lawyers in 30 offices around the world. Because the firm has a large and diverse group of corporate clients, the

may make in this case would not directly and predictably affect your husband's income from Jones Day. Hence, you do not have a financial conflict in this matter.

### *Impartiality*

The Standards of Conduct require that an employee not participate in a particular matter involving specific parties when she knows the matter is likely to affect the financial interests of a member of her household, or when she knows that a person with whom she has a "covered relationship" is or represents a party, if she determines that a reasonable person with knowledge of the relevant facts would question her impartiality in the matter. 5 C.F.R. § 2635.502(a). Because your husband is employed by Jones Day you have a "covered relationship"<sup>3</sup> with the firm.

I do not think that reasonable people who consider the relevant facts would find a basis to doubt your ability to be completely impartial in a matter, solely because that matter involved lawyers from Jones Day. Your husband is not working on the matter, nor are any of his current clients parties to the matter. A challenge to your participation in this matter would have to be premised on the assumption that mere knowledge of Jones Day's involvement in other countries' review of the same transaction would affect your decision on the merits. This seems wholly unreasonable. The Standards of Conduct are premised on protecting the integrity of government decision making while also allowing government officials appropriately to carry out their duties.

Even assuming that your participation in this matter reasonably raised an appearance issue, the Standards of Conduct do not dictate your recusal. An employee may participate in such a matter, provided a designated agency ethics official authorizes the participation in accordance with the standards in Section 502(d). Participation may be authorized if, based on the relevant circumstances, the interest of the Government in the employee's participation outweighs the concern that a reasonable person might question the integrity of the agency's programs and operations. Factors to be considered include, *inter alia*, the nature of the relationship involved, the nature and importance of the employee's role in the matter, and the difficulty of reassigning the matter to another employee. Id. at 2635.502(d).

Based on my analysis of the factors specified in Section 502(d), I find that any concern about your participation in the Google-DoubleClick matter is outweighed by the agency's interest in your participation.

Your participation in merger matters is very important to the Commission. The transaction involved in this matter involves the distribution of display advertisements on the Internet, a business that Google documents indicate it is actively attempting to enter. The primary job of the FTC is to enforce competition and consumer protection laws to promote a free and vigorous marketplace. If you could not participate, the Commission would lose one of its Presidentially appointed decision makers. As you know, a Commissioner's decision making responsibilities may not be transferred to

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financial impact of any particular FTC proceeding on the firm will be very small.

<sup>3</sup> Under the Standards of Conduct, an employee has a "covered relationship" with her spouse's employer. 5 C.F.R. at § 2635.502(b)(1)(iii).

anyone else. Further, your recusal would deprive the Commission of the expertise and judgment that led to your becoming Chairman.

The ethics opinions I gave the Office of Government Ethics and the Senate Commerce Committee in connection with your confirmation indicated that the provisions of Section 502(d) would apply and be followed. Your participation in this matter is consistent with those opinions and your ethics commitment.

For the reasons described above, I conclude that your participation in Goggle/DoubleClick matter is authorized under the Standards of Conduct, 5 C.F.R. § 2635.502(d).