

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney**

In the Matter of NXP Semiconductors N.V., a corporation.))))))))	Docket No. C-4560
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ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent NXP Semiconductors N.V. (“NXP”) of the outstanding voting securities of Freescale Semiconductor, Ltd. (“Freescale”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent NXP Semiconductors N.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Netherlands, with its corporate office and principal place of business located at High Tech Campus 60, Eindhoven 5656 AG, the Netherlands.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. “NXP” means NXP Semiconductors N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by NXP Semiconductors N.V. (including Freescale, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) JAC or (ii) any other Person that acquires the RF Power Assets pursuant to the Decision and Order.
- D. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger by and among NXP Semiconductors N.V., Nimble Acquisition Limited, and Freescale Semiconductor, Ltd., dated March 1, 2015.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Confidential Information” means any and all of the following information:
 1. all information that is a trade secret under applicable trade secret or other law;
 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price

lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures, and architectures;

3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

G. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.

H. "Divestiture Agreement" means (i) the JAC Acquisition Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the RF Power Assets, including all related ancillary agreements (transitional services agreement, intellectual property transfer and license agreement, and manufacturing services agreement), schedules, exhibits, and attachments thereto.

I. "Divestiture Date" means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the RF Power Assets to Acquirer.

J. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

- K. “RF Power Assets” means the assets identified in Paragraph I.V. of the Decision and Order.
- L. “RF Power Business” means the business conducted by NXP as of the date of the announcement of the Acquisition in respect of researching, designing, developing, testing, manufacturing, commercializing, packaging, marketing, distributing, selling and/or servicing high power RF Power transistors (from >1 watt peak power to more than 1kW) for applications including but not limited to cellular base stations, broadcast systems, radars, medical equipment and various industrial applications, which are manufactured using Silicon Lateral Diffused Metal Oxide Semiconductor (Si-LDMOS), Vertical Diffused Metal Oxide Semiconductor (VDMOS) or Gallium Nitride on Silicon Carbide (GaN-on-SiC) process technologies in order to be able to deliver the desired high output power and heat dissipation and any past and/or future generations of such transistors, technologies, or markets.
- M. “RF Power Employee” means any individual (i) employed by NPX on a full-time, part-time, or contract basis at any time as of and after the date of the announcement of the Acquisition and (ii) whose job responsibilities predominantly relate or predominantly related to the RF Power Business.

II.

IT IS FURTHER ORDERED that until the Divestiture Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the RF Power Assets and grant of the RF Power License; *provided, however*, that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements directly with each of the relevant Persons; and *provided further* that in the event Respondent is unable to obtain any consent, assignment, or waiver required by this Paragraph II., Respondent shall (i) provide such assistance as Acquirer may reasonably request in its efforts to obtain the consent or (ii) with the acceptance of Acquirer and the prior approval of the Commission, Respondent may substitute equivalent assets or arrangements.

III.

IT IS FURTHER ORDERED that during the time period before the Divestiture Date, Respondent shall operate the RF Power Business and RF Power Assets in the ordinary course of business consistent with past practices as of the date that Respondent announced the Acquisition, including but not limited to the following responsibilities:

- A. Respondent shall maintain (i) the RF Power Business and RF Power Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondent signs the Consent Agreement, and (ii) relations and good will with suppliers,

customers, landlords, creditors, agents, and other having business relationships with the RF Power Business and RF Power Assets;

- B. Respondent shall provide the RF Power Business with sufficient financial and other resources to (i) operate the RF Power Business and RF Power Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans and promotional activities in place prior to the Acquisition; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the RF Power Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, or expansion projects; and (iv) maintain the viability, competitiveness, and marketability of the RF Power Business and RF Power Assets.
- C. Respondent shall preserve the RF Power Business and RF Power Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent's control, as a result of which the viability, competitiveness, and marketability of the RF Power Business and RF Power Assets would be diminished.

IV.

IT IS FURTHER ORDERED that:

- A. Until the Divestiture Date, Respondent shall staff the RF Power Business and RF Power Assets with sufficient employees to maintain the viability and competitiveness of the RF Power Business and RF Power Assets, including but not limited to, providing each RF Power Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the RF Power Assets.
- B. Respondent shall cooperate with and assist Acquirer to evaluate and retain any RF Power Employee necessary to operate the RF Power Business in substantially the same manner as NXP prior to the divestiture, including but not limited to:
 - 1. Not later than twenty (20) days before the Divestiture Date, Respondent shall (i) identify all RF Power Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all RF Power Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any RF Power Employee;
 - 2. Respondent shall (i) not offer any incentive to any RF Power Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may

deter any RF Power Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere the recruitment, hiring, or employment of any RF Power Employee by Acquirer;

3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any RF Power Employee who accepts an offer of employment from Acquirer and (ii) provide each RF Power Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
4. For a period of two (2) years after the RF Power Assets are divested, Respondent shall not solicit the employment of any RF Power Employee who becomes employed by Acquirer at the time the RF Power Assets are divested; *provided, however,* that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the RF Power Business or RF Power Assets; *provided, however,* that Respondent may disclose or use such Confidential Information in the course of:
 1. Performing its obligations or as permitted under this Order to Maintain Assets, Decision and Order, or Divestiture Agreement; or

2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the RF Power Business or RF Power Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph V.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph V. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph V., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint Advolis S.A. to serve as Monitor.
- B. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order to Maintain Assets and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order to Maintain Assets and the Decision and Order, and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order to Maintain Assets and the Decision and Order, or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order to Maintain Assets;

3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after the Acquisition Date for a period of one year, (ii) every ninety (90) days thereafter until Respondent has completed all obligations required by Paragraph II. of the Decision and Order, and (iii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order to Maintain Assets and the Decision and Order.
- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- E. The Monitor's power and duties under this Order to Maintain Assets shall terminate at the time this Order to Maintain Assets terminates, or at such other time as directed by the Commission.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:

1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain Assets on the same terms and conditions as provided in this Paragraph VI.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.

VII.

IT IS FURTHER ORDERED that:

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and Decision and Order within thirty (30) days from the date Respondent signs the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates.
- B. With respect to the divestiture required by Paragraph II. of the Decision and Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the RF Power Assets; (ii) a description of all substantive contacts with a proposed acquirer (other than JAC); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

VIII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the RF Power Business and RF Power Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the date that Respondent completes the divestiture required by Paragraph II.A. of the Decision and Order; *provided, however*, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: November 25, 2015