Plaintiff Federal Trade Commission
Closing Statement

Federal Trade Commission v. IQVIA Holdings Inc. and Propel Media, Inc.

Case No. 1:23-cv-06188-ER

December 8, 2023

Message

From: Escalante, Dave [Dave.Escalante@iqvia.com]
Sent: 3/11/2022 9:29:03 AM
To: Margolis, Jay [Jay.Margolis@iqvia.com]
CC: Lin, Frank [frank.lin@iqvia.com]
Subject: London & Doe Messaging, Draft

Hi Jay –

Here is where Frank and I landed on the side-by-side messaging. Since the thinking w/ Jon is potentially "both", we identified the positives by category.

LMK if you have any questions or suggestions?

Thanks,

Dave

Category	DOE	LONDON
Market Penetration	• Doe is #1 and PP #2 • Doe has momentum direct w/ Pharma Brand • Doe is already co-presenting w/ IQV DE GTM Team	• London is #3 position
Data Everywhere & Publisher Strategy	• Doe is actively working with IQV to replace 3rd Party for Advanced • Doe supports Data Everywhere strategy; however, will need investment for expanded Data Distribution play	• London active to adopt IQV Advanced Data • London platform is in better position today to: • satisfy Data Distribution strategy • satisfy Publisher strategy
Channel Coverage	• Doe is in better position for HCP / DTC programmatic	• London is better position on Email, Social, and AIM
DTC & CTV Maturity	• Doe strategy is mature and has momentum (reflected in their MC revenue ramp) • Doe doesn't see PP / Lasso as competition … sees bigger opportunity vs. Crossix and The Trade Desk	• London's strategy and overall view of the opportunity is behind
Measurement & Optimization	• Doe's linear capabilities today, overall path to integrate, and future ability to innovate (w IQV MM Team) is much better	• London has better multi-channel measurement capabilities today
Owner/Founder Risk	confidential	
Overall Risk (Integration, Innovation)		

Dave Escalante
VP & GM
Digital Enablement, Information Solutions

IQVIA

Confidential Treatment Requested

IQVIA-FTC-000094283
PX1296-001

From: Escalante, Dave [Dave.Escalante@iqvia.com]
Sent: 3/11/2022 9:29:03 AM
To: Margolis, Jay [Jay.Margolis@iqvia.com]
CC: Lin, Frank [frank.lin@iqvia.com]
Subject: London & Doe Messaging, Draft

Hi Jay –

Here is where Frank and I landed on the side-by-side messaging. Since the thinking w/ Jon is potentially "both", we identified the positives by category.

LMK if you have any questions or suggestions?

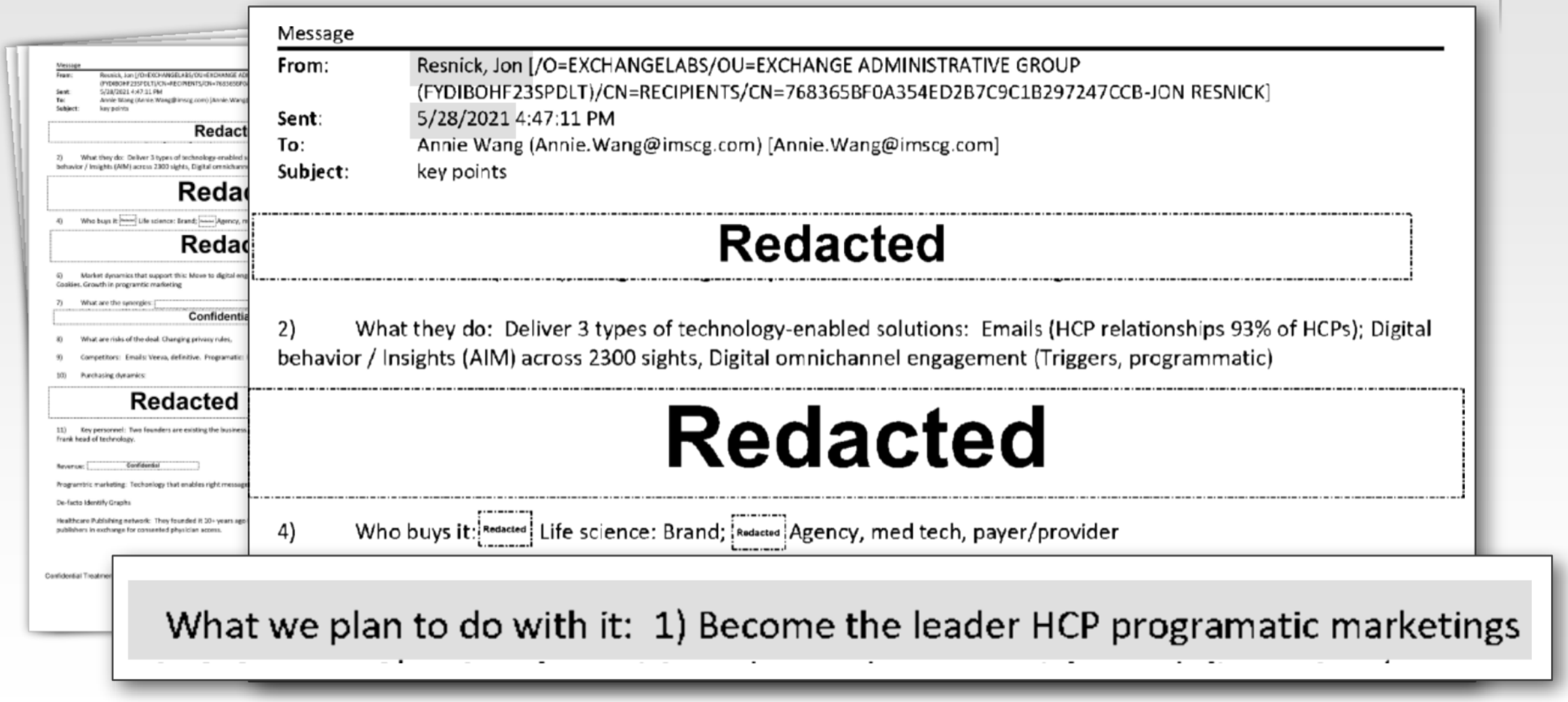
Thanks,

- Doe is #1 and PP #2
- Doe has momentum direct w/ Pharma Brand
- Doe is already co-presenting w/ IQV DE GTM Team

- London is #3 position

Data Everywhere & Publisher Strategy	Party for Advanced • Doe supports Data Everywhere strategy; however, will need investment for expanded Data Distribution play	• London platform is in better position today to: • satisfy Data Distribution strategy • satisfy Publisher strategy
Channel Coverage	• Doe is in better position for HCP / DTC programmatic	• London is better position on Email, Social, and AIM
DTC & CTV Maturity	• Doe strategy is mature and has momentum (reflected in their MC revenue ramp) • Doe doesn't see PP / Lasso as competition … sees bigger opportunity vs. Crossix and The Trade Desk	• London's strategy and overall view of the opportunity is behind
Measurement & Optimization	• Doe's linear capabilities today, overall path to integrate, and future ability to innovate (w IQV MM Team) is much better	• London has better multi-channel measurement capabilities today
Owner/Founder Risk	confidential	
Overall Risk (Integration, Innovation)		

PX1296



Message

From: Resnick, Jon [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=768365BF0A354ED2B7C9C1B297247CCB-JON RESNICK]

Sent: 5/28/2021 4:47:11 PM

To: Annie Wang (Annie.Wang@imscg.com) [Annie.Wang@imscg.com]

Subject: key points

Redacted

2) What they do: Deliver 3 types of technology-enabled solutions: Emails (HCP relationships 93% of HCPs); Digital behavior / Insights (AIM) across 2300 sights, Digital omnichannel engagement (Triggers, programmatic)

Redacted

4) Who buys it: Redacted Life science: Brand; Redacted Agency, med tech, payer/provider

What we plan to do with it: 1) Become the leader HCP programatic marketings

PX1596

Party Documents: The Big 3

On Oct 14, 2022, at 12:11 PM, Ross Sandler <ross.sandler@deepintent.com> wrote:

Hey Mac,

Thanks for the detailed update. Glad to hear that TI is out. Based on what I'm reading below, sounds like it's still a 3 horse race between us, PP and Lasso.

Will connect with Slubs re: gift cards.

For DPE, we should connect him with John M f
already. Also, I know he mentioned TTD and L

Thanks,

Ross

From: Colarossi, Michael <michael.colarossi@iqvia.com>
Sent: Tuesday, June 6, 2023 10:25 PM
To: O'Brien, Clare <clare.obrien@iqvia.com>
Subject: My suggested agenda for Thursday's weekly

Clare – "The people have spoken

Based on the feedback from the sellers, they would like to use this week's sales call to talk a lot more (and learn more) about our data story and what is/isn't unique about it (as opposed to say...our platform story). With the Big 3 (e.g. IQVIA O.S. , PulsePoint and Deep Intent) all offering the same "3 in 1" story, the feeling is we should be talking about what makes our data unique vs. the competition .
Thoughts?

