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17 Attorneys for Defendants
   SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.

19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

                          OAKLAND DIVISION
21
   ORACLE USA, INC., et al.,   Case No. 07-CV-1658 PJH (EDL)
22
                  Plaintiffs,   **CORRECTED EXHIBIT 38 TO THE
23   DECLARATION OF THARAN GREGORY
         v.   LANIER ISO DEFENDANTS' RENEWED
24   MOTION FOR JUDGMENT AS A MATTER OF
   SAP AG, et al.,   LAW AND NEW TRIAL MOTION**
25
                  Defendants.   ***CORRECTION OF DOCKET ITEM NO. 1045-38***
26
                                          Date: July 13, 2011
27   Time: 9:00 a.m.
                                          Courtroom: 3, 3rd Floor
28   Judge: Hon. Phyllis J. Hamilton

SVI-91864v1   CORRECTED EXHIBIT 38 TO LANIER DECL. ISO DEFS' RENEWED
                                             MOTION FOR JMOL AND NEW TRIAL MOTION
                                                     Case No. 07-CV-1658 PJH (EDL)

                                                                        D o c k e

EXHIBIT 38

Amended Trial Stipulation and Order No. 1 (November 2, 2010) & Trial Stipulation and Order Regarding Contributory Infringement Liability (November 2, 2010)

TN stipulates to all liability on all claims

SAP stipulates to vicarious liability on the copyright claims against TN

In addition to all the other stipulations the Parties have entered into, on October 28, 2010, SAP AG and SAP America also stipulated with the Plaintiffs that they are liable for contributory infringement.

Work Steps

Information Reviewed

Analysis

Determination of Damages Approach / Amount

- Legal Filings
- Company and Industry Research
- Financial and Other Company Documents
- Depositions
- Expert Reports
- Trial Testimony
- Stipulations

- Analyzed Strategic Goals/ Expectations of Oracle and SAP
- Reviewed Oracle and SAP Licenses / Acquisition History
- Analyzed ERP Market Shares
- Analyzed Oracle and SAP Financial Records / Models
- Interviewed Oracle Personnel
- Considered Input From Other Experts

Copyright License Negotiation

The Reduction of the Fair Market Value of the Copyrighted Work is the Amount a Willing Buyer (SAP) Would Have Been Reasonably Required to Pay a Willing Seller (Oracle) at the Time of the Infringement

Oracle's Negotiating Perspective

SAP's Negotiating Perspective

What is Oracle Giving Up?

What is SAP Gaining?

Fair Market Value License Negotiation Framework

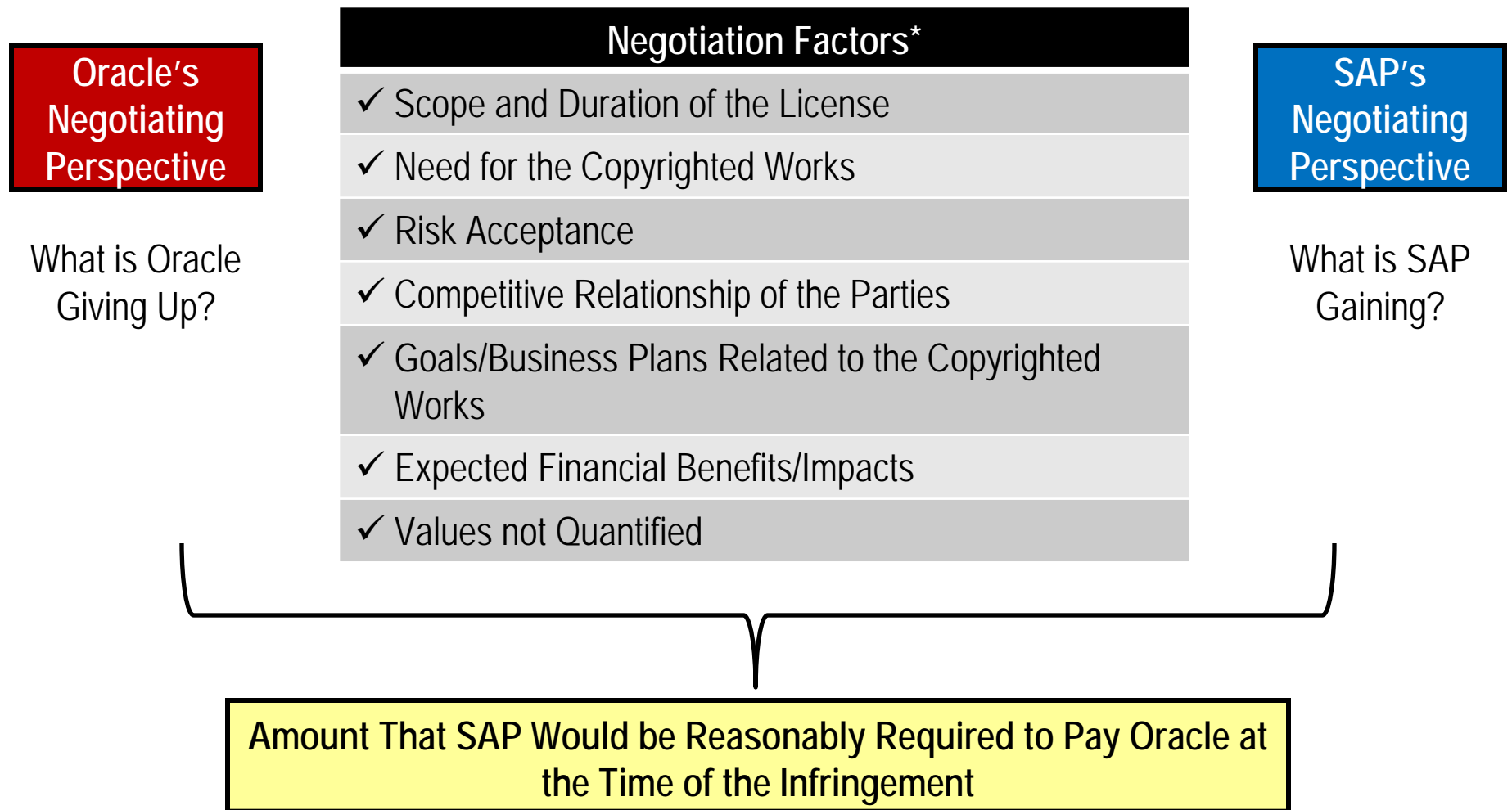| Oracle's Negotiating Perspective	Negotiation Factors*	SAP's Negotiating Perspective
	✓ Scope and Duration of the License	
	✓ Need for the Copyrighted Works	
What is Oracle Giving Up?	✓ Risk Acceptance	What is SAP Gaining?
	✓ Competitive Relationship of the Parties	
	✓ Goals/Business Plans Related to the Copyrighted Works	
	✓ Expected Financial Benefits/Impacts	
	✓ Values not Quantified	

Amount That SAP Would be Reasonably Required to Pay Oracle at the Time of the Infringement

* Consistent with *Georgia-Pacific Corp. v. U.S. Plywood Corp.*

Fair Market Value of Copyrighted Works - Concept

	Before License to SAP (Exclusive Rights)	After License to SAP (Non-Exclusive Rights)	

License Value

	Original Value to Oracle	Value to Oracle After License	Value to SAP with License
Customer Relationships		↓	↑
Customer Revenues		↓	↑
Market Share		↓	↑
Other Value		↓	↑
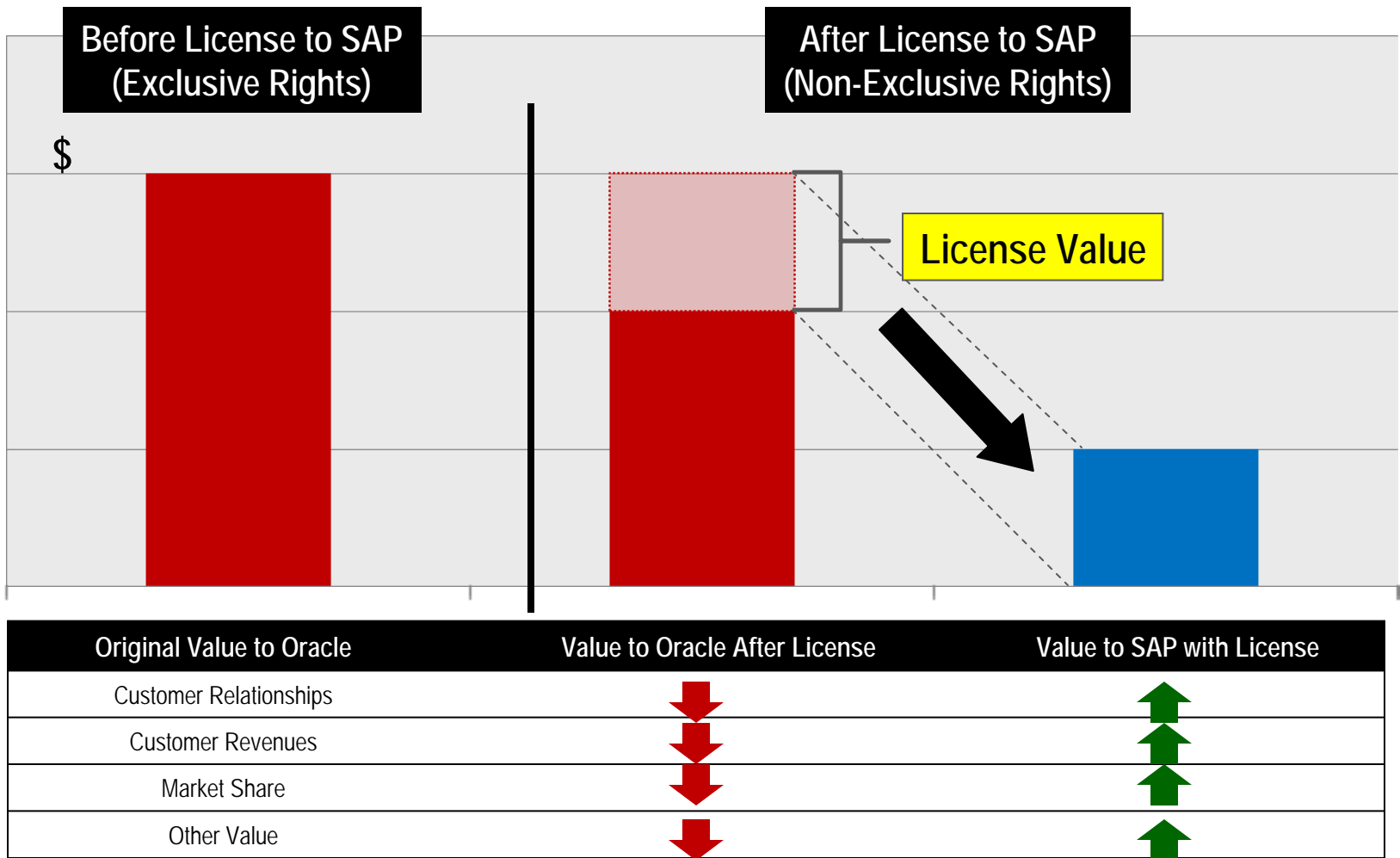
Why Fair Market Value License Approach

✓ Measures fair market value of what Oracle would have been paid <u>at the time</u>, based on total scope of infringing activities

✓ Reflects <u>Oracle's upfront investments</u> for PeopleSoft ($11.1B) and Siebel ($6.1B), including exclusive use of software and materials

✓ Reflects <u>SAP's need</u> for the software and materials <u>prior</u> to launching PeopleSoft and Siebel maintenance services

✓ Substitutes negotiation for infringement

Fair Market Value License – Information Considered

✓ Considers events and circumstances known <u>at the valuation date</u>

- SAP documents indicate expectations at the time
- As ERP software market leader, SAP was experienced in projecting customer conversions and revenues

✓ Not appropriate to determine fair market value in hindsight

- Value not impacted by events not known at the time
- Value not dependent on SAP execution after January 2005
- Value not affected by Oracle's filing of lawsuit (March 2007)

✓ Approach consistent with recognized valuation theory

Why Upfront License Fee

- ✓ Protects <u>Oracle's upfront investment </u>of $11.1B and $6.1B just spent to acquire PeopleSoft and Siebel

- ✓ SAP was aware that <u>Oracle paid upfront </u>to acquire PeopleSoft and Siebel software and support materials

- ✓ <u>Only way to balance the risk </u>between Oracle's upfront investments and SAP's execution of its business plans

- ✓ <u>Common payment structure </u>for technology licenses between direct competitors

- ✓ <u>Avoids future disputes </u>over what are royalty-bearing customers or revenues – especially between competitors

Why Not Running Royalty

- ✓ Places the <u>entire risk </u>of the $11.1B and $6.1B upfront investments on Oracle

