

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Public Version

In the Matter of

RAMBUS INCORPORATED,

a corporation.

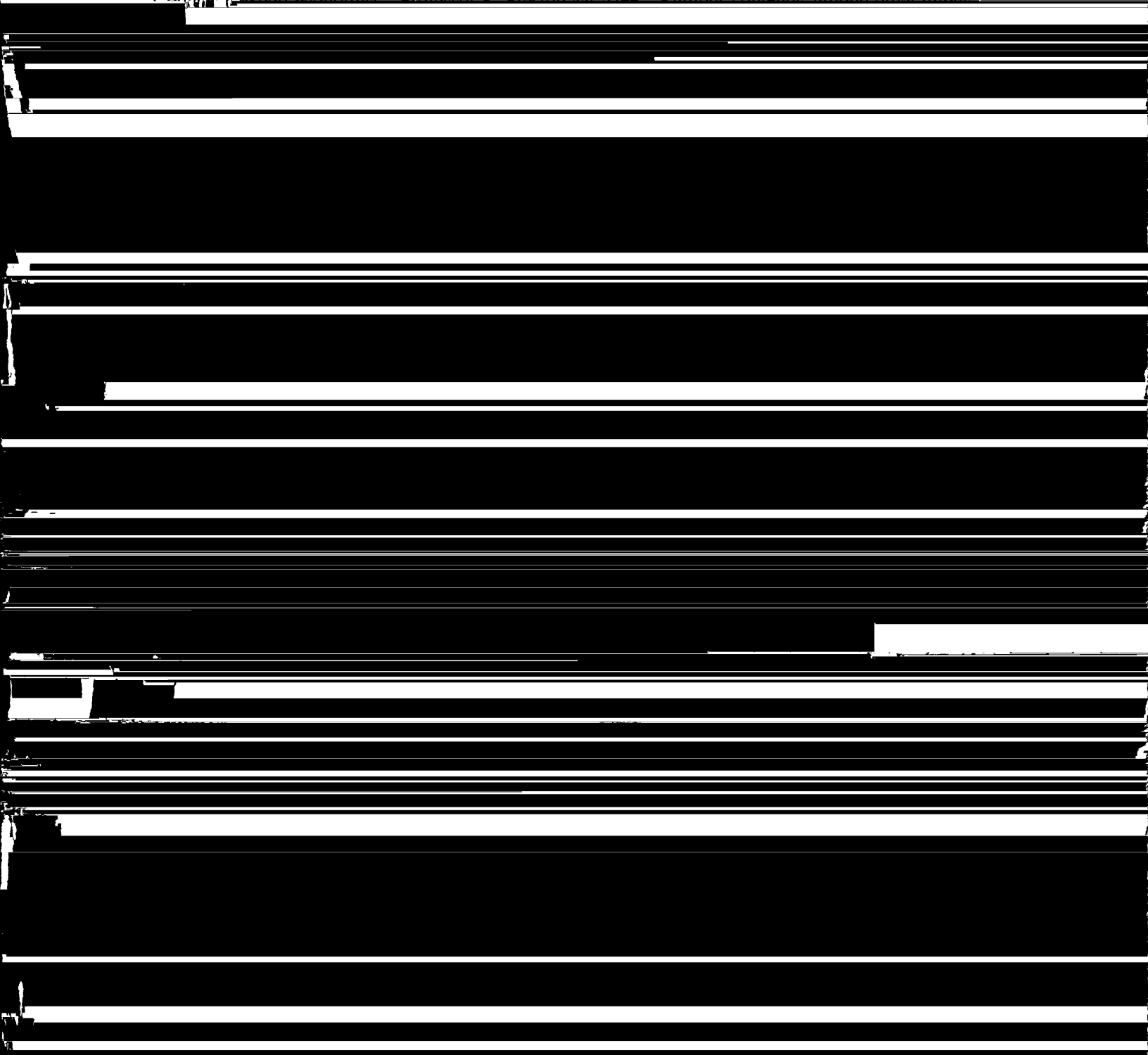
Docket No. 9302

**COMPLAINT COUNSEL'S RESPONSE TO MEMORANDUM BY RAMBUS INC.
IN RESPONSE TO MOTION BY DEPARTMENT OF JUSTICE
TO LIMIT DISCOVERY RELATING TO THE DRAM GRAND JURY**

