Plaintiff Federal Trade Commission
Opening Statement

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

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

Let's Buy Both

18476360801/19083611114/19178618150/19733422563 chatroom: chat transcript

Chat description: none provided

Chat type	iMessage
Private chat	no
Transcript timezone	(UTC-05:00) Eastern Time (US & Canada)
Transcript start	2022-07-22 22:28:24
Transcript end	2022-07-22 23:16:07
Transcript participants	4
Initial participants	Wei Han Frank Lin (18476360801); Dave Escalante (19083611114); Jon Resnick (19178618150); Jay Margolis (19733422563)

Timestamp	Sender	Recipients	Message text
2022-07-22 22:28:24	Jon Resnick (19178618150)	Wei Han Frank Lin (18476360801); Dave Escalante (19083611114); Jon Resnick (19178618150); Jay Margolis (19733422563)	"Let's buy both". Famous last words
2022-07-22 22:28:43	Wei Han Frank Lin	Wei Han Frank Lin (18476360801); Dave Escalante (19083611114);	Laughed at ""Let's buy both". Famous last words "
2022-07-22 22:33:31	Wei Han Frank Lin (18476360801)	Dave Escalante (19083611114); Jon Resnick (19178618150); Jay Margolis (19733422563) Wei Han Frank Lin (18476360801);	I promise that I will not make any more acquisition recommendations

2022-07-22 22:28:24 Jon Resnick (19178618150) Dave Escalante (19083611114); "Let's buy both". Famous last words Jon Resnick

PX1254

Why We Are Here

Pause IQVIA's Proposed Acquisition of DeepIntent

- **Preserves the status quo pending full trial on the merits**
- **If allowed to proceed, the proposed acquisition will have the following effects:**

Higher prices

Diminished innovation

Lower quality offerings

Roadmap

1. Intro
2. Legal Standard
3. HCP Programmatic Advertising
4. The Merging Parties: Head to Head Competition
5. IQVIA's Data Dominance
6. Market Definition
7. Defendants' Arguments
8. Equities

Legal Standard for Preliminary Injunction

"Likelihood of Ultimate Success"

- "[T]he FTC meets its burden on the 'likelihood of success' issue if it shows preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate success on the merits" or raises "serious, substantial" questions 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."

  FTC v. Lancaster Colony Corp., 434 F. Supp. 1088, 1090-91 (S.D.N.Y. 1977).

- The FTC's burden is met by a "tenable showing" of a proposed market, even if there is also "conflicting evidence on the relevant product market" or "market shares."

  FTC v. Warner Commc'ns Inc., 472 F.2d 1156, 1162, 1164 (9th Cir. 1984); *Lancaster*, 434 F. Supp. at 1089.

Equities and "Public Interest"

- "The equities to be weighed here are not the usual equities of private litigation but public equities. . . . [T]he aim of the Clayton Act to nip anticompetitive acquisitions in the bud and is to be implemented, injunctions prohibiting those acquisitions serve the public interest."

  Lancaster at 1096.

- Private injury from delaying or abandonment "not proper considerations for granting or withholding injunctive relief under 13(b)."

  Lancaster at 1097 (citing *FTC v. Food Town Stores, Inc.*, 539 F.2d 1339, 1342, 1346 (4th Cir. 1976)).

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

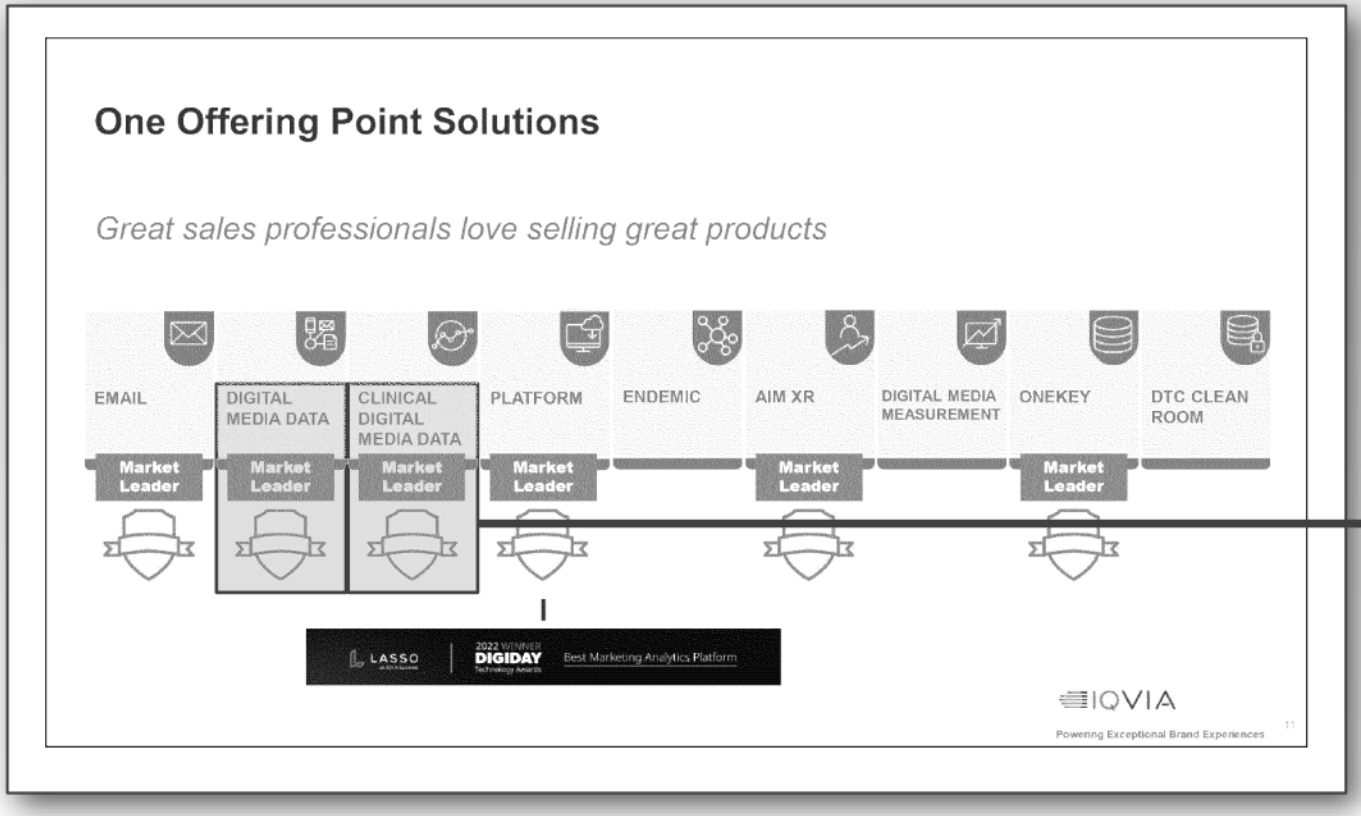
- Market concentration figures are well past the 30% thresholds outlined by the Supreme Court and the Horizontal Merger Guidelines.
- Current market concentration is solidified by high barriers to entry and expansion.

