From: Greg Shaw (Corp. PR)
Sent: Sunday, November 22, 1998 10:34 PM
To: Dean Katz; Tom Pilla; Mark Murray
Cc: David Heiner (LCA); Bill Neukom (LCA); Yusuf Mehdi; Will Poole; Brad Chase; Mich Mathews; Lynann Bradbury (Waggener Edstrom); Barry Murphy (LCA); John A C Kelly (LCA)
Subject: RE: AOL-NS Rumor

Tom, I'd appreciate your contacting CRC in the morning and asking them to reach out to broadcasters and to conservative editorial writers and columnists. For ed writers, we could offer Rick Rule to do a conference call as he has done before. You, me Barry, John Kelly and others could do radio

—Original Message—
From: Dean Katz
Sent: Sunday, November 22, 1998 10:31 PM
To: Tom Pilla; Mark Murray; Greg Shaw (Corp. PR)
Cc: David Heiner (LCA); Bill Neukom (LCA); Yusuf Mehdi; Will Poole; Brad Chase; Mich Mathews; Lynann Bradbury (Waggener Edstrom)
Subject: RE: AOL-NS Rumor

Tom has put together some great points here that I don't think need to be restricted to third parties. There is nothing wrong with us saying something like the following, which might be a more effective substitute for bullet point #2:

- No doubt the executives of Netscape, Sun and AOL are laughing all the way to the bank. Unfortunately, the joke is on American consumers, whose taxpayers dollars are being wasted by a Justice Department which was duped by these companies into bringing a lawsuit against Microsoft. We welcome the competition, but today's action proves what we have been saying all along -these companies have been using the government to advance their competitive interests, rather than the interests of customers.

I don't know if we want to touch the issue of AOL dropping IE in favor of Nav, but it certainly captures the core point we are trying to make about how fluid the market is. In the IDC survey from last September, NSCP was at 42%, MS at 28% and AOL at 16%. If you combine NSCP and AOL, all of a sudden you're looking at 58% marketshare for NSCP. If that isn't competition in action, I don't know what is. Tom has put together some great points here that I don't think need to be restricted to third parties. There is nothing wrong with us saying something like the following, which might be a more effective substitute for bullet point #2:

—Original Message—
From: Tom Pilla
Sent: Sunday, November 22, 1998 8:12 PM
To: Mark Murray; Greg Shaw (Corp. PR); Lynann Bradbury (Waggener Edstrom); PR SmallCore Team
Cc: David Heiner (LCA); Bill Neukom (LCA); DOJ Case; Carla Lewis; Jack Krumholtz (LCA); Kimberly Ellwanger (LCA); Marcy Simon (Global Communications and Tele); Yusuf Mehdi; Will Poole; Marty Taucher; Brad Chase
Subject: RE: AOL-NS Rumor

I agree with all the points below.

In addition, I think we should have some of our 3rd party supporters be a little more aggressive.

To me, our conservative influential groups (perhaps, even Haley?), as well as TAAC, ACT & Citizens Agst Gov Waste, can/should paint a different, more cynical view....i.e., if this deal is successful, Barksdale, NSCP and its shareholders will be laughing all the way to the bank after pulling one over on both the government and the U.S. taxpayer.

3rd Party Messaging

NSCP certainly is an "innovative" company; they practically invented a whole new way of doing business. Here's their prescription for being successful:

STEP #1 – instead of competing in the marketplace, spend your resources lobbying the govt for a couple years until they start to take notice (usually, a brunch or two at your CEO's mansion should do the trick),

STEP #2 – get the govt to sue your main competition (twice) and have the American taxpayer foot the bill (Barksdale admitted on the stand it was "too expensive" for them to do it);

STEP #3 – find a suitor (ie wartime ally..."Winston Churchill," I think he said) in AOL who will now generously reward you, your fellow execs and shareholders...this is nice work if you can get it...unfortunately, the US taxpayer foots the bill while NSCP, its execs and shareholders laugh all the way to the bank;

CONFIDENTIAL
MS98 00241780

Admittedly, this is very sarcastic and should not come out of our mouths but at same time packages this to our broader audiences via third-parties and makes points that track with our messaging research.

I will make sure CRC is aware and have them ready to communicate broadly with their folks (ie. radio talk show hosts like Rush, Ollie, Reagan, influential columnists/writers, etc.)

Obviously, we can't implement this strategy/messaging unless there actually is a deal in the works. I assume we will know more tomorrow.

---Original Message---
From: Mark Murray
Sent: Sunday, November 22, 1998 6:44 PM
To: Greg Shaw (Corp. PR); Lynann Bradbury (Waggener Edstrom); PR SmallCore Team
Cc: David Heiner (LCA); Bill Neukom (LCA); DOJ Case; Carla Lewis; Jack Krumholtz (LCA); Kimberly Ellwanger (LCA); Marcy Simon (Global Communications and Tele); Yusuf Mehdi; Will Poole; Marty Taucher; Brad Chase
Subject: RE. AOL-NS Rumor
Importance: High

Here are expanded draft talking points on the legal implications of the apparent AOL-Sun-NSCP deal, plus an outline of the various legal-oriented PR activities we will be taking over the next 24-48 hours based on discussions with the litigation team, government affairs and corppr.