The structure and content of Rambus's argument can be summarized as follows:

Based on selective excerpts and quotations from the recently exchanged report of Complaint

Council's expert economist Professor P. Draxton McAfee, Rambus contends, among other things,



evidence from which it contends one might conclude that such a “group boycott” in fact did occur. *See* Rambus Mem. 12-17. Thereafter, Rambus argues that alleged concerted action of this sort materially contributed to Intel’s decision, in 2000, to abandon its support for RDRAM. *See id.* at 17.

The flow of Rambus’s argument at this stage makes an abrupt leap to the pricing not of

RDRAM but of SDRAM and DDR SDRAM devices. In the late 2001 and 2002 time frame,



each invalid and should be rejected. Hence, Complaint Counsel submits, the DOJ Motion can and

~~should be granted, and doing so will cause no prejudice to Rambus's ability to conduct a lawsuit~~

discovery and otherwise defend itself in this action.

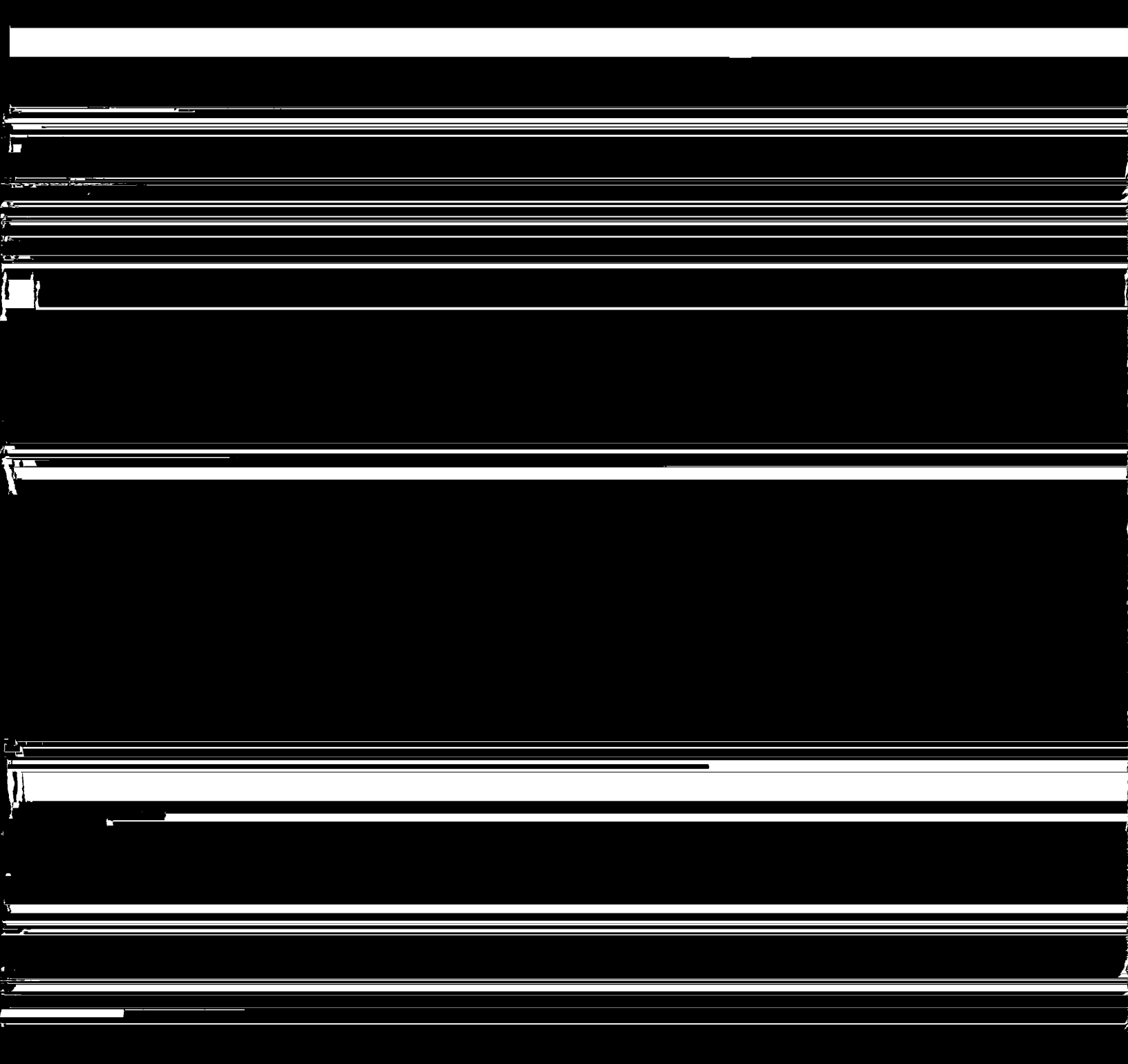
- 1. Rambus's Arguments Ignore Decades of Legal Precedent Ruling That Alleged Downstream Conspiracies Are Irrelevant to Determinations of Antitrust Liability**

