

EXHIBIT C

LARRY ELLISON May 5, 2009
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Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a)	
Delaware corporation, ORACLE)	
USA, INC., a Colorado)	
corporation, and ORACLE)	
INTERNATIONAL CORPORATION, a)	
California corporation,)	
)	
Plaintiffs,)	
)	
vs.)	No. 07-CV-1658 (PJH)
)	
SAP AG, a German corporation,)	
SAP AMERICA, INC., a Delaware)	
corporation, TOMORROWNOW,)	
INC., a Texas corporation, and)	
DOES 1-50, inclusive,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF
LARRY ELLISON

TUESDAY, MAY 5, 2009

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REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-418128)

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11:31:24 5 with counsel, no.

11:31:29 6 MR. LANIER: Q. Let's go back to the

11:31:31 7 PeopleSoft acquisition.

11:31:33 8 What were your goals in entering into the

11:31:36 9 PeopleSoft acquisition?

11:31:38 10 A. To expand our applications business.

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12:05:56

25

Q. Let's change topics a bit.

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12:06:01 1 We talked early on about whether Oracle
12:06:06 2 ever went to SAP or not. Let's forget how people
12:06:09 3 end up talking, but talk about what might have been
12:06:14 4 the outcomes had a certain conversation occurred.

12:06:18 5 Had SAP come to Oracle in January of 2005
12:06:22 6 and said, here's what TomorrowNow is going to do, we
12:06:26 7 want a license for them to do that, who would have
12:06:29 8 had the decision-making -- putting aside what the
12:06:31 9 decision would have been, who would have made that
12:06:33 10 decision?

12:06:35 11 A. Me.

12:06:38 12 Q. Had SAP come to you in January of 2005 and
12:06:40 13 said, all right, we -- here's what TomorrowNow does,
12:06:44 14 we'd like a license, would you have given them a
12:06:47 15 license?

12:06:51 16 A. Never say never. How much? It would be
12:06:53 17 very expensive. But I mean, if they really wanted
12:06:56 18 to do that, and they wanted to get all of our -- you
12:07:02 19 know, they wanted to get all of our support updates
12:07:05 20 and be able to -- basically have all of our IP, to
12:07:08 21 make the IP equally accessible to their team and our
12:07:11 22 team, and then we compete basically on service
12:07:15 23 quality and price, for all of our products or just
12:07:20 24 PeopleSoft products, or --

12:07:22 25 Q. PeopleSoft, JDE, and let's throw Siebel in

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12:07:25 1 at the moment.

12:07:27 2 A. Those three. Hypothetically,
12:07:32 3 theoretically, we would certainly discuss the
12:07:34 4 license. I think it would be so prohibitively -- it
12:07:37 5 would be so expensive that I'd be -- I don't -- you
12:07:40 6 know, that I don't know if they would do it, but --
12:07:43 7 it would be a very expensive license. We're
12:07:46 8 basically transferring all of our -- again, I just
12:07:48 9 want to be clear what the license would include.

12:07:51 10 It would include everything we're currently
12:07:54 11 doing. So regulatory updates, bug fixes. I'm not
12:08:02 12 sure exactly response -- the detailed -- new
12:08:06 13 versions, all of those things, and perhaps crisis
12:08:10 14 response, special behavior and crisis response,
12:08:12 15 which I think they'd want also, would be the
12:08:14 16 license. In other words, that's how we run our
12:08:17 17 support organization. We can't retask our
12:08:19 18 engineering team if there's a crisis in the field to
12:08:21 19 address this issue and if they want to compete on
12:08:24 20 equal footing given all of the IP.

12:08:26 21 But let's say just ignoring the crisis
12:08:30 22 response, just the IP, just all of the code. Yeah,
12:08:33 23 if they wanted to do that, we would have talked
12:08:35 24 about a license agreement.