PX2570

PX1625

DeepIntent CEO's Definition of Programmatic Advertising

Chris Paquette
DeepIntent

Q. And programmatic advertising is an automated way of placing ads across many different publishers instead of going publisher by publisher to buy those ads; right?
A. Yes.
Q. And programmatic advertising, in this way, offers an advantage over direct buys because it is not feasible to contract with hundreds of thousands of websites individually; right?
A. Yes. There is a long tail of inventory that is typically available. This consolidates that into one place to buy it.
Q. One of the purposes of HCP programmatic advertising is to reach health care providers wherever they are on the internet across multiple media properties, right?
A. Yes.

Paquette (DeepIntent), Hr'g Tr., Day 4, p. 603.

1. HCP programmatic advertising is a distinct market with specific characteristics, serving specific needs.

2. There are three primary competitors for HCP programmatic advertising.

3. IQVIA's data is far and away the top choice for HCP programmatic advertising.

4. There has been increasing consolidation in the HCP programmatic advertising industry.

Roadmap

1. Introduction
2. Addressing The Court's Questions
3. Market Definition and Presumption of Harm
4. Defendants' Burden on Entry
5. Vertical Competitive Harm
6. Legal Standard
7. Conclusion

What is the legal standard to be applied?

A: Fair and Tenable *(Lancaster Colony; Sun & Sand Imports (aff'd))*

"We do not believe that there is any significant difference between the 'serious question' standard and the 'fair and tenable chance' standard."

United States v. Sun & Sand Imports, Ltd., 725 F.2d 184, 188 n.5 (2d Cir. 1984)

FTC Is Entitled to Preliminary Injunction Unless It Has No Fair and Tenable Chance on Any Alleged Basis for Harm

1 Loss of Head-to-Head Competition

- Overwhelming evidence of head-to-head competition between Lasso and DeepIntent in terms of both pricing and innovation.

2 Presumptively Illegal Increase in Market Concentration

- Market concentration figures are well past the 30% thresholds outlined by the Supreme Court and the Horizontal Merger Guidelines.
- Current market concentration is solidified by high barriers to entry and expansion.

3 Illegal Vertical Merger

- IQVIA's dominance in HCP data and post-acquisition market leadership in HCP programmatic advertising creates a likelihood it may act as a "clog on competition"—the "primary vice" of a vertical merger. *Brown Shoe Co. v. United States*, 370 U.S. 294, 333-34 (1962) (citations omitted).
- Post-acquisition, IQVIA will have the ability and enhanced incentive to harm competition.

The Court's Questions

How should ordinary course documents be analyzed?

A: Courts typically place <u>significant weight</u> on ordinary course documents (*H&R Block*; *Peabody*)

"When determining the relevant product market, courts often pay close attention to the defendants' ordinary course of business documents."

United States v. H & R Block, Inc., 833 F.Supp. 2d 36, 52 (D.D.C. 2011)

FTC v. Peabody Energy Corp.

FEDERAL TRADE COM'N v. PEABODY ENERGY CORPORATION 865
Cite as 492 F.Supp.3d 865 (E.D.Mo. 2020)

Corning-Wilson Interference. The Court also finds that Plaintiff has failed to allege sufficient facts to state plausible claims for a declaration of claim preclusion and preclusion under the *Kessler* doctrine. At this stage in the litigation, the Court finds that Plaintiff has alleged sufficient facts to state a plausible claim for inequitable conduct for submittal of the Vera Declaration. The Court also finds that Plaintiff has alleged sufficient facts to state a plausible claim for tortious interference. The Court further finds that Defendant Wilson is properly a defendant at this time. Finally, the Court finds that a stay of Defendants' deadline to answer the Complaint pending the disposition of Defendants' motion to dismiss is appropriate.

ORDER

Based upon the foregoing, and the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (Doc. No. [20]) is **GRANTED IN PART** and **DENIED IN PART** consistent with the memorandum above as follows:

1. The Court **GRANTS** Defendants' Motion to Dismiss regarding Plaintiff's claims for inequitable conduct for misrepresentation of data, failure to disclose adverse data, and failure to disclose the Corning-Wilson Interference.

2. The Court **DENIES** Defendants' Motion to Dismiss regarding Plaintiff's claims for inequitable conduct for submittal of the Vera Declaration.

3. The Court **GRANTS** Defendants' Motion to Dismiss regarding Plaintiff's claims for a declaration of claim preclusion and preclusion under the *Kessler* doctrine.

4. The Court **DENIES** Defendants' Motion to Dismiss regarding Plaintiff's claim for tortious interference.

5. The Court **DENIES** Defendants' Motion to Dismiss regarding all claims against Defendant Wilson.

6. The Court **GRANTS** Defendants' Motion to Stay the Deadline for Answering the Complaint. Defendants have until 14 days after this Order to answer the Complaint.

FEDERAL TRADE COMMISSION, Plaintiff,

v.

PEABODY ENERGY CORPORATION and Arch Resources, Inc., Defendants.

Case No. 4:20-cv-00317-SEP

United States District Court, E.D. Missouri, Eastern Division.

Signed 09/29/2020

Filed 10/05/2020

Background: Federal Trade Commission (FTC) brought action against coal producers that sought to form joint venture, seeking injunction under Federal Trade Commission Act (FTCA) to prevent joint venture from moving forward until FTC could conduct an administrative hearing to determine whether joint venture would violate Section 7 of the Clayton Act.

Holdings: The District Court, Sarah E. Pitlyk, J., held that:

(1) relevant product market was the market for coal from the specific geographical region in which proposed venture's coal was mined;

"The Court recognizes the risk of relying on such testimony, particularly when it comes from Defendants' employees."

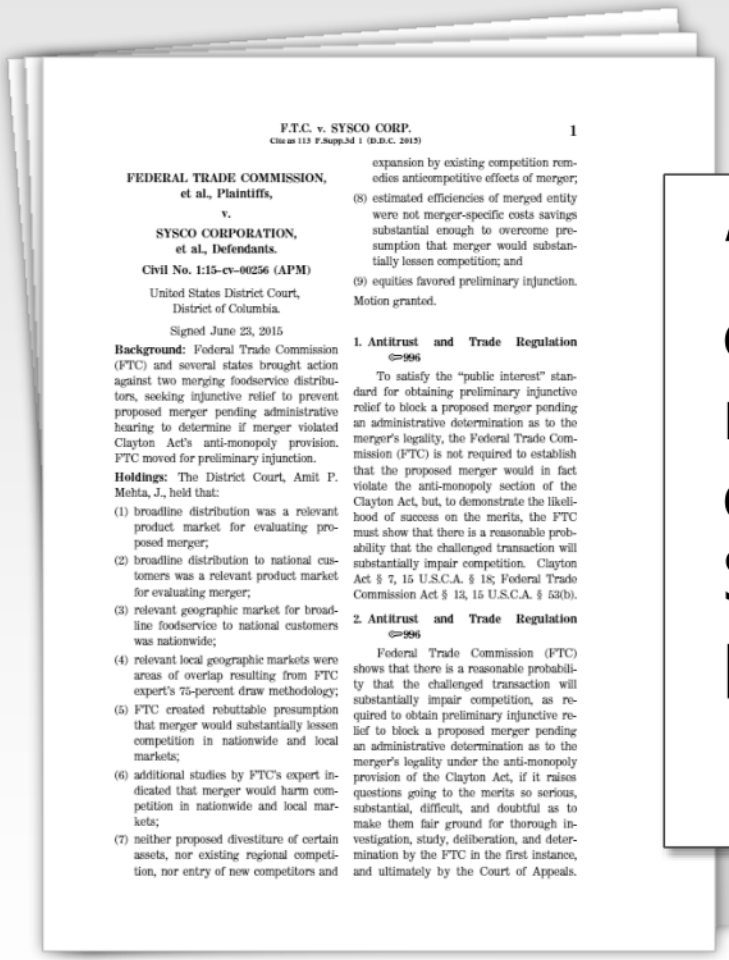
FTC v. Peabody Energy Corp., 492 F. Supp. 3d 865, 894 (E.D. Mo. 2020)

The Court's Questions

What does the caselaw say about having a "cafeteria" of different choices?

Key Question: what do customers view and treat as close substitutes?

FTC v. Sysco Corp.



F.T.C. v. SYSCO CORP. 1
Cite as 113 F.Supp.3d 1 (D.D.C. 2015)

FEDERAL TRADE COMMISSION, et al., Plaintiffs,
v.
SYSCO CORPORATION, et al., Defendants.

Civil No. 1:15-cv-00256 (APM)

United States District Court, District of Columbia.

