

# What The Oracle-TikTok Saga Means For Oracle Licensees

By **Arthur Beeman, Joel Muchmore and Melissa Wehri** (January 20, 2021)

As a new administration takes over in the White House, it is unlikely that a deal will be completed between TikTok's parent company ByteDance and Oracle Corp. The anticipated deal would have given Oracle oversight of U.S. operations of TikTok.

Oracle's interest in TikTok last year was perplexing: Why did Oracle want to be connected to a free social media site that was the target of serious allegations regarding data collection and security?

What follows explores the recent events surrounding Oracle's ongoing strategy for cloud relevance, suggests how Oracle intended the acquisition of TikTok to fulfill this strategy, and, finally, suggests what this means for the Oracle licensees.

## A Brief History of Oracle's Standing in the Cloud Wars

In 2006, when cloud technology was just gaining momentum, Oracle's then-CEO Larry Ellison was nothing if not derisive. Professing bewilderment, he opined, "Maybe I'm an idiot, but I have no idea what anyone is talking about."

By 2009, he had moved from befuddlement toward hostility, objecting to the "absurdity" and "nonsense" of cloud innovation. "What are you talking about?" he exclaimed. "It's not water vapor. It's a computer attached to a network!"[1]

And while Ellison professed befuddlement, the cloud industry surged ahead and shows no signs of slowing. Per Gartner, at the end of 2019, global cloud revenue accounted for \$227.8 billion, was expected to reach \$266.4 billion in 2020, and is expected to reach and \$354.6 billion in 2022.[2]

Recognizing the formidable returns it was missing out on, Oracle came to the belated realization that it needed Wall Street to recognize it as a significant cloud provider lest it be stigmatized as a legacy vendor.[3]

First came Oracle's initial attempts to build the necessary infrastructure. Since launching its first infrastructure as a service platform in 2015 — lagging nearly a decade behind most competitors — Oracle has been investing billions in a quest to build and defend a range of cloud services. However, its investment remains a small fraction of those made by its competitors.[4]

With a fledgling infrastructure in place, Oracle was faced with the complex task of gaining competitive market share. Initially, Oracle's approach appeared to be moving its substantial licensee base to its cloud through its infamously aggressive audits.

While much has been written about Oracle's well-honed audit machine that many believe is all but guaranteed to find steep licensing shortfalls, it was over the last few years that



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industry observers began noting that Oracle was routinely offering to resolve daunting audit disputes by pushing resolution packages that bundled unwanted cloud services.[5]

However, this approach ran into impediments when these alleged audit-based cloud sales tactics made Oracle the target of a securities litigation currently pending in the U.S. District Court for the Northern District of California.[6] We have observed that Oracle has slowed its practice of offering cloud credits to resolve contentious audits during the pendency of this litigation.

Meanwhile, Oracle worked to create competitive cloud offerings that would attract customers that were not existing licensees. Some industry analysts believe that Oracle's new autonomous database may be its biggest breakthrough in years. And by tying it to their cloud, by the end of 2019, Oracle appeared to have had its best chance yet to increase its standing in the cloud wars.[7]

Then COVID-19 hit. Oracle's 2020 fourth quarter report showed dramatic slowdown in four different areas of their business: Cloud services and licenses support saw a 1% increase in revenue over the past year; hardware saw a 9% dip; services saw an 11% dip; and cloud licenses and on-premise licenses decreased by an incredible 22%.[8]

When Oracle announced its 2021 fiscal first quarter results in September, CEO Safra Catz suggested that business was only briefly interrupted by the coronavirus pandemic.[9] Even if Oracle is back on track from the blow, many believe that Oracle still significantly lags behind its competitors.[10]

### **TikTok Enters the Picture**

After Trump's campaign anticipated massive crowds for his June 20, 2020, rally in Tulsa, Oklahoma, the turnout was much lower than projected. The New York Times reported that, "Hundreds of teenage TikTok users and K-pop fans say they're at least partially responsible." [11]

Scarcely six weeks later, on Aug. 6, Trump issued an executive order targeting TikTok, alleging, among other things, threats to national security.[12] Suffice it to say, TikTok disagreed, stating that the "order was 'issued without any due process' and risked 'undermining global businesses' trust in the United States' commitment to the rule of law.'" [13]