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.

IQVIA Has the Ability to Harm

IQVIA controls key HCP data for which no adequate alternatives exist



Q. Okay. Are you familiar with other vendors that provide the sort of claims data that you need for audience creation?

A. No. Because in every single company I worked with, we worked with IQVIA.

Dr. Karlova (EMD Serono) Dep. Tr. at 51

PX1390-016

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HCP Programmatic Advertising 101

Dr. Amy Hunt, Oncologist

Targeted banner ads on her devices

Three in One Solution

Pharma Companies

Ad Agencies

Planning: Determining which healthcare professionals ("HCPs") to target on a 1:1 basis with advertisements

Activation: Allows for the automated bidding and buying of digital advertising space for serving of ads to specific HCPs

Measurement & Optimization: Built-in tools that provide metrics such as "script lift" – whether a given ad resulted in an increase in prescriptions written for a given HCP – and enables marketers to adjust campaigns to maximize results

Healthcare Professionals (HCPs)

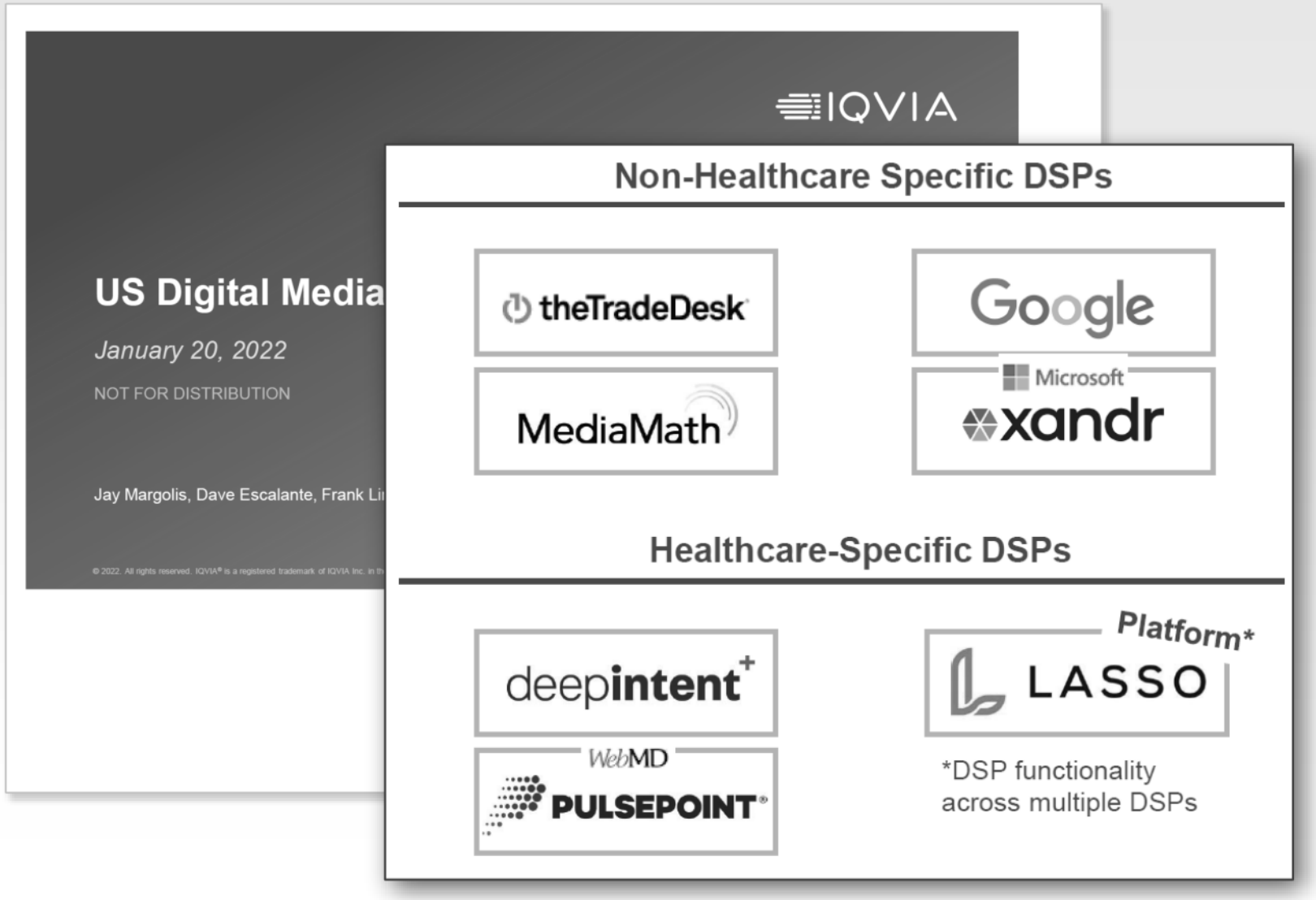
Step 01: Planning

Pharma Companies

Dr. Amy Hunt, Oncologist

Custom Built Oncologist List

Step 02: Activation

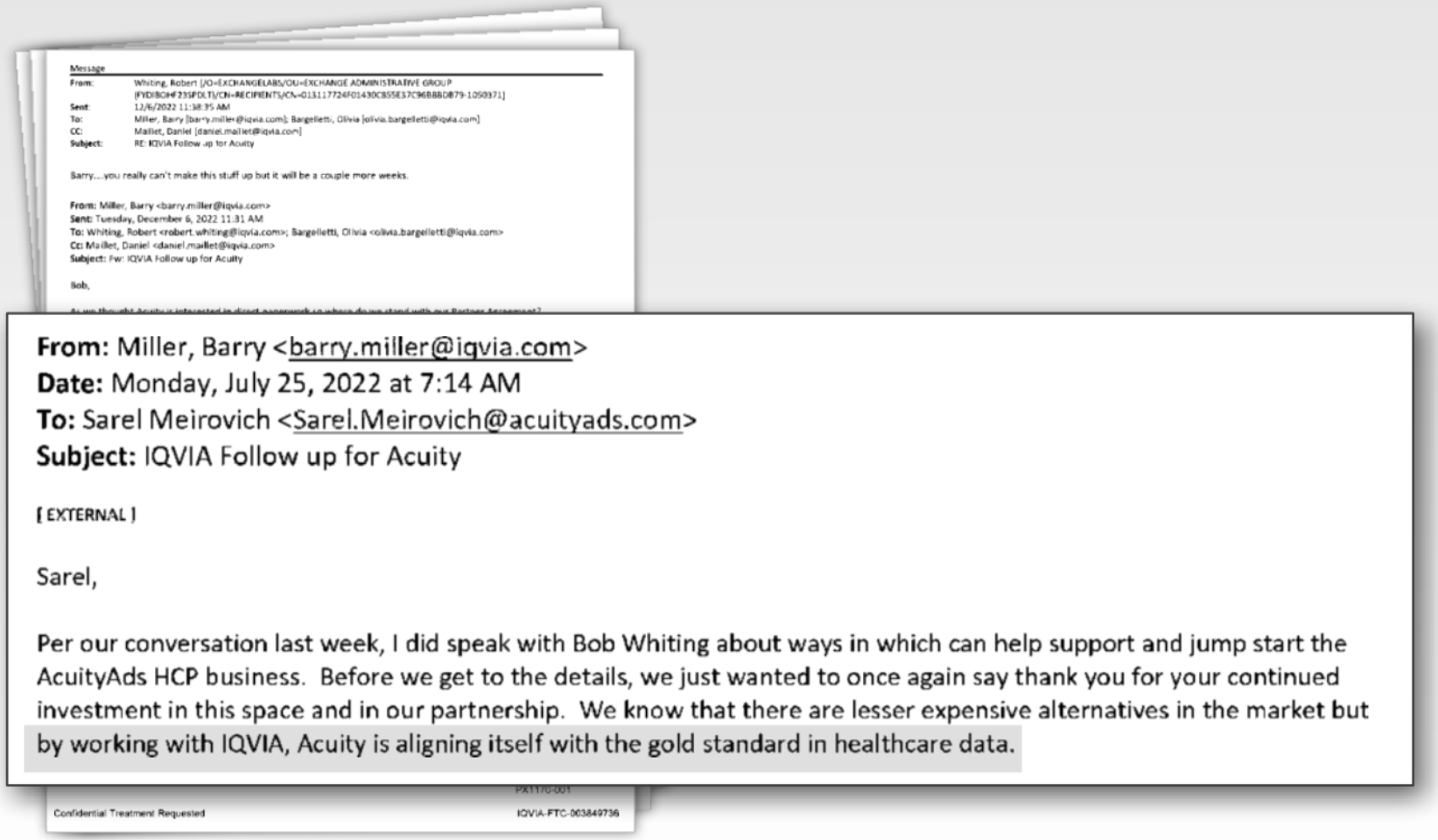


PX0008-011

Step 03: Measurement & Optimization

screenshot from DeepIntent's website at https://www.deepintent.com/wp-content/uploads/2021/11/DI_Outcomes.mp4

IQVIA is the Gold Standard for HCP Data



Message

From: Whiting, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=013117724F01430C855E37C96B88D879-1050371]
Sent: 12/6/2022 11:38:35 AM
