




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.¹ However, because your husband is still employed by the firm, you have a "covered relationship"² 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

¹ 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.

² 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”³ 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

³ 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).