Despite insisting on a TikTok ban, this edict changed when the Trump administration offered parent company ByteDance the option of finding a bidder for U.S. control.[14]

As Trump prepared to dole out control of TikTok, Oracle had positioned itself to gather these spoils, having courted Trump in various ways: from placing an Oracle executive on his transition team,[15] to hosting lavish Trump fundraisers,[16] to providing Trump with a free database for tracking unproven COVID-19 treatments.[17]

Oracle had also aligned itself against Google Inc., Facebook Inc. and Amazon.com Inc.[18] by funding certain conservative-friendly, politically oriented tech coalitions, including the Internet Accountability Project,[19] the Free and Fair Markets Initiative,[20] and the Campaign for Accountability/Google Transparency Project.[21]

Ultimately, a potential deal was reached that would have given Oracle a 12.5% stake in TikTok Global while Wal-Mart Stores Inc., another member of the Free and Fair Markets

Initiative, would have received 7.5%.

However, as the Trump administration wound down, very little actually changed. TikTok is still functioning in the U.S., with two federal judges, U.S. District Judge Carl Nichols of the U.S. District Court for the District of Columbia and U.S. District Judge Wendy Beetlestone of the U.S. District Court for the Eastern District of Pennsylvania, blocking the ban.

Rather than holding fast, the U.S. Department of Commerce repeatedly extended deadlines set for ByteDance to complete the sale of TikTok, with the most recent ByteDance deadline quietly passing without renewal.[22]

Further, some reports speculate that a Biden administration will be less concerned with TikTok's ownership. Robert Atkinson, the president of the Information Technology and Innovation Foundation, stated that the TikTok ban was "much more of a Trump issue" that Biden might drop entirely.[23] Other sources suggest that the Oracle deal to buy TikTok itself "will likely face additional possibly lengthy scrutiny" from a Biden administration and is unlikely to be approved.[24]

While Oracle has declined to comment on whether Ellison's public support of Trump had any play in Oracle's efforts to secure a TikTok deal,[25] it seems certain that Oracle's best and only chance to assume any control of TikTok was under the Trump administration.

### **How Would the TikTok Deal Have Affected Oracle's Posture in the Cloud Wars?**

The TikTok deal would arguably have put Oracle back in the game it is sorely losing. As stated in Bloomberg, "In 2019, Oracle's share of the cloud infrastructure market was so small that Gartner lumped it into an 'Others' category of niche players." At best, TikTok would have represented a desperately needed win after Oracle has spent years struggling to find a place in the competitive cloud market.[26]

In fact, the competition for control over TikTok ownership was itself described as a cloud war:

The whole deal has turned out to be a new turf for the American cloud providers to take another shot at dominance. AWS is the undisputed cloud leader. Azure had already bagged a \$10 billion contract from the Pentagon. Oracle, a relatively obscure name in the cloud markets might finally get to enter the trillion-dollar club.[27]

Coupled with Oracle's success in picking up some of Zoom's pandemic-induced cloud traffic, some speculated that Oracle would have had the opportunity to enter the arena of the vast customer base that was previously "ruled by the likes of AWS, Azure and Google Cloud." [28]

### **What Should the Oracle Licensee Expect?**

At the end of the day, Oracle will maintain ongoing licensing relationships with hundreds of thousands of businesses. What should Oracle's licensees be on the lookout for now that Oracle showed its hand in the now-moribund TikTok deal?

More of the same. A few thoughts and considerations for Oracle's licensees follow.

***Oracle licensees should consider themselves targets for aggressive cloud sales***

## ***tactics.***

Oracle was never going to limit its cloud aspirations to a single approach. Acquisitions and deals have always fueled Oracle's aspirations for decades. However, infrastructure alone is not sufficient for cloud success — clients are needed to populate the cloud.

As some commentators have noted, to fully leverage the hopeful gains from obtaining Zoom and TikTok, Oracle would have needed "to get some of its big legacy clients to bring their workloads to the cloud, which has so far proven to be a tough task." [29]

## ***Licensees should anticipate Oracle's returning to aggressive audits with attempts to leverage them into cloud sales.***

Potentially due to the Oracle securities litigation, Oracle has ceased leveraging software audits as a means to push unwanted cloud sales. However, with a currently pending motion to dismiss and a sympathetic judge, that matter may soon be dismissed. [30] If so, licensees should expect Oracle to resume that practice.