12:08:36 25 Q. And do you have -- as you sit here today,

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12:08:38 1 do you have any idea of how you would go about for
12:08:41 2 yourself thinking about what the appropriate price
12:08:43 3 was?
12:08:45 4 MR. HOWARD: Again, let me ask for a
12:08:46 5 clarification, Greg.
12:08:48 6 Your question was January 2005.
12:08:49 7 MR. LANIER: Yes.
12:08:50 8 MR. HOWARD: Then you threw Siebel in.
12:08:52 9 Where are you in time?
12:08:53 10 MR. LANIER: I'm in January 2005.
12:08:55 11 MR. HOWARD: Okay.
12:08:56 12 MR. LANIER: Q. So let's forget Siebel for
12:08:58 13 a moment. I don't want these to be confusing,
12:08:59 14 so I'll -- January 2055.
12:09:02 15 A. PeopleSoft, JDE.
12:09:05 16 Q. SAP comes to you and says, we want a
12:09:07 17 license to do those things you described for
12:09:08 18 PeopleSoft and JDE. You're the one who makes the
12:09:10 19 decision. Right?
12:09:11 20 A. Yeah.
12:09:12 21 Q. As you sit here today, do you have any idea
12:09:14 22 in mind how you would go about thinking, what's the
12:09:16 23 price I'm going to ask for?
12:09:17 24 A. Yes.
12:09:18 25 Q. What's your idea?

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12:09:20 1 A. So the thought process is, we're moving all
12:09:22 2 of our IP. They've got a license to the
12:09:25 3 PeopleSoft/JD Edwards IP. All of it. They are the
12:09:31 4 number one applications company in the world. So
12:09:37 5 they already have a bit of an advantage, because
12:09:39 6 they're the market leader, and we're -- you know,
12:09:42 7 we're number two.

12:09:44 8 If they have all of the IP, and you get the
12:09:48 9 new versions, they're a bigger applications company
12:09:52 10 than we are to start with, they would win a majority
12:09:55 11 of the business, I think. They would get -- they
12:09:58 12 would get maybe the vast majority of PeopleSoft and
12:10:02 13 JD Edwards, being in that position.

12:10:07 14 So let's say we were -- they were going to
12:10:09 15 win relative to our market positions, maybe they
12:10:13 16 were at least twice as big, maybe three times as big
12:10:17 17 as we are. But let's say they're 70 percent and
12:10:20 18 we're 30 percent of the market. So let's say it's
12:10:23 19 split that they win 70 percent of the JD Edwards and
12:10:25 20 PeopleSoft customers, we win 30 percent, is how it
12:10:29 21 all plays out. Market share is just not changed.
12:10:31 22 I'm not sure if that's what would happen. I think
12:10:34 23 they'd win more.

12:10:36 24 But let's say that's -- I'm just giving you
12:10:38 25 the thought process. So they're buying about 70

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12:10:41 1 percent of what we just bought. So you could say --
12:10:42 2 so you could argue then it's 70 percent of what we
12:10:44 3 paid.

12:10:45 4 But I would argue it's even more than that,
12:10:48 5 because I think we paid -- you know, we thought it
12:10:50 6 was worth more than we paid, or we wouldn't have
12:10:53 7 paid that much. Right?

12:10:54 8 So we paid in excess of 10 billion dollars.
12:10:58 9 You know, 70 percent is, you know, 7 billion. And
12:11:02 10 then it's worth a little bit more than that, so 8
12:11:07 11 billion?

12:11:10 12 Q. Is it in any way rational to you to believe
12:11:12 13 that SAP would pay 8 billion for a license to run a
12:11:15 14 company it paid \$10 million to buy?

12:11:20 15 A. Say one more time.

12:11:21 16 Q. Is it --

12:11:21 17 A. I think you said billion and million, and
12:11:23 18 I'm not sure you --

12:11:25 19 Q. And I meant to.

12:11:26 20 A. All right. Say it again.

12:11:27 21 Q. Is it in any way rational to you to believe
12:11:30 22 that SAP would pay, say, \$8 billion for a license to
12:11:33 23 operate a company that it paid 10 million to buy?

12:11:40 24 A. It would be buying -- oh, I see what you're
12:11:43 25 saying. I mean, would they buy it to operate

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12:11:47 1 TomorrowNow.

12:11:48 2 Well, this is a very different situation.

