




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

July 17, 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 Commission's consideration of Google, Inc.'s proposed acquisition of Click Holding Corp., which controls DoubleClick Inc. You have sought advice because you have been told informally by a social acquaintance that the law firm of Jones Day is working on this matter. The firm is not representing one of the merging parties, but they may represent a third party complainant. Your husband, John Majoras, is currently affiliated with the Washington D.C. office of Jones Day. 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. All benefits your husband receives from Jones Day will be the same as those earned by other similarly situated non-equity partners in the firm. Therefore, your husband does not have a financial interest in the income of the firm and, hence, you do not have such an imputed interest.<sup>1</sup> However, because your husband is still employed by the firm, you have a "covered relationship"<sup>2</sup> with the firm and, hence, seek advice regarding your participation. For the reasons discussed below, I am authorizing you to participate in this matter in accordance with Section 502(d) of the Standards of Conduct.

**Applicable Law**

As you know, an executive branch official is prohibited by 18 U.S.C. § 208(a) from participating personally and substantially in any particular matter in which, to her knowledge, she has a financial interest, if the outcome of, or determinations made in, the particular matter will have a

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<sup>1</sup> You would only have an imputed financial interest if the pending matter could effect Jones Day's ability or willingness to pay Mr. Majoras's salary or benefits. However, this is clearly not a concern in this matter.

<sup>2</sup> Under the Standards of Conduct, an employee has a "covered relationship" with his spouse's employer. 5 C.F.R. at § 2635.502(b)(1)(iii).

“direct and predictable effect”<sup>3</sup> on that interest or the interest of someone whose financial interests are imputed to the employee. The “Standards of Ethical Conduct for Employees of the Executive Branch,” 5 C.F.R. § 2635, (“Standards of Conduct”) also 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).

## Discussion

### *Financial Interest*

As noted above, your husband is no longer an equity partner in the law firm of Jones Day. Therefore, any decisions that you may make in this case cannot be said to directly and predictably affect your husband’s interest in 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 with Jones Day. An employee nevertheless may participate in a matter in which she has such a conflict, despite impartiality concerns, provided the agency designee authorizes the participation in accordance with the standards in Section 502(d). An agency ethics official may authorize participation if, based on the relevant circumstances, the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations. Factors to be considered include:

- 1) the nature of the relationship involved;
- 2) the effect that resolving the matter would have on the financial interest of the person

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<sup>3</sup> A particular matter will have a **direct effect** on a financial interest if there is a **close causal link** between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. 5 C.F.R. § 2635.402(b)(1)(i). An effect may be direct even though it does not occur immediately. However, a particular matter will not have a direct effect on a financial interest if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of § 2635.402(a). *Id.* A particular matter will have a **predictable effect** if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial. 5 C.F.R. § 2635.402(b)(1)(ii).



- involved in the relationship;
- 3) the nature and importance of the employee's role in the matter;
  - 4) the sensitivity of the matter;
  - 5) the difficulty of reassigning the matter to another employee; and
  - 6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Id. at 2635.502(d).

I conclude that any concern about your participation in the Google/DoubleClick matter is outweighed by the agency's interest in your participation.

Jones Day is a large law firm with a multi-disciplinary practice. Even if the firm's client would be affected by events in this matter, Jones Day itself would not be so affected. As a large law firm with more than 2,200 lawyers in 30 offices around the world that has a large and diverse group of corporate clients, the financial impact of any one particular FTC proceeding on the firm will be very small. Further, there is no reason to believe that the fact of your husband's employment with the firm would necessarily influence your opinion in this matter. Your husband is not working on the matter. Moreover, to your knowledge, the firm is only peripherally involved. Further, your own affiliation with the firm was concluded well over one year ago and therefore, you no longer have a covered relationship with Jones Day based on your prior employment there.<sup>4</sup> Any contention that your decision could be affected by mere knowledge of Jones Day's representation of a potential third party to this matter seems spurious. The Standards of Conduct strike a balance between protecting the integrity of government decision making and enabling government officials to carry out the duties with which they are charged. As I understand it, you have no other connection to this matter that could raise any concerns. Therefore, I do not think that reasonable people who considered the relevant facts would find reason to doubt your ability to be completely impartial in a matter that happened to involve attorneys from Jones Day.

Like most potential Commission enforcement actions, the Google/DoubleClick matter is "sensitive." However, 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. Your recusal would deprive the Commission of your expertise and judgment. Therefore, the conflict does not outweigh the importance of your participation to the Government in this matter.

For the reasons described above, I conclude that your participation in Google/DoubleClick matter, FTC File No. 071-0170, is authorized under the Standards of Conduct, 5 C.F.R. § 2635.502(d).

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<sup>4</sup> Under the Standards of Conduct, an employee has a "covered relationship" with anyone with whom he has served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee within the past year. 5 C.F.R. at § 2635.502(b)(1)(iv). You have not served Jones Day in such capacity for more than 3 years.