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Client Alert

FTC Order in the Rambus, Inc. SDRAM Matter Sheds Light on the Commission's Ability to Fashion Broad Remedies for Competitive Harm

In February 2007, the Federal Trade Commission (FTC) issued a final opinion and order that requires Rambus, Inc. to license its SDRAM and DDR SDRAM technology. In addition to the licensing requirement, the FTC order prohibits Rambus from making misrepresentations or omissions to any standard-setting organization, establishes the maximum royalty rate that Rambus can collect for licensing of its SDRAM and DDR SDRAM technology, and requires that Rambus implement control measures to ensure compliance with the order.

The February 5, 2007 FTC opinion and order were motivated by the agency's determination that Rambus deliberately engaged in anticompetitive conduct to deceive the Joint Electron Device Engineering Council (JEDEC)[1], an industry standard-setting organization whose purpose is to provide published standards free from patent and licensing restrictions. The FTC complaint alleged that Rambus participated in JEDEC's DRAM standard-setting activities, but withheld the fact that it was actively developing patent applications involving technologies that would be incorporated into the JEDEC standards. The Commission determined that this abuse of the standard-setting process, and other related conduct had allowed Rambus to obtain monopoly power in four related markets. The FTC order is intended to remedy any competitive harm that could arise from Rambus' exercise of that monopoly power.

Implications of the Rambus Order

The Rambus decision has several implications. First, the decision demonstrates the wide latitude that the FTC may have in fashioning remedial orders for perceived anticompetitive conduct. The Rambus order reflects the Commission's attempt to restore market conditions to those that would have prevailed absent Rambus' deception. To restore market conditions, the order not only places restrictions on Rambus' future conduct, it also imposes pricing and licensing restrictions on the company. This broad remedy stands in stark contrast to Rambus' contention that the Commission's remedial power is limited to the issuance of "cease-and-desist" orders. In fact, the Rambus order suggests that the FTC is able to implement strong remedial measures as long as those measures are reasonably related to the anticompetitive conduct. It should also be noted that the order may serve as a new enforcement paradigm for courts attempting to fashion a remedy for similar violations in the future.

Second, the order demonstrates that the FTC will not tolerate conduct that abuses standard-setting systems to gain competitive advantage. The Commission's decision suggests that a company's

[1] The organization is currently known as "JEDEC Solid State Technology Association."

attempt to exploit the standards-setting system is likely to violate the antitrust laws, drawing the ire of the federal antitrust agencies. Given the likelihood of an antitrust complaint, the significant costs associated with defending the complaint, and the stiff penalties imposed, companies should implement their own control measures to ensure compliance with the regulations of the standard-setting organizations in which they participate. In addition, when collaborating with standard-setting organizations, a company may want to err on the side of caution and opt for full disclosure of any relevant intellectual property. By implementing these measures, a company may avoid both the appearance of impropriety and potential antitrust scrutiny from the federal antitrust agencies.

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