Signed June 23, 2015

Background: Federal Trade Commission (FTC) and several states brought action against two merging foodservice distributors, seeking injunctive relief to prevent proposed merger pending administrative hearing to determine if merger violated Clayton Act's anti-monopoly provision. FTC moved for preliminary injunction.

Holdings: The District Court, Amit P. Mehta, J., held that:

(1) broadline distribution was a relevant product market for evaluating proposed merger;
(2) broadline distribution to national customers was a relevant product market for evaluating merger;
(3) relevant geographic market for broadline foodservice to national customers was nationwide;
(4) relevant local geographic markets were areas of overlap resulting from FTC expert's 75-percent draw methodology;
(5) FTC created rebuttable presumption that merger would substantially lessen competition in nationwide and local markets;
(6) additional studies by FTC's expert indicated that merger would harm competition in nationwide and local markets;
(7) neither proposed divestiture of certain assets, nor existing regional competition, nor entry of new competitors and expansion by existing competition remedies anticompetitive effects of merger;
(8) estimated efficiencies of merged entity were not merger-specific costs savings substantial enough to overcome presumption that merger would substantially lessen competition; and
(9) equities favored preliminary injunction.

Motion granted.

1. Antitrust and Trade Regulation ⚖996

To satisfy the "public interest" standard for obtaining preliminary injunctive relief to block a proposed merger pending an administrative determination as to the merger's legality, the Federal Trade Commission (FTC) is not required to establish that the proposed merger would in fact violate the anti-monopoly section of the Clayton Act, but, to demonstrate the likelihood of success on the merits, the FTC must show that there is a reasonable probability that the challenged transaction will substantially impair competition. Clayton Act § 7, 15 U.S.C.A. § 18; Federal Trade Commission Act § 13, 15 U.S.C.A. § 53(b).

2. Antitrust and Trade Regulation ⚖996

Federal Trade Commission (FTC) shows that there is a reasonable probability that the challenged transaction will substantially impair competition, as required to obtain preliminary injunctive relief to block a proposed merger pending an administrative determination as to the merger's legality under the anti-monopoly provision of the Clayton Act, if it raises questions going to the merits so serious, substantial, difficult, and doubtful as to make them fair ground for thorough investigation, study, deliberation, and determination by the FTC in the first instance, and ultimately by the Court of Appeals.

"It would be improper to group complementary goods into the same relevant market just because they occasionally substitute for one another. Substitution must be effective to hold the primary good to a price near its costs[.]"

FTC v. Sysco Corp., 113 F. Supp. 3d 1, 31 (D.D.C. 2015)

Roadmap

1. Introduction
2. Addressing The Court's Questions
3. Market Definition and Presumption of Harm
4. Defendants' Burden on Entry
5. Vertical Competitive Harm
6. Legal Standard
7. Conclusion

Defining the Relevant Market

Two Widely Accepted Methods:

***Brown Shoe* Practical Indicia:**

- the product's peculiar characteristics and uses
- distinct customers
- distinct prices
- the existence of classes of customers who desire particular products
- industry or public recognition of the market
- Defendants' documents' portrayal of market realities

- *Brown Shoe*, 370 U.S. 294, 325 (1962)

Hypothetical Monopolist Test

- "The test requires that a hypothetical profit-maximizing firm . . . that was the only present and future seller of those products ("hypothetical monopolist") likely would impose at least a small but significant and non-transitory increase in price ("SSNIP") on at least one product in the market, including at least one product sold by one of the merging firms."
- "Groups of products may satisfy the hypothetical monopolist test without including the full range of substitutes from which customers choose. The hypothetical monopolist test may identify a group of products as a relevant market even if customers would substitute significantly to products outside that group in response to a price increase."

- *Horizontal Merger Guidelines § 4.1.1*

See FTC v. Shkreli, 581 F. Supp. 3d 579, 626-27 (S.D.N.Y. 2022)

The Customer = The Advertiser

The Hypothetical Monopolist Test

Test:

Whether an owner of the entire relevant market (every HCP programmatic advertising competitor) could profitably raise the price of a single platform (e.g. DeepIntent's) by 5%?

Multiple formulations of the HMT confirm that HCP programmatic advertising constitutes a relevant antitrust market

Critical loss analysis of a SSNIP on DeepIntent

- Based on actual customer choice data.
- Diversion inside candidate market more than 3x critical loss threshold.
- HMT satisfied even under Dr. Israel's own inputs.

Merger simulation: price increases by hypothetical monopolist

- Hypothetical Monopolist of DeepIntent, Lasso, and PulsePoint would raise merging party prices by more than 43%, well above 5% SSNIP.
- Robust to social media, other claimed constraints – Hypothetical Monopolist of all HCP programmatic advertising raises prices by 57%.

Source: PX6504-88 (Hatzitaskos Reply Report, Exhibit R-12, ¶ 252); PX6504-90 (Exhibit R-13); PX6500-120 (Hatzitaskos Initial Report, Exhibit 12)

Entry: 2010 Horizontal Merger Guidelines

9. Entry

The analysis of competitive effects in Sections 6 and 7 focuses on current participants in the relevant market. That analysis may also include some forms of entry. Firms that would rapidly and easily enter the market in response to a SSNIP are market participants and may be assigned market shares. See Sections 5.1 and 5.2. Firms that have, prior to the merger, committed to entering the market also will normally be treated as market participants. See Section 5.1. This section concerns entry or adjustments to pre-existing entry plans that are induced by the merger.

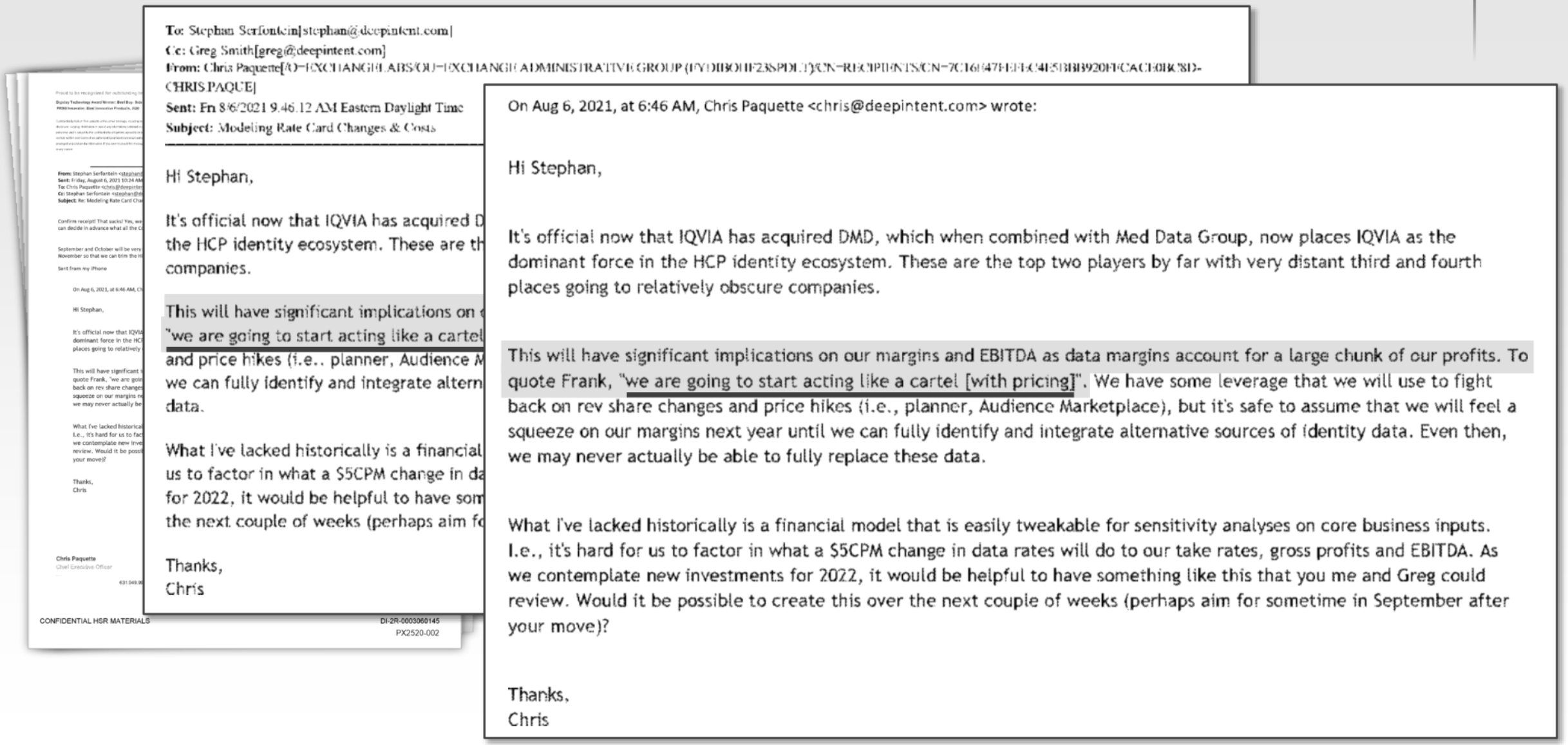
As part of their full assessment of competitive effects, the Agencies consider entry into the relevant market. The prospect of entry into the relevant market will alleviate concerns about adverse competitive effects only if such entry will deter or counteract any competitive effects of concern so the merger will not substantially harm customers.