12:11:51 3 They're not -- you know, not clear they need

12:11:54 4 TomorrowNow. You know, they -- they would be --

12:11:58 5 they would be buying -- my view is they would end up

12:12:04 6 with 70 percent of those customers, at least. They

12:12:08 7 would -- you got to give me more details.

12:12:12 8 Would there be a non -- could they hire our

12:12:14 9 people, could they hire the PeopleSoft people?

12:12:16 10 There's more information I need.

12:12:18 11 But I would think that I could then walk

12:12:22 12 into any PeopleSoft customer, you know, say, okay,

12:12:25 13 we're SAP, we'll give you the new versions of --

12:12:28 14 we'll give you everything Oracle will give you, but

12:12:30 15 you're getting it from us, we have rights to all of

12:12:32 16 this stuff, you're getting it from us, you get new

12:12:35 17 versions, you get bug fixes, regulatory updates. So

12:12:38 18 you get everything Oracle can provide, plus,

12:12:41 19 everything SAP can provide.

12:12:43 20 So Oracle can only provide what Oracle can

12:12:45 21 provide. We can provide what Oracle can provide

12:12:47 22 plus what we provide.

12:12:49 23 So I think that would put them in a

12:12:51 24 position to win -- you know, make a pretty

12:12:55 25 persuasive argument to customers that they should be

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12:12:57 1 contracting with SAP and not contracting with Oracle
12:12:59 2 to get their PeopleSoft support and product updates.

12:13:05 3 Q. So if Mr. Plattner had called you up and
12:13:09 4 said -- or Mr. Kagermann, whoever you like, one of
12:13:12 5 the senior folks over there had called you up and
12:13:15 6 said, we'll pay \$8 billion for 70 percent of your
12:13:18 7 customers, would you have said yes?

12:13:28 8 A. Probably not.

12:13:30 9 Q. Now, let's change the --

12:13:31 10 A. But if they --

12:13:32 11 Q. Oh, sorry. Go ahead, please.

12:13:33 12 A. -- said 30 billion -- you know, at some
12:13:36 13 price -- I suppose there's some price I would say,
12:13:40 14 yeah, sure.

12:13:41 15 Q. So now let's change the hypothetical
12:13:43 16 scenario slightly. It's --

12:13:46 17 A. By the way, because I think if they had
12:13:48 18 done that, we would have been saying good-bye to the
12:13:50 19 applications business forever. I mean, we might as
12:13:52 20 well -- if we're going to do that, we might as well
12:13:54 21 say, okay, we're exiting this business, and let's
12:13:57 22 get rid of all of it, so let's talk about the rest.

12:14:00 23 I'll tell you what. For a few extra
12:14:03 24 billion, we'll just give you the whole deal. We
12:14:05 25 don't even want to be in this business any more. If

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12:14:07 1 they made us a -- you know, an attractive enough
12:14:10 2 offer. It would be a big number. But at a certain
12:14:13 3 point -- you get these tipping points where they
12:14:15 4 just become so large that it's very hard for us to
12:14:19 5 compete with them at all.

12:14:20 6 Q. Sure. In January of 2005, your state of
12:14:23 7 mind was that Oracle wanted to be in the
12:14:25 8 applications business. Right?

12:14:26 9 A. Yes.

12:14:27 10 Q. So now, let's change the hypothetical a
12:14:29 11 little bit. It's just TomorrowNow; SAP hasn't
12:14:33 12 bought them.

12:14:33 13 A. Yep.

12:14:35 14 Q. Just TomorrowNow doing its TomorrowNow
12:14:36 15 thing.

12:14:38 16 And TomorrowNow says, we want a license to
12:14:40 17 do all those things that we do.

12:14:42 18 First question is, who would have made that
12:14:44 19 decision?

12:14:45 20 A. Me.

12:14:45 21 Q. Okay. How would you have figured out what
12:14:49 22 you would have charged TomorrowNow?

12:14:54 23 A. I don't think we would have entertained --
12:14:56 24 we don't think TomorrowNow could have paid us what
12:14:59 25 we would have wanted. I don't think we would have

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12:15:02 1 thought about it very long. They didn't have the
12:15:04 2 wherewithal to pay for such a license.