- ✓ <u>Does not</u> value software and support materials <u>at the time </u>of the negotiation

- ✓ Greater SAP success (customer conversions) equals greater impact to Oracle revenue / direct competitors

- ✓ Lower SAP maintenance price equals lower royalty paid / increased chance of SAP converting the customer

From SAP's Opening Statement

Scope of PeopleSoft Copyrighted Works Valued

105 PeopleSoft Copyright Registrations

- At Least **Hundreds of Thousands** of Software Files

- At Least **Thousands** of Copies of Entire Applications

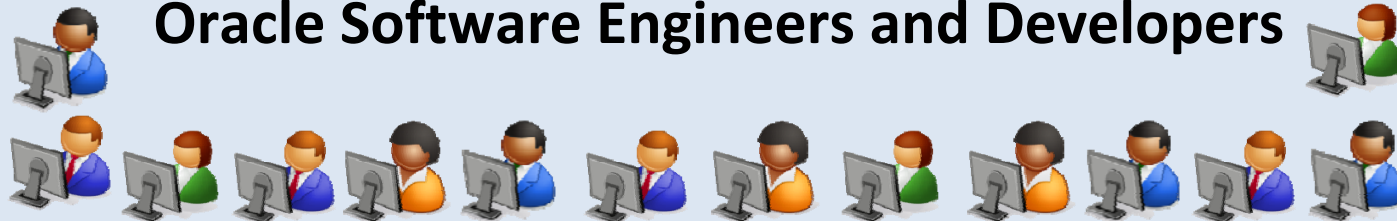- At Least **Hundreds of Thousands** of Downloads
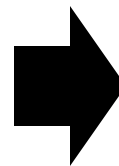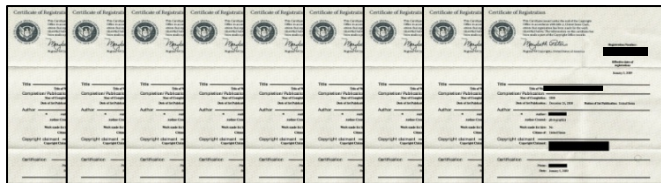
Oracle Copyrighted Works

- ✓ Software Objects
- ✓ Software Updates
- ✓ Bug Fixes
- ✓ Patches
- ✓ Software Applications
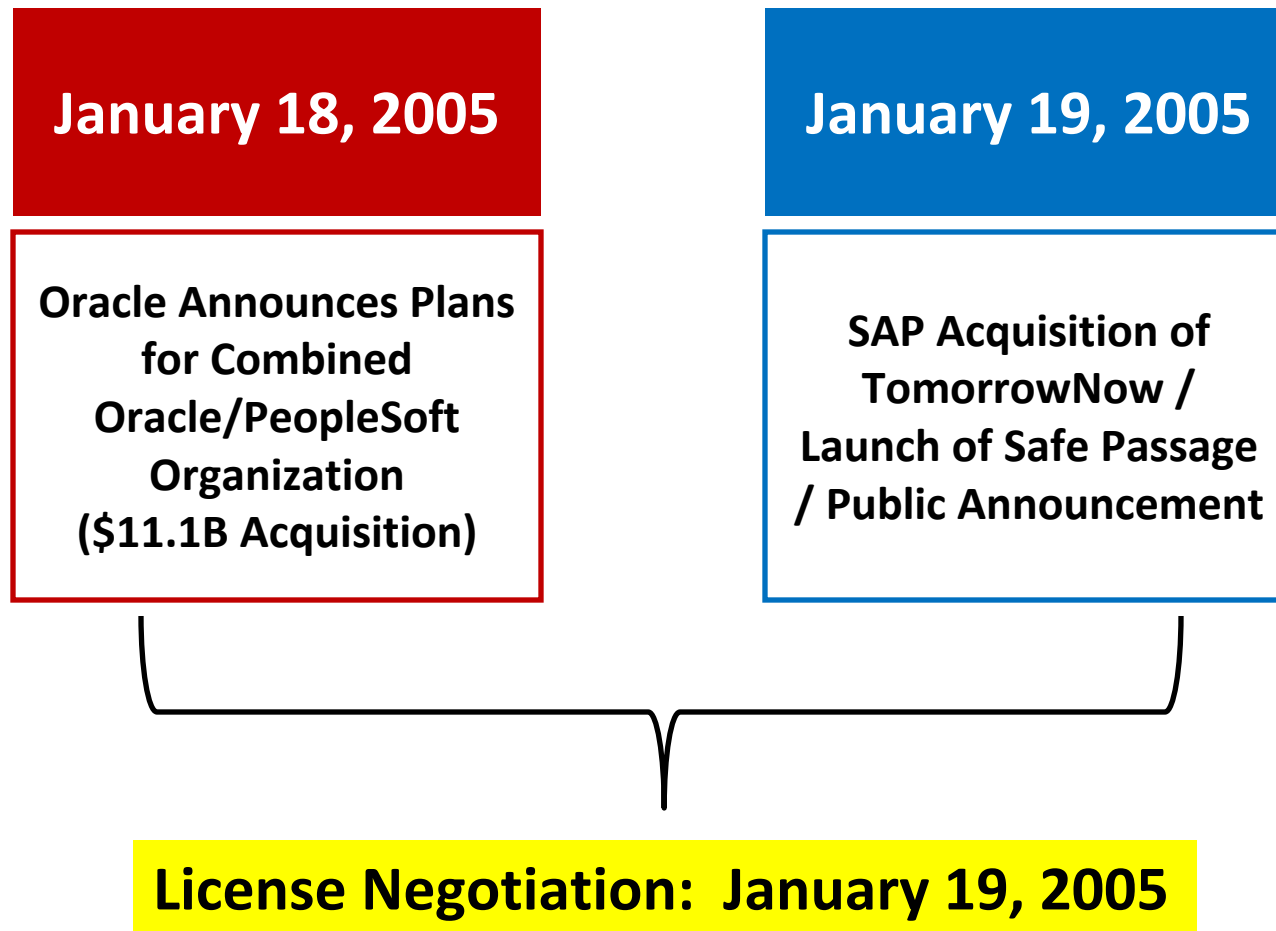- ✓ Instructional Materials
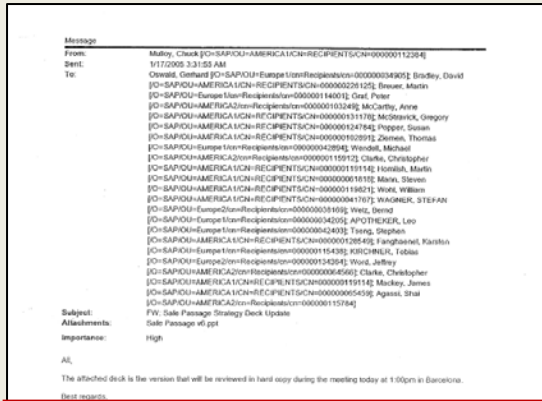- ✓ Custom Solutions

Oracle Software Engineers and Developers

Timing of PeopleSoft License Negotiation

January 18, 2005

Oracle Announces Plans for Combined Oracle/PeopleSoft Organization ($11.1B Acquisition)

January 19, 2005

SAP Acquisition of TomorrowNow / Launch of Safe Passage / Public Announcement

License Negotiation: January 19, 2005

"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-J.D. Edwards" – January 16, 2005

Strategy

"Convert and Contain"

Goal: Our goal is to convert the majority of the PeopleSoft and J.D. Edwards customer base to SAP and contain Oracle's potential growth in the next generation application market.

Strategy: By offering full maintenance and support of PeopleSoft and J.D. Edwards systems, migration tools along with favorable upgrade licensing terms to SAP NetWeaver and mySAP ERP, SAP will siphon off the cash flow that Oracle needs to build or acquire it's next generation applications. SAP will establish or re-invigorate relationships with potentially thousands of new and existing customers.

Key Tactics:
- Announce a dramatic, market changing PeopleSoft and J.D. Edwards support and upgrade

Key Tactics:
- Announce a dramatic, market changing PeopleSoft and J.D. Edwards support and upgrade offering in January, just as Oracle announces their new strategy.

PeopleSoft and JDE installations by perhaps combining the IBM-DOC PeopleSoft-JDE practice with the SAP practice and enable hundreds of IBM channel partners around the world to engage PeopleSoft and JDE accounts on behalf of the joint SAP and IBM initiative.
- Roll out targeted direct marketing and sales programs to a variety of PSFT and JDE market segments including strategic installed bases of mid market manufacturing, project/service industries, local/state governments and HCM
- Wrap up the first half 2005 Safe Passage campaign at the SAPPHIRES with high profile closing events and special tracks to further education and nurture PeopleSoft and J.D. Edwards customers.

SAP Global Marketing © 2004, Safe Passage v1, December 23, 2004, 3

THE BEST-RUN BUSINESSES RUN SAP

PX0141

Oracle and SAP ERP Worldwide Market Share

2004 Worldwide Market Share

Post PeopleSoft Acquisition Market Share
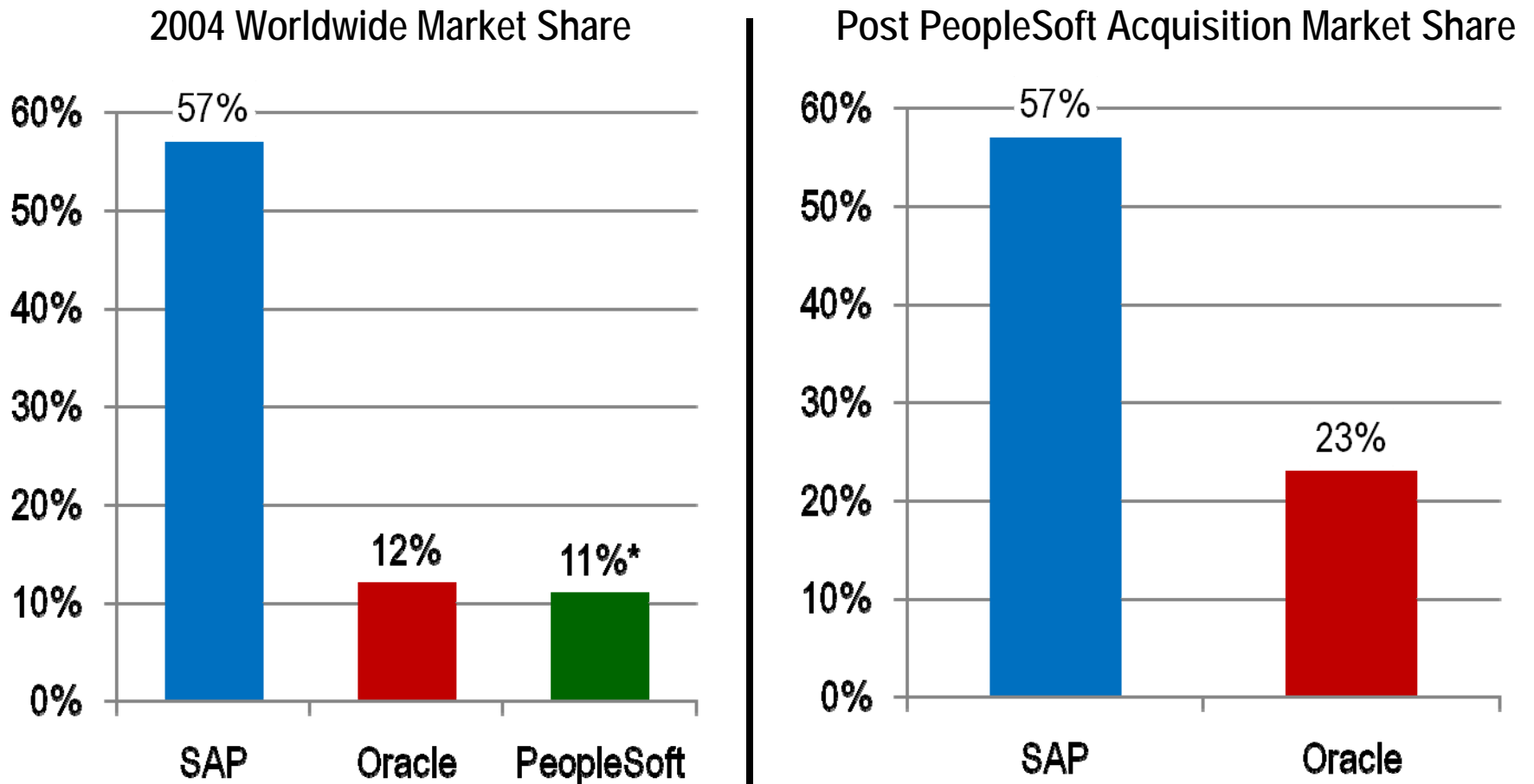
* Oracle paid $11.1 billion to acquire 11% market share

Source: SAP Document - "The Truth About Oracle's Claims" (PX0157)

"Clear Sailing: Sustaining Our Momentum in Competitive Waters" – February 3, 2005

Situation Analysis

➲ **Market consolidation has changed the competitive landscape.** Oracle is positioning itself to aggressively challenge SAP for leadership in business software solutions.

