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FTC Issues Final Opinion and Order in Rambus Matter

Remedy Seeks to Restore Ongoing Competition in Computer Memory Technologies Markets

FOR RELEASE

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The Federal Trade Commission today issued a final opinion and order in the legal proceeding against computer technology developer Rambus, Inc. In addition to barring Rambus from making misrepresentations or omissions to standard-setting organizations, the order requires Rambus to license its SDRAM and DDR SDRAM technology and sets maximum allowable royalty rates it can collect for the licensing, bars Rambus from collecting or attempting to collect more than the maximum allowable royalty rates from companies that may already have incorporated its DRAM technology, and requires Rambus to employ a Commission-approved compliance officer to ensure that Rambus's patents and patent applications are disclosed to industry standard-setting bodies in which it participates. The order is designed to remedy the effects of the unlawful monopoly Rambus established in the markets for four computer memory technologies that have been incorporated into industry standards for dynamic random access memory – DRAM chips. DRAMs are widely used in personal computers, servers, printers, and cameras.

In June 2002, the FTC charged Rambus with violating federal antitrust laws by deliberately engaging in a pattern of anticompetitive acts to deceive an industry-wide standard-setting organization, which caused or threatened to cause substantial harm to competition and consumers. The Commission complaint alleged that Rambus participated in the Joint Electron Device Engineering Council (JEDEC), a standard-setting organization that “maintained a commitment to avoid, where possible, the incorporation of patented technologies into its published standards, or at a minimum to ensure that such technologies, if incorporated, will be available to be licensed on royalty-free or otherwise reasonable and non-discriminatory terms.

According to the FTC complaint, Rambus nonetheless participated in JEDEC's DRAM standard-setting activities for more than four years without disclosing to JEDEC or its members that it was actively working to develop, and possessed, a patent and several pending patent applications that involved specific technologies ultimately adopted in the standards.

The charges were litigated in an administrative trial. In February 2004, the charges were dismissed in an initial decision and order by Chief Administrative Law Judge Stephen J. McGuire. FTC Complaint Counsel appealed the decision to the Commission, which overturned the ALJ's decision in July 2006.

In its liability opinion dated July 31, 2006, the Commission found that, “Rambus engaged in exclusionary conduct that significantly contributed to its acquisition of monopoly power in four related markets.” The Commission announced that it would determine a remedy for the unlawful conduct after additional briefings and oral argument. The opinion and order announced today prescribes that remedy.

The Commission’s majority opinion states that the Supreme Court has “emphasized the Commission’s wide discretion in its choice of remedy, and stated the expectation that the Commission would ‘exercise a special competence in formulating remedies to deal with problems in the general sphere of competitive practices.’”

Thus, “The Commission enjoys ‘wide latitude for judgment’ in fashioning a remedial order, subject to the constraint that the requirements of the order bear a reasonable relationship to the unlawful practices that the Commission has found.”

“Having found liability, we want a remedy strong enough to restore ongoing competition and thereby to inspire confidence in the standard-setting process. At the same time, we do not want to impose an unnecessarily restrictive remedy that could undermine the attainment of pro-competitive goals,” it says.

“[T]he Commission has previously declared, and we agree, that ‘where the circumstances justify such relief, the Commission has the authority to require royalty-free licensing.’ . . . We conclude, however, that Complaint Counsel have not satisfied their burden of demonstrating that a royalty-free remedy is necessary to restore the competition that would have existed in the ‘but for’ world – i.e., that absent Rambus’s deception, JEDEC would not have standardized Rambus technologies, thus leaving Rambus with no royalties. . . . We have examined the record for the proof that the courts have found necessary to impose royalty-free licensing, but do not find it.”

“We therefore are left with the task of determining the maximum reasonable royalty rate that Rambus may charge those practicing the SDRAM and DDR-SDRAM standards. Royalty rates unquestionably are better set in the marketplace, but Rambus’s deceptive conduct has made that impossible. Although we do not relish imposing a compulsory licensing remedy, the facts presented make that relief appropriate and indeed necessary to restore competition,” the opinion states.

“[W]e find that a maximum royalty rate of .5% for DDR SDRAM, for three years from the date the Commission’s Order is issued and then going to zero, is reasonable and appropriate. We also find that a corresponding .25% maximum rate for SDRAM is appropriate. Halving the DDR SDRAM rate reflects the fact that SDRAM utilizes only two of the relevant Rambus technologies, whereas DDR SDRAM uses four.”

The opinion explains that the order bars Rambus “from collecting royalties relating to the sale, manufacture or use of any JEDEC-compliant DRAM or non-DRAM products that are greater than those that Rambus is allowed to collect under the terms” of the order. “The purpose of this provision . . . is to preclude Rambus from continuing to collect monopoly rents” with respect to these products.

In addition, to ensure that the efforts to restore competition are not undermined by the threat of patent infringement litigation, the order bars Rambus from enforcing any royalty agreements now in effect that would be prohibited under the terms of the order.

The order prohibits Rambus from misrepresenting its patents or patent applications to any standard-setting organization or its members. It requires that Rambus abide by standard-setting organizations’ requirements or policies to make complete, accurate, and timely disclosures of its patents or patent applications. In addition, the order requires Rambus to employ a Commission-approved compliance officer to ensure disclosure of

intellectual property rights to standard-setting organizations and to verify the accuracy of Rambus's periodic reports to the Commission.

The order also contains bookkeeping and record-keeping requirements to allow the Commission to monitor Rambus's compliance with the order.

The Commission vote to issue the opinion and order was 3-2, with Commissioners Pamela Jones Harbour and J. Thomas Rosch concurring in part and dissenting in part, and issuing separate opinions.

Noting that he agrees entirely that the Commission has the authority to issue a mandatory licensing decree, Commissioner Rosch's opinion states that he dissented from the above-zero royalty rate provisions of the majority's remedy. "I conclude that licensing on terms above zero would enable Rambus to obtain royalties it would not have obtained," and enable it to "continue to reap the fruits of its ongoing violation of Section 2."

"In rejecting Rambus's characterization of the remedy as extreme, I must emphasize that the royalty free licensing order I would issue would not run against any patents in their entirety. To the contrary, as previously discussed, I would only order royalty-free licensing with respect to patents reading on SDRAM and DDR-SDRAM standards in favor of those who are practicing those standards. Thus, for example, Rambus would be able to collect royalties on any patents reading on DDR2 SDRAM and all other JEDEC standards from those who practice those standards," his statement says.

In her separate statement, Commissioner Harbour said, "Along with Commissioner Rosch . . . I believe the Commission should have imposed a royalty-free remedy in this case. . . . I also dissent [because] I do not believe the remedy adopted by the majority goes far enough to restore competition. Given the Commission's remedial authority and the current 'actual market realities' for SDRAM technologies, the Commission can and should impose a remedy reaching the DDR2 generation of SDRAM. A remedy extending to DDR2 would be a legitimate and appropriate exercise of the Commission's remedial discretion."

Copies of the Commission's opinion and order, the Commissioners' separate statements and the other legal documents associated with this case are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

The FTC seeks to prevent business practices that restrain competition. The agency carries out its mission by investigating alleged law violations and, when appropriate, recommending taking formal enforcement action. To notify the FTC's Bureau of Competition concerning particular business practices, call or write the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580, Electronic Mail: antitrust@ftc.gov; Telephone (202) 326-3300. For more information on the laws that the Bureau enforces, the Commission has published "Promoting Competition, Protecting Consumers: A Plain English Guide to Antitrust Laws," which can be accessed at <http://www.ftc.gov/bc/compguide/index.htm>.

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(Docket No. 9302)



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