We recognize that there are significant business issues associated with this announcement, and we want to make sure we are all in sync. As the business groups develop their messaging, they need to understand and incorporate these legally-oriented talking points -- even as they address the non-legal issues (such as "how will Microsoft compete against such a formidable joint enterprise, etc"). Obviously, we want to stay in touch with the messaging that emerges from the business groups, so we are consistent with your comments in those areas.

Trial-related talking points

- This deal blows an enormous hole in the government's lawsuit. This deal proves what Microsoft has been saying throughout this case -- there is vigorous competition in the marketplace, and Microsoft faces many formidable competitors.

- This deal raises serious questions about our competitors' actions. It would appear that Microsoft's competitors have been using the government to attack Microsoft in the Courts, while they join together to attack Microsoft in the marketplace. Microsoft is ready, willing, and able to compete in the marketplace, but the government should not be taking sides and trying to help other powerful companies attack Microsoft.

- The government's case has always been about helping Microsoft's competitors, not helping consumers. This deal shows that the government's case was always unnecessary. Microsoft's competitors have always had the ability and the resources to change the competitive landscape overnight.

- The government should hire a contortionist to explain why they're suing Microsoft, in the face of such powerful competition. This deal would bring together the dominant online service, the self-proclaimed dominant browser, and two of the most dominant portal sites in the industry.

- It's clear that the software industry is moving so fast that government intervention is bad for competition, bad for consumers, and bad for innovation. As we saw in the IBM case during the 1970s, competition in the industry made the government's lawsuits against IBM irrelevant. In this case, the government filed its case six months ago and the industry has already reinvented itself and pulled the rug out from under major elements of the government's case.

- As Nobel laureate Milton Friedman said during a speech in Silicon Valley this past weekend, "by the time the government's case is done, who knows how the government's case will look." It turns out Milton Friedman is absolutely right -- this announcement dramatically changes the competitive landscape and makes major portions of the government's case irrelevant.

- The combination of Netscape and AOL is potentially a powerful force in the software industry. It certainly further undermines the Government's contention that competition is somehow limited.

- This deal confirms Microsoft's argument that companies in the software industry work together all the time to advance their technology or their business interests. The government appears to have an unfair double standard -- when you look at these kinds of deals among other companies, it's ridiculous that the government is attacking Microsoft for simply meeting with other companies to discuss potential areas of cooperation.

Trial-related PR/Govt Affairs strategy

1) We will have either John Warden or Bill Neukom speak to the pool camera and the wires on the Courthouse steps at 9:40 as we enter the Courthouse. In addition, Neukom or Warden will conduct the noon briefing, since the government will undoubtedly be trying to spin that the deal doesn't affect the government's case in any way. (Mark Murray will own)
2) Marcy Simon will assemble a b-roll package and radio soundbite package of the Courthouse steps comments and disseminate to all media. (Marcy)
3) We will go all-out to get a WSJ editorial saying how crazy the government's case is in light of these events -- "free market has shown it's way ahead of government intervention, government should butt out." (Greg Shaw)
4) Our Government Affairs DC Team should call sympathetic conservative columnists, to push immediate columns on the same message. (Jack/Vivek)
5) Rick Rule should be available for media interviews all day Monday & Tuesday -- both in court and outside of court hours. Rick has already talked to AP, WSJ, Washington Post and USA Today to get our messages into the advance stories. (Rick/Edelman)
6) Rick should call the top 10-12 antitrust "experts" who get quoted on our case, try to sell them on the idea that this fundamentally undermines the government's case. (Rick/Edelman)
7) Bill Baxter -- we should pursue a couple of very high level interviews for Baxter -- WA Post, NYT? We should also try to place an immediate Baxter op-ed saying "government ought to read the writing on the wall and drop this case... This is just like the old IBM case he had to pull the plug on -- the industry reinvents itself far faster than government could ever hope to intervene." (Rick/Vivek)
8) Leverage Milton Friedman statement in the Valley on Saturday -- Friedman's comments are exactly on point -- (a) Valley support for the Government's lawsuit is suicidal; (b) government intervention will be bad for innovation and bad for consumers; (c) the industry will be totally changed before the government gets around to acting -- (as this deal shows). (Govt Aff)
9) Government affairs outreach to Congressional, state/local officials and our core supporters who have been following the case. (Jackk/John Kelly/vivekv)
10) Billn briefing for financial analysts early this week-- put the issue into context, avoid statements like Rob Enderle ("this kind of deal would never have happened without the DOJ case..."). We may need to include a business guy on these calls, as analysts will undoubtedly want to know how this new entity challenges our browser and portal efforts. (IR/TomP)
11) Post Courthouse steps comments to PressPass for all reporters who are not covering the trial directly.