To: Miller, Barry [barry.miller@iqvia.com]; Bargelletti, Olivia [olivia.bargelletti@iqvia.com]
CC: Maillet, Daniel [daniel.maillet@iqvia.com]
Subject: RE: IQVIA Follow up for Acuity

Barry….you really can't make this stuff up but it will be a couple more weeks.

From: Miller, Barry <barry.miller@iqvia.com>
Sent: Tuesday, December 6, 2022 11:31 AM
To: Whiting, Robert <robert.whiting@iqvia.com>; Bargelletti, Olivia <olivia.bargelletti@iqvia.com>
Cc: Maillet, Daniel <daniel.maillet@iqvia.com>
Subject: Fw: IQVIA Follow up for Acuity

Bob,

From: Miller, Barry <barry.miller@iqvia.com>
Date: Monday, July 25, 2022 at 7:14 AM
To: Sarel Meirovich <Sarel.Meirovich@acuityads.com>
Subject: IQVIA Follow up for Acuity

[EXTERNAL]

Sarel,

Per our conversation last week, I did speak with Bob Whiting about ways in which can help support and jump start the AcuityAds HCP business. Before we get to the details, we just wanted to once again say thank you for your continued investment in this space and in our partnership. We know that there are lesser expensive alternatives in the market but by working with IQVIA, Acuity is aligning itself with the gold standard in healthcare data.

PX1170-001

Confidential Treatment Requested IQVIA-FTC-003849736

A. [T]he majority of the advertising are from lists that were provided via TPA from IQVIA.

Q. Do you know why that is?

A. IQVIA, you know, is considered to be the gold standard data especially around our prescription data, Rx data, and they use – the pharma company uses it internally.

Elwell (RealChemistry)
Dep. Tr. at 103:18-104:1

PX1170-005

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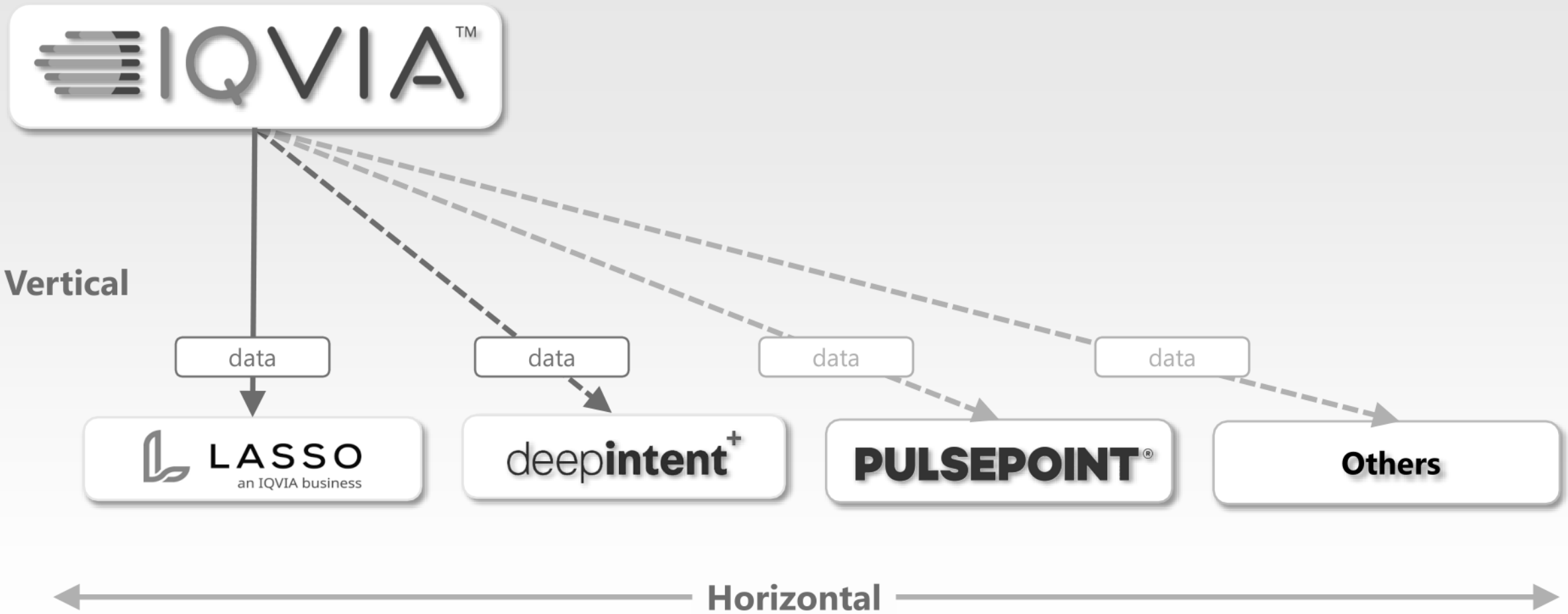
IQVIA Everywhere