➲ **Media interest is high** – provocative statements from Oracle, and simple statements from executives will drive the news cycle in most key markets.

➲ Recent **SAP share price drop** caused mainly by disappointment on SAP operating margin guidance coupled with Oracle projections of strong top line and margin targets. Some possibe selling by hedge funds and long-term holders taking profits due to "lack of a catalyst" to drive near term SAP share price and SAP trading at highest valuation in peer group.

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Internal pressure at SAP is high to "take on Oracle" in response to public provocation from Oracle. We are emboldened by strong financial performance, especially after nine good quarters in the US market, which is the key battleground.

PX0171

PeopleSoft License – SAP Negotiation Factors

Negotiation Factor	Analysis
1 SAP's Goals for New Offering	✓ Offering PeopleSoft Maintenance is Step 1 of "3-Step Plan" to Convert Customers to SAP
2 SAP's Expected Impact on Oracle	✓ Impact Oracle's Return on $11.1B Investment by Taking PeopleSoft Customers ✓ SAP Increased Revenue Equals Oracle Revenue Impact
3 SAP's Expected Financial Gains	✓ $897 Million in Only 3 Years ✓ Expected Customer Conversions of 2,000 to 6,000 ✓ SAP Expected Gains of $881M to $2.69B

ORACLE

SAP

January 19, 2005

PeopleSoft License – Key SAP Documents

	Date	Document	SAP NEGOTIATION FACTORS			Presented To / Received By
			① SAP Goals	② Impact on Oracle	③ Financial Gains	
1	12/15/2004	Executive Board Meeting Minutes (PX0003)	X			**SAP Executive Board**
2	12/20/2004	"PeopleSoft 1-2-3" (PX0006, PX0008)	X	X		**Agassi, Oswald**, Mackey
3	12/23/2004	"A Roadmap For PSFT Customers to SAP" (PX0012)	X		X	**Agassi, Apotheker, Kagermann, Oswald**
4	1/5/2005	"PeopleSoft 1-2-3" Version 1.2 (PX0015)	X	X		**Agassi, Oswald**, Shenkman, Mackey and Others
5	1/16/2005	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" (PX0141)	X	X	X	**Apotheker, Agassi, Oswald**, Homlish, Ziemen, Mackey and Others
6	1/19/2005	SAP Conference Call (PX0023)	X	X	X	Public
7	1/20/2005	Executive Board / "Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" (PX0024, PX0151)	X	X	X	**SAP Executive Board**
8	1/25-26/2005	"TomorrowNow Integration Meeting" (PX0161)	X		X	**Oswald**, Ziemen, Nelson, Ravin and Others

PeopleSoft License - SAP's Goals For New Offering (Factor ①)

	Document	Presented To / Received By	SAP's Goals (quotes)
1	Executive Board Meeting Minutes – 12/15/2004 (PX0003)	SAP Executive Board	• "The Executive Board agrees to make a special offer to PeopleSoft/SAP customers to take over responsibility for the maintenance of their PeopleSoft HR installations and for potentially upgrading to mySAP BS"
2	"PeopleSoft 1-2-3" – 12/20/2004 & 1/5/2005 (PX0006, PX0008, PX0015)	**Agassi, Oswald,** Mackey	• "Step 1: Provide current SAP customers PeopleSoft support" • "Freezing a PeopleSoft customer 'forever' is not an end goal of SAP. SAP ultimately wants to sell more software and upgrade a customer to mySAP."
3	"A Roadmap for PSFT Customers to SAP" - 12/23/2004 (PX0012)	**Agassi, Apotheker, Kagermann, Oswald**	• "SAP provides ongoing support for PSFT software until 2009"
4	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-J.D. Edwards" – 1/16/2005 (PX0141)	**Apotheker, Agassi, Oswald,** Homlish, Ziemen, Mackey and Others	• "Safe Passage features 3 fundamental elements: 1. Maintenance of PeopleSoft and J.D. Edwards applications"

PeopleSoft License - SAP's Goals For New Offering (Factor ①) – cont.

	Document	Presented To / Received By	SAP's Goals (quotes)
5	SAP AG Phone Conference – 1/19/2005 (PX0023)	Public	• "To accelerate this offering, SAP has acquired TomorrowNow" • "Our Safe Passage program has three key components. One: a maintenance offering on existing investments customers have made in PeopleSoft and JDE." • "This offer is a global offer."
6	Executive Board / "Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" – 1/20/2005 (PX0024, PX0151)	**SAP Executive Board**	• "Our Offering: SAP will offer full product maintenance and support for all PeopleSoft and J.D. Edwards products, and provide that support through TomorrowNow."
7	"TomorrowNow Integration Meeting" – 1/25-26/2005 (PX0161)	**Oswald**, Ziemen, Nelson, Ravin and Others	• "Tnow will serve as major cornerstone of our Go-to – market strategy as our key Service-delivery unit"

PeopleSoft License - SAP's Expected Impact on Oracle (Factor ②)

	Document	Presented To / Received By	SAP's Impact on Oracle (quotes)
1	"PeopleSoft 1-2-3" - 12/20/2004 & 1/5/2005 (PX0006, PX0008, PX0015)	**Agassi, Oswald**, Mackey	• "May force Oracle to change its behavior or plans around pricing or positioning" (PX0006, PX0015) • "Affecting Oracle's ability to maintain this revenue stream could impact the ROI assumptions of the Oracle/PeopleSoft deal" (PX0015)
2	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" – 1/16/2005 (PX0141)	**Apotheker, Agassi, Oswald**, Homlish, Ziemen, Mackey and Others	• "Contain Oracle's potential growth in the next generation application market." • "SAP will siphon off the cash flow that Oracle needs to build or acquire it's next generation applications."
3	SAP AG Phone Conference - 1/19/2005 (PX0023)	Public	• "The value was estimated by Oracle, rightfully or wrongly, as $10 billion." • "This customer base is not necessarily captive by Oracle."
4	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" – 1/20/2005 (PX0024, PX0151)	**SAP Executive Board**	• "Disrupt Oracle's ability to pay for the acquisition out of cash flow" • "Shrink their share of the application market" • "Discredit their efforts to create a next-generation application platform"

PeopleSoft License - SAP's Expected Financial Gains (Factor ③)

	Document	Presented To / Received By	SAP's Expected Gains
1	"A Roadmap For PSFT Customers to SAP" - 12/23/2004 (PX0012)	**Agassi, Apotheker, Kagermann, Oswald**, Homlish	• **3,000 maintenance** customers by 2007 • **Convert 1,375** customers to SAP by 2007 • **$897 million** in first **3 years**
2	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-J.D. Edwards – Executive Overview" – 1/16/2005 (PX0141)	**Apotheker, Agassi, Oswald**, Homlish, Ziemen, Mackey and Others	• "Our goal is to **convert the majority** of the PeopleSoft and J.D Edwards customer base to SAP" • "Aggressively convert" **450** of Global 1000 "**over the next 30 days**"
3	SAP AG Phone Conference – 1/19/2005 (PX0023)	Public	• Target **4,000 joint** SAP customers • Two common customer scenarios
4	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" – 1/20/2005 (PX0024, PX0151)	**SAP Executive Board**	• **Convert 50%** of PSFT/JDE customers (100% of shared customers) to SAP • 9,920 x 50% = **4,690**
5	"TomorrowNow Integration Meeting" – 1/25-26/2005 (PX0161)	**Oswald**, Ziemen, Nelson, Ravin and Others	• **2,000 to 4,000** TomorrowNow customers by 2009
6	Deposition Testimony of Shai Agassi, Former SAP Executive Board Member	N/A	• **60%** of PSFT/JDE customers • 9,920 x 60% = **5,952**

Executive Board Meeting Minutes – December 15, 2004 (Factor **1**)

The Executive Board agrees to make a special offer to People-soft/SAP customers to take over responsibility for the maintenance of their Peoplesoft HR installations and for potentially upgrading to mySAP BS (offer the same conditions as for R/3 customers).

PX0003

"PeopleSoft 1-2-3"
- December 20, 2004 (Factor 1)

Step 1 – Provide current SAP customers Peoplesoft support

Step 2 – Drive incremental revenue through composite applications

Step 3 – Upgrade Peoplesoft customers to mySAP ERP

PX0006

"A Roadmap For PeopleSoft Customers to SAP" - December 23, 2004 (Factor ③)

PX0012

"PeopleSoft Attack Program"
- December 23, 2004 (Factor ③)

PX4814

"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-J.D. Edwards" – January 16, 2005 (Factors **2** & **3**)

Strategy

"Convert and Contain"

Goal: Our goal is to convert the majority of the PeopleSoft and J.D. Edwards customer base to SAP and contain Oracle's potential growth in the next generation application market.

Strategy: By offering full maintenance and support of PeopleSoft and J.D. Edwards systems, migration tools along with favorable upgrade licensing terms to SAP NetWeaver and mySAP ERP, SAP will siphon off the cash flow that Oracle needs to build or acquire it's next generation applications. SAP will establish or re-invigorate relationships with potentially thousands of new and existing customers.

■ Announce a joint initiative between SAP and IBM to service, support and upgrade the existing PeopleSoft and JDE installations by perhaps combining the IBM BCS PeopleSoft/JDE practice with the SAP practice and enable hundreds of IBM channel partners around the world to engage PeopleSoft and JDE accounts on behalf of the joint SAP and IBM initiative.
■ Roll out targeted direct marketing and sales programs to a variety of PSFT and JDE market segments including strategic installed bases of mid market manufacturing, project/service

Key Tactics:

■ Reach out to the joint SAP-PSFT-JDE accounts within the "Global 1,000" (est. 450) over the next 30 days (February) and aggressively convert their maintenance contracts to SAP and facilitate immediate adoption of NetWeaver and planned adoption of mySAP ERP at PSFT and JDE installations within those enterprises.

SAP Global Marketing © 2004, Safe Passage v1, December 23, 2004, 3

THE BEST-RUN BUSINESSES RUN SAP

PX0141

SAP AG Phone Conference
- January 19, 2005 (Factor ②)

SAP AG

Phone Conference

Ubiqus/Nation-Wide Reporting & Convention
305 Broadway, Suite 408 - New York City, N
Phone: 212-227-7440 • 800-221-7242 • FAX 21

Holly Thuman, CSR

HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY   SAP-OR00329565

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: 07-cv-01658-PJH
PLNTF EXHIBIT NO. 0023
Date Admitted:_____
By:_____
Nichole Heuerman, Deputy Clerk

JD Edwards customer.

H.   Okay.

Tomorrow Now is the vehicle through which
tenance services, not the customer-based
after. It's also--it's not a 75 percent

o. Please go ahead.

o. I had a couple of quick questions. One

SAP AG
Phone Conference
13

HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY   SAP-OR00329578

MR. SHAI AGASSI: And Tomorrow Now is the vehicle through which
they get the maintenance services, not the customer-based
that we're going after.   It's also--it's not a 75 percent
discount, it's a 75 percent credit on their original
PeopleSoft, JD Edwards investment.   So as a result of that,
basically I think what we're looking at, and if you want to
look at it from sort of the financials perspective, the
rationale is more around the value, if you want, that these
customers represent as a potential future set of customers
for SAP applications.   And it's--the value was estimated by
Oracle, rightfully or wrongly, as $10 billion.   What we
believe is that this customer base is not necessarily captive
by Oracle.   I think this customer base has to make a choice
right now.

