

August 24, 2000

VIA FACSIMILE

Mr. Michael Verne Federal Trade Commission Premerger Notification Office 600 Pennsylvania Avenue, N.W.

Re: Section 801.40 Analysis

Dear Mike:

This letter is intended to confirm my understanding of the advice you provided during a telephone conversation with me last week.

STATEMENT OF FACTS

Corporation A is negotiating the terms of an agreement with several investors. Under the terms of the proposed agreement, the proposed investors would form a new

million in cash will come in six months after forentias. These forentias, the important

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basis, assuming the issuance of the common shares that are reserved for issuance to management, consultants and employees, Corporation A would hold 29% of the equity and the investor group would hold 51%.

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million in cash to Corporation A in the form of an equalization payment for its contribution. The additional \$5 million in cash coming in six months later will also be passed through Newco to Corporation A to complete the equalization.

A third closing is also contemplated by the transaction agreement. If Newco is able to develop the technology sufficiently and is able to ship beta versions of products to two separate customers and receive revenues for such shipments, then the investor group will contribute an additional \$10 million in gash to Newco. Corporation A has never developed

receive payment as speculative. In any event, Corporation A does not anticipate that such phinments and revenue and the achieved prior to conserving talk one was from now and I

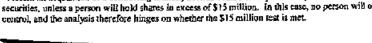
ANALYSIS

million or more in Newco voting securities.2

with three abbreviational policy of one town education was a series the investor group is willing to pay \$20 million, with no contingency, in order to obtain to the series of the source and the series of the source of the series o

The relevant question that needs to be determined is what an arms-length purchaser would pay Corporation A to obtain its 36% interest in Newco after the formation معالم المراجع المراجع

² Absent an acquisition of a controlling interest, Section 802.20 exempts the acquisition of 15% of the voting securities, unless a person will hold shares in excess of \$15 million. In this case, no person will obtain



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customers, then the contingent payments from the investors would come in, raising their total amount paid for their equity interest to \$30 million. However, as noted above, it is uncertain and speculative as to when or whether this additional \$10 million will be invested by the investors. The contingent investment which will not come in unless the