---Original Message---
From: Greg Shaw (Corp. PR)
Sent: Sunday, November 22, 1998 7:59 PM
To: Lynann Bradbury (Waggener Edstrom); PR SmallCore Team
Cc: David Heiner (LCA); Bill Neukom (LCA); DOJ Case; Carla Lewis
Subject: RE: AOL-NS Rumor

We are getting press calls now and are saying the following. I think we need to be in every story saying this undermines the core of the Government's case, that there somehow is not serious competition in this industry.

- This deal certainly underscores the fact that competition is vigorous in this industry.
- The marketplace, not government regulators will create the best solutions for consumers
- The combination of Netscape and AOL is potentially a powerful force in the software industry. It certainly further undermines the Government's contention that competition is somehow limited.
- We exposed this combination in our cross examination of AOL Executive David Colburn as evidence that companies coordinate competition all the time in this industry.

Other comments we should make?

---Original Message---
From: Pam Edstrom
Sent: Sunday, November 22, 1998 1:55 PM
To: MSBRADC; MSDENNIST
Cc: MSSTEVEB; MSBILLG; MSMICHMATH; MSGREGSHAW; Mananne Allison; Pam Edstrom; MSJEFFR
Subject: netsacpe/aol

john markoff just called and said that AOL is ready to sign a deal to acquire Netscape. then in tern sun would do a deal with AOL for browser stuff.
he called because he wanted a quote form ms.
I told him it just proved what ms has been saying that this is a very very competitive business.
I asked him why this made sense and he said AOL was after a daytime user for their portal and that Netscape could provide that.
I did the usual stuff on wow that is hard and if just after portal then hard to keep momentum for the browser etc.
this mail is FYI only
I dont think ms has anything to gain from giving a quote on this and there is always a chance the deal will not get signed

john said it was very close but I said we have heard that before.

john asked for bill or steve and I said I would try for brad but referred him to bill gurley so again no one needs to take action this is an FYI

—Original Message—
From: Larry West [SMTP:lwest@microsoft.com]
Sent: Sunday, November 22, 1998 12:43 PM
To: Jim Cullinan; Tom Pilla; PR SmallCore Team
Subject: RE: AOL-NS Rumor

You're forgetting the very essence of the government's case, Jim.

Anything Microsoft does is anti-competitive; anything one of our competitors does is, by definition, competitive.

—Original Message—
From: Jim Cullinan
Sent: Sunday, November 22, 1998 12:40 PM
To: Tom Pilla; PR SmallCore Team
Subject: RE: AOL-NS Rumor

AOL would then have dominant share in the browser and portal business while Sun might have a dominant share in the server market - hope the DOJ is looking into this possible anti-competitive deal.

—Original Message—
From: Tom Pilla
Sent: Sunday, November 22, 1998 12:22 PM
To: Jim Cullinan; PR SmallCore Team
Subject: RE: AOL-NS Rumor

Here's the WSJi story...

America Online Is in Talks To Buy Netscape in Stock Deal

By KARA SWISHER

Staff Reporter of THE WALL STREET JOURNAL

America Online Inc. is in talks to buy Netscape Communications Corp. in an all-stock transaction that may also involve Sun Microsystems Inc., people familiar with the situation say.

Financial terms weren't available. But any pact is likely to value Netscape at some premium to its current market capitalization of about $4 billion, these people said.

Under terms now being discussed, AOL, of Dulles, Va., would take over Netscape's Netcenter Web site (www.netscape.com as well as Netscape's well-known software for browsing the Web. In a side agreement, Sun is considering an arrangement under which it would take control of Netscape's business software, paying AOL a fee for using Netscape technology, these people said.

The three companies have been in talks all week and over the weekend, and a final agreement may not be reached. But some people familiar with the situation believe a deal could be announced before stock markets open Monday morning. If so, the arrangement would mark a dramatic end to the independent existence of Mountain View, Calif.-based Netscape, whose meteoric rise and bruising battle with Microsoft Corp. have been the subject of multiple books and historic antitrust charges aimed at Microsoft. Such a deal also would provide additional ammunition as AOL and Sun continue to slug it out against Microsoft on several fronts.

In trading Friday on the Nasdaq Stock Market, Netscape's shares closed Friday at $39.875, up $2.625; Sun closed at $67, down 25 cents, also on Nasdaq. AOL closed

at $84.875, up $1.50 in composite New York Stock Exchange trading.

—Original Message—
From: Jim Cullinan
Sent: Sunday, November 22, 1998 12:14 PM
To: PR SmallCore Team
Subject: AOL-NS Rumor

There is something on the Dow Jones wire and AP has called us about the rumor of AOL buying Netscape. Obviously, we don't comment on rumors, but some of our press want to know if this was discussed during the parts of the trial when the court was closed. We remain mum, but very interesting rumor.