

United States Federal Trade Commission

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FTC Finds Rambus Unlawfully Obtained Monopoly Power Deceptive Conduct Fostered “Hold-Up” of Computer Memory Industry

By a unanimous vote, the Federal Trade Commission has determined that computer technology developer Rambus, Inc. unlawfully monopolized the markets for four computer memory technologies that have been incorporated into industry standards for dynamic random access memory – DRAM chips. DRAMs are widely used in personal computers, servers, printers, and cameras.

In an opinion by Commissioner Pamela Jones Harbour, the Commission found that, through a course of deceptive conduct, Rambus was able to distort a critical standard-setting process and engage in an anticompetitive “hold up” of the computer memory industry. The Commission held that Rambus’s acts of deception constituted exclusionary conduct under Section 2 of the Sherman Act and contributed significantly to Rambus’s acquisition of monopoly power in the four relevant markets. The Commission has ordered additional briefings to determine the appropriate remedy for “the substantial competitive harm that Rambus’s course of deceptive conduct has inflicted.”

In June 2002, the FTC charged Rambus with violating federal antitrust laws by deliberately engaging in a pattern of anticompetitive acts to deceive an industry-wide standard-setting organization, which caused or threatened to cause substantial harm to competition and consumers. The Commission complaint alleged that Rambus participated in the Joint Electron Device Engineering Council (JEDEC), a standard-setting organization that “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.” According to the FTC complaint, Rambus nonetheless participated in JEDEC’s DRAM standard-setting activities for more than four years without disclosing to JEDEC or its members that it was actively working to develop, and possessed, a patent and several pending patent applications that involved specific technologies ultimately adopted in the standards.

The charges were litigated in an administrative trial. In February 2004, the charges were dismissed in an initial decision and order by Chief Administrative Law Judge Stephen J. McGuire, who ruled that “Complaint Counsel have failed to sustain their burden to establish liability for the violations alleged.” Complaint counsel – FTC staff – appealed the decision to the Commission, which today issued its opinion overturning the ALJ’s decision.

The Commission’s unanimous opinion states, “We find that Rambus’s course of conduct constituted deception under Section 5 of the FTC Act. Rambus’s conduct was calculated to mislead JEDEC members by fostering the belief that Rambus neither had, nor was seeking, relevant patents that would be enforced against JEDEC-compliant products. . . . Under the circumstances, JEDEC members acted reasonably when they relied on Rambus’s actions and omissions and adopted the SDRAM and DDR SDRAM standards.”

“Rambus withheld information that would have been highly material to the standard-setting process within JEDEC,” the opinion continues. “JEDEC expressly sought information about patents to enable its members to make informed decisions about which technologies to adopt, and JEDEC members viewed early knowledge of potential patent consequences as vital for avoiding patent hold-up. Rambus understood that knowledge of its evolving patent position would be material to JEDEC’s choices, and avoided disclosure for that very reason.”

“Through its successful strategy, Rambus was able to conceal its patents and patent applications until after the standards were adopted and the market was locked in,” states the opinion. “Only then did Rambus reveal its patents – through patent infringement lawsuits against JEDEC members who practiced the standard.”

Analyzing Rambus’s conduct under the standards of Section 2 of the Sherman Act, the Commission found that “Rambus engaged in exclusionary conduct that significantly contributed to its acquisition of monopoly power in four related markets. By hiding the potential that Rambus would be able to impose royalty obligations of its own choosing, and by silently using JEDEC to assemble a patent portfolio to cover the SDRAM and DDR SDRAM standards, Rambus’s conduct significantly contributed to JEDEC’s choice of Rambus’s technologies for incorporation in the JEDEC DRAM standards and to JEDEC’s failure to secure assurances regarding future royalty rates – which, in turn, significantly contributed to Rambus’s acquisition of monopoly power.”

“Rambus claims that the superiority of its patented technologies was responsible for their inclusion in JEDEC’s DRAM standards,” the opinion states. “These claims are not

established by the record. Nor does the record support Rambus's argument that, even after two JEDEC standards were adopted and substantial switching costs had accrued, JEDEC and its participants were not locked into the standards. Rambus now claims that we can and should blind ourselves to the link between its conduct and JEDEC's adoption of the SDRAM and DDR SDRAM standards, as well as to the link between JEDEC's standard-setting process and Rambus's acquisition of monopoly power. These claims fail, both as a matter of fact and as a matter of law. To hold otherwise would be to allow Rambus to exercise monopoly power gained through exclusionary conduct. We cannot abide that result, given the substantial competitive harm that Rambus's course of deceptive conduct has inflicted."

"Questions remain regarding how the Commission can best determine the appropriate remedy," the opinion states. "Now that the Commission has found, and determined the scope of liability, the Commission believes it would exercise its broad remedial powers most responsibly after additional briefings and, if necessary, oral argument devoted specifically to remedial issues."

In a separate concurring statement, Commissioner Jon Leibowitz wrote, "Rambus's abuse of JEDEC's standard-setting process was intentional, inappropriate, and injurious to competition and consumers alike." He adds that Rambus's conduct not only ran afoul of the antitrust laws, but also constitutes an unfair method of competition in violation of the broader reach of the FTC Act.

The Commission vote to issue the opinion and order was 5-0.

Copies of the Commission's opinion and order 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, DC 20580.¹

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