

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

_____)
In the Matter of)
)
NXP Semiconductors N.V.,) Docket No. C-4560
a corporation.)
_____)

ORDER TO MAINTAIN ASSETS

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 furnvie 45; and

Respondent, its j EMI12(t8-3(e)4(s)1c]o3(n)-2

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.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. “NXP” means NXP Semiconductors N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by NXP Semiconductors N.V. (including Freescale, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) JAC or (ii) any other Person that acquires the RF Power Assets pursuant to the Decision and Order.
- D. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger by and among NXP Semiconductors N.V., Nimble Acquisition Limited, and Freescale Semiconductor, Ltd., dated March 1, 2015.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “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, computer hardware, 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.

G. "Decision and Order" means the:

- K. “RF Power Assets” means the assets identified in Paragraph I.V. of the Decision and Order.
- L. “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.
- M. “RF Power Employee” means any individual (i) employed by NPX 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.

II.

IT IS FURTHER ORDERED that until the Divestiture Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the RF Power Assets and grant of the RF Power License; *provided, however*, that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements

deter any RF Power Employee from accepting employment with Acquirer,

2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the RF Power Business or RF Power Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph V.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph V. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph V., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint Advolis S.A. to serve as Monitor.
- B. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order to Maintain Assets and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order to Maintain Assets and the Decision and Order, and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order to Maintain Assets and the Decision and Order, or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order to Maintain Assets;

3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monito

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 to Maintain Assets on the same terms and conditions as provided in this Paragraph VI.
- 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 to Maintain Assets.

VII.

IT IS FURTHER ORDERED that:

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and Decision and Order within thirty (30) days from the date Respondent signs the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates.
- B. With respect to the divestiture required by Paragraph II. of the Decision and Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the RF Power Assets; (ii) a description of all substantive contacts with a proposed acquirer (other than JAC); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

VIII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the RF Power Business and RF Power Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent; ;