Key Parties – Defendants

- A digital advertising company that enables marketers to plan, activate, measure, and optimize their advertising campaigns, targeting HCPs and patients.
- DeepIntent brands itself as "The Most Powerful Healthcare Advertising Platform."

- Acquired by IQVIA in July 2022.
- Describes itself as the only marketing platform that allows healthcare advertisers to plan, activate, and measure their digital advertising campaigns.

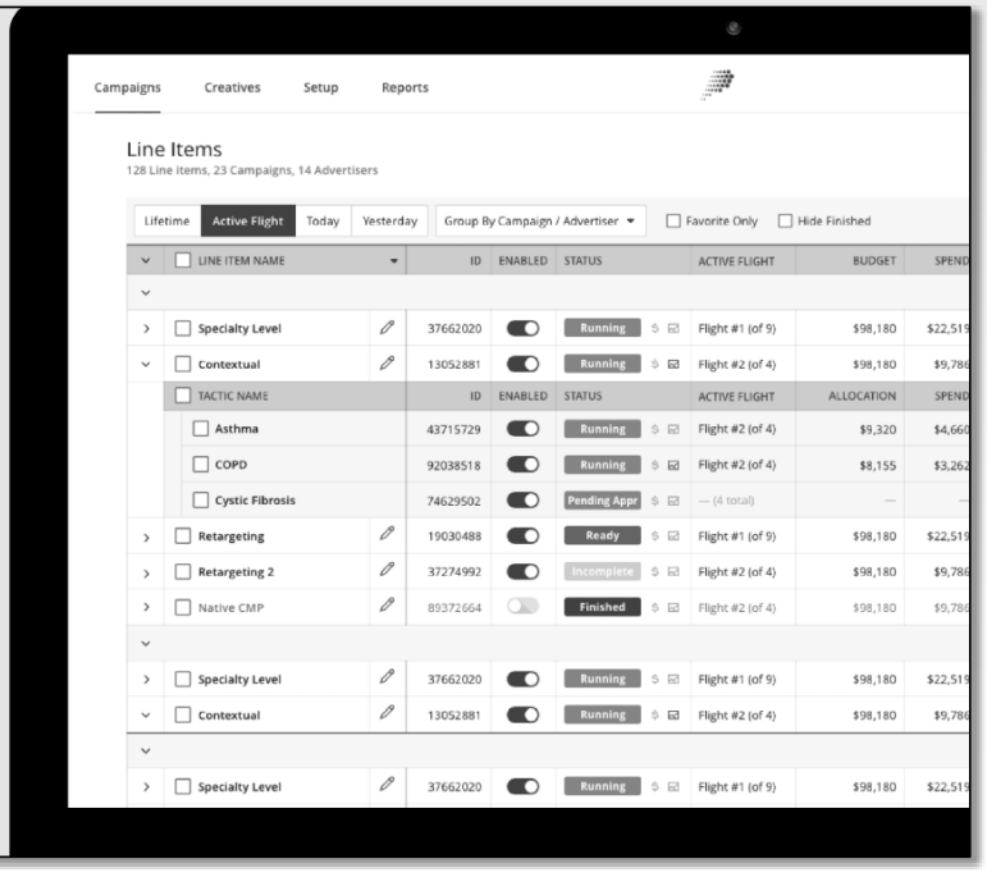
PulsePoint – Third "Big 3" Competitor

PULSEPOINT®

LIFE BY PULSEPOINT™

Everything you need to plan, activate, analyze and optimize your digital healthcare advertising campaigns - in one platform.

SEE IT NOW



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

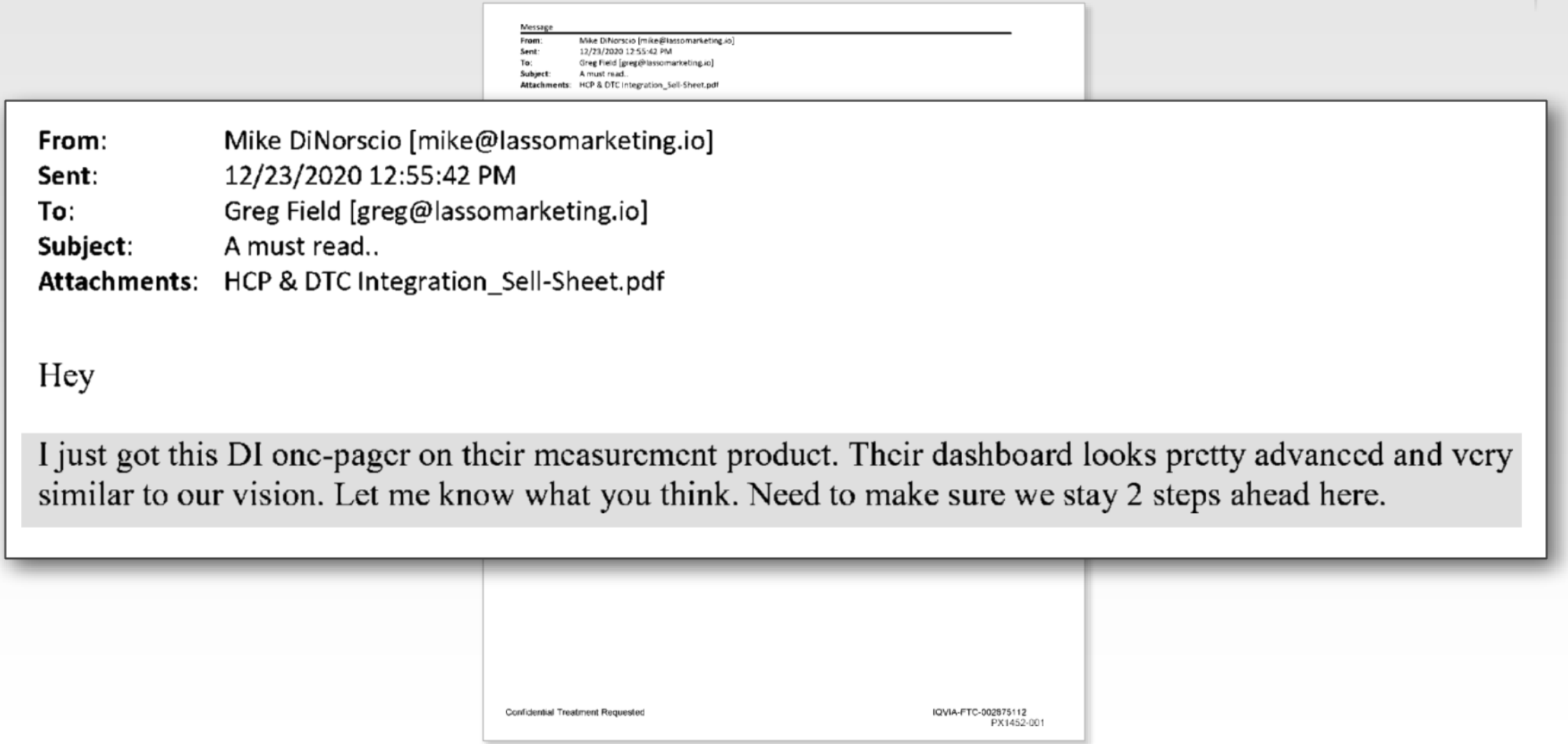
Based on the feedback from the sellers, they would like to use this week's sales call to talk a lot more (and learn more) about our data story and what is/isn't unique about it (as opposed to say...our platform story). With the Big 3 (e.g. IQVIA O.S. , PulsePoint and Deep Intent) all offering the same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