A merger is not likely to enhance market power if entry into the market is so easy that the merged firm and its remaining rivals in the market, either unilaterally or collectively, could not profitably raise price or otherwise reduce competition compared to the level that would prevail in the absence of the merger. Entry is that easy if entry would be timely, likely, and sufficient in its magnitude, character, and scope to deter or counteract the competitive effects of concern.

The Agencies examine the timeliness, likelihood, and sufficiency of the entry efforts an entrant might practically employ. An entry effort is defined by the actions the firm must undertake to produce and sell in the market. Various elements of the entry effort will be considered. These elements can include: planning, design, and management; permitting, licensing, or other approvals; construction, debugging, and operation of production facilities; and promotion (including necessary introductory discounts), marketing, distribution, and satisfaction of customer testing and qualification requirements. Recent examples of entry, whether successful or unsuccessful, generally provide the starting point for identifying the elements of practical entry efforts. They also can be informative regarding the scale necessary for an entrant to be successful, the presence or absence of entry barriers, the factors that influence the timing of entry, the costs and risk associated with entry, and the sales opportunities realistically available to entrants.

Horizontal Merger Guidelines § 9

See also United States v. Visa USA, Inc., 163 F. Supp. 2d 322, 342 (S.D.N.Y. 2001)



To: Stephan Serfontein[stephan@deepintent.com]
Cc: Greg Smith[greg@deepintent.com]
From: Chris Paquette[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7C161647EEF6C4E51BBB920FFCACE01K8D-CHRIS.PAQUE]
Sent: Fri 8/6/2021 9:46:12 AM Eastern Daylight Time
Subject: Modeling Rate Card Changes & Costs

Hi Stephan,

It's official now that IQVIA has acquired D
the HCP identity ecosystem. These are th
companies.

This will have significant implications on
"we are going to start acting like a cartel
and price hikes (i.e.. planner, Audience M
we can fully identify and integrate altern
data.

What I've lacked historically is a financial
us to factor in what a $5CPM change in da
for 2022, it would be helpful to have som
the next couple of weeks (perhaps aim fo

Thanks,
Chris

On Aug 6, 2021, at 6:46 AM, Chris Paquette <chris@deepintent.com> wrote:

Hi Stephan,

It's official now that IQVIA has acquired DMD, which when combined with Med Data Group, now places IQVIA as the dominant force in the HCP identity ecosystem. These are the top two players by far with very distant third and fourth places going to relatively obscure companies.

This will have significant implications on our margins and EBITDA as data margins account for a large chunk of our profits. To quote Frank, "we are going to start acting like a cartel [with pricing]". We have some leverage that we will use to fight back on rev share changes and price hikes (i.e., planner, Audience Marketplace), but it's safe to assume that we will feel a squeeze on our margins next year until we can fully identify and integrate alternative sources of identity data. Even then, we may never actually be able to fully replace these data.

What I've lacked historically is a financial model that is easily tweakable for sensitivity analyses on core business inputs. I.e., it's hard for us to factor in what a $5CPM change in data rates will do to our take rates, gross profits and EBITDA. As we contemplate new investments for 2022, it would be helpful to have something like this that you me and Greg could review. Would it be possible to create this over the next couple of weeks (perhaps aim for sometime in September after your move)?

Thanks,
Chris

CONFIDENTIAL HSR MATERIALS
DI-2R-0003060145
PX2520-002

PX2575, PX2520

Brown Shoe Co. v. United States

1502 82 SUPREME COURT REPORTER 370 U.S. 606

606

and for their respect of the Bill of Rights —neither of which is as crucial to the performance of the duties of those who sit in Article I courts as it is to the duties of Article III judges.

In sum, Judges who do not perform Article III functions, who do not enjoy *constitutional* tenure and whose salaries are not *constitutionally* protected against diminution during their term of office cannot be Article III judges.

Judges who perform "judicial" functions on Article I courts do not adjudicate "cases" or "controversies" in the sense of Article III. They are not bound by the requirements of the Seventh Amendment concerning trial by jury.

Judges who sit on Article I courts are chosen for administrative or allied skills, not for their qualifications to sit in cases involving the vast interests of life, liberty, or property for whose protection the Bill of Rights and the other guarantees in the main body of the Constitution, including the ban on bills of attainder and *ex post facto* laws, were designed. Judges who might be confirmed for an Article I court might never pass muster for the onerous and life-or-death duties of Article III judges.

For these reasons I would reverse the judgments below.

tion of this Court to review a *habeas corpus* case that was *sub judice*, and then apparently draws a distinction between that case and United States v. Klein, 13 Wall. 128, 20 L.Ed. 519, where such withdrawal was not permitted in a property claim. There is a serious question whether the McCardle case could command a majority view today. Certainly the distinction between liberty and property (which emanates from this portion of my Brother HARLAN'S opinion) has no vitality even in terms of the Due Process Clause.

Second, Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693, 47 S.Ct. 284, 71 L.Ed. 478, is apparently overruled. Why this is done is not apparent. That case ruled on the question whether a ruling on a Patent Office determination was "judicial." Whether it was

370 U.S. 294

BROWN SHOE CO., Appellant,
v.
UNITED STATES.
No. 4.

Argued Dec. 6, 1961.
Decided June 25, 1962.

Government's civil antitrust action challenging, as violative of the Clayton Act, merger of two manufacturers and sellers of shoes. The United States District Court for the Eastern District of Missouri, 179 F.Supp. 721, rendered judgment for the Government, ordering the defendant shoe company to divest itself completely of all stock, assets and interests it held in the shoe company which merged with it. The defendant took a direct appeal. The Supreme Court, Mr. Chief Justice Warren, held that merger of defendant shoe manufacturer and seller which was third largest seller of shoes by dollar volume in United States with the eighth largest company by dollar volume among those primarily engaged in selling shoes, itself a large manufacturer of shoes, was one which might tend to lessen competition substantially in retail sale of men's, women's and children's shoes in overwhelming majority of those

or not is immaterial because, as already noted, Article I courts, like Article III courts, exercise "judicial" power. The only relevant question here is whether a court that need not follow Article III procedures is nonetheless an Article III court.

Third, it is implied that Congress could vest the lower federal courts with the power to render advisory opinions. The character of the District Court in the District of Columbia has been differentiated from the other District Courts by O'Donoghue v. United States, supra, in that the former is, in part, an agency of Congress to perform Article I powers. How Congress could transform regular Article III courts into Article I courts is a mystery. Certainly we should not decide such an important issue so casually and so unnecessarily.

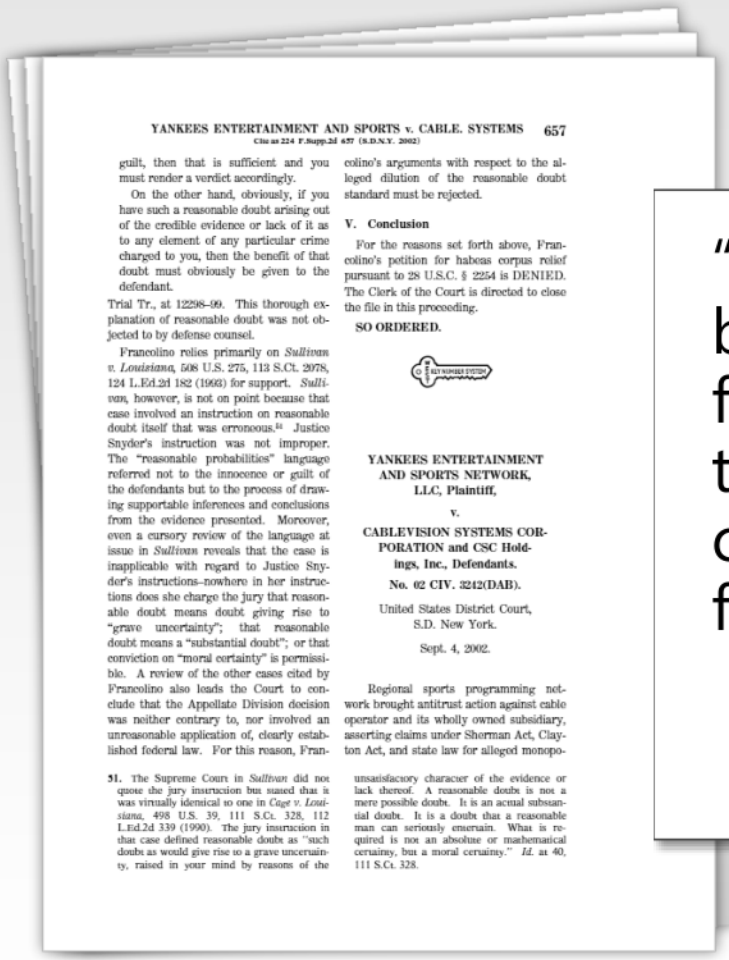
"A company's history of expansion through mergers presents a different economic picture than a history of expansion through unilateral growth. Internal expansion is more likely to be the result of increased investment in plants, more jobs and greater output. Conversely, expansion through merger is more likely to reduce available consumer choice while providing no increase in industry capacity, jobs or output. It was for these reasons, among others, Congress expressed its disapproval of successive acquisitions."

