

From: Richard Fade
Sent: Friday, January 15, 1999 12:18 PM
To: Joachim Kempin; Allen Wilcox (LCA)
Subject: FW: Compaq: Need Input

ATTORNEY CLIENT COMMUNICATION

Joachim I cannot add much to this thread as Rod's comments on his performance on promoting our properties (how many) are about what was verbally agreed to in the discussions. I also had a conversation with Carl that David Heiner had at some point reviewed the language in the license agreement, Allen may want to apprise you of that.
richard

-----Original Message-----

From: Laura Jennings
Sent: Thursday, January 14, 1999 1:54 PM
To: Paul Maritz; Bill Gates; Steve Ballmer; Joachim Kempin; Carl Sittig; Richard Fade; Allen Wilcox (LCA)
Cc: Greg Maffei; Carol Whitaker (Davies LCA)
Subject: RE: Compaq: Need Input

Thanks. These two responses are extremely helpful. We'll stay the hard-core approach on #1 and 2 and leave the old digital stuff out of it. I expect if we push hard enough tonight this will escalate by Monday if not before.

-----Original Message-----

From: Paul Maritz
Sent: Thursday, January 14, 1999 12:50 PM
To: Bill Gates; Laura Jennings; Steve Ballmer; Joachim Kempin; Carl Sittig; Richard Fade; Allen Wilcox (LCA)
Cc: Greg Maffei; Carol Whitaker (Davies LCA)
Subject: RE: Compaq: Need Input

Only thing that I ask is that we not roll in the Digital payments into the "high end" discussion - it can only result in them asking for more in situation where we have enough at stake already. My view is in fact that we should keep them out of both discussions, make deals on the merits, stay hard on the point that this is money owed to us no matter what, and later as an accounting measure we can agree to trade one off before the other.

-----Original Message-----

From: Bill Gates
Sent: Thursday, January 14, 1999 12:46 PM
To: Laura Jennings; Steve Ballmer; Joachim Kempin; Carl Sittig; Paul Maritz; Richard Fade; Allen Wilcox (LCA)
Cc: Greg Maffei; Carol Whitaker (Davies LCA)
Subject: RE: Compaq: Need Input

Attorney client

This all sounds like the Rod gets rich plan to me.

I think Compaq is making a big mistake selling the bounty they get from their machines to an outside company. It will make them non-competitive in the consumer PC space.

I see no reason not to be hard core about the first two points outlined here.

I have never heard about these Digital back payments. It may be that those should be kept out of this negotiation and folded into the negotiation Paul is having with them on high end things. We have some things they owe us related to Tandem as well. The total number of all these things is really large.

My biggest beef relates to point 1.

We agreed to let them have some flexibility for a year to see how they fulfilled point #1. We were clear that if point #1 was not fulfilled in a big big way that we would stop letting them do anything. Unfortunately our mistake in letting them do something was passed on to other companies losing massive value for us and creating a precedent we will be struggling to back out of for a long time.

My view is that they should use our branded communications services and do some other things just to deal with point #1. Not unbranded.

We should be hard core on this one.

Point #2 is just a money point. They owe us and they have to pay.

Rose is going to testify in the antitrust lawsuit but the positions we are taking here are very reasonable.

Lets now give in on #1 without getting something large. If they have to delay their offering that is too bad. We WILL be locking down the Windows agreement more over time and with new products.

If I need to call Pfeifer on this I will.

-----Original Message-----

From: Laura Jennings
Sent: Thursday, January 14, 1999 10:05 AM
To: Bill Gates; Steve Ballmer; Joachim Kempin; Carl Sittig; Paul Maritz; Richard Fade; Allen Wilcox (LCA)
Cc: Greg Maffei; Carol Whitaker (Davies LCA)
Subject: Compaq: Need Input

ATTORNEY CLIENT COMMUNICATION

Summary: Compaq plans to file to take AltaVista++ public next week, details of their plans included below. Greg and I are actively engaged in dialog with Compaq on two fronts: 1. a commercial agreement for this new company to use Hotmail, Messenger, Passport as their communications infrastructure and 2. an equity investment of 5-10% in this new public company. There are three outstanding issues we are familiar with regarding Compaq which could potentially influence our negotiating position, and we'd like input from those of you more familiar with these previous deals on how to use them, if at all, in these negotiations. -- thanks.