CONFIDENTIAL HSR MATERIALS DI-2R-0000623035 PX2570-001

CONFIDENTIAL - FTC V. IQVIA AND PMI; FTC DOCKET NO. 9416 IQVLIT-000235767 PX1625-001

PX2570 *PX1625*

Head to Head Competition



Message

From: Mike DiNorscio [mike@lassomarketing.io]
Sent: 12/23/2020 12:55:42 PM
To: Greg Field [greg@lassomarketing.io]
Subject: A must read..
Attachments: HCP & DTC Integration_Sell-Sheet.pdf

From: Mike DiNorscio [mike@lassomarketing.io]
Sent: 12/23/2020 12:55:42 PM
To: Greg Field [greg@lassomarketing.io]
Subject: A must read..
Attachments: HCP & DTC Integration_Sell-Sheet.pdf

Hey

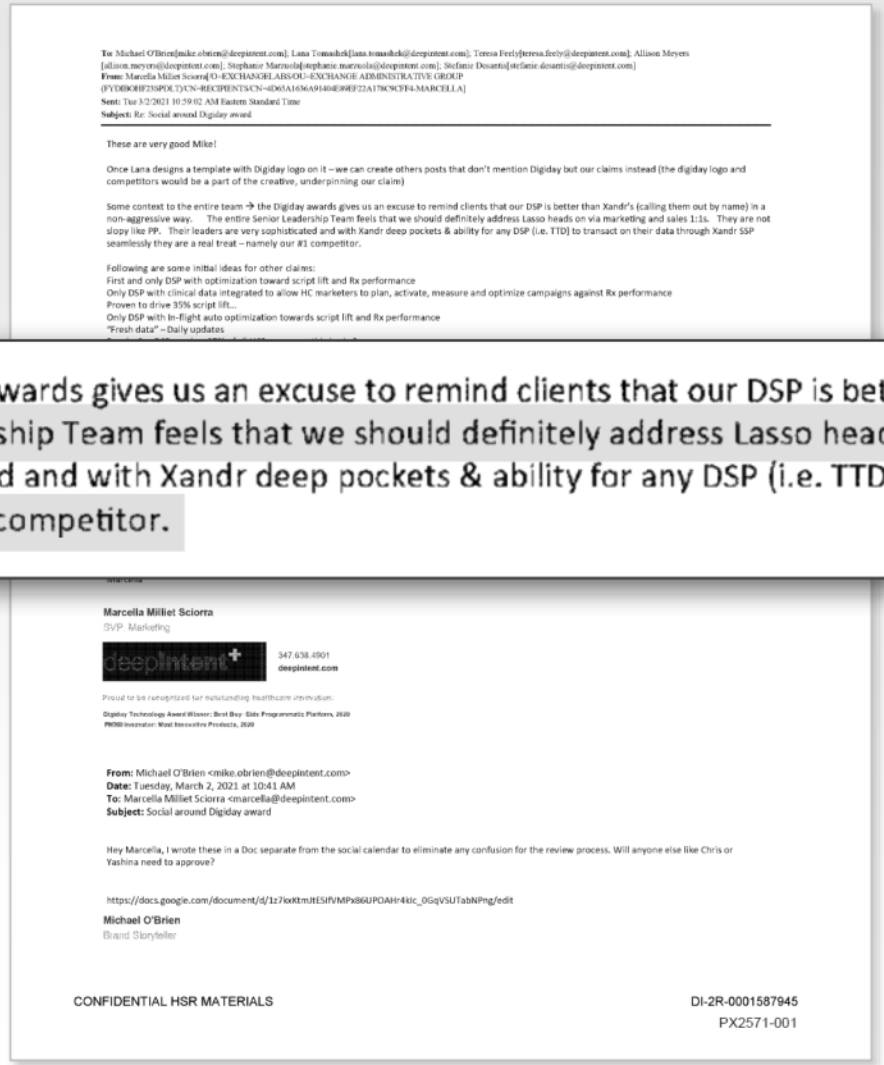
I just got this DI one-pager on their measurement product. Their dashboard looks pretty advanced and very similar to our vision. Let me know what you think. Need to make sure we stay 2 steps ahead here.

Confidential Treatment Requested

IQVIA-FTC-002875112
PX1452-001

PX1452

Head to Head Competition



To: Michael O'Brien[mike.obrien@deepintent.com]; Lana Tomashek[lana.tomashek@deepintent.com]; Teresa Feely[teresa.feely@deepintent.com]; Allison Meyers [allison.meyers@deepintent.com]; Stephanie Marzeola[stephanie.marzeola@deepintent.com]; Stefanie Desantis[stefanie.desantis@deepintent.com]
From: Marcella Milliet Sciorra[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D65A16364A9140E89EF22A178C9CFF4-MARCELLA]
Sent: Tue 3/2/2021 10:59:02 AM Eastern Standard Time
Subject: Re: Social around Digiday award

These are very good Mike!