Brown Shoe Co. v. United States, 370 U.S. 294, 318-19 (1962)

Roadmap

1. Introduction
2. Addressing The Court's Questions
3. Market Definition and Presumption of Harm
4. Defendants' Burden on Entry
5. Vertical Competitive Harm
6. Legal Standard
7. Conclusion

Yankees Entm't & Sports Network, LLC v. Cablevision Sys. Corp.



YANKEES ENTERTAINMENT AND SPORTS v. CABLE. SYSTEMS 657
Cite as 224 F.Supp.2d 657 (S.D.N.Y. 2002)

guilt, then that is sufficient and you must render a verdict accordingly.

On the other hand, obviously, if you have such a reasonable doubt arising out of the credible evidence or lack of it as to any element of any particular crime charged to you, then the benefit of that doubt must obviously be given to the defendant.

Trial Tr., at 12298–99. This thorough explanation of reasonable doubt was not objected to by defense counsel.

Francolino relies primarily on *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993) for support. *Sullivan*, however, is not on point because that case involved an instruction on reasonable doubt itself that was erroneous.[51] Justice Snyder's instruction was not improper. The "reasonable probabilities" language referred not to the innocence or guilt of the defendants but to the process of drawing supportable inferences and conclusions from the evidence presented. Moreover, even a cursory review of the language at issue in *Sullivan* reveals that the case is inapplicable with regard to Justice Snyder's instructions–nowhere in her instructions does she charge the jury that reasonable doubt means doubt giving rise to "grave uncertainty"; that reasonable doubt means a "substantial doubt"; or that conviction on "moral certainty" is permissible. A review of the other cases cited by Francolino also leads the Court to conclude that the Appellate Division decision was neither contrary to, nor involved an unreasonable application of, clearly established federal law. For this reason, Francolino's arguments with respect to the alleged dilution of the reasonable doubt standard must be rejected.

V. Conclusion

For the reasons set forth above, Francolino's petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 is DENIED. The Clerk of the Court is directed to close the file in this proceeding.

SO ORDERED.

KEY NUMBER SYSTEM

YANKEES ENTERTAINMENT AND SPORTS NETWORK, LLC, Plaintiff,

v.

CABLEVISION SYSTEMS CORPORATION and CSC Holdings, Inc., Defendants.

No. 02 CIV. 3242(DAB).

United States District Court, S.D. New York.

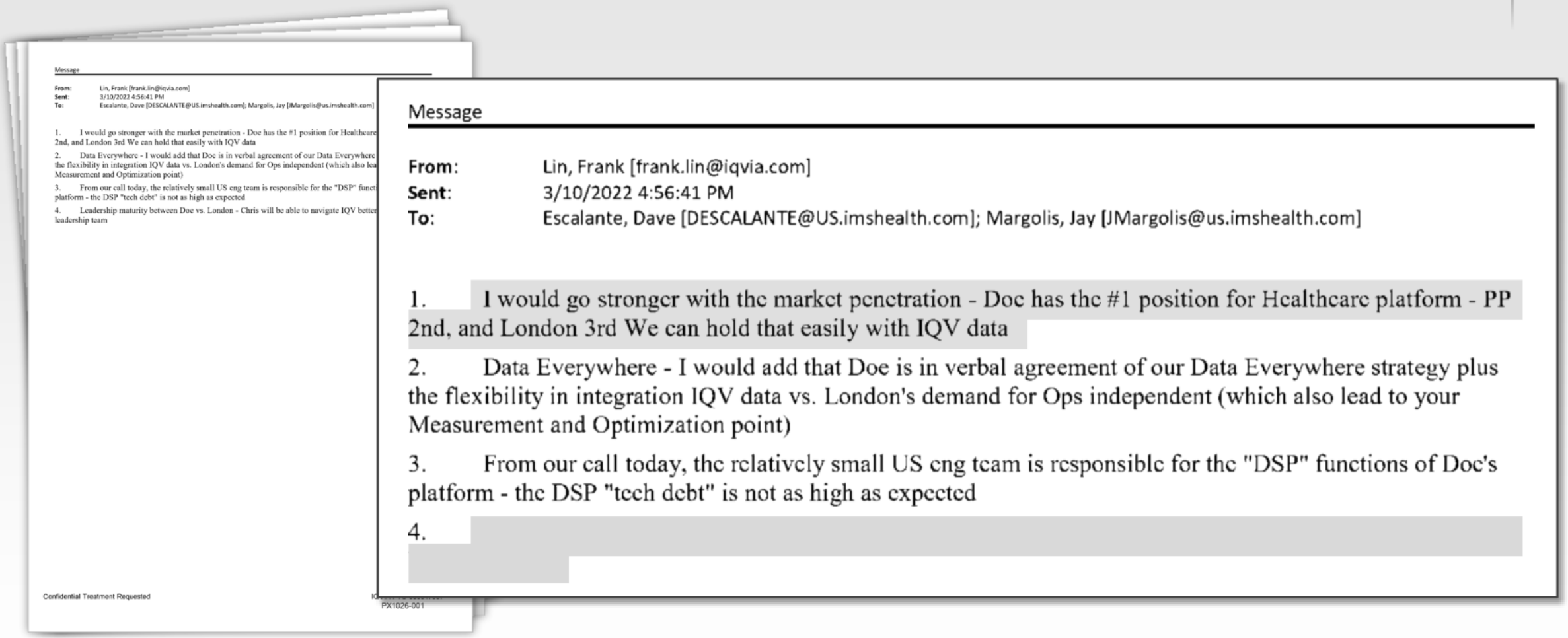
Sept. 4, 2002.

Regional sports programming network brought antitrust action against cable operator and its wholly owned subsidiary, asserting claims under Sherman Act, Clayton Act, and state law for alleged monopo-

51. The Supreme Court in *Sullivan* did not quote the jury instruction but stated that it was virtually identical to one in *Cage v. Louisiana*, 498 U.S. 39, 111 S.Ct. 328, 112 L.Ed.2d 339 (1990). The jury instruction in that case defined reasonable doubt as "such doubt as would give rise to a grave uncertainty, raised in your mind by reasons of the unsatisfactory character of the evidence or lack thereof. A reasonable doubt is not a mere possible doubt. It is an actual substantial doubt. It is a doubt that a reasonable man can seriously entertain. What is required is not an absolute or mathematical certainty, but a moral certainty." *Id.* at 40, 111 S.Ct. 328.

"The primary vice of a vertical merger . . .is that, by foreclosing the competitors of either party from a segment of the market otherwise open to them, the arrangement may act as a 'clog on competition, [which] 'deprive(s) . . . rivals of a fair opportunity to compete.'"

Yankees Entm't & Sports Network, LLC v. Cablevision Sys. Corp., 224 F. Supp. 2d 657, 673 (S.D.N.Y. 2002)



Message

From: Lin, Frank [frank.lin@iqvia.com]
Sent: 3/10/2022 4:56:41 PM
To: Escalante, Dave [DESCALANTE@US.imshealth.com]; Margolis, Jay [JMargolis@us.imshealth.com]

1. I would go stronger with the market penetration - Doc has the #1 position for Healthcare platform - PP 2nd, and London 3rd We can hold that easily with IQV data
2. Data Everywhere - I would add that Doe is in verbal agreement of our Data Everywhere strategy plus the flexibility in integration IQV data vs. London's demand for Ops independent (which also lead to your Measurement and Optimization point)
3. From our call today, the relatively small US eng team is responsible for the "DSP" functions of Doc's platform - the DSP "tech debt" is not as high as expected
4.