PX0023

-27-

"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-J.D. Edwards" – January 20, 2005 (Factors **2** & **3**)

Safe Passage:
Winning Customers and Markets From
Oracle-PeopleSoft-J.D. Edwards

January 20, 2004

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HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: 07-cv-01658-PJH
PLNTF EXHIBIT NO. 0024
Date Admitted: _____
By: _____
Nichole Heuerman, Deputy Clerk

The Goal

Convert **approximately 50% of the PeopleSoft and J.D. Edwards** customer installations to SAP (100% of shared customers)

- Disrupt Oracle's ability to pay for the acquisition out of cash flow
- Shrink their share of the application market
- Discredit their efforts to create a next-generation application platform

THE BEST-RUN BUSINESSES RUN SAP

SAP-OR 00299500

PX0024

"TomorrowNow Integration Meeting" – January 25-26, 2005 (Factor ③)

TomorrowNow Integration Meeting 25-26 January 2005

Stephen Tseng

Business and Resource Planning (1)

- Customer base for TNow Maintenance Services
  - 54 existing TNow customers, 200 planned for 2005 including JDE, up to 800 in 2009
  - 2000 joint SAP/PSFT customer as primary focus, 300 covered in 2005

  ◆ Scenario 1: 2000 customers in 2009 (2,5x original TNow planning)
  ◆ Scenario 2: 4000 customers in 2009 (5x original TNow planning)

- PeopleSoft Enterprise (20 FTE per 100 customers)
  ◆ 15:1 customers per Primary Support Engineer, 7 PSE per 100
  ◆ 7,5:1 customers per Development Support Engineer, 13 DSE per 100
- PeopleSoft Enterprise One and World (30 FTE per 100 customers)
  ◆ 10:1 customers per PSE (in 2005/2006), 10 PSE per 100
  ◆ 5:1 customers per DSE (in 2005/2006), 20 DSE per 100
  ◆ Assuming PeopleSoft Enterprise planning ratios for 2009

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THE BEST-RUN BUSINESSES RUN SAP

PX0161

"TomorrowNow Integration Meeting" – January 25-26, 2005 (Factor ①)

TomorrowNow Integration Meeting 25-26 January 2005

Stephen Tseng

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: 07-cv-01658-PJH
PLNTF EXHIBIT NO. 0161
Date Admitted: _____
BY:_____
Nichole Heuerman, Deputy Clerk

Introduction

- On behalf of Gerd Oswald, member of SAP's executive board responsible for Service & Support, welcome to the SAP
- **Merger presents a huge opportunity for us**
- Facing an exiting adventure with the unprecedented launch of our Safe Passage offering which surprised the analysts and especially ORACLE
- **TNow will serve as major cornerstone of our Go-to-market strategy as our key Service-delivery unit**
- Scale, build-up and prepare the organization accordingly
- Let's do it Together Now !!!

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THE BEST-RUN BUSINESSES RUN SAP

PX0161

PeopleSoft License - SAP's Expected Financial Gains (Factor ③)

|	Document	Presented To / Received By	SAP's Expected Gains
1	"A Roadmap For PSFT Customers to SAP" - 12/23/2004 (PX0012)	**Agassi, Apotheker, Kagermann, Oswald**, Homlish	• **3,000 maintenance** customers by 2007 • **Convert 1,375** customers to SAP by 2007 • **$897 million** in first **3 years**
2	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-J.D. Edwards – Executive Overview" – 1/16/2005 (PX0141)	**Apotheker, Agassi, Oswald**, Homlish, Ziemen, Mackey and Others	• "Our goal is to **convert the majority** of the PeopleSoft and J.D Edwards customer base to SAP" • "Aggressively convert" **450** of Global 1000 "**over the next 30 days**"
3	SAP AG Phone Conference – 1/19/2005 (PX0023)	Public	• Target **4,000 joint** SAP customers • Two common customer scenarios
4	"Safe Passage: Winning Customers and Markets from Oracle-PeopleSoft-JD Edwards" – 1/20/2005 (PX0024, PX0151)	**SAP Executive Board**	• **Convert 50%** of PSFT/JDE customers (100% of shared customers) to SAP • 9,920 x 50% = **4,690**
5	"TomorrowNow Integration Meeting" – 1/25-26/2005 (PX0161)	**Oswald**, Ziemen, Nelson, Ravin and Others	• **2,000 to 4,000** TomorrowNow customers by 2009
6	Deposition Testimony of Shai Agassi, Former SAP Executive Board Member	N/A	• **60%** of PSFT/JDE customers • 9,920 x 60% = **5,952**

PeopleSoft License – SAP's Expected Financial Gains
- Calculation Inputs – Revenue Components (Factor ③)

Example

Conversions to SAP Apps

+

Sales of Other SAP Products

+

Maintenance
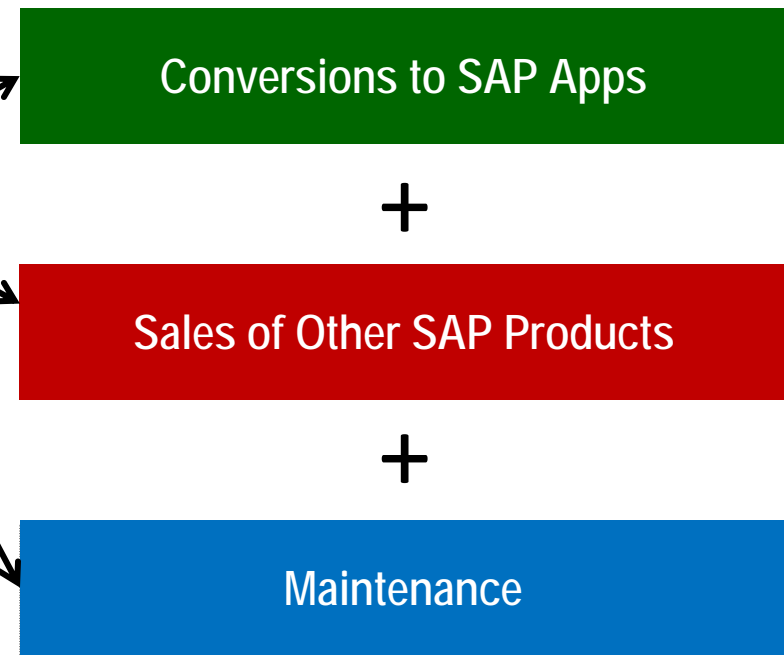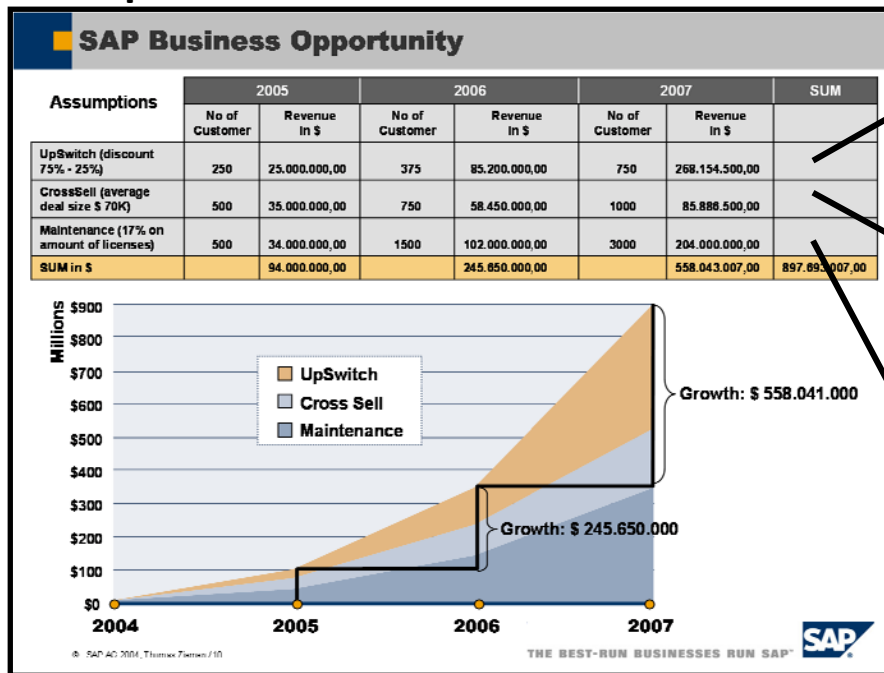
Source: PX0012

PeopleSoft License – SAP's Expected Financial Gains – Calculation Approach (Factor ③)

Based on *SAP's Expectations* at the Time of the Negotiation
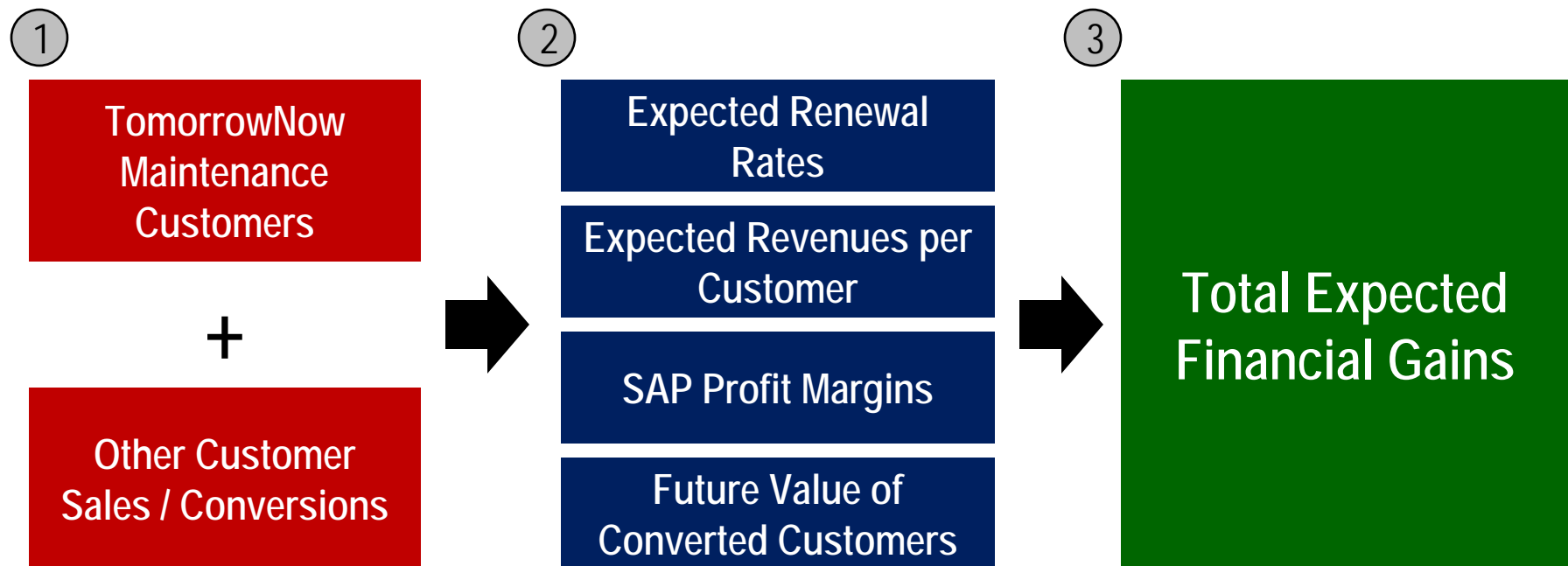
①

TomorrowNow Maintenance Customers

+

Other Customer Sales / Conversions

②

Expected Renewal Rates

Expected Revenues per Customer

SAP Profit Margins

Future Value of Converted Customers

③

Total Expected Financial Gains

PeopleSoft License – SAP's Expected Financial Gains – Calculation Inputs (Factor 3)

