

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
RAMBUS INCORPORATED,)
a corporation.)
_____)

Docket No. 9302

**REPLY BRIEF OF RAMBUS INC. IN SUPPORT OF ITS MOTION
TO COMPEL MICRON TECHNOLOGY, INC. TO PRODUCE
DRAM PRICE-RELATED DOCUMENTS**

I. INTRODUCTION

On November 13, 2002, respondent Rambus Inc. (“Rambus”) filed a motion to compel Micron Technology, Inc. (“Micron”) to produce documents relating to the pricing and production of DRAM chips and modules. On or about November 25, 2002, Micron filed a brief in opposition to Rambus’s motion to compel.

Micron acknowledged in its opposition that Your Honor has previously ruled in this matter that DRAM pricing and production issues are relevant. See Micron Opposition, pp. 3, 9 (referencing November 12, 2002 Order requiring Mitsubishi Electronic & Electronics USA, Inc. (“Mitsubishi”) to produce documents relating to DRAM pricing and production). Micron argues, however, that Your Honor’s ruling “should not control the result here” because Complaint Counsel have recently sent several letters that supposedly demonstrate that DRAM pricing is not relevant to any triable issue in this case. Micron Opposition, p. 10.

Micron’s position is not

chips, nor do they contain any representation that Complaint Counsel will not raise pricing and production issues at the hearing in this matter. Instead, the letters state clearly that Complaint Counsel believe such issues to be “material” to the remedy they seek.

In short, the recent letters that Micron relies upon both confirm and reinforce the correctness – and fairness – of Your Honor’s prior ruling with respect to the documents in question. This motion to compel should therefore be granted.

II. DISCUSSION

As Rambus’s opening brief pointed out, the Complaint in this matter alleges that “[t]he threatened or actual anticompetitive effects of Rambus’ conduct include . . . increases in the price, and/or reductions in the use or output, of synchronous DRAM chips, as well as products incorporating or using synchronous DRAM or related technology” Complaint, ¶ 120. Given these allegations of anticompetitive effect, and their importance to the remedy sought by the Complaint, Your Honor previously required that Mitsubishi produce documents relating to DRAM pricing and production. Despite that ruling, Micron has refused to produce its own documents on those issues, relying upon statements made by Complaint Counsel in two recent letters.

The correspondence that Micron cites began with a November 5, 2002 letter from Rambus’s counsel to Complaint Counsel. That letter described Rambus’s ongoing efforts to obtain documents from third parties relating to DRAM pricing and production issues and the position taken by several third parties that such issues were irrelevant to the issues in dispute. In order to avoid potentially unnecessary motion practice in this area, the letter asked Complaint Counsel to confirm that they had raised – and were likely to raise at the hearing – issues relating to DRAM module and chip pricing.

In two letters dated November 15, 2002 and November 19, 2002, Complaint Counsel reaffirmed that they do indeed intend to raise such issues. According to Complaint Counsel’s November 15 letter, they intend to argue that Rambus’s patent royalties are likely “to cause increases in the prices of synchronous DRAM devices themselves, as well as downstream products that use or incorporate synchronous DRAM devices, in part due to the potential for

DRAM manufacturers to pass through to their customers some or all of the increased costs associated with Rambus' conduct." Micron Opposition, ex. B, p. 1. Complaint Counsel's November 19, 2002 letter is even clearer. The November 19 letter contends that "downstream price effects are inevitable

III. CONCLUSION

Complaint Counsel's recent letters make it clear that pricing and production issues are "material" issues that will be raised at the hearing in this matter. The requested discovery is thus plainly relevant, and Micron should be ordered to produce the documents in question forthwith.

Respectfully submitted,

Gregory P. Stone
Steven M. Perry
Sean P. Gates
Peter A. Detre
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
(213) 683-9100

A. Douglas Melamed
IJay Palansky
Kenneth A. Bamberger*
Jacqueline M. Haberer
WILMER, CUTLER & PICKERING
2445 M Street, NW
Washington, DC 20037-1402
(202) 663-6000

Sean C. Cunningham
John M. Guaragna

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CERTIFICATE OF SERVICE

I, Jacqueline M. Haberer, hereby certify that on December 3, 2002, I caused a true and correct copy of the *Reply Brief of Rambus Inc. in Support of its Motion to Compel Micron Technology, Inc. to Produce DRAM Price-Related Documents* to be served by hand delivery to Arnold & Porter, counsel for Micron Technology Corporation, at 555 Twelfth Street, N.W., Washington, D.C. 20004, and on the following persons by hand delivery:

Hon. James P. Timony
Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Donald S. Clark, Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Joseph J. Simons
Director, Bureau of Competition
Federal Trade Commission
Room H-372
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Malcolm L. Catt
Attorney
Federal Trade Commissions
Room 3035
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

M. Sean Royall
Deputy Director, Bureau of Competition
Federal Trade Commission
Room H-378
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Richard B. Dagen
Assistant Director
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Room 6223
Washington, D.C. 20580

Geoffrey D. Oliver
Deputy Assistant Director
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Jacqueline M. Haberer