Once Lana designs a template with Digiday logo on it – we can create others posts that don't mention Digiday but our claims instead (the digiday logo and competitors would be a part of the creative, underpinning our claim)

Some context to the entire team → the Digiday awards gives us an excuse to remind clients that our DSP is better than Xandr's (calling them out by name) in a non-aggressive way. The entire Senior Leadership Team feels that we should definitely address Lasso heads on via marketing and sales 1:1s. They are not slopy like PP. Their leaders are very sophisticated and with Xandr deep pockets & ability for any DSP (i.e. TTD) to transact on their data through Xandr SSP seamlessly they are a real treat – namely our #1 competitor.

Following are some initial ideas for other claims:
First and only DSP with optimization toward script lift and Rx performance
Only DSP with clinical data integrated to allow HC marketers to plan, activate, measure and optimize campaigns against Rx performance
Proven to drive 35% script lift...
Only DSP with In-flight auto optimization towards script lift and Rx performance
"Fresh data" – Daily updates

Marcella Milliet Sciorra
SVP, Marketing
deepintent
347.638.4901
deepintent.com
Proud to be recognized for outstanding healthcare innovation:
Digiday Technology Award Winner: Best Buy-Side Programmatic Platform, 2020
PMDB Innovator: Most Innovative Products, 2020

From: Michael O'Brien <mike.obrien@deepintent.com>
Date: Tuesday, March 2, 2021 at 10:41 AM
To: Marcella Milliet Sciorra <marcella@deepintent.com>
Subject: Social around Digiday award

Hey Marcella, I wrote these in a Doc separate from the social calendar to eliminate any confusion for the review process. Will anyone else like Chris or Yashina need to approve?

https://docs.google.com/document/d/1z7IoxKtmJtESIfVMPx86UPOAHr4klc_0GqVSUTabNPng/edit

Michael O'Brien
Brand Storyteller

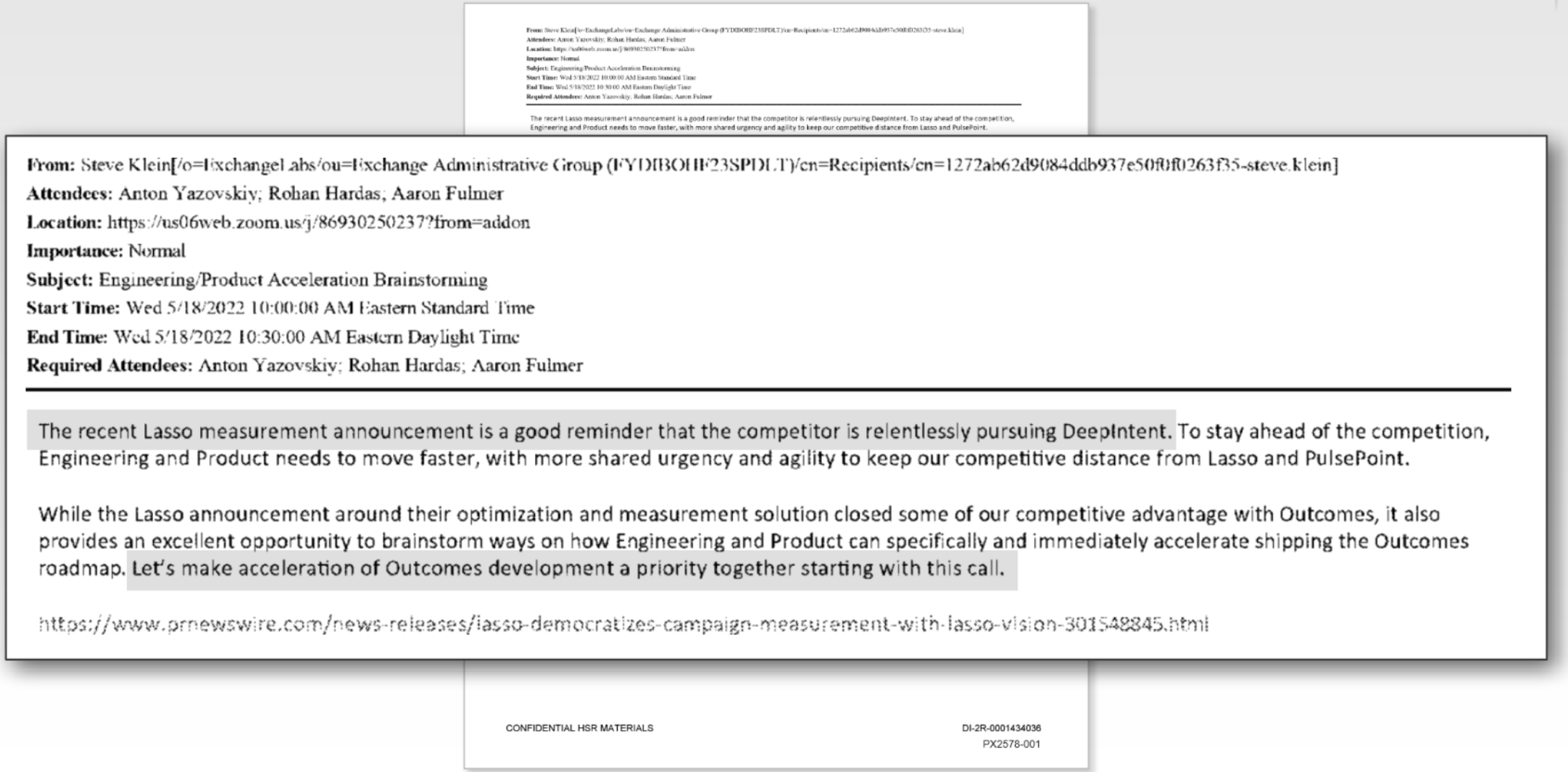
CONFIDENTIAL HSR MATERIALS

DI-2R-0001587945
PX2571-001

Some context to the entire team → the Digiday awards gives us an excuse to remind clients that our DSP is better than Xandr's (calling them out by name) in a non-aggressive way. The entire Senior Leadership Team feels that we should definitely address Lasso heads on via marketing and sales 1:1s. They are not slopy like PP. Their leaders are very sophisticated and with Xandr deep pockets & ability for any DSP (i.e. TTD) to transact on their data through Xandr SSP seamlessly they are a real treat – namely our #1 competitor.

PX2571

Innovation Competition



From: Steve Klein[/o=Exchangel abs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1272ab62d9084ddb937e50f0f0263f35-steve.klein]
Attendees: Anton Yazovskiy; Rohan Hardas; Aaron Fulmer
Location: https://us06web.zoom.us/j/86930250237?from=addon
Importance: Normal
Subject: Engineering/Product Acceleration Brainstorming
Start Time: Wed 5/18/2022 10:00:00 AM Eastern Standard Time
End Time: Wed 5/18/2022 10:30:00 AM Eastern Daylight Time
Required Attendees: Anton Yazovskiy; Rohan Hardas; Aaron Fulmer

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The recent Lasso measurement announcement is a good reminder that the competitor is relentlessly pursuing DeepIntent. To stay ahead of the competition, Engineering and Product needs to move faster, with more shared urgency and agility to keep our competitive distance from Lasso and PulsePoint.

