

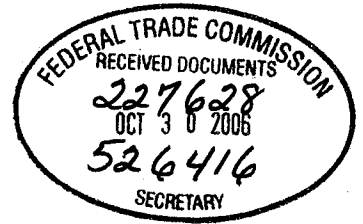
ORIGINAL

PUBLIC

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch



a corporation.

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INTRODUCTION1

I. AAI's "Open Standards" Submission Provides No Useful Guidance For The

Commission And Its Regulatory Process

A. JEDEC did not value openness above all else.1

INTRODUCTION

The proper remedy for the violation that the Commission has found in this case depends in large part on the answers to two fundamental questions: (1) whether the Commission has

authorize order market alteration and (2) if so, what are the appropriate

“where everyone can participate that wants to, and in the end the end product is available to

everybody”): I. Kelly, Tr. 2072 (“open standards” include those with patented features as long as

they are available on reasonable and nondiscriminatory terms).

undisputed that JEDEC and its committees “did *not* themselves engage in ex ante royalty

negotiations about the level of a “reasonable” royalty.” *Amicus Curiae Briefs of JEDEC S-13*.

State Technology Association (Sept. 15, 2006) at 9-10 (emphasis added), and “there is no

evidence that the [JEDEC] Committee issued a RAND license.” *Amicus Curiae Briefs of JEDEC S-13*.

conduct affecting those markets and the Commission's decision on remedy should follow the

same path.

In any event, even if the JEDEC process could be deemed to be a market, the Commission cannot as a practical matter restore competition to that market. Nobody—not even the DRAM manufacturers who seek to curtail Rambus's patent rights—has suggested that the Commission should require JEDEC to promulgate new SDRAM and DDR SDRAM standards through some process by which hypothetical alternative technologies would compete for JEDEC's favor.

II. AAI's Argument About Rambus's "Reward" From Its Patents Is Analytically Flawed And Unrelated To The Issues In This Case.

AAI's second principle is that the "reward" to which Rambus is "entitled" from its

Moreover, AAI offers no hint as to how the Commission might undertake the factual task

demand attributable to the patent from the demand attributable to the standard may not always be easy.” AAI Br. at 6. That is a significant understatement. There is nothing in the record that suggests a method or a basis for measuring “commercial demand” for the DDD or SDD AM.

* * *

As a matter of law, the Commission should not remedy that prevents unlawful conduct

in the future and—if the Commission has authority to go beyond that objective—restores the markets that the Commission found Rambus to have monopolized to their but-for state. The former objective focuses on possible deception by Rambus in the future; the latter turns on what would have happened in the but-for world. Whereas Rambus and Complaint Counsel agree that those are the central remedy issues in this case (see Complaint Counsel Opening Remedy Br. at

10. A A Brief addresses neither and thus fails to address the Commission's legal findings

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In the Matter of _____)

RAMBUS Inc., _____)

Docket No. 9302

CERTIFICATE OF SERVICE

I, Sambhav Sankar, hereby certify that on October 30, 2006, I caused a true and correct
~~copy of the Supplemental Brief of Defendant Rambus Inc. in Docket No. 9302~~

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