defense] asserts that Plaintiffs are or were engaged in a separate antitrust conspiracy, then, it is clearly an insufficient defense to the antitrust action.”).

As Complaint Counsel here further explained this initial claim is not sufficient to

(emphasis added); *Memorex*, 555 F.2d at 1382 (“A wrongful act committed against one who violates the antitrust laws must not become a shield in the violator’s hand against operation of the antitrust laws.”) (emphasis added); *Southern Motor Carriers*, 439 F. Supp. at 52 (striking unclean-hands defense directed at government).

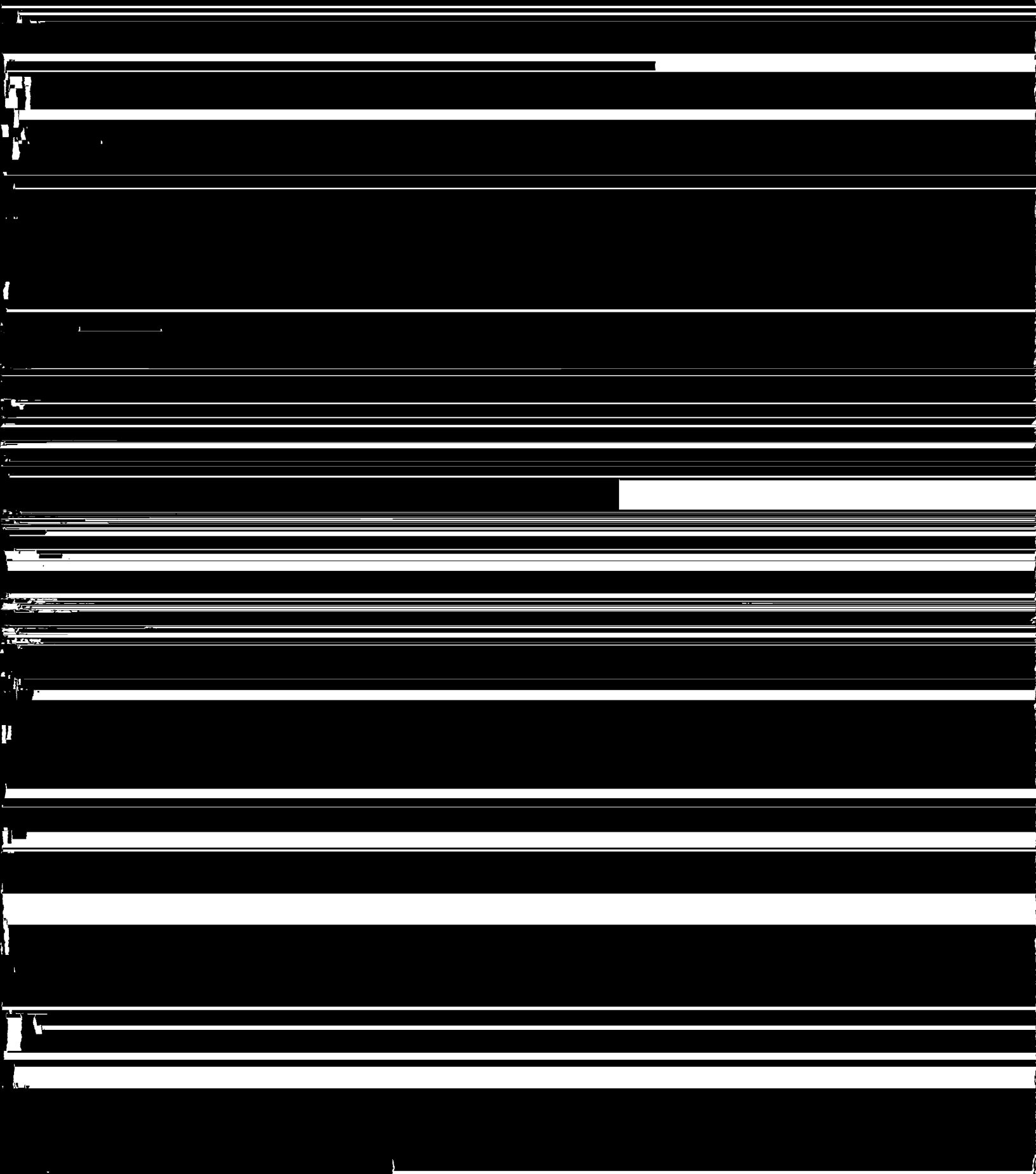
Why are such arguments contrary to the public policies undergirding the antitrust laws? In this



