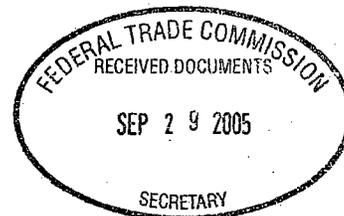


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz



In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

PUBLIC

**COMPLAINT COUNSEL'S OPPOSITION TO RAMBUS'S
MOTION TO REOPEN THE RECORD**

*"[P]roof of price fixing by DRAM manufacturers
... is immaterial to the issues in this case,
including whether Rambus' conduct alleged in the
Complaint could tend to injure competition."*

Judge Timony, Opinion Supporting Order Granting Motion of the
United States Department of Justice to Limit Discovery Relating to
the Grand Jury at 7 (January 15, 2003).

*"[T]he Court does not intend to entertain extensive
examination on this question [the purported anti-
competitive conduct of DRAM manufacturers] since
the focus of this matter is on the conduct and
actions of Respondent, not non-parties."*

Judge McGuire, Order on Motions In Limine at 10 (April 21,
2003).

This litigation has unfortunately been characterized by a recurring theme: whenever it is
confronted with its own misconduct, Rambus attempts to distract attention by pointing the finger

at others. Once again, faced not only with a detailed track record of its deliberate, decade-long manipulation of the JEDEC standard-setting process in order unlawfully to acquire monopoly power, but also with overwhelming evidence of its bad-faith spoliation of vast quantities of evidence from its business files, Rambus has reverted to its old, familiar pattern. Rambus seeks to deflect attention from its own conduct by blaming third parties. But as even ALJ McGuire recognized (at least initially), the issue in this Part III litigation is not the conduct of third parties, but the conduct of Rambus.

Rambus has asserted on multiple occasions that the failure of its RDRAM architecture between 1999 and 2001 was due to a conspiracy among DRAM manufacturers. Each such assertion has proven to be irrelevant to the current litigation. In yet one more attempt to draw attention away from its own conduct, Rambus now relies on a selection of as-yet unseen documents it acquired in separate litigation to argue that DRAM manufacturers conspired to increase RDRAM prices, then to reduce DDR SDRAM prices, and then to increase DDR SDRAM prices.

Complaint Counsel condemn the apparent SDRAM-related conspiracy among DRAM manufacturers and applaud the efforts of the Department of Justice to bring it to an end. Complaint Counsel have no knowledge as to whether Rambus's description of the apparent conspiracy is accurate. But even if Rambus's rather implausible-sounding story were true, it might support a treble damage claim against the DRAM manufacturers (a claim Rambus is pursuing in California state court). It would not give Rambus a free pass in this Part III litigation with respect to its own unlawful conduct.

Regarding Rambus's present motion, Complaint Counsel cannot comment with any specificity with respect to a motion to reopen the record to admit an unknown number of documents that we have never seen. (Indeed, Complaint Counsel and the Commission may never have the opportunity to see these documents.) Thus, Complaint Counsel limit ourselves to the following general observations.

First, in light of Rambus's repeated unsuccessful attempts to inject this irrelevant issue into this Part III litigation and the fact that this issue has not been raised on appeal, briefed, or argued before the Commission, the Commission should reject Rambus's motion out of hand. Second, even if the Commission might otherwise consider the possibility of reopening the record with respect to this extraneous topic, the Commission cannot possibly evaluate a motion to reopen the record that fails even to identify the documents at issue, let alone to include copies for review. Indeed, it would be the very definition of prejudice to admit into the record documents that Complaint Counsel has never even had the chance to see.

For these reasons, Rambus's motion to reopen the record should be denied.

Respectfully submitted,



Geoffrey D. Oliver
Patrick J. Roach
Robert P. Davis

Bureau of Competition
FEDERAL TRADE COMMISSION
Washington, D.C. 20001
(202) 326-2275

Counsel for the Complaint

Dated: September 29, 2005

CERTIFICATE OF SERVICE

I, Lourine K. McDuffie, hereby certify that on September 29, 2005, I caused a copy of the attached, *Complaint Counsel's Opposition To Rambus's Motion To Reopen The Record*, to be served upon the following persons:

by hand delivery to:

The Commissioners
U.S. Federal Trade Commission
Via Office of the Secretary, Room H-135
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

A. Douglas Melamed, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
2445 M Street, N.W.
Washington, DC 20037-1402

and by overnight courier to:

Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071

Counsel for Rambus Incorporated


Lourine K McDuffie