

Statement of Marc Rotenberg (EPIC) and Jeffrey Chester (CDD)
Regarding Response to Recusal Petition of FTC Chairman Deborah Platt Majoras
in Proposed Acquisition of Doubleclick

December 14, 2007

We reviewed the response of the Chairman and the other Members of the Commission regarding the motion that we filed earlier this week regarding the recusal of the Chairman from the Doubleclick matter. We understand their arguments and respect their position, but we do not believe that the Chairman has made a persuasive case against recusal. In fact, her comments on this matter, combined with developments subsequent to the filing of our original petition with the Secretary of the Commission, have strengthened the case for recusal.

First, the Chairman states that “Jones Day does not represent Doubleclick before the FTC. . . .” As we made clear in our original filing and attached as Appendix 1, Jones Day said they are representing Doubleclick in the merger review at the FTC. Moreover, once we called attention to the Jones Day statement on this matter, the firm promptly removed the relevant page from their web site. Even now, a quick search for the term “Doubleclick” at the Jones Day website produces “no matches found.”

The logical conclusion is that Jones Day represents Doubleclick in this matter, became aware of the conflict of interest once it was brought to their attention, and sought to destroy the relevant evidence. Jones Day’s admission makes clear the case for recusal and it is nowhere addressed in the Chairman’s statement.

Second, the Chairman states because of her spouse’s change to “fixed participation” partner status, the conflict of interest is vitiated. This argument would be more persuasive if Mr. Majoras worked in the firm in an unrelated field or did not have the specific responsibility for business development. But in fact, Mr. Majoras is both an antitrust expert for the firm – the central question now before the Commission in the DoubleClick review – and his key responsibility for his firm is business development in Washington D.C. The Chairman’s statement indicates that this latter factor alone would not be sufficient to establish a conflict of interest, but that factor combined with the others cited in our petition clearly does.

Third, the FTC Chairman’s statement indicates that, for reasons similar to those raised in our motion, she established a procedure “to actively monitor . . . whether Jones Day is involved in FTC matters.” According to her statement, this procedure has been in place since January 1, 2006. However, regarding the conflict of interest in the Google-Doubleclick, she states she only become aware of Jones Day representation on “the afternoon of Tuesday, December 11, 2007.” Yet, as we made clear in our second letter to

the FTC Secretary, the Jones Day representation of DoubleClick began at least as early as November 9, 2007.

It is evident that whatever procedures were in place to alert the Chairman as to potential conflicts of interest in matters involving the representation of clients by Jones Day at the Federal Trade Commission failed utterly in the case of Doubleclick. That further strengthens the case for recusal and indicates a clear need to review and strengthen the Commission's conflict of interest procedures.

Fourth, with regard to her analysis of the federal Standards of Conduct, the Chairman simply sets out the conclusion that the interests in her participation in this matter outweigh the potential conflict without providing any of the relevant factors that support that conclusion other than that she is the Chairman of the Commission. The EPIC / CDD petition made clear the basis for recusal, considering each of the relevant factors, under the appropriate legal standard, as required by the Commission's rules. The Chairman's response fails to rebut the case we have made and therefore recusal is required as per the FTC rule. 16 C.F.R. 4.17 (2007).

Finally, the Chairman indicated that she had asked the FTC Ethics Official to prepare a conflict of interest analysis regarding this matter. The report should be placed on the FTC web site as soon as practicable.