[the] litigation, with concomitant expense.”) (alteration in original) (emphasis added). Of course, this

~~does not mean that victims of antitrust offenses may recover the consequences of litigation.~~

What do the alleged DRAM conspiracies now raised by Rambus have to do with the merits of



Rambus Mem. 20.

added). This argument is self-defeating.

The fact is that Complaint Counsel has never established that the Defendant is a

Id. at 19-20.

Without commenting on the merits of this argument from an evidentiary standpoint, it is not an

~~argument that should have been made in *Yan He*, 2011 WL 3500 (S.D.Pa. 1/11/11).~~

patent rights, will be subject to serious doubt.” *Id.*

Complaint Counsel frankly finds this argument to be incoherent. At best, this argument would appear to be a meritless attempt to circumvent the legal authorities discussed, which forcefully reject the

admission of evidence relating to third-party conspiracies. If ill-constructed arguments about the need

to challenge witness credibility were enough to evade such legal authorities, this is an exception that would swallow the rule.

Yet even assuming, for sake of argument, that there were some credible reason to suggest that participation in or knowledge of an alleged group boycott “to eliminate Rambus as a competitive threat”

Rambus Mem. 21.

The problem with this argument is simply this: It is not the DRAM manufacturers whose alleged conduct is on trial here. Nor, given the legal authorities discussed above, is it permissible for Rambus to attempt to put the DRAM makers, or their alleged misdeeds, on trial. Because the focus of this case is the allegedly deceptive and monopolistic conduct of Rambus, it follows that any remedy imposed in this case should seek to correct for the marketwide harms that conduct has caused, or threatens to

to believe that Rambus would be prejudiced by DOJ's requested limitations on discovery, there is likewise no reason to postpone or stay discovery in this case in the DOJ's Motion is granted.

Accordingly, Complaint Counsel respectfully urges Your Honor to grant DOJ's Motion and to do so without agreeing to Rambus's invitations for delay.

Respectfully submitted,

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BUREAU OF COMPETITION

FEDERAL TRADE COMMISSION