



Federal Trade Commission Protecting America's Consumers

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FTC Issues Complaint Against Rambus, Inc.

Deception of Standard-Setting Organization Violated Federal Law

The Federal Trade Commission has charged Rambus, Inc., based in Los Altos, California, with violating federal antitrust laws by deliberately engaging in a pattern of anticompetitive acts and practices that served to deceive an industry-wide standard-setting organization, resulting in adverse effects on competition and consumers.

"The conduct at issue here has done substantial harm to important technology markets, and threatens to undermine participation in industry standard-setting activities more generally," said Joseph J. Simons, Director of the FTC Bureau of Competition. "By issuing this complaint, the Commission is sending a signal not only to Rambus but also to other companies. The message is this: If you are going to take part in a standards process, be mindful to abide by the ground rules and to participate in good faith."

The standards organization at issue - the JEDEC Solid State Technology Association (formerly known as the Joint Electron Device Engineering Council, from which the acronym "JEDEC" derives) - develops and issues widely adopted technical standards for a common form of computer memory known as synchronous dynamic random access memory, or "SDRAM." Memory chips incorporating JEDEC's SDRAM standards are used in a wide variety of downstream products, including both personal and network computers, fax machines, printers, digital video recorders, video game equipment, and personal digital assistants.

In developing standards for use throughout the semiconductor industry, JEDEC has endeavored to promote free competition among industry participants. As the FTC's complaint notes, one of JEDEC's "basic" rules is that standardization programs conducted by the organization "shall not be proposed for or indirectly result in ... restricting competition, giving a competitive advantage to any manufacturer, [or] excluding competitors from the market." The complaint notes that "JEDEC also has 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." "Toward this end," the complaint states, "JEDEC has implemented procedures designed to ensure that members disclose any patents, or pending patent applications, involving the standard-setting work being undertaken by the organization."

According to the FTC's complaint, Rambus participated in JEDEC's SDRAM-related work for more than four years without ever making it known to JEDEC or its members that Rambus was actively working to develop, and did in fact possess, a patent and several pending patent applications that involved specific technologies proposed for, and ultimately adopted in, the relevant standards. By allegedly concealing this information, in violation of JEDEC's operating rules and procedures, and through other alleged bad-faith, deceptive conduct, the complaint charges that Rambus purposefully sought to, and did, convey to JEDEC the materially false and misleading impression that it had no relevant intellectual property rights. Specifically, the complaint alleges that "Rambus's very participation in JEDEC, coupled with its failure to make required patent-related disclosures, conveyed a materially false and misleading impression - namely, that JEDEC, by incorporating into its SDRAM standards technologies openly discussed and considered during Rambus's tenure in the organization, was not at risk of adopting standards that Rambus could later claim to infringe upon its patents."

According to the FTC's complaint, Rambus's challenged conduct has caused or threatened to cause substantial harm to competition and consumers because it has placed Rambus in a position to assert patent rights over the relevant JEDEC standards, and to obtain substantial royalties from memory manufacturers producing products in compliance with those standards. Had Rambus properly complied with JEDEC's rules and abstained from any misleading conduct, the FTC contends that this likely would have impacted the content of the organization's SDRAM standards, the terms on which Rambus could license any pertinent patent rights, or both. That is, according to the FTC, the royalties that Rambus has been able to charge SDRAM manufacturers would not likely have been sustainable without the pattern of misleading and deceptive conduct outlined in the complaint.

The complaint asserts that a number of large memory manufacturers - including such well-known companies as Samsung, Hitachi, NEC, and Toshiba - have acquiesced to Rambus's royalty demands. Under these existing license agreements,

Rambus is entitled to collect royalties in the range of \$50 to \$100 million per year. The complaint notes that some memory manufacturers have opposed Rambus's royalty demands, choosing instead to dispute Rambus's patent rights in litigation. Should Rambus prevail in its private patent litigation, the complaint asserts that Rambus could, over the life of its patents, "extract royalty payments well in excess of a *billion* dollars" from the memory industry.

In addition to increasing royalty rates paid by memory manufacturers, the FTC's complaint asserts that Rambus's conduct has brought about other threatened or actual anticompetitive effects, including:

- Increases in the price - and/or reductions in the use or output - of SDRAM chips, as well as other products incorporating or using SDRAM technology;
- Decreased incentives, on the part of memory manufacturers, to produce memory using SDRAM technology;
- Decreased incentives, on the part of memory manufacturers and others, to participate in JEDEC or other industry standard-setting organizations or activities; and
- Both within and outside the memory industry, decreased reliance, or willingness to rely, on standards established by industry standard-setting collaborations.

The FTC's complaint contains three separate but related legal counts. Through the pattern of anticompetitive and exclusionary acts detailed in the complaint's allegations, the agency charges that Rambus, in violation of Section 5 of the FTC Act, "has illegally monopolized, attempted to monopolize, or otherwise engaged in unfair methods of competition in certain markets relating to technological features necessary for the design and manufacture of [SDRAM]."

While the FTC's complaint notes that the agency would have latitude to "order such relief as is supported by the record and is necessary and appropriate," according to a detailed "Notice of Contemplated Relief" attached to the complaint, such relief may include, among other things, an order preventing Rambus from enforcing any United States patents against producers and users of SDRAM technology, to the extent such patents derive from patent applications filed prior to Rambus's withdrawal from JEDEC. In addition, such relief may include an order preventing Rambus from enforcing certain foreign patents against producers and users of SDRAM technology, with respect to products intended for import into or export from the United States.

The Commission vote to file the complaint was 5-0.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is *not* a finding or ruling that the defendant has actually violated the law. The case will be decided, in the first instance, by an administrative law judge, with right of appeal to the full Commission.

The FTC Bureau of Competition seeks to prevent business practices that restrain competition. The Bureau carries out its mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. To notify the Bureau concerning particular business practices, call or write the Office of Policy and Evaluation, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, D.C. 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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Related Documents:

Rambus Incorporated, File No. 011 0017, Docket No. 9302

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