Message

From: Lin, Frank [frank.lin@iqvia.com]
Sent: 3/10/2022 4:56:41 PM
To: Escalante, Dave [DESCALANTE@US.imshealth.com]; Margolis, Jay [JMargolis@us.imshealth.com]

1. I would go stronger with the market penetration - Doc has the #1 position for Healthcare platform - PP 2nd, and London 3rd We can hold that easily with IQV data
2. Data Everywhere - I would add that Doe is in verbal agreement of our Data Everywhere strategy plus the flexibility in integration IQV data vs. London's demand for Ops independent (which also lead to your Measurement and Optimization point)
3. From our call today, the relatively small US eng team is responsible for the "DSP" functions of Doc's platform - the DSP "tech debt" is not as high as expected
4. Leadership maturity between Doe vs. London - Chris will be able to navigate IQV better leadership team

PX1026

Ability and Incentive

Ability to Deny/Delay TPAs

What should you consider when reviewing & approving TPAs…

Commercial Owner Considerations

OFFERING OWNER — **Evaluate TPA requests** to assess third party/use/offerings requested for approval (low-high risk)

When in doubt seek **Second line of support (Executive Level, IQVIA Legal, or Global TPA Team)**

Things to consider when reviewing a TPA

- ❑ Client contract obligation (examples: permitted to share at limited levels, in effect client license term only)
- ❑ Vendor is a direct competitor
- ❑ Vendor is a competitor to IQVIA, but not directly of your offering
- ❑ Atypical Use/Offering selection, the combination make sense
- ❑ Privacy considerations

As the Commercial Owner, you are responsible for knowing your offering space, and if it broadens, it is your responsibility to learn more and understand how and where your offering is being used in the industry.

If you do not know, we urge you to reach out to an IQVIA industry expert in that space to understand how your offering may be used in that space as input to a thoughtful review. If you do not know of an internal Subject Matter Expert (SME), please reach out to your leadership or contact the Commercial Analysis department with your questions regarding the vendor via marketinsightteam@iqvia.com email address.

IQVIA

PX1785-020

Incentive to Deny/Delay TPAs

From: Whiting, Robert [robert.whiting@iqvia.com]
Sent: 10/22/2021 11:40:22 AM
To: O'Brien, Clare [clare.obrien@iqvia.com]; Frank Lin [flin@dmdconnects.com]
Subject: RE: Selling against PP. Key messages- feedback please

Team,

On a call with Dave. The conversation with WebMD / Internet Brands landed where we thought it would with IQVIA and WebMD parting ways. Dave is emailing everyone in a little bit with this news and his direction on encouraging brands to move off of PP. In addition to everything on this email – I agree with all – a couple of other bullets come to mind.

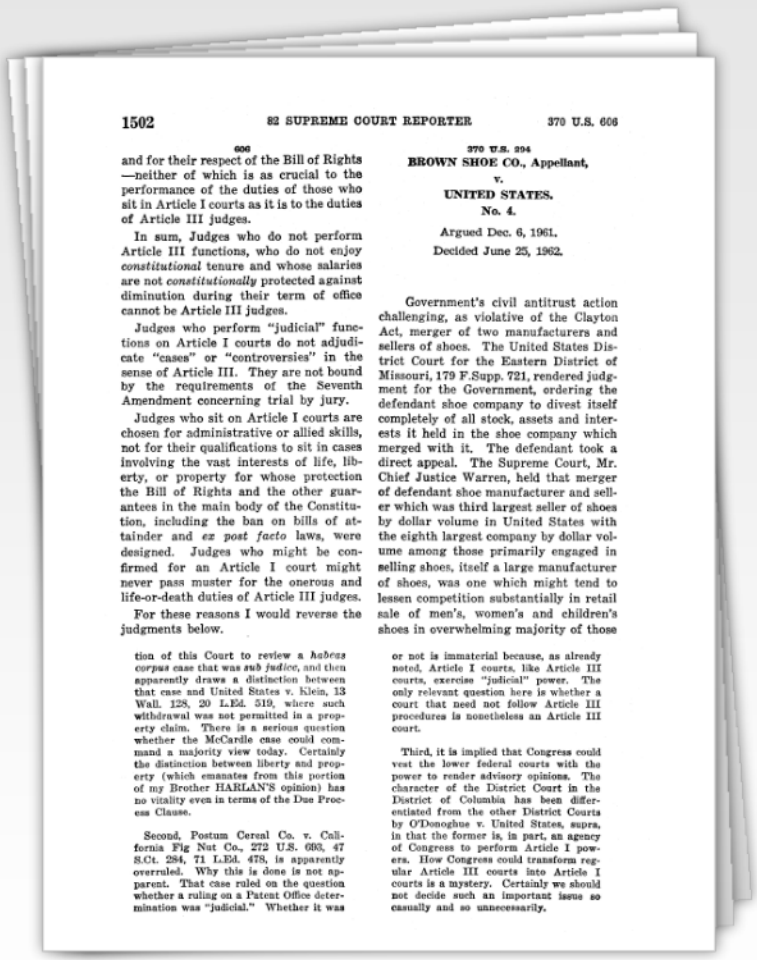
1. Frank – In addition to an overall Sales Deck (versions for brands, agencies, pubs and partners) I do think we need to have a November 'update' deck that just covers all of the major implications of what a unified IQVIA+DMD+MDG means to the marketplace. This could include sunsetting our support for working with Pulsepoint effective……date TBD.

PX1031

Roadmap

1. Introduction
2. Addressing The Court's Questions
3. Market Definition and Presumption of Harm
4. Defendants' Burden on Entry
5. Vertical Competitive Harm
6. Legal Standard
7. Conclusion

Returning to the Legal Standard: *Brown Shoe*



1502 82 SUPREME COURT REPORTER 370 U.S. 606

606

and for their respect of the Bill of Rights —neither of which is as crucial to the performance of the duties of those who sit in Article I courts as it is to the duties of Article III judges.

In sum, Judges who do not perform Article III functions, who do not enjoy *constitutional* tenure and whose salaries are not *constitutionally* protected against diminution during their term of office cannot be Article III judges.

Judges who perform "judicial" functions on Article I courts do not adjudicate "cases" or "controversies" in the sense of Article III. They are not bound by the requirements of the Seventh Amendment concerning trial by jury.

Judges who sit on Article I courts are chosen for administrative or allied skills, not for their qualifications to sit in cases involving the vast interests of life, liberty, or property for whose protection the Bill of Rights and the other guarantees in the main body of the Constitution, including the ban on bills of attainder and *ex post facto* laws, were designed. Judges who might be confirmed for an Article I court might never pass muster for the onerous and life-or-death duties of Article III judges.

For these reasons I would reverse the judgments below.

tion of this Court to review a *habeas corpus* case that was *sub judice*, and then apparently draws a distinction between that case and United States v. Klein, 13 Wall. 128, 20 L.Ed. 519, where such withdrawal was not permitted in a property claim. There is a serious question whether the McCardle case could command a majority view today. Certainly the distinction between liberty and property (which emanates from this portion of my Brother HARLAN'S opinion) has no vitality even in terms of the Due Process Clause.

Second, Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693, 47 S.Ct. 284, 71 L.Ed. 478, is apparently overruled. Why this is done is not apparent. That case ruled on the question whether a ruling on a Patent Office determination was "judicial." Whether it was or not is immaterial because, as already noted, Article I courts, like Article III courts, exercise "judicial" power. The only relevant question here is whether a court that need not follow Article III procedures is nonetheless an Article III court.

Third, it is implied that Congress could vest the lower federal courts with the power to render advisory opinions. The character of the District Court in the District of Columbia has been differentiated from the other District Courts by O'Donoghue v. United States, supra, in that the former is, in part, an agency of Congress to perform Article I powers. How Congress could transform regular Article III courts into Article I courts is a mystery. Certainly we should not decide such an important issue so casually and so unnecessarily.

370 U.S. 294

BROWN SHOE CO., Appellant,
v.
UNITED STATES.
No. 4.

Argued Dec. 6, 1961.
Decided June 25, 1962.

