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ATTORNEYS AT LAW

February 24, 2000

Water's Direct Dial Number

Mr. Patrick Sharp
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Proposed Transaction

Dear Patrick:

This letter confirms our telephone conversation of February 18, 2000. Participating in the call, in addition to myself, were [redacted] of this office and [redacted]

As we discussed, Company "A" and Company "B" (each of which is a \$100 million person) are establishing "Newco" as a U.S. company. The objective of Newco is to make Internet-related investments in certain specified non-U.S. jurisdictions, perhaps through intermediate holding companies located in the United States. For business reasons unrelated to the HSR Act, Company A and Company B have structured the transaction as follows:

- A. Initially, Company A will invest \$7.5 million in cash in Newco in exchange for 75% of Newco's voting securities and Company B will invest \$2.5 million in cash in Newco in exchange for 25% of Newco's voting securities.
- B. Upon the satisfaction of various conditions to be identified and determined by Company A and B in the definitive documentation of the transaction (several of which conditions are dependent upon the performance of third parties), Company A and B will contribute, in aggregate, up to \$40 million in cash to Newco in proportion to their relative percentage ownership interest in Newco (i.e., Company A 75% and Company B 25%).

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- C. Upon the satisfaction of further conditions, Company A and B will make further capital contributions to Newco, again in proportion to their relative percentage ownership (i.e., Company A 75% and Company B 25%). It is anticipated that, if all the conditions to funding, including those which are dependent on third parties, are met, the total capital contributions to Newco will be approximately \$200 million over a two-year period with Company A contributing up to \$150 million and Company B contributing up to \$50 million. All contributions to Newco will be in cash.

Based upon the facts presented, you agreed with our conclusions as follows:

1. The proposed transaction would satisfy the HSR Act "size of person" thresholds for the establishment of a joint venture set forth in 16 C.F.R. § 801.40.
2. The \$10 million initial funding of Newco does not trigger the size of transaction threshold pursuant to 16 C.F.R. § 802.20 because neither Company A nor Company B will hold more than \$15 million of voting securities of Newco as a result of that investment.

The primary reason for this conclusion was that, given the contingent nature of the various Newco fundings, the total contributions to be made by Company A and Company B would not be treated as a single contribution for purposes of determining the size of transaction test. Rather, the size of transaction test would need to be examined at the time of each acquisition of Newco voting securities.

3. Upon the second funding, and assuming an aggregate contribution of \$40 million, whereby Company A will hold more than \$15 million of Newco voting securities, the acquisition of additional voting securities would not subject Company A to any HSR Act notification requirements because this is an exempt intra-person transaction under 16 C.F.R. § 802.30.
4. As a result of the second funding, Company B would not be subject to any HSR Act notification requirements, again under 16 C.F.R. § 802.20, as it would hold less than \$15 million of Newco voting securities.
5. At any subsequent funding of Newco as a result of which Company B would hold more than \$15 million of Newco voting securities, the acquisition of additional Newco voting securities by Company B would not

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be subject to any HSR Act notification requirements pursuant to 15 U.S.C. § 18a(c)(10), so long as Company B does not, in any subsequent funding of Newco, increase the percentage ownership of Newco voting securities held immediately prior to such acquisition.

We appreciate your taking the time to discuss this proposed transaction with me and would greatly appreciate you letting me know promptly if this is not your understanding.

Very truly



called 

I concur with this
letter (PS) 2/28/00