While the Lasso announcement around their optimization and measurement solution closed some of our competitive advantage with Outcomes, it also provides an excellent opportunity to brainstorm ways on how Engineering and Product can specifically and immediately accelerate shipping the Outcomes roadmap. Let's make acceleration of Outcomes development a priority together starting with this call.

https://www.prnewswire.com/news-releases/lasso-democratizes-campaign-measurement-with-lasso-vision-301548845.html

CONFIDENTIAL HSR MATERIALS

DI-2R-0001434036
PX2578-001

PX2578

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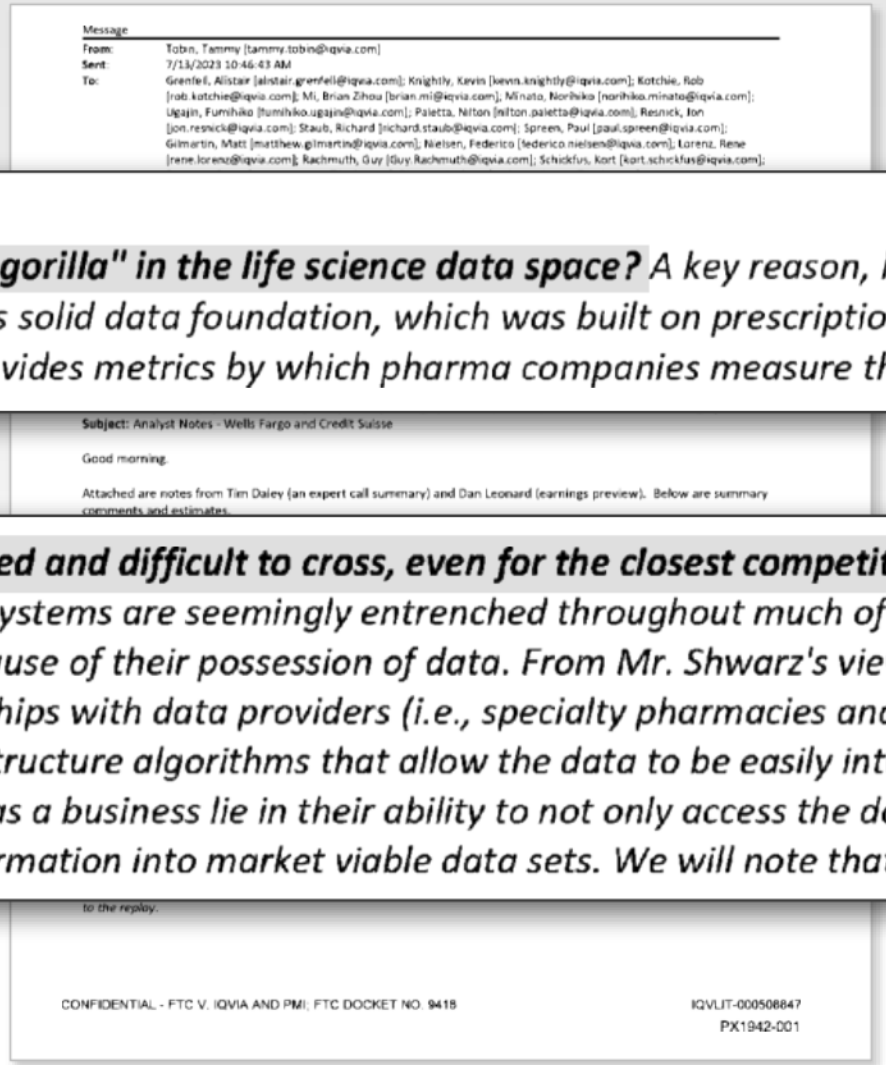
800 Pound Gorilla



Message

From: Tobin, Tammy [tammy.tobin@iqvia.com]
Sent: 7/13/2023 10:46:43 AM
To: Grenfell, Alistair [alistair.grenfell@iqvia.com]; Knightly, Kevin [kevin.knightly@iqvia.com]; Kotchie, Rob [rob.kotchie@iqvia.com]; Mi, Brian Zihou [brian.mi@iqvia.com]; Minato, Norihiko [norihiko.minato@iqvia.com]; Ugajin, Fumihiko [fumihiko.ugajin@iqvia.com]; Paletta, Nilton [nilton.paletta@iqvia.com]; Resnick, Jon [jon.resnick@iqvia.com]; Staub, Richard [richard.staub@iqvia.com]; Spreen, Paul [paul.spreen@iqvia.com]; Gilmartin, Matt [matthew.gilmartin@iqvia.com]; Nielsen, Federico [federico.nielsen@iqvia.com]; Lorenz, Rene [rene.lorenz@iqvia.com]; Rachmuth, Guy [Guy.Rachmuth@iqvia.com]; Schickfus, Kort [kort.schickfus@iqvia.com];

Subject: Analyst Notes - Wells Fargo and Credit Suisse

Good morning.

Attached are notes from Tim Daley (an expert call summary) and Dan Leonard (earnings preview). Below are summary comments and estimates.

to the replay.

CONFIDENTIAL - FTC V. IQVIA AND PMI, FTC DOCKET NO. 9418

IQVLIT-000508847
PX1942-001

IQVIA-focused commentary

What makes IQVIA the "800 lb. gorilla" in the life science data space? *A key reason, highlighted by Mr. Schwarz, for IQIVIA's commercial success is its solid data foundation, which was built on prescription share data. Mr. Schwarz shared that, prescription share data provides metrics by which pharma companies measure their performance, drive incentive*

IQVIA's moat is considerably sized and difficult to cross, even for the closest competitor; likely to continue enabling IQVIA's dominance. *IQV's data systems are seemingly entrenched throughout much of the core data market, but the moat is not necessarily only because of their possession of data. From Mr. Shwarz's viewpoint, this company has spent many years developing relationships with data providers (i.e., specialty pharmacies and other resources), aggregating that data, and developing infrastructure algorithms that allow the data to be easily interpretable. Essentially, much of the value in IQVIA's capabilities as a business lie in their ability to not only access the data, but to reconcile and clean the data, as well as convert this information into market viable data sets. We will note that although IQV appears to be a*

PX1942

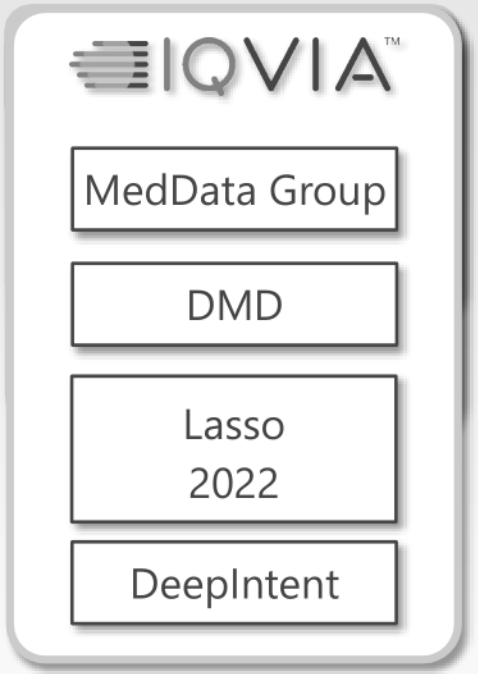
IQVIA Data Everywhere

Largest Healthcare Data Provider

- **"[O]ne of the largest and most comprehensive collections of healthcare information in the world."** IQVIA 2023 10-K.

