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Initial Decision Released in Rambus Case

Judge Dismisses Complaint Alleging Company Violated Antitrust Laws

FOR RELEASE

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Chief Administrative Law Judge Stephen J. McGuire today released the public version of his initial decision in the matter of Rambus. The decision sets forth his rationale for concluding that the FTC complaint charging Rambus with violating the FTC Act should be dismissed. The initial decision and Order dismissing the complaint was announced February 17. The judge's initial decision contained in camera material which has been redacted before release of the public version today.

The Complaint

A complaint announced on June 19, 2002 charged Rambus, Inc., 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 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." The FTC complaint alleged that JEDEC 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 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. The complaint charges that 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, Rambus purposefully sought to, and did, convey to JEDEC the materially false and misleading impression that it had no relevant intellectual property rights.

According to the FTC's complaint, Rambus' 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.

The FTC's complaint charged Rambus with three violations of Section 5 of the FTC Act. The agency charged that Rambus engaged in a pattern of anticompetitive practices to obtain monopoly powers in the synchronous DRAM technology market and other narrower markets. The complaint charged that Rambus engaged in a pattern of anticompetitive and exclusionary practices with intent to monopolize the markets. Finally, the complaint charged that Rambus engaged in a pattern of anticompetitive and exclusionary practices which unreasonably restrained trade in the DRAM technology market.

Summary of the Initial Decision

In his initial decision, Judge McGuire stated that the issues at question were:

- (1) whether Rambus engaged in a pattern of deceptive, exclusionary conduct by subverting an open standards process;
- (2) whether Rambus used that conduct to capture a monopoly in technology-related markets;
- (3) whether Rambus' conduct violated antitrust law; and
- (4) whether Rambus' conduct resulted in anticompetitive injury.

The decision states that Complaint Counsel failed to prove the violations alleged in the Complaint. The decision states that on the basis of the evidence Judge McGuire concluded:

"(1) the EIA/JEDEC patent policy encouraged the early, voluntary disclosure of essential patents and Respondent did not violate this policy; (2) the case law upon which Complaint Counsel rely to impose antitrust liability is clearly distinguishable on the facts of this case; (3) Respondent's conduct did not amount to deception and did not violate any 'extrinsic duties,' such as a duty of good faith to disclose relevant patent information; (4) Respondent did not have any undisclosed patents or patent applications during the time that it was a JEDEC member that it was obligated to disclose; (5) amendments to broaden Respondent's patent applications while a member of JEDEC were not improper, either as a matter of law or fact; (6) by having a legitimate business justification for its actions, Respondent did not engage in exclusionary conduct; (7) Respondent did not intentionally mislead JEDEC by knowingly violating a JEDEC disclosure rule; (8) there is no causal link between JEDEC standardization and Respondent's acquisition of monopoly power; (9) members of JEDEC did not rely on any alleged omission or misrepresentation by Respondent and, if they had, such reliance would not have been reasonable; (10) the challenged conduct did not result in anticompetitive effects, as Complaint Counsel did not demonstrate that there were viable alternatives to Respondent's superior technologies; (11) the challenged conduct did not result in anticompetitive effects as the challenged conduct did not result in higher prices to consumers; and (12) JEDEC is not locked in to using Respondent's technologies in its current standardization efforts."

"For these reasons, Complaint Counsel have failed to sustain their burden to establish liability for the violations alleged. Accordingly, the Complaint is DISMISSED," Judge McGuire wrote.

The Judge's initial decision is subject to review by the full Commission, either on its own motion or at the request of either party. The initial decision will become the decision of the Commission 30 days after it is served on the parties or 30 days after the filing of a timely notice of appeal (whichever is later), unless: (1) a party filing a notice of appeal perfects an appeal by the timely filing of an appeal brief, or (2) the Commission takes certain other actions detailed in its Rules.

Copies of the Initial Decision by the administrative law judge 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, D.C. 20580.
(Docket No. 9302)

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