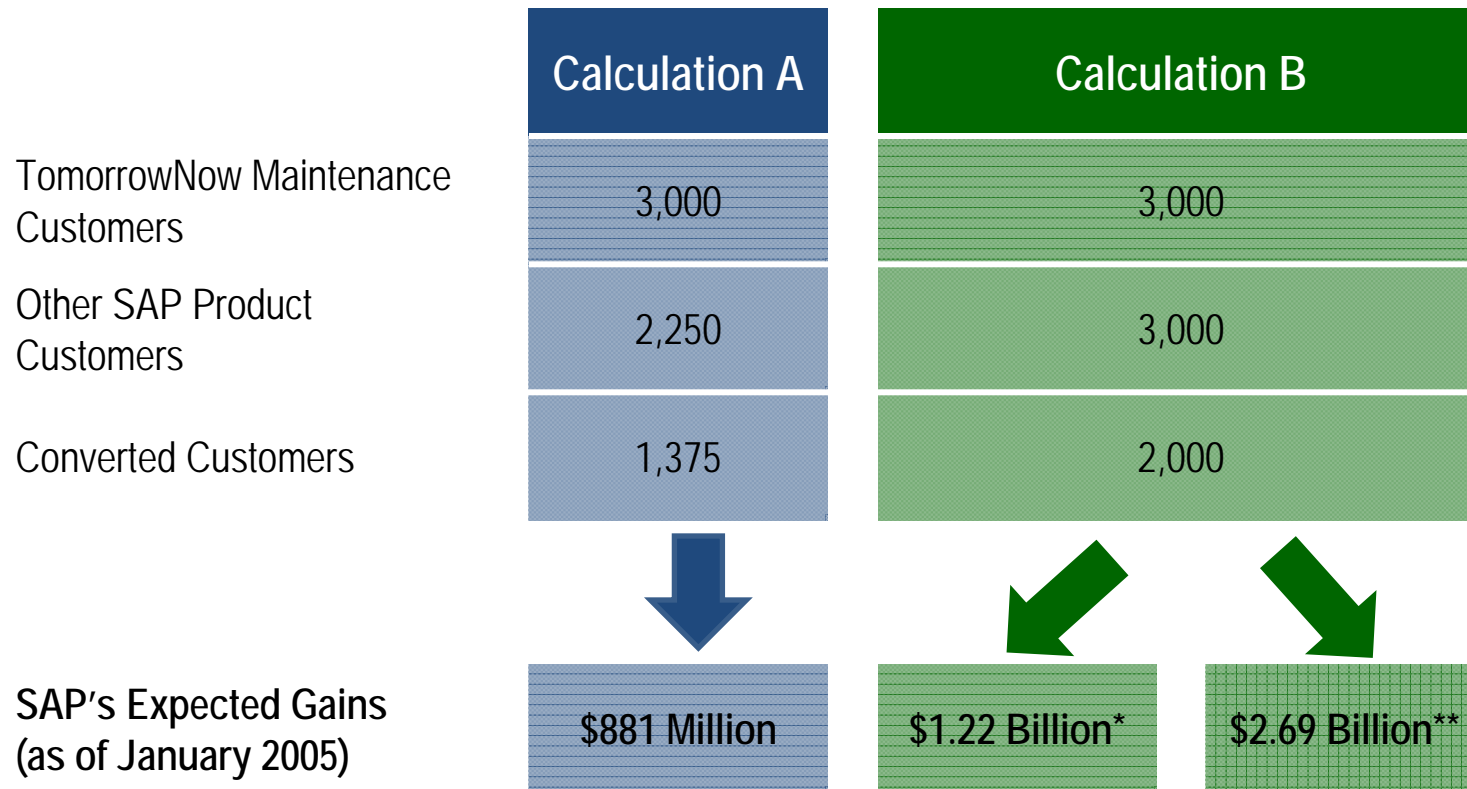| Category	Source	INPUTS	
		TN Maintenance	Other Revenues
Number of Customers	SAP Projections 12/04 – 1/05 (PX0012, PX0023, PX0024, PX0161, PX0141)	3,000	Conversions: 1,375 - 2,000 Other Sales: 2,250 - 3,000
Minus: Customer Attrition	Expected Attrition for PSFT	3.5% (per year)	3.5% (per year)
Multiplied By: Average Revenue per Customer	"SAP Business Opportunity" (PX0012)	$68,000 (per year)	Conversions: up to $358K Other Sales: up to $86K
= Total Revenue	Calculated	Calculated	
Multiplied By: Profit Margin	SAP Financial Records (PX1760, PX1761)	70%	70%
Multiplied By: Discount Factor	SAP Valuation Documents (PX0533)	14%	14%
= Expected Profits (as of 1/05)	Calculated	Calculated	
Plus: Future Value of Customers	PeopleSoft Acquisition (PX0013, PX1762)	N/A	Revenue Multiple: 4 Per Customer Value: $1M
= SAP EXPECTED FINANCIAL GAINS			

PeopleSoft License – SAP's Expected Financial Gains – Example Calculation (Factor **3**)

3,000 Maintenance Customers / 2,000 Converted to SAP

SAP Expected Gains as of January 2005 (in $ millions)	Customer Base	2005 - 2008			Future Financial Gains from Converted Customers	Total Expected Gains as of January 2005
		Total Expected Revenue	Less: Costs	Total Expected Profits		
Expected SAP Maintenance Revenue	3,000	$ 370.1	$ (111.0)	$ 259.1	N/A	$ 259.1
Expected Additional Product Sales	3,000	187.9	(56.3)	131.6	90.6	222.2
Expected License Revenue / Converted Customers	2,000	427.9	(128.3)	299.6	440.4	740.0
Total Expected Gains as of January 2005		$ 985.9	$ (295.6)	$ 690.3	$ 531.0	**$1,221.3**

Sources: PX0012, PX013, PX0193, PX0533, PX1760, PX1762

-35-

PeopleSoft License – SAP's Expected Financial Gains – Calculation Results (Factor 3)

	Calculation A	Calculation B	
TomorrowNow Maintenance Customers	3,000	3,000	
Other SAP Product Customers	2,250	3,000	
Converted Customers	1,375	2,000	
SAP's Expected Gains (as of January 2005)	$881 Million	$1.22 Billion*	$2.69 Billion**

*   Future value based on revenue multiple

**   Future value based on value per customer

Sources: PX0012, PX013, PX0193, PX0533, PX1760, PX1762

PeopleSoft License – SAP Negotiation Factors

Negotiation Factor	Analysis
1 SAP's Goals for New Offering	✓ Offering PeopleSoft Maintenance is Step 1 of "3-Step Plan" to Convert Customers to SAP
2 SAP's Expected Impact on Oracle	✓ Impact Oracle's Return on $11.1B Investment by Taking PeopleSoft Customers ✓ SAP Increased Revenue Equals Oracle Revenue Impact
3 SAP's Expected Financial Gains	✓ $897 Million in Only 3 Years ✓ Expected Customer Conversions of 2,000 to 6,000 ✓ SAP Expected Gains of $881M to $2.69B

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January 19, 2005

PeopleSoft License – Oracle Negotiation Factors

Negotiation Factor	Analysis
1 Oracle's Goals for PeopleSoft Acquisition	✓ Maintenance revenue stream from 9,920 customers ✓ Doubles Oracle ERP worldwide market share
2 Risk to Oracle's Investment in PeopleSoft	✓ $11.1B investment including software and support materials ✓ Loss of exclusive rights to copyrighted works
3 Oracle's Expected Financial Impacts	✓ At least 3,000 expected maintenance customer losses ✓ Oracle expected financial impact

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January 19, 2005

Oracle's Goals / Plans for PeopleSoft (Factor **1**)

✓ Double worldwide market share in enterprise applications

✓ Obtain "Best of Breed" software

✓ Obtain PeopleSoft customer base (approx. 10,000)
  – Maintenance relationships using copyrighted works
  – On-going customer relationships

✓ Retain annual $1.3B maintenance revenue stream to fund further innovation

✓ Earn a return on $11.1 billion investment

Oracle "Rating Discussion"
– January 2005 (Factor ①)

Rating Discussion

January 2005

Confidential and Proprietary

Highly Confidential Information - Attorneys' Eyes Only

Charles Phillips / Safra Catz Presentation

Rationale for the PeopleSoft Transaction

- Expanded customer base with greater scale
- Larger applications R&D budget and accelerated innovation
- Stronger competitive positioning
- More high-margin recurring revenue
- Accretive transaction from operations to Oracle's shareholders
- Low risk acquisition based on planned integration

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Confidential and Proprietary   27

Highly Confidential Information - Attorneys' Eyes Only   ORCL00381773

Confidential Information   ORCL00381744

PX4811

Oracle Corporation Presentation
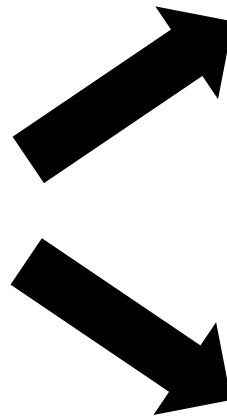## – January 26, 2005 (Factor ①)

PX4809

PeopleSoft Acquisition - Summary (Factor **2**)

January 18, 2005

ORACLE

✓ **Exclusive** Rights to PSFT Software and Materials

✓ ~ 10,000 Customers

✓ 11% Increase in ERP Market Share

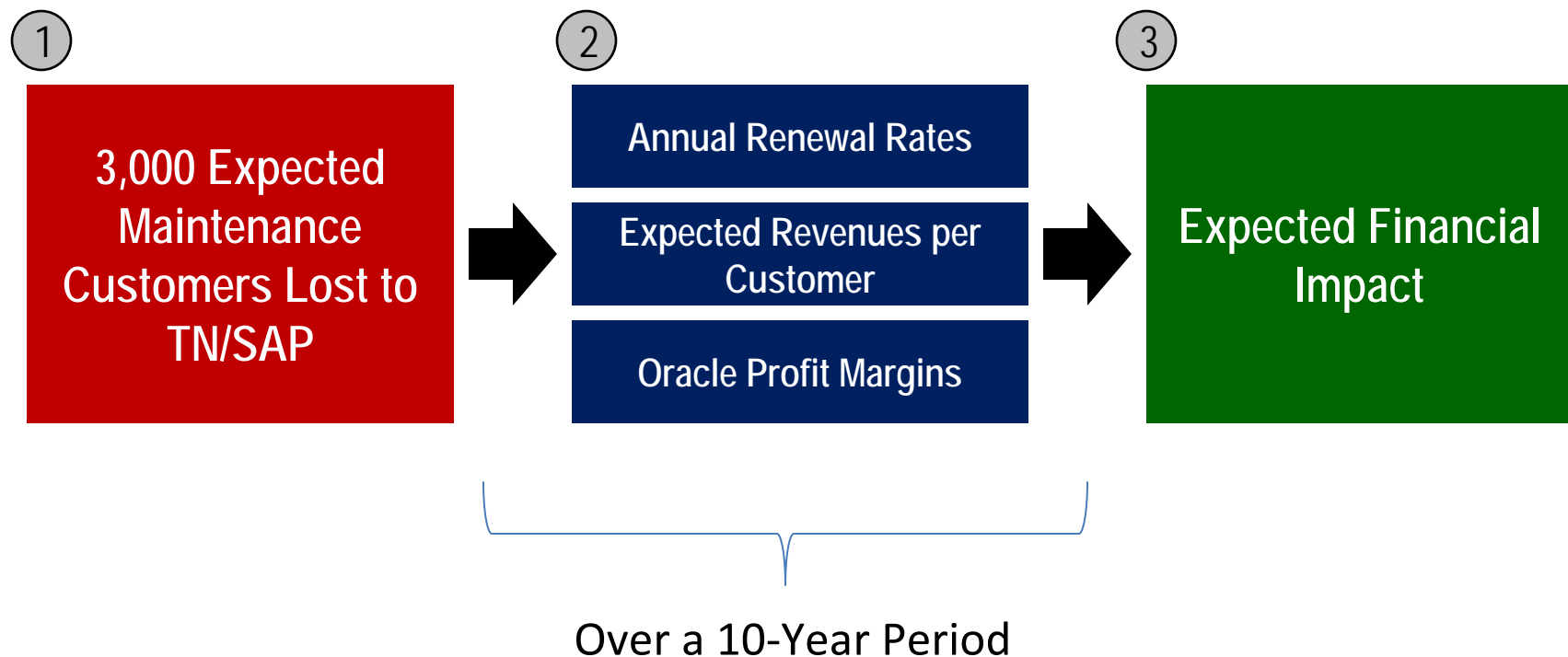✓ $1.3B Annual Maint. Revenue

January 19, 2005

ORACLE

✓ **Non-Exclusive** Rights to PSFT Software and Materials

✓ Expected **Loss** of Customers, Market Share and Revenue

SAP

✓ **Non-Exclusive** Rights to PSFT Software and Materials

✓ Expected **Gain** of Customers, Market Share and Revenue

PeopleSoft License - Oracle's Expected Financial Impact – Calculation Approach (Factor **3**)

Based on *Oracle's Expectations* at the Time of the Acquisition

① **3,000 Expected Maintenance Customers Lost to TN/SAP**

➡

② Annual Renewal Rates

Expected Revenues per Customer

Oracle Profit Margins

➡

③ **Expected Financial Impact**

Over a 10-Year Period

PeopleSoft License - Oracle's Expected Financial Impact – Calculation Inputs (Factor ③)

Category	Source	Inputs
Number of Lost Customers	SAP Projections 12/04 – 1/05 (PX0012, PX0023, PX0024, PX0161, PX0141)	3,000 (10/08) 1,375 – 3,000 (post-10/08)
Minus: Customer Attrition	Expected Attrition for PSFT	3.5% (per year)
Multiplied By: Average Revenue per Customer	Oracle Valuation Documents (PX0615)	$130,000 (per year)
= Total Revenue	*Calculated*	*Calculated*
Multiplied By: Profit Margin	Oracle Financial Records (PX0013, PX1758)	80%
Multiplied By: Discount Factor	Oracle Valuation Documents (PX0013)	10%
= Expected Profits (as of 1/05)	*Calculated*	*Calculated*
Plus: Future Value of Customers	Oracle Valuation Documents (PX0658)	8.3% Capitalization Rate
= ORACLE EXPECTED FINANCIAL IMPACTS		

PeopleSoft License - Oracle's Expected Financial Impact – Example Calculation (Factor ③)

3,000 Maintenance Customers / 1,375 (Post 10/08)

Oracle Financial Impacts as of January 2005 (in $ millions)	Customer Base	2005 - 2014			Future Financial Impact of Converted Customers	Total Expected Impact as of January 2005
		Total Impacted Revenue	Less: Costs	Total Impacted Profits		
Impacted Oracle Maintenance (1/05 – 10/ 08) (Impacted 1,375 Customers 10/08 – 12/14)	3,000 / 1,375	$ 1,082.9	$ (216.6)	$ 866.3	$ 519.9	$ 1,386.2

