

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Julie Brill  
Maureen K. Ohlhausen  
Terrell McSweeney

\_\_\_\_\_)  
In the Matter of )  
) Docket No. C-  
NXP Semiconductors N.V., )  
a corporation. )  
\_\_\_\_\_)

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent NXP Semiconductors N.V. (“NXP”) of the outstanding voting securities of Freescale Semiconductor, Ltd. (“Freescale”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon issued its complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule § 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

1. Respondent NXP Semiconductors N.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Netherlands, with its corporate office and principal place of business located at High Tech Campus 60, Eindhoven 5656 AG, the Netherlands.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

G. “Confidential Information” means any and all of the following information:

1. all information that is a trade secret under applicable trade secret or other law;
2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

- H. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.
- I. “Corporate Trade Names” means all NXP’s commercial names, trade names, doing business as (d/b/a) names, registered and unregistered trademarks and service marks.
- J. “Cost” means the actual cost of raw materials, direct labor, and administrative expenses, and reasonably allocated operations and factory and shared corporate services overhead used to develop, manufacture, and supply the relevant good or service.

K. “Divestiture Agreement” means (i) the JAC Acquisition Agreement or (ii) any other agreement between Respon

- S. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- T. “Products” means (i) LDMOS and MOSCAP wafers relating to the RF Power Business and associated grinding and backside metallization and testing services, currently performed at NXP’s factory in Nijmegen, Netherlands, and NXP’s factory in Hamburg, Germany, and (ii) finished product supply services relating to the RF Power Business currently performed at NXP’s assembly plant in Kaoshiung, Taiwan, including assembly and final testing.
- U. “Qubic Intellectual Property” means all Intellectual Property related to NXP’s Qubic Bi-CMOS process technology, whether used in or for the research, development, design, or manufacture of products, and any patents or other Intellectual Property Rights associated therewith.
- V. “RF Power Assets” means all of Respondent’s right, title, and interest in and to all property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the RF Power Business, including, but not limited to:
  - 1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
  - 2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of the RF Power Business since the date of the announcement of the Acquisition.

6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);
7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone and telecopy listings;
8. all insurance benefits, including rights and proceeds; and
9. all rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof;

Provided, however, that the RF Power Assets need not include NXP's right, title, and interest in the (i) Retained Assets or (ii) Retained Intellectual Property.

- W. "RF Power Business" means the business conducted by NXP as of the date of the announcement of the Acquisition in respect of researching, designing, developing, testing, manufacturing, commercializing, packaging, marketing, distributing, selling and/or servicing high power RF Power transistors (from >1 watt peak power to more than 1kW) for applications including but not limited to cellular base stations, broadcast systems, radars, medical equipment and various industrial applications, which are manufactured using Silicon Lateral Diffused Metal Oxide Semiconductor (Si-LDMOS), Vertical Diffused Metal Oxide Semiconductor (VDMOS) or Gallium Nitride on Silicon Carbide (GaN-on-SiC) process technologies in order to be able to deliver the desired high output power and heat dissipation and any past and/or future generations of such transistors, technologies, or markets.
- X. "RF Power Employee" means any individual (i) employed by NXP on a full-time, part-time, or contract basis at any time as of and after the date of the announcement of the Acquisition and (ii) whose job responsibilities predominantly relate or predominantly related to the RF Power Business.
- Y. "RF Power License" means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license under:

1. The Retained Intellectual Property sufficient for JAC or other Acquirer to operate the RF Power Business in substantially the same manner as NXP prior to the Acquisition, including the freedom to extend existing products and develop new products;
2. Any Intellectual Property owned or licensed (as licensor or licensee) by NXP sufficient for JAC or other Acquirer to research, design, develop, test, manufacture, commercialize, package, market, distribute, sell and service “mmWave” RF power products (signal frequency > 10GHz) for 5G (or subsequent generation standards of) telecom infrastructure applications consisting of RF transceiver and PAs in the form of ICs and modules up to and including the antenna interface, manufactured in one of three specialty process technologies, being Si-LDMOS, GaN-on-SiC and RFCMOS, and for the avoidance of doubt, not in SiGe process technology, with respect to the existing roadmap of the RF Power Business prior to the Acquisition; and
3. Such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable JAC or other Acquirer to use the rights;

Provided, however, that for any Retained Intellectual Property or other Intellectual Property licensed by NXP from a third-party, the RF Power License shall include only those rights licensed from such third-party.

- BB. “Retained Intellectual Property” means any owned or licensed (as licensor or licensee) Intellectual Property (not included in the Retained Assets) relating to both the operation of the RF Power Business and any other business owned by NXP prior to the Acquisition, unless such Intellectual Property is predominantly used by the RF Power Business.
- CC. “SiPS Building” means the building located at Philips Avenue, LISP 1, Barrio Diezmo Cabuyao City, Laguna, Philippines.





Provided further that Respondent shall not (i) terminate its obligation to provide any Transitional Assistance because of a material breach by Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondent's breach of any agreement to provide Transitional Assistance.

F. No later than the Divestiture Date and in a manner that receives the prior approval of the Commission, Respondent shall:

1. Divest any and all Intellectual Property (excluding the Qubic Intellectual Property) to Acquirer necessary to enable Acquirer to redesign the Volcano Chip RFE001 using a process technology other than NXP's Qubic technology, including but not limited to, datasheets, application notes, PCB design files, PCB Gerber and Drill files, PCB BOM, software, architecture diagrams, block level design documents, simulation plan and reports, change reports, and problem report lists;

Provided, however, that NXP may license to Acquirer rights in software and other design documents relating to the Volcano Chip RFE001 that NXP also uses for other purposes;

2. Provide technical assistance as requested by Acquirer at a price not to exceed Cost to enable Acquirer to redesign the Volcano Chip RFE001 using a process technology other than NXP's Qubic technology;

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enterprise, except for such Tangible Personal Property or other appropriate arrangements which can readily be obtained from sources other than Respondent.

J.

**IV.**

**IT IS FURTHER ORDERED** that:

A.

5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after the Acquisition Date for a period of one (1) year, (ii) every ninety (90) days thereafter until Respondent has completed all obligations required by Paragraph II. of this Order (including a final report when Respondent has completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order.
- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- E. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph IV.C.(ii) of this Order, or at such other time as directed by the Commission.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
  1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
  2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph IV.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

V.

**IT IS FURTHER ORDERED** that:

- A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the RF Power Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall



accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days