The new company will contain:

- AltaVista
- Shopping.com, which they announced their intent to purchase last week for \$220 million
- "Traffic and promotion" from a "major media player", details of which are sketchy at best, but Rod is currently holed up in NYC completing these negotiations and promises more info to us tomorrow
- Exclusive rights to all internet-related activities on Compaq hardware -- desktop real estate, keyboard links, etc. -- for a period of 3 years. This new company can decide to direct all traffic to altavista or to sell the links/position to third parties.

Rod will run this new company. Compaq is going to keep a controlling interest, and sell minority percentages to their major media partner and their infrastructure provider, the latter of which we hope is us. (Rod told us Yahoo will get the infrastructure deal if not us, and they are negotiating simultaneously with the two of us.)

The three outstanding leverage points Greg and I know about with Compaq are:

1. "Prominent" Internet Partner contractual language from Compaq's Windows license, per Carl Sittig:

In the Windows negotiations last Spring, MS made a large concession to Rod regarding ISP referral server provided that "(1) MSCORP is promoted as COMPANY's prominent partner in the internet and (2) MSCORP's www-based services (i.e., Expedia, CarPoint, Sidewalk.com, MSNBC, Internet Gaming Zone, MSN Investor, etc.) are promoted (A) in such ISP sign up wizard; (B) on COMPANY's Presario internet home page; and (C) in other Presario internet activities." This was also a discussion during a Compaq Exec review with BillG, Rod, Eckhard, et

Given that a big benefit that Alta Vista will have is the Compaq distribution rights, if MS were to aggressively assert its rights with Compaq under this contract, it would surely affect AV's valuation. Rod's

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current strategy seems to be to ignore this aspect of our existing agreement. What Greg and I need to know from the folks who negotiated this or have subsequently discussed it with Compaq execs is how strongly to interpret and assert our rights under this agreement. Unless we hear from someone that the intent as discussed during the negotiation phase was softer, we will push very aggressively a stance which says MSN properties are already guaranteed MFN status in the new AltaVista portal for as long as it serves as the Presario default or is linked in any way to Presario-linked internet activities, and that regardless of how the infrastructure commercial discussions go, Microsoft plans to vigorously defend these rights.

2. Search contract (I already own, included for completeness)

AltaVista signed a one-year, \$18 million distribution deal with MSN this summer. Compaq has subsequently made it clear they want out of this deal. We have indicated a willingness to work with Compaq to address their needs – we'll take the payment in PCs, we'll take it in more aggressive cross-distribution than we currently are already entitled to under the clause above, we'll change the payment structure, add international, etc. – but we won't just let them out of the contact. Compaq is currently in breach of the significant terms of the existing search distribution contract, and failed to make the second payment of \$4.5 million in December. We have not yet taken them off of our site nor taken legal action against them since we were engaged in dialog to both rectify their failures and explore a potential new infrastructure deal, but if we were prepared to do so, this could be a second strong card in our hand which might make it more difficult for Altavista's public offering.

3. Digital back payments

This one we understand the least well. Greg believes that Digital owed us back payments of \$40 million at the time of the Compaq acquisition, and that this matter is not yet settled. One option would be for us to agree to take this \$40 million and the \$18 million above in the form of equity in the new company.

In summary, Greg and I want to take the position in our calls this evening and tomorrow that we are already in a very strong position on Compaq's internet activities and that not resolving their existing outstanding issues with us (#1 and 2 above) will make the spin-off more difficult. We are willing to transfer some of their outstanding obligations into equity in the new AltaVista company, but if we find ourselves locked out of AV's plans, we intend to vigorously pursue our rights per the first two contracts above, and they are better off negotiating with us on these issues directly than trying to ignore them. This is hard ball, they will likely then escalate to Steve/Bill, but we believe now is the time for us to stand firm.

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