## ***Oracle will feel encouraged and will intensify all angles of its push for cloud dominance.***

After suffering the highly visible defeat when Microsoft Corp. was awarded the \$10 billion Pentagon cloud contract, Oracle is likely to feel equally discouraged by the public failure of the TikTok deal. However, by coming so close to such an important multibillion-dollar deal, Oracle is unlikely to have any second thoughts about its strategy of leveraging politically minded tech coalitions to curry favor in Washington.

## ***The failed TikTok deal suggests that Oracle may be only one acquisition away from leveraging the virtuous cycle.***

While some observers focused on the fact that Oracle would have still trailed the big three even had the acquisition gone through, [31] this may have missed the importance of scaling in the cloud wars. According to some commentators, once a cloud provider reaches a certain threshold, the so-called virtuous cycle kicks in, which allows a provider to generate profit while growing its client base. [32]

The cloud is particularly susceptible to this cycle, as larger size drives prices down and allows further investment into infrastructure and amenities. Oracle will likely still be on the hunt for a comparable acquisition in order to provide it with precisely that scaling opportunity, thereby incentivizing it to continue its drive to move licensees to the cloud.

The TikTok saga demonstrates that Oracle is far from out of the cloud game, though whether Oracle is able to find a comparable win and leverage it into a path to true cloud competitiveness remains unclear.

However, those who routinely keep a close eye on their company's posture vis-à-vis Oracle should continue to stay on top of these developments and anticipate forthcoming audit activity and the inevitable cloud push. If nothing else, uncertainty continues to reign. Buckle up. It's going to be a bumpy ride.

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**Disclosure: The authors' firm represents Oracle licensees and was lead counsel for Mars in the Mars v. Oracle matter.**

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- [1] Powell, J. (2018, June 24). Oracle: Cloud Strife. Financial Times. <https://on.ft.com/31D2DMo>; see also Asay, M. (2018, February 26). Hubris, Thy Name is Oracle: So, Cloud is Still Totally for Nerds, Right? The Register. <https://bit.ly/2TF6jKP>.
- [2] Watts, S. (2020, April 21). Cloud Revenue & Market Share Trends in 2020. BMC Blogs. <https://www.bmc.com/blogs/cloud-revenue-market-share-trends/>.
- [3] Gartner Forecasts Worldwide Public Cloud Revenue to Grow 17.5 Percent in 2019. (2019, April 2). Gartner. <https://gtnr.it/2FL5FVv>; see also Woods, D. (2018, May 21). Oracle's Strong Arm Cloud Tactics — The 2018 Model. Forbes. <https://bit.ly/307GIg6>.
- [4] Kindig, B. (2018, June 25). Oracle hit from all sides: IaaS Cloud and Programmatic. Seeking Alpha. <https://bit.ly/2KLLFOR>.
- [5] Bloomberg, J. (2017, July 11). Oracle's Cloud Strategy: Ruthless or 'Byzantine'? Forbes. <https://www.forbes.com/sites/jasonbloomberg/2017/07/11/oracles-cloud-strategy-ruthless-or-byzantine/?sh=126f79462d91>.
- [6] Beeman, A. & Muchmore, J. (2020, September 18) Mars v. Oracle: Not the Only Complaint Against Oracle That Put Its Auditing and Licensing Practices at Risk of Exposure. Beeman & Muchmore, LLP. <https://beemanmuchmore.com/mars-v-oracle-no-longer-only-important-litigation-against-oracle/>.
- [7] Evans, B. (2019, December 2). Top 3 Tech Battles in 2020: Microsoft vs. Google, Salesforce vs. SAP, Amazon vs. Oracle. Cloud Wars. <https://cloudwars.co/articles/2020-tech-battles-microsoft-google-salesforce-sap-amazon-oracle/>.
- [8] Oracle's 2020 Q4 is In, Does it Mean an Audit for You? MetrixData 360. <https://metrixdata360.com/audit-series/oracle-audits-coming/>.
- [9] Novet, J. (2020, September 10). Oracle's Stock Jumps as Company Returns to Growth. CNBC. <https://www.cnbc.com/2020/09/10/oracle-orcl-earnings-q1-2021.html>.
- [10] <https://www.cnbc.com/2020/09/22/oracle-remains-laggard-in-cloud-infrastructure-even-after-tiktok-deal.html>.
- [11] Lorenz, T., Browning, K. & Frenkel, S. (2020, June 21). TikTok Teens & K-Pop Stans Say They Sank Trump Rally. The New York Times. <https://www.nytimes.com/2020/06/21/style/tiktok-trump-rally-tulsa.html>.
- [12] Trump, D. (2020, August 6). Executive Order on Addressing the Threat Posed by

TikTok. The White House. <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/>.