Sources: PX0012, PX0013, PX0615, PX0658, PX1758

PeopleSoft License - Oracle's Expected Financial Impact – Calculation Results - (Factor ③)

	Calculation A	Calculation B	Calculation C
PSFT/JDE Maintenance Customers Lost to TomorrowNow	3,000 (1,375 post-10/08)	3,000 (2,000 post-10/08)	3,000
Oracle's Expected Impact (as of January 2005)	$1.36 Billion	$1.82 Billion	$2.46 Billion

Sources: PX0012, PX0013, PX0615, PX0658, PX1758

PeopleSoft License – Oracle Negotiation Factors

Negotiation Factor	Analysis
1 Oracle's Goals for PeopleSoft Acquisition	✓ Maintenance revenue stream from 9,920 customers ✓ Doubles Oracle ERP worldwide market share
2 Risk to Oracle's Investment in PeopleSoft	✓ $11.1B investment including software and support materials ✓ Loss of exclusive rights to copyrighted works
3 Oracle's Expected Financial Impacts	✓ At least 3,000 expected maintenance customer losses ✓ Oracle expected financial impact

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SAP

January 19, 2005

PeopleSoft Fair Market Value Damages - Summary
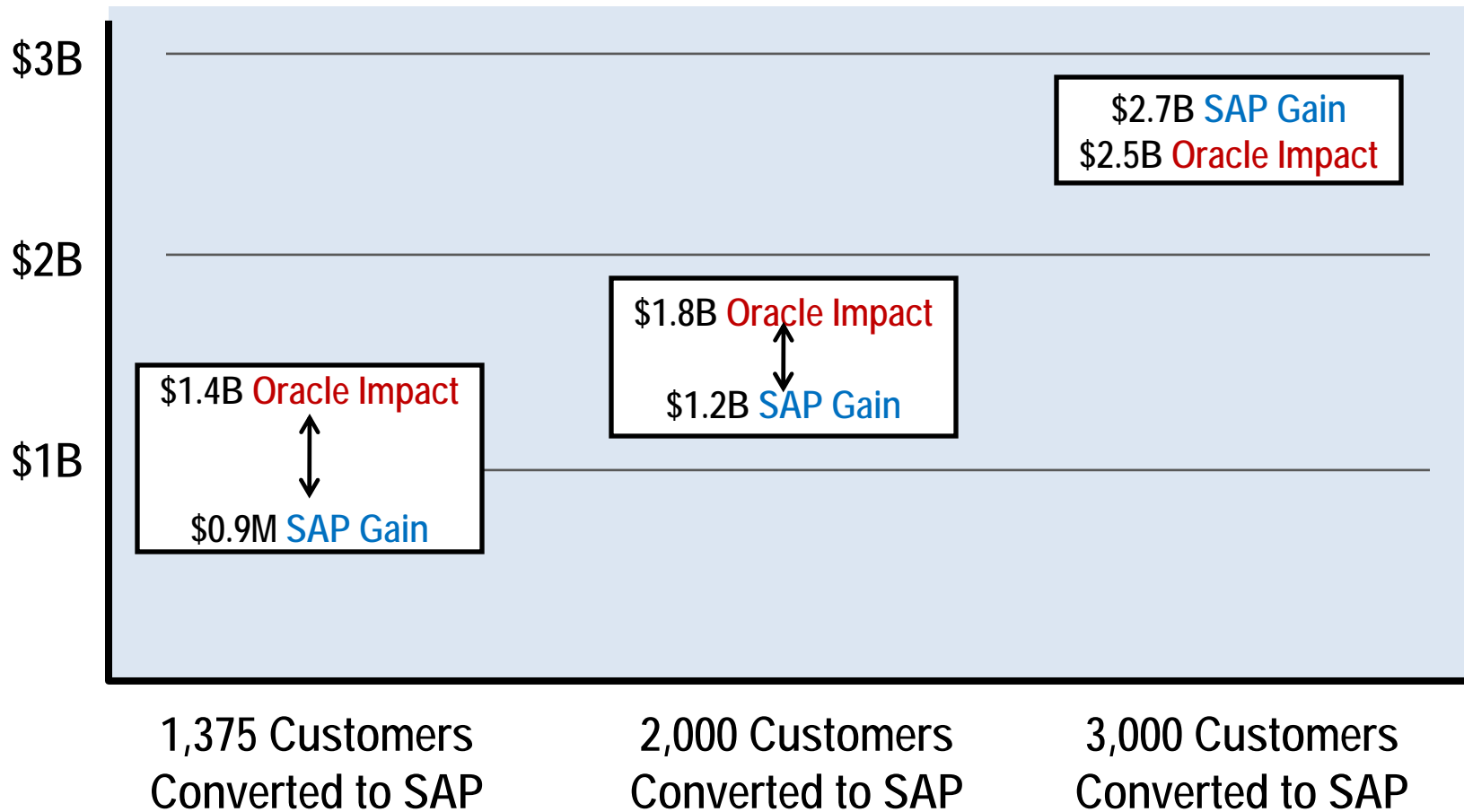
Why Not Oracle Lost Customer Profits + SAP Profits

- ✓ Does not measure full fair market value of copyrighted works

    - Does not measure total impact to Oracle

    - Does not capture all acknowledged benefits of infringement to SAP

- ✓ <u>Specifically</u> does not measure value beyond lost customer revenues and profits

- ✓ Dependent on SAP's execution, not the value of the copyrighted works

- ✓ Lost profits only available measure of damages for non-copyright legal claims

Timing of Siebel License Negotiation

September 12, 2005	January 31, 2006	May 15, 2006	September 29, 2006
Oracle and Siebel Execute Merger Agreement	Oracle Acquires Siebel ($6.1 Billion)	SAP Announces Extension of TomorrowNow Service to Siebel Customers	First TomorrowNow Contract for Siebel Service
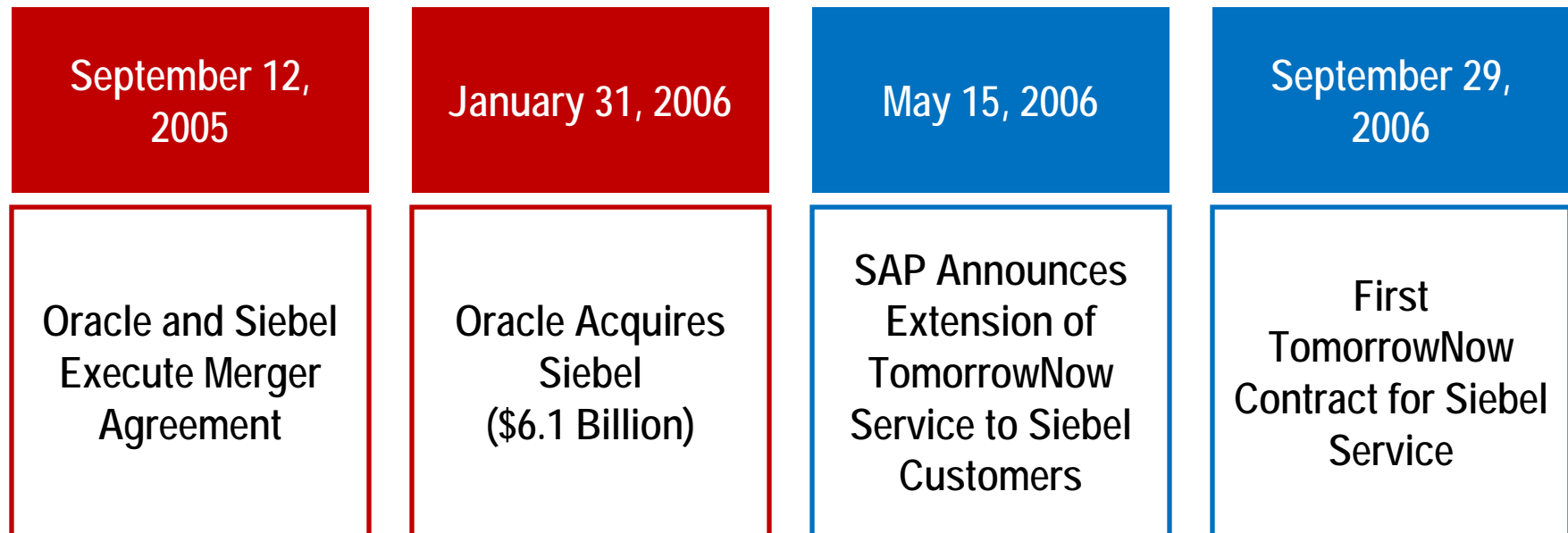
License Negotiation: September 29, 2006

Oracle and SAP Worldwide CRM Segment Market Share
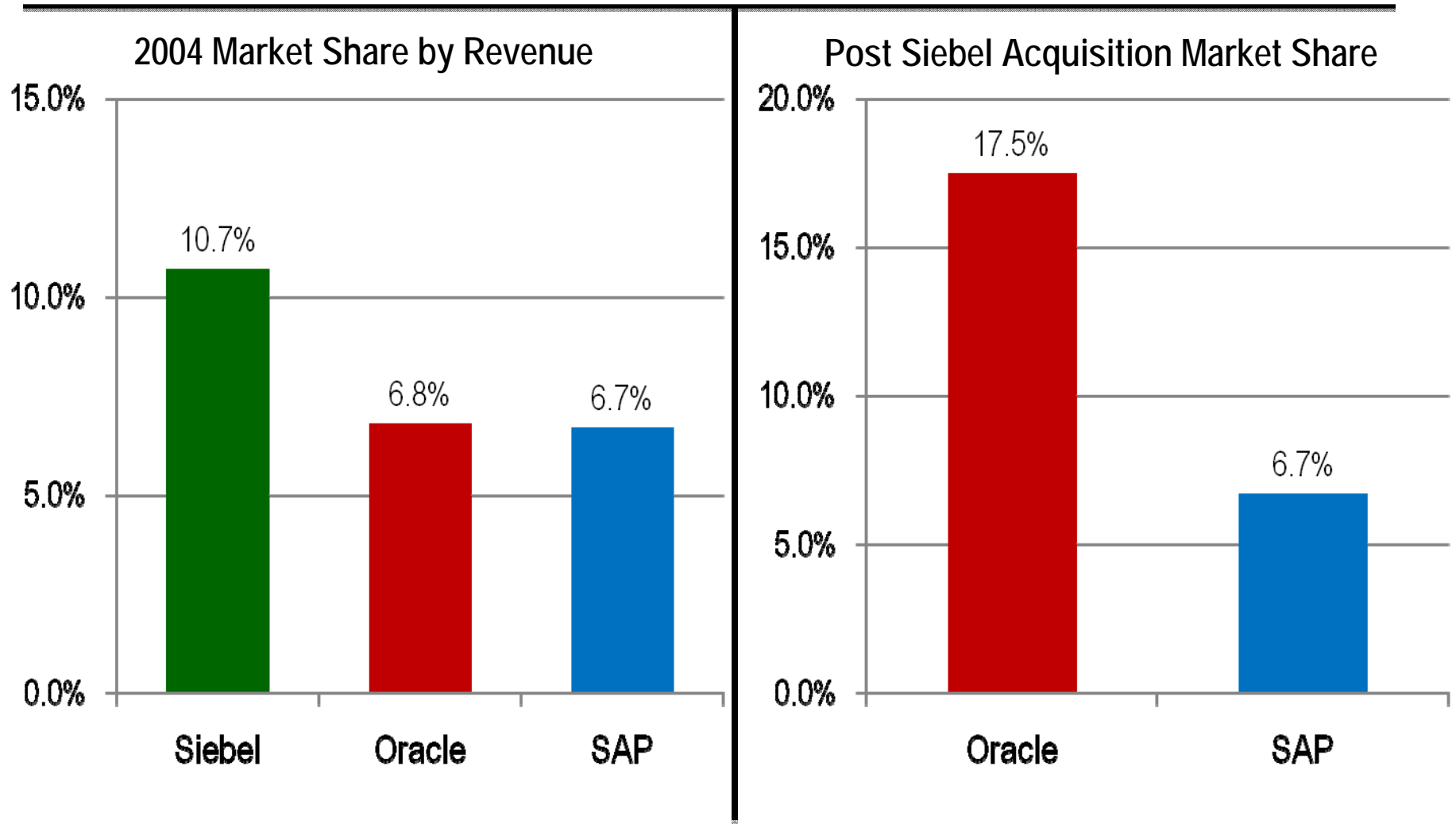
"CRM Review II"
– October 24, 2005

PX0245

Siebel License – SAP Negotiation Factors

Negotiation Factor	Analysis
1 SAP's Goals for Siebel Maintenance Offering	✓ Goal to convert customers to mySAP CRM ✓ TomorrowNow is enabler for future license revenue
2 SAP's Expected Impact on Oracle	✓ $110M to $220M related to Siebel maintenance
3 SAP's Expected Financial Gains	✓ 200 customers by 2008 ✓ Expected future gains of $97M to $247M

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September 29, 2006

Siebel License – Key SAP Documents

	Document	SAP Negotiation Factor(s)	SAP Statements (quotes)
1	"Siebel Safe Passage Program Playbook" – October 2005 (PX0960)	① ② ③	• "The opportunity is to **move the 300+** SAP customers SAP and Siebel have in common and migrate them to mySAP CRM." • "Program Objectives & KPI's: Keep Oracle out of our customer base. Provide an incentive to Siebel customers who have a SAP footprint to migrate from Siebel CRM to mySAP CRM."
2	"Business Case: TomorrowNow 2006" – 10/17/2005 (PX0958)	① ③	• "The Siebel customer base consists of **4,000 customers**, (including large number of join SAP/Siebel customers) and presents a huge market opportunity." • "The maintenance offering – a key part of the Safe Passage Program and provided by TomorrowNow – can be used as enabler for future license revenue" • "Biz Planning – TNow Offering for Siebel": **200 customers (cumulated) in 2008**
3	Email: "TN Standalone deals to Safe Passage" – 3/26/2006 (PX0037)	②	• "Over the long term, every $1 of TN Stand-alone revenue this year represents $18 of originally expected Oracle revenue"

"Siebel Safe Passage Program Playbook"
– October 2005 (Factors ① & ③)

The opportunity is to move the 300+ SAP customers SAP and Siebel have in common and migrate them to mySAP CRM.