Government's civil antitrust action challenging, as violative of the Clayton Act, merger of two manufacturers and sellers of shoes. The United States District Court for the Eastern District of Missouri, 179 F.Supp. 721, rendered judgment for the Government, ordering the defendant shoe company to divest itself completely of all stock, assets and interests it held in the shoe company which merged with it. The defendant took a direct appeal. The Supreme Court, Mr. Chief Justice Warren, held that merger of defendant shoe manufacturer and seller which was third largest seller of shoes by dollar volume in United States with the eighth largest company by dollar volume among those primarily engaged in selling shoes, itself a large manufacturer of shoes, was one which might tend to lessen competition substantially in retail sale of men's, women's and children's shoes in overwhelming majority of those

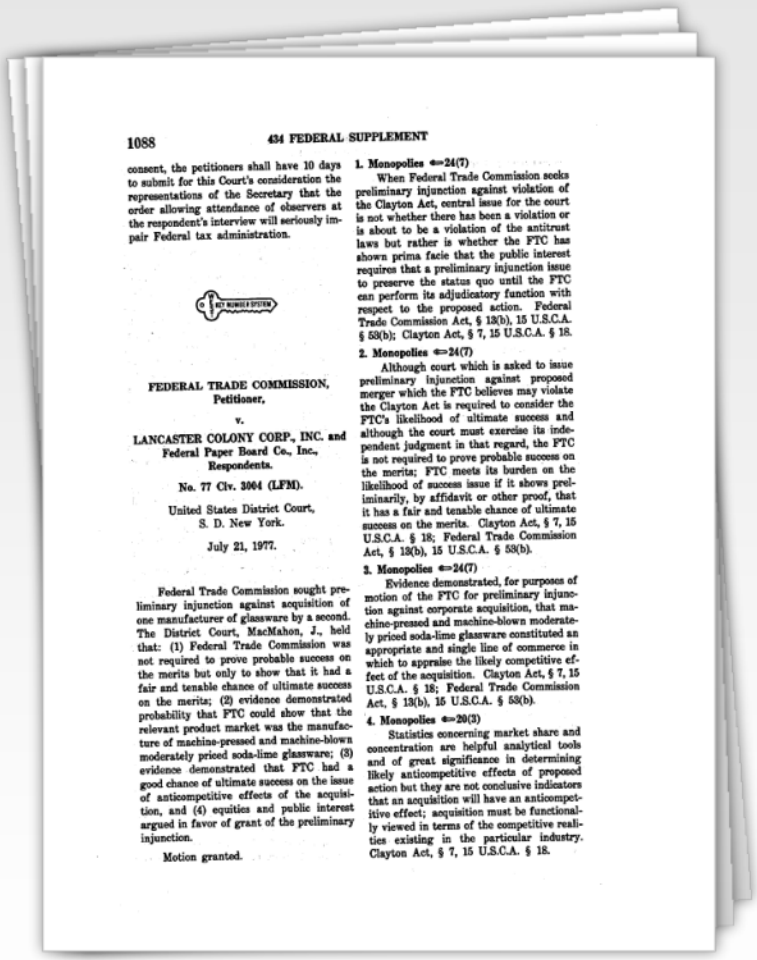
"[I]t is apparent that a keystone in the erection of a barrier to what Congress saw was the rising tide of economic concentration, was its provision of authority for arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency."

Brown Shoe Co. v. United States, 370 U.S. 294, 318 (1962)

"Congress saw the process of concentration in American business as a dynamic force; it sought to assure the Federal Trade Commission and the courts the power to brake this force at its outset and before it gathered momentum."

Brown Shoe Co. v. United States, 370 U.S. 294, 318-19 (1962)

Returning to the Legal Standard: *Lancaster Colony*



1088 434 FEDERAL SUPPLEMENT

consent, the petitioners shall have 10 days to submit for this Court's consideration the representations of the Secretary that the order allowing attendance of observers at the respondent's interview will seriously impair Federal tax administration.

KEY NUMBER SYSTEM

FEDERAL TRADE COMMISSION, Petitioner,

v.

LANCASTER COLONY CORP., INC. and Federal Paper Board Co., Inc., Respondents.

No. 77 Civ. 3004 (LFM).

United States District Court, S. D. New York.

July 21, 1977.

Federal Trade Commission sought preliminary injunction against acquisition of one manufacturer of glassware by a second. The District Court, MacMahon, J., held that: (1) Federal Trade Commission was not required to prove probable success on the merits but only to show that it had a fair and tenable chance of ultimate success on the merits; (2) evidence demonstrated probability that FTC could show that the relevant product market was the manufacture of machine-pressed and machine-blown moderately priced soda-lime glassware; (3) evidence demonstrated that FTC had a good chance of ultimate success on the issue of anticompetitive effects of the acquisition, and (4) equities and public interest argued in favor of grant of the preliminary injunction.

Motion granted.

1. Monopolies ⇐24(7)

When Federal Trade Commission seeks preliminary injunction against violation of the Clayton Act, central issue for the court is not whether there has been a violation or is about to be a violation of the antitrust laws but rather is whether the FTC has shown prima facie that the public interest requires that a preliminary injunction issue to preserve the status quo until the FTC can perform its adjudicatory function with respect to the proposed action. Federal Trade Commission Act, § 13(b), 15 U.S.C.A. § 53(b); Clayton Act, § 7, 15 U.S.C.A. § 18.

2. Monopolies ⇐24(7)

Although court which is asked to issue preliminary injunction against proposed merger which the FTC believes may violate the Clayton Act is required to consider the FTC's likelihood of ultimate success and although the court must exercise its independent judgment in that regard, the FTC is not required to prove probable success on the merits; FTC meets its burden on the likelihood of success issue if it shows preliminarily, by affidavit or other proof, that it has a fair and tenable chance of ultimate success on the merits. Clayton Act, § 7, 15 U.S.C.A. § 18; Federal Trade Commission Act, § 13(b), 15 U.S.C.A. § 53(b).

3. Monopolies ⇐24(7)

Evidence demonstrated, for purposes of motion of the FTC for preliminary injunction against corporate acquisition, that machine-pressed and machine-blown moderately priced soda-lime glassware constituted an appropriate and single line of commerce in which to appraise the likely competitive effect of the acquisition. Clayton Act, § 7, 15 U.S.C.A. § 18; Federal Trade Commission Act, § 13(b), 15 U.S.C.A. § 53(b).

4. Monopolies ⇐20(3)

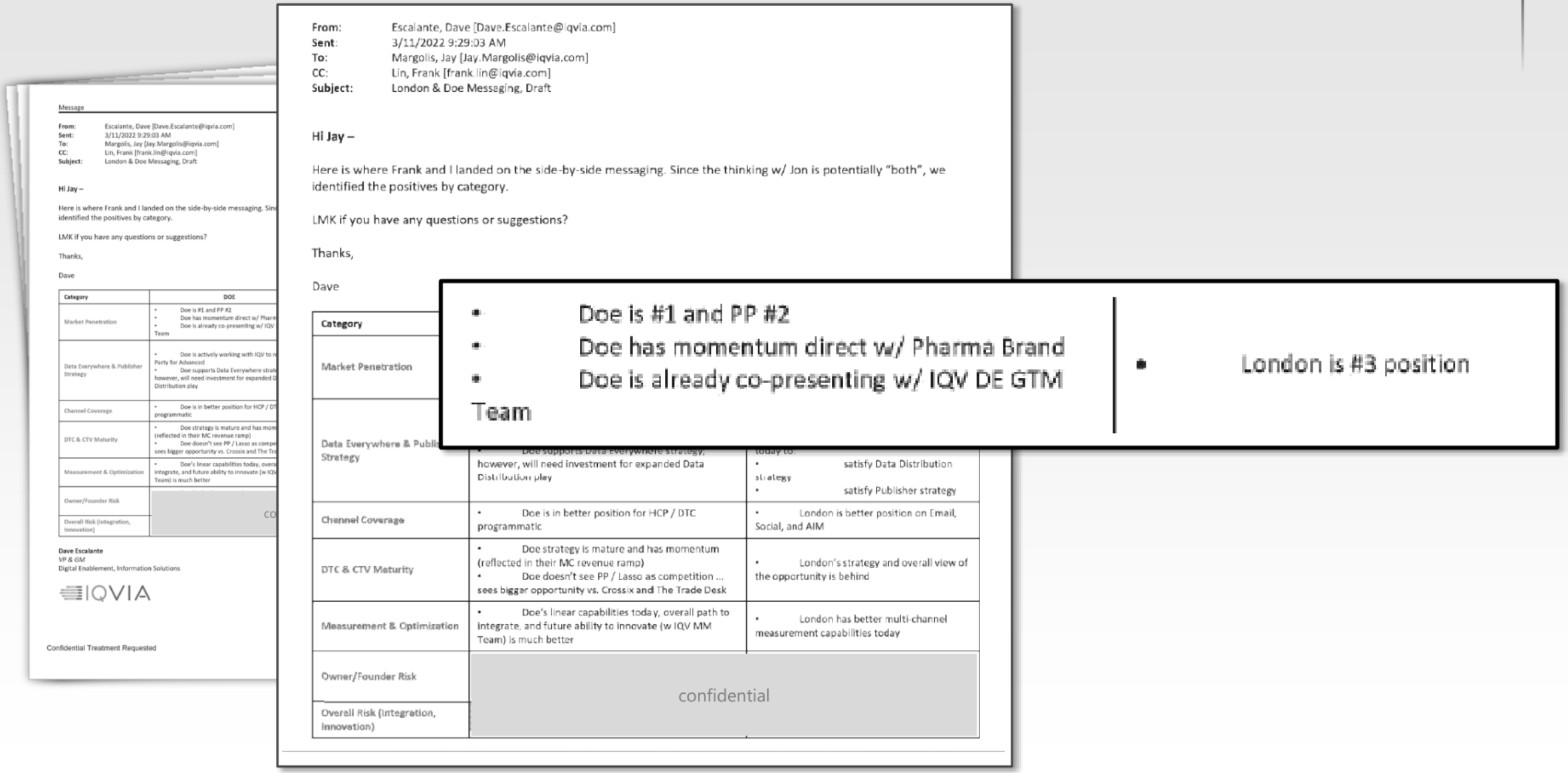
Statistics concerning market share and concentration are helpful analytical tools and of great significance in determining likely anticompetitive effects of proposed action but they are not conclusive indicators that an acquisition will have an anticompetitive effect; acquisition must be functionally viewed in terms of the competitive realities existing in the particular industry. Clayton Act, § 7, 15 U.S.C.A. § 18.