- **Used "by 85% of pharma brands . . . to build [HCP National Provider Identifier] target lists, direct sales and marketing outreach."** PX2544-002.

"[I]t is profoundly obvious to everyone in the industry that IQVIA is leading a consolidation." – IQVIA Executive



MedData Group | DMD | Lasso | DeepIntent

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HCP Programmatic Advertising Market

Elements of Market Definition

Brown Shoe Practical Indicia:

- the product's peculiar characteristics and uses
- unique production facilities
- 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

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Undisputed

1. Lasso and DeepIntent directly compete.
2. PulsePoint, DeepIntent, and Lasso are the three largest providers of HCP programmatic advertising.
3. Combined post-merger market share is in excess of 30%.
4. Combined firm controls an important input to HCP programmatic advertising.

Smaller Relevant Product Markets Can Exist Within a Broader Market

Case	Relevant Market	Identical Product Sold in Other Channels Outside Relevant Market	Ruling
FTC v. Peabody Energy Corp., 492 F.Supp.3d 865, 886 (E.D. Mo. 2020)	Southern Powder River Basin (SPRB) coal	Electricity Production	• "It is indisputable on the record in this case that coal competes with natural gas and renewables in a broader energy market. Still, the FTC has presented more than sufficient evidence that there is also a distinct competitive market among SPRB coal producers that satisfies the applicable criteria for market definition. … that is the market within which the Court must evaluate the legality of the proposed JV."
FTC v. Sysco, 113 F.Supp.3d 1, 30-31 (D.D.C. 2015)	Broadline Food Distribution	Foodservice Distribution	• The fact that "customers buy across channels" and Defendants "sometimes compete against other channels of distribution in the larger marketplace does not mean those alternative channels belong in the relevant product market for purposes of merger analysis."
(Staples I) FTC v. Staples, Inc., 970 F. Supp. 1066, 1075, 1079 (D.D.C. 1997)	Office Supplies Sold by Office Superstores	Consumable Office Supplies	• Although office supply products are "undeniably the same," the "unique combination of size, selection, depth and breadth of inventory offered by the superstores distinguishes them from other retailers."
(Staples II) FTC v. Staples, Inc., 190 F.Supp.3d 100, 126, 127 (D.D.C. 2016)	Consumable Office Supplies Sold and Distributed to Large Business to Business Customers	Consumable Office Supplies	• "There is overwhelming evidence in this case that large B-to-B customers constitute a market that Defendants could target for price increases if they are allowed to merge," even if they are "a targeted group that represents a relatively small part of an overall market" as Defendants argued.

Philadelphia National Bank (PNB) Structural Presumption

"Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat."

"Our conclusion [is] that these percentages raise an inference that the effect of the contemplated merger of appellees may be substantially to lessen competition."

U.S. v. Philadelphia Nat'l Bank, 374 U.S. 321, 364-65 (1963).

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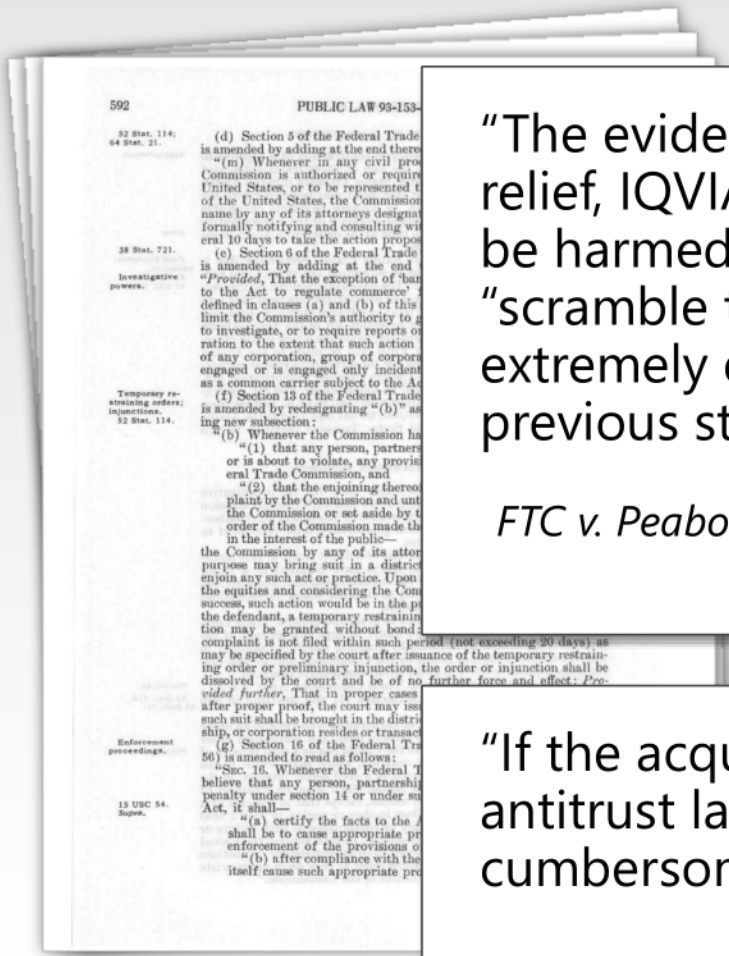
Weighing the Equities



"The evidence before this court easily meets that standard. Absent preliminary relief, IQVIA can acquire and begin integrating DeepIntent. Customers would be harmed with higher prices and decreased innovation, and Defendants can "scramble the eggs" – that is, immediately merge their operations and make it extremely difficult, if not impossible, for competition to be restored to its previous state."

FTC v. Peabody Energy Corp., 492 F. Supp. 3d 865, 918 (E.D. Mo. 2020) (citing *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 87 (D.D.C. 2015)); *Lancaster*, 434 F. Supp. at 1096-97.

"If the acquisition is allowed to proceed but is later found to be violative of the antitrust laws, divestiture will be required. At best, divestiture is a slow, cumbersome, difficult, disruptive and complex remedy."

Lancaster, 434 F. Supp. at 1096.

Thank you