"Business Case: TomorrowNow 2006" – October 17, 2005 (Factors ① & ③)

"Business Case: TomorrowNow 2006" – October 17, 2005 (Factor ③)

Biz Planning – TNow Offering for Siebel

in €M

Revenue / Cost chart:
- 2006: 1,5 / 1,9
- 2007: 5,8 / 4,4
- 2008: 11,9 / 8,1

	2006	2007	2008
Margin	-27%	25%	32%
	27 / 15	58 / 34	50 / 62
Customers (cumulated)	40	100	200

→ Approval to offer Maintenance Services provided by TNow for Siebel Customers

© SAP AG 2005, Thomas Ziemen, Service Solution Management

THE BEST-RUN BUSINESSES RUN SAP

PX0958

Nelson Email, "TN Standalone deals to Safe Passage" – March 26, 2006 (Factor ②)

Message
_____

From: CN=Andrew Nelson/O=TomorrowNow
Sent: 3/26/2006 11:37:55 AM
To: CN=Lon Fiala/O=TomorrowNow@TomorrowNow; CN=Bob
           Geib/O=TomorrowNow@TomorrowNow; CN=Nigel Pullan/O=TomorrowNow@TomorrowNow
CC: leo.apotheker@sap.com
Subject: TN Standalone deals to Safe Passage

Gentlemen -

One of the agenda items in my executive sales meeting with Leo last week was to review our existing strategy for selling and marketing TN Standalone deals with full independence from SAP sales goals and needs.

Like last year, one of TN's key compensation KPIs involves support for Safe Passage and the long term SAP strategy for winning these customers over to SAP. Also like last year, the executive team remains aligned in our strategy for achieving this support though a strategy of TN independence, assuring we will neither limit TN Stand-alone customers in their future ERP options or use our support relationship to force an SAP license conversation or marketing upon them before they express an interest in replacing their ERP system or building their ERP roadmap.

Our key executive SAP stakeholders, Leo, Gerd, and Shai, have unanimously supported this strategy even though it requires us to publicly tell the market that our customers are free to go to Fusion or anywhere else when they retire their PSFT/JDE systems, and we simply support those systems until they tell us they are done with them.

> 2) Over the long term, every $1 of TN Stand-alone revenue this year represents $18 of originally expected Oracle revenue from their misguided acquisition strategy.

independent TN; giving SAP key intelligence and early notification when a customer tells us they are planning to look into a replacement system and/or retire their PSFT/JDE system.
4) In the short term, many of our conversations about justifying long-term support strategy lead the customer to want to figure out their ERP roadmap earlier than they originally communicated, allowing us in the short term to notify SAP and get them talking to our parent company.
5) It is critical to overcoming one of our top sales objections - - "Signing with TomorrowNow will eventually require you to go with SAP, so don't sign with TN unless or until you choose SAP"

Operational takeaways to you three:

1) Independent-minded TN Stand-alone sales and marketing strategy remains unchanged for 2006
2) Use every opportunity to explain our strategy to our virtual teammates at SAP so they don't misunderstand why this is in their strategic interest even if it feels tactically counter-intuitive.
3) Make sure our SAP teammates also understand this is a combined SAP/TN strategy with SAP board alignment, not some selfish/renegade TN position.
4) Continue to find every opportunity to help SAP field sales and marketing when they need us for one of their deals or campaigns. You continue to be compensated on support for Safe Passage just like last year and beyond our "independence" constraint, so go above and beyond whenever SAP asks for help.
5) Regional SAP opportunity reporting will be implemented this year to assure that whenever we know of an SAP opportunity, we formally communicate it to get SAP into the mix early before Oracle knows what hit them.

Please forward this as appropriate to your teams, including virtual SAP teammates, who may value an update on our strategy and relationship.

Warm regards,

Andrew

Andrew Nelson

EXHIBIT 58
1018
Nelson 2-26-09

HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY   TN-OR00609470

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: 07-cv-01658-PJH
PLNTF EXHIBIT NO. 0037
Date Admitted:_____
By:_____
Nichole Heuerman, Deputy Clerk

PX0037

Siebel License – SAP's Expected Impact on Oracle - Calculation Results (Factor 2)

	If 50% of Oracle's Price	If 100% of Oracle's Price
SAP Expected TN 2007 Siebel Revenue	$7.19M	$14.38M
$1 of TN Revenue = $18 of Oracle Revenue	18	18
Impact to Oracle Revenue	$130M	$259M
Oracle Profit Margin	85%	85%
Impact to Oracle	$110M	$220M

Sources: PX0037, PX0958, PX0658

Siebel License - SAP Expected Financial Gains – Example Calculation (Factor ③)

200 Maintenance Customers / 200 Converted

SAP Expected Gains as of September 2006 (in $ millions)	Customer Base	2006 - 2008			Future Financial Gains of Converted Customers	Total Expected Gains as of September 2006
		Total Expected Revenue	Less: Costs	Total Expected Profits		
Expected SAP Maintenance Revenue	200	$ 17.0	$ (5.1)	$ 11.9	N/A	$ 11.9
Expected Additional Product Sales	130	8.3	(2.5)	5.8	4.4	10.2
Expected License Revenue / Converted Customers	200	41.4	(12.4)	29.0	45.6	74.6
Total Expected Gains as of September 2006		$ 66.7	$ (20.0)	$ 46.7	$ 50.0	**$96.7**

Sources: PX0012, PX0193, PX0533, PX0615, PX1760, PX1762

Siebel License – SAP's Expected Financial Gains – Calculation Results (Factor ③)
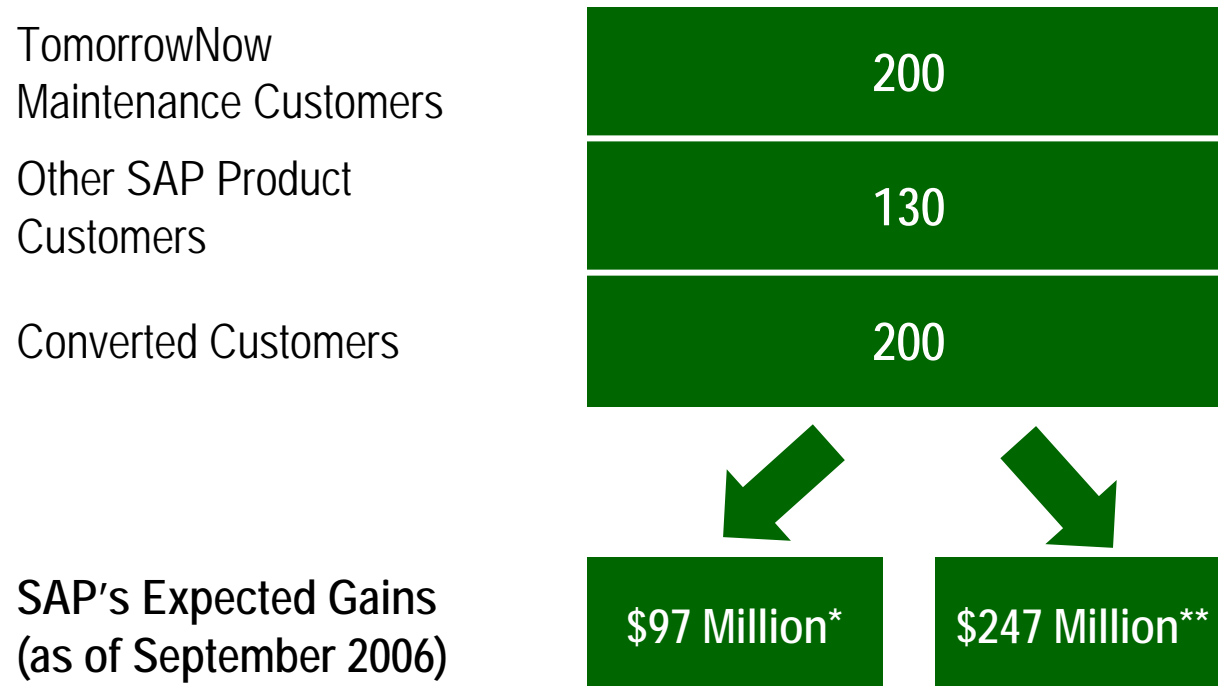
TomorrowNow
Maintenance Customers

200

Other SAP Product
Customers

130

Converted Customers

200

**SAP's Expected Gains
(as of September 2006)**

$97 Million*

$247 Million**

*   Future value based on revenue multiple
** Future value based on value per customer

Sources: PX0012, PX0193, PX0533, PX0958, PX1762, PX1760

Siebel License – SAP Negotiation Factors

Negotiation Factor	Analysis
1 SAP's Goals for Siebel Maintenance Offering	✓ Goal to convert customers to mySAP CRM ✓ TomorrowNow is enabler for future license revenue
2 SAP's Expected Impact on Oracle	✓ $110M to $220M related to Siebel maintenance
3 SAP's Expected Financial Gains	✓ 200 customers by 2008 ✓ Expected future gains of $97M to $247M

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SAP

September 29, 2006

Siebel License – Oracle Negotiation Factors

Negotiation Factor	Analysis
1 Oracle's Goals for Siebel Acquisition	✓ Acquired maintenance revenue stream for 4,000 customers ✓ Establishes Oracle as leader in CRM market
2 Risk to Oracle's Investment in Siebel	✓ $6.1B investment including software and support materials ✓ Loss of exclusive rights to copyrighted works
3 Oracle's Expected Financial Impacts	✓ At least 200 expected maintenance customer losses ✓ Oracle expected financial impact

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September 29, 2006

Siebel Acquisition – Summary (Factor ②)

January 31, 2006

ORACLE
✓ **Exclusive** Rights to Siebel Software and Materials
✓ ~ 4,000 Customers
✓ Increased CRM Market Share
✓ $500M Annual Maint. Revenue
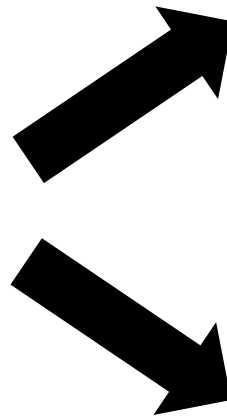
September 29, 2006

ORACLE
✓ **Non-Exclusive** Rights to Siebel Software and Materials
✓ Expected **Loss** of Customers, Market Share and Revenue

SAP
✓ **Non-Exclusive** Rights to Siebel Software and Materials
✓ Expected **Gain** of Customers, Market Share and Revenue

Siebel License - Oracle's Expected Financial Impact - Calculation (Factor ③)