"Obviously, a 'firm understanding' of the setting and unique facts of a given market cannot be made without a plenary trial. It, therefore, seems clear that Congress intended that on applications under Section 13(b), the district court be guided by preliminary and tentative findings of fact without attempting to resolve the underlying antitrust issues of fact. Imperfections are inherent in the problem. We must work within the limitations of the allotted time imposed by the need for speedy action due to the imminence of the challenged transaction and the burdens on this congested court."

FTC v. Lancaster Colony Corp., 434 F. Supp. 1088, 1091 (S.D.N.Y. 1977)

Roadmap

1. Introduction
2. Addressing The Court's Questions
3. Market Definition and Presumption of Harm
4. Defendants' Burden on Entry
5. Vertical Competitive Harm
6. Legal Standard
7. Conclusion



From: Escalante, Dave [Dave.Escalante@iqvia.com]
Sent: 3/11/2022 9:29:03 AM
To: Margolis, Jay [Jay.Margolis@iqvia.com]
CC: Lin, Frank [frank.lin@iqvia.com]
Subject: London & Doe Messaging, Draft

Hi Jay –

Here is where Frank and I landed on the side-by-side messaging. Since the thinking w/ Jon is potentially "both", we identified the positives by category.

LMK if you have any questions or suggestions?

Thanks,

Dave

Category	DOE	London
Market Penetration	• Doe is #1 and PP #2 • Doe has momentum direct w/ Pharma Brand • Doe is already co-presenting w/ IQV DE GTM Team	• London is #3 position
Data Everywhere & Publisher Strategy	• Doe supports Data Everywhere strategy, however, will need investment for expanded Data Distribution play	today to: • satisfy Data Distribution strategy • satisfy Publisher strategy
Channel Coverage	• Doe is in better position for HCP / DTC programmatic	• London is better position on Email, Social, and AIM
DTC & CTV Maturity	• Doe strategy is mature and has momentum (reflected in their MC revenue ramp) • Doe doesn't see PP / Lasso as competition … sees bigger opportunity vs. Crossix and The Trade Desk	• London's strategy and overall view of the opportunity is behind
Measurement & Optimization	• Doe's linear capabilities today, overall path to integrate, and future ability to innovate (w IQV MM Team) is much better	• London has better multi-channel measurement capabilities today
Owner/Founder Risk	confidential	
Overall Risk (integration, innovation)		

Message

From: Escalante, Dave [Dave.Escalante@iqvia.com]
Sent: 3/11/2022 9:29:03 AM
To: Margolis, Jay [Jay.Margolis@iqvia.com]
CC: Lin, Frank [frank.lin@iqvia.com]
Subject: London & Doe Messaging, Draft

Hi Jay –

Here is where Frank and I landed on the side-by-side messaging. Sin
identified the positives by category.

LMK if you have any questions or suggestions?

Thanks,

Dave

Category	DOE
Market Penetration	• Doe is #1 and PP #2 • Doe has momentum direct w/ Pharm • Doe is already co-presenting w/ IQV Team
Data Everywhere & Publisher Strategy	• Doe is actively working with IQV to r Party for Advanced • Doe supports Data Everywhere strat however, will need investment for expanded D Distribution play
Channel Coverage	• Doe is in better position for HCP / DT programmatic
DTC & CTV Maturity	• Doe strategy is mature and has mom (reflected in their MC revenue ramp) • Doe doesn't see PP / Lasso as compe sees bigger opportunity vs. Crossix and The Tra
Measurement & Optimization	• Doe's linear capabilities today, overa integrate, and future ability to innovate (w IQV Team) is much better
Owner/Founder Risk	CO
Overall Risk (integration, innovation)	

Dave Escalante
VP & GM
Digital Enablement, Information Solutions

IQVIA

Confidential Treatment Requested

- Doe is #1 and PP #2
- Doe has momentum direct w/ Pharma Brand
- Doe is already co-presenting w/ IQV DE GTM Team

- London is #3 position

PX1296

Sanitized Deal Deck

From: Escalante, Dave [Dave.Escalante@iqvia.com]
Sent: 3/11/2022 9:29:03 AM
To: Margolis, Jay [Jay.Margolis@iqvia.com]
CC: Lin, Frank [frank.lin@iqvia.com]
Subject: London & Doe Messaging, Draft

Hi Jay –

Here is where Frank and I landed on the side-by-side messaging. Since the thinking w/ Jon is potentially "both", we identified the positives by category.

LMK if you have any questions or suggestions?

Thanks,

Dave

Category	DOE	LONDON
Market Penetration	• Doe is #1 and PP #2 • Doe has momentum direct w/ Pharma Brand • Doe is already co-presenting w/ IQV DE GTM Team	• London is #3 position
Data Everywhere & Publisher Strategy	• Doe is actively working with IQV to replace 3rd Party for Advanced • Doe supports Data Everywhere strategy; however, will need investment for expanded Data Distribution play	• London active to adopt IQV Advanced Data • London platform is in better position today to: • satisfy Data Distribution strategy • satisfy Publisher strategy
Channel Coverage	• Doe is in better position for HCP / DTC programmatic	• London is better position on Email, Social, and AIM
DTC & CTV Maturity	• Doe strategy is mature and has momentum (reflected in their MC revenue ramp) • Doe doesn't see PP / Lasso as competition … sees bigger opportunity vs. Crossix and The Trade Desk	• London's strategy and overall view of the opportunity is behind
Measurement & Optimization	• Doe's linear capabilities today, overall path to integrate, and future ability to innovate (w IQV MM Team) is much better	• London has better multi-channel measurement capabilities today
Owner/Founder Risk	Confidential	Confidential
Overall Risk (Integration, Innovation)	Confidential	

PX1296

Opportunity for IQVIA

	deepintent+	LASSO	
Market Penetration	●	◑	DeepIntent is market leader and has momentum selling direct to Pharma Brand
Data Everywhere & Publisher Strategy	◑	◕	Lasso OS approach is in better position to accelerate Data Everywhere, Distribution and Publisher strategy. Adoption of IQVIA Claims Data is in flight with both.
Digital Channel Coverage	◑	◑	DeepIntent is market leader in programmatic. Lasso is market leader in Email, Social and AIM XR.
DTC & cTV Maturity	◕	◔	DeepIntent is in best position to be the market leader in DTC / cTV solution, moving market share from incumbents
Measurement & Optimization	◑	◑	DeepIntent is leader in linear campaign measurement. Lasso is leader in omnichannel campaign measurement.
Global	◑	○	DeepIntent has plan to launch OUS enhancement in 2023
Integration & Owner / Founder Risk	◔ Low	◑ Medium	DeepIntent business is more mature and lower risk to integrate

IQVIA 98

PX0011-099

PX0011-099

From: Escalante, Dave [Dave.Escalante@iqvia.com]
Sent: 3/11/2022 9:29:03 AM
To: Margolis, Jay [Jay.Margolis@iqvia.com]
CC: Lin, Frank [frank.lin@iqvia.com]
Subject: London & Doe Messaging, Draft

Hi Jay –

Here is where Frank and I landed on the side-by-side messaging. Since the thinking w/ Jon is potentially "both", we identified the positives by category.

LMK if you have any questions or suggestions?

- Doe is #1 and PP #2
- Doe has momentum direct w/ Pharma Brand
- Doe is already co-presenting w/ IQV DE GTM

Team

- London is #3 position

Data Everywhere & Publisher Strategy	Party for Advanced • Doe supports Data Everywhere strategy; however, will need investment for expanded Data Distribution play	• London platform is in better position today to: • satisfy Data Distribution strategy • satisfy Publisher strategy
Channel Coverage	• Doe is in better position for HCP / DTC programmatic	• London is better position on Email, Social, and AIM
DTC & CTV Maturity	• Doe strategy is mature and has momentum (reflected in their MC revenue ramp) • Doe doesn't see PP / Lasso as competition … sees bigger opportunity vs. Crossix and The Trade Desk	• London's strategy and overall view of the opportunity is behind
Measurement & Optimization	• Doe's linear capabilities today, overall path to integrate, and future ability to innovate (w IQV MM Team) is much better	• London has better multi-channel measurement capabilities today
Owner/Founder Risk	Confidential	Confidential
Overall Risk (Integration, Innovation)	Confidential	

Thank you