12:15:06 3 Q. The -- now let's talk about Siebel.
12:15:08 4 Obviously, at some point during the overall period
12:15:13 5 of time we've been talking about, Oracle acquired
12:15:15 6 Siebel. Correct?

12:15:15 7 A. Yes.

12:15:17 8 Q. And I take it you're aware that at some
12:15:19 9 point during that same period of time, TomorrowNow
12:15:23 10 started providing some level of service for Siebel
12:15:26 11 customers.

12:15:27 12 Are you aware of that generally?

12:15:28 13 A. Yes.

12:15:29 14 Q. Do you have any sense as you sit here
12:15:31 15 today, putting aside whatever lawyers may have told
12:15:33 16 you and learned in the litigation, how many
12:15:35 17 customers TomorrowNow provided Siebel service for?

12:15:37 18 A. No. I don't know.

12:15:39 19 Q. So now let's be hypothetical again.

12:15:43 20 It's -- I think it's September 2006.
12:15:45 21 Forgive me if I've got the date wrong, so I'll just
12:15:48 22 say, Oracle has bought Siebel, SAP has announced
12:15:53 23 that Safe Passage includes Siebel, and now
12:15:55 24 Mr. Plattner or Mr. Kagermann calls you up again and
12:15:59 25 says, we'd like to get a license to do all of that

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12:16:02 1 stuff for Siebel.

12:16:04 2 Would it still have been you who made the
12:16:06 3 decision?

12:16:06 4 A. Yes.

12:16:06 5 Q. And would you have applied any different
12:16:08 6 methodology or thought process to figuring out what
12:16:10 7 price to ask?

12:16:11 8 A. Well, I have to -- you have to -- I have to
12:16:13 9 ask a clarification.

12:16:14 10 Had they -- had they already bought the
12:16:17 11 PeopleSoft/JD Edwards license, we never would have
12:16:21 12 bought Siebel. So it's a hypothetical that couldn't
12:16:24 13 occur.

12:16:25 14 So now, a different hypothetical, if after
12:16:29 15 we bought Siebel, they came and said, would you sell
12:16:32 16 us a Siebel/JD Edwards/PeopleSoft license, that's a
12:16:35 17 hypothetical that could have occurred.

12:16:38 18 Q. So then let's make that our hypothetical.

12:16:40 19 If Mr. Plattner or Mr. Kagermann had called
12:16:43 20 you up and said, we want a license to do all those
12:16:46 21 things we do for PeopleSoft, JDE and Siebel -- still
12:16:50 22 would have been you making the decision, of course?

12:16:52 23 A. Definitely, yes.

12:16:54 24 Q. Would you have applied the same thought
12:16:55 25 process and methodology to figuring out a price?

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12:17:00 1 A. Yes.

12:17:01 2 Q. Would the same sort of considerations you
12:17:03 3 described apply to the decision when you add in
12:17:05 4 Siebel as opposed to the decision you talked about
12:17:07 5 earlier when it was just PeopleSoft and JDE?

12:17:10 6 A. Yes.

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12:18:24 7 Q. We're going to look at a few documents for
12:18:26 8 a little bit. Always an exciting part of a
12:18:28 9 deposition.

12:18:34 10 I'm sure, sir, you are familiar with this
12:18:37 11 process. This is a document that has not yet been
12:18:40 12 marked. It is a press release, or it's a printout
12:18:43 13 from the good old internet of a press release, or
12:18:47 14 article, excuse me, titled, "Ellison Tries To Allay
12:18:50 15 PeopleSoft Customers' Fears," and it is 3 pages
12:18:55 16 long. I'll give one to the court reporter, and she
12:18:57 17 will soon pass it to you.

12:18:58 18 (Deposition Exhibit 399 was marked for
12:18:59 19 identification.)

12:19:11 20 MR. LANIER: Q. Mr. Ellison, Exhibit 399
12:19:12 21 is in front of you. It's an article, it's --

12:19:17 22 A. It's a small font.

12:19:18 23 Q. Yes. I am on the ragged bleeding edge,
12:19:22 24 probably past it, of needing help reading it myself.

12:19:26 25 It's three pieces of paper. The article's

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12:19:28 1 only on one page. You're welcome to look at as much
12:19:31 2 or as little of it as you wish. I'm going to ask
12:19:34 3 you a couple of specific questions. Tell me when
12:19:36 4 you are ready.