[13] Shu, C. & Liao, R. (2020, August 6). Trump Signs Orders Banning US Business with TikTok Owner ByteDance and Tencent's WeChat. TechCrunch. <https://techcrunch.com/2020/08/06/trump-signs-executive-orders-banning-transactions-with-tiktok-and-wechat/>.

[14] Leskin, P. (2020, September 18). Trump's Push to Ban TikTok, Explained in 30 Seconds. Business Insider. <https://www.businessinsider.com/donald-trump-tiktok-ban-us-china-explained-in-30-seconds-2020-8?r=MX&IR=T>.

[15] <https://www.theguardian.com/technology/2016/dec/21/oracle-executive-resigns-ceo-safra-catz-donald-trump>.

[16] <https://thehill.com/policy/technology/483750-trump-administration-backs-oracle-in-supreme-court-battle-against-google>.

[17] <https://www.nytimes.com/2020/03/24/us/politics/trump-oracle-coronavirus-chloroquine.html>.

[18] <https://www.wsj.com/articles/oracles-man-in-washington-fans-the-flames-against-rival-tech-giants-11581615873>.

[19] <https://www.bloomberg.com/news/articles/2020-02-25/oracle-reveals-it-s-funding-dark-money-group-fighting-big-tech>.

[20] <https://www.wsj.com/articles/a-grassroots-campaign-to-take-down-amazon-is-funded-by-amazons-biggest-rivals-11568989838>.

[21] <https://fortune.com/2016/08/19/google-transparency-project-2/>.

[22] <https://fortune.com/2021/01/11/tiktok-bans-trump-before-trump-bans-tiktok/>.

[23] <https://www.socialmediatoday.com/news/new-report-predicts-that-tiktok-will-surpass-one-billion-users-in-2021/588772/>.

[24] <https://twitter.com/CGasparino/status/1325889660493684740>.

[25] <https://qz.com/1906677/the-tiktok-deals-real-winner-is-oracles-larry-ellison/>.

[26] Grant, N. (2020, September 20). Oracle Boosts Cloud Ambitions with Help from TikTok and Trump. Bloomberg. <https://www.bloomberg.com/news/articles/2020-09-20/oracle-boosts-cloud-ambitions-with-help-from-tiktok-and-trump>.

[27] Sagar, R. (2020, September 18). Behind the TikTok Fiasco: Another Shot by US Tech Giants at Cloud Dominance. Analytics India Mag. <https://analyticsindiamag.com/tik-tok-oracle-cloud-microsoft-us-china/>.

[28] Id.

[29] Sagar, R. (2020, September 19). Beyond the TikTok Fiasco: Another Shot by US Tech Giants at Cloud Dominance. Analytics India Mag. <https://analyticsindiamag.com/tik-tok->

oracle-cloud-microsoft-us-china/.

[30] Beeman, A. & Muchmore, J. (2020, November 3). The Oracle Securities Litigation: The Hero We May Want (But Perhaps Not the Hero We Will Get). Beeman & Muchmore, LLP. <https://beemanmuchmore.com/the-oracle-securities-litigation-the-hero-we-may-want/>.

[31] Miller, R. (2020, October 1). Oracle's TikTok and Zoom Deals Won't Move Cloud Market Share Needle Significantly. TechCrunch. <https://techcrunch.com/2020/10/01/oracles-tiktok-and-zoom-deals-wont-move-cloud-market-share-needle-significantly/>.

[32] Here's Why Amazon is No Shoo-In to Win the \$206B Global Cloud Market. (2020, August 22). CB Insights. <https://www.cbinsights.com/research/amazon-google-microsoft-multi-cloud-strategies/>.