Based on *Oracle's Expectations* at the Time of the Acquisition
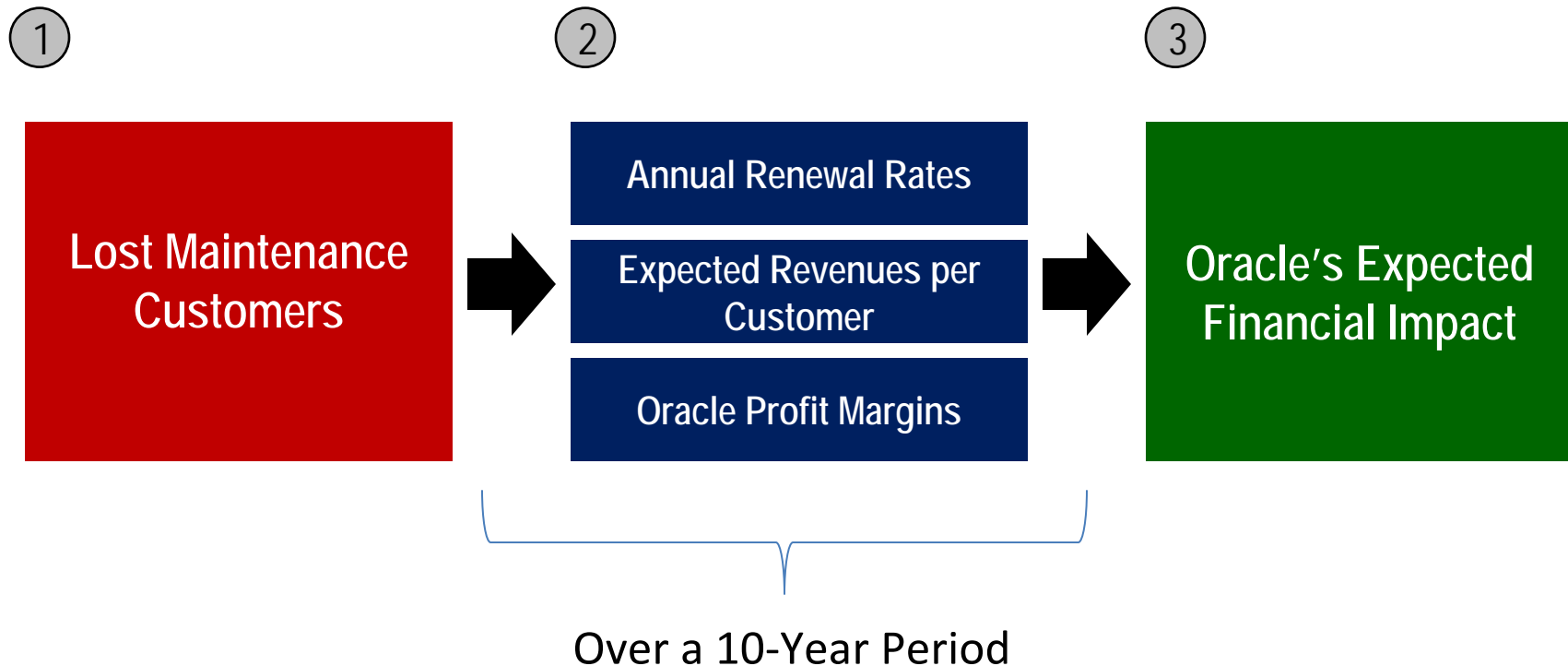
① **Lost Maintenance Customers**

➡

②
- Annual Renewal Rates
- Expected Revenues per Customer
- Oracle Profit Margins

➡

③ **Oracle's Expected Financial Impact**

Over a 10-Year Period

Siebel License - Oracle's Expected Financial Impact – Example Calculation (Factor ③)

200 Maintenance Customers / 200 (Post -10/08)

Oracle Financial Impacts as of September 2006 (in $ millions)	Customer Base	2006 - 2015			Future Financial Impact of Converted Customers	Total Expected Impact as of Sept. 2006
		Total Impacted Revenue	Less: Costs	Total Impacted Profits		
Impacted Oracle Maintenance (9/06 – 12/15)	200	$ 109.4	$ (16.4)	$ 93.0	$ 71.0	$ 164.0

Sources: PX0012, PX614, PX0615, PX0658, PX0958 PX1758

Siebel License – Oracle Negotiation Factors

Negotiation Factor	Analysis
1 Oracle's Goals for Siebel Acquisition	✓ Acquired maintenance revenue stream for 4,000 customers ✓ Establishes Oracle as leader in CRM market
2 Risk to Oracle's Investment in Siebel	✓ $6.1B investment including software and support materials ✓ Loss of exclusive rights to copyrighted works
3 Oracle's Expected Financial Impacts	✓ At least 200 expected maintenance customer losses ✓ Oracle expected financial impact

ORACLE   **SAP**

September 29, 2006

Siebel Fair Market Value Damages - Summary

Database License Negotiation

Oracle's Negotiating Perspective
- ✓ Database licensing practices
- ✓ Database pricing
- ✓ Competitive relationship with SAP and TomorrowNow

Negotiated Database License Fee

SAP's Negotiating Perspective
- ✓ Goals for database software
- ✓ Need for database copyrighted works
- ✓ Competitive relationship with Oracle
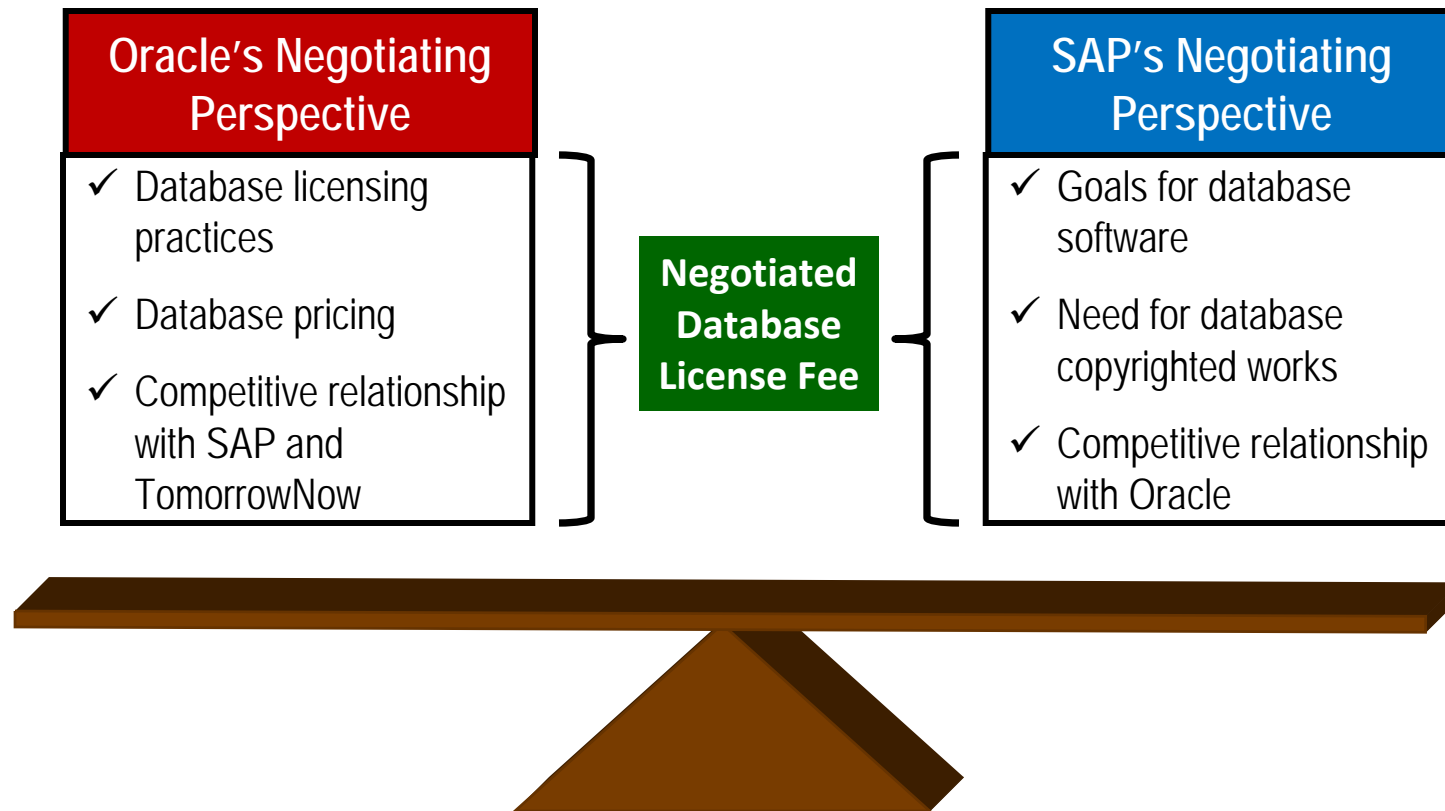
Database License – Calculation Approach

1. **Oracle Database Licensing Practices**

2. **TomorrowNow Hardware Configuration**

3. **Oracle Enterprise Edition Database Pricing**

4. **# of TomorrowNow Customers Benefiting**

5. **Total Database License Fee**
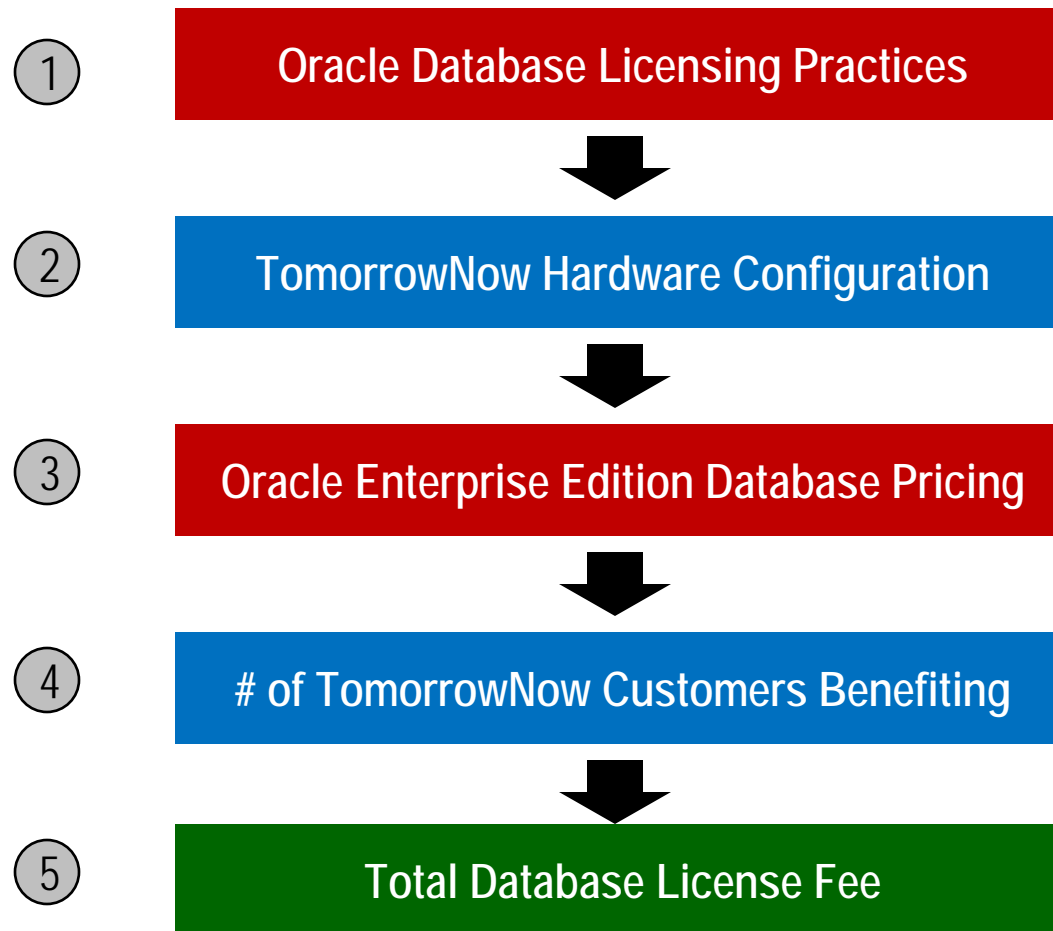
Database Licenses Needed
– Number of TomorrowNow Customers

Benefit from Oracle Database	Source	Number of Customers
Local Oracle Database Environments	SAP Discovery Response	71
Confirmed Cross-Use With Oracle Local Database Environments	Fixes Developed in Oracle Database Environments	43
Additional Cross-Use	PeopleSoft HRMS Customers	58
TOTAL		172

Sources: PX0583, PX0602, PX2822, PX2827

Database Fair Market Value Damages - Summary

172 Customers

$240,000 License Fee/Customer + ($52,800 Maintenance Fee/Customer X Number of Years Under TN Service)
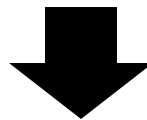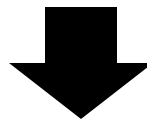
$55.6 Million

Sources: PX0097, PX0269, PX0583, PX0602, PX0653, PX0984, PX0996, PX2822, PX2827

Oracle's Damages - Summary

Damages Category	Amount
PeopleSoft / JDE Software & Support Materials	*at least* $1.5 Billion
Siebel Software & Support Materials	*at least* $100 Million
Database Software Materials	$55.6 Million
Total Damages	*at least* $ 1,655,600,000