12:19:37 5 A. Okay. Give me a couple seconds.

12:19:39 6 Q. Please.

12:19:40 7 A. (Examining document.)

12:19:46 8 Is there a date on this document that I
12:19:47 9 just can't find?

12:19:48 10 Q. Yes. It is -- do you see the title, it's
12:19:51 11 about a third of the way down the page, maybe 40
12:19:53 12 percent of down, there's the byline "By Charles
12:19:56 13 Babcock"?

12:19:57 14 A. Got it. December 9, 2004. Thank you.

12:20:26 15 Okay.

12:20:27 16 Q. Sir, have you seen this article before?

12:20:30 17 A. I may have. I have no recollection of the
12:20:32 18 article, though.

12:20:33 19 Q. Okay. There's a couple of quotes
12:20:34 20 attributed to you. I am going to ask you about them
12:20:38 21 and some other questions.

12:20:40 22 So the first is in the first paragraph, in
12:20:43 23 the second sentence, there's a quote attributed to
12:20:46 24 you that says, "'We're going to oversupport
12:20:49 25 PeopleSoft customers,' Ellison said Wednesday," and

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12:20:51 1 it goes on.

12:20:52 2 Do you see that?

12:20:54 3 A. I do.

12:20:55 4 Q. Do you recall saying that or words to that
12:20:56 5 effect?

12:20:57 6 A. Words to that effect.

12:20:58 7 Q. What did you mean by "oversupport"?

12:21:00 8 A. We're going to do as good -- we're going to
12:21:09 9 focus very heavily on these new customers, we're
12:21:12 10 going to pay a lot of attention to them, we're going
12:21:14 11 to make sure we're doing a -- you know, A-plus-level
12:21:19 12 support. Communicating with them on a regular
12:21:20 13 basis, even sometimes proactively. You know, rather
12:21:24 14 than waiting for them to call us, we'll call them.

12:21:27 15 Q. And these were plans that were already in
12:21:29 16 place as of December 9, 2004?

12:21:31 17 A. Correct.

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13:09:39 16 Q. As of the acquisition of PeopleSoft by
13:09:42 17 Oracle, who -- other than SAP, who were Oracle's
13:09:46 18 competitors in the applications marketplace?

13:09:50 19 A. We have -- there are lots of them, and I
13:09:56 20 mean, there are specific competitors in banking,
13:09:58 21 there are specific competitors in telecommunications
13:10:02 22 and utilities. I mean, it's a highly fragmented
13:10:05 23 market, so we have lots and lots of competitors.
13:10:07 24 Our largest competitor is SAP.

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13:40:57

1

THE VIDEO OPERATOR: This marks the end of

13:40:58

2

Videotape No. 2 in the deposition of Larry Ellison.

13:41:01

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Going off the record, the time now is 1:41.

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(Time noted, 1:41 p.m.)

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I declare under penalty of perjury that

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7

the foregoing is true and correct. Subscribed at

13:41:09

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_____, California, this ____ day of

13:41:09

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_____, 2009.

13:41:09

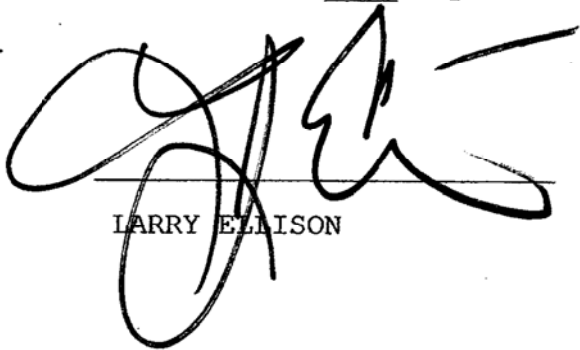
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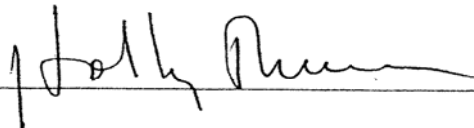
CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED May 11, 2009.



HOLLY THUMAN, CSR No. 6834