

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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In the Matter of))
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Broadcom Limited,)	Docket No.C-)
a limited company, and))
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Brocade Communications Systems, Inc.))
a corporation.))
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DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Broadcom Limited (hereinafter referred to as “Broadcom”) of Respondent Brocade Communications Systems, Inc. (hereinafter referred to as “Brocade”), and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 has reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having a0s[nd t4v1ed2(ng de)-s[T1de ex-0.9(t)-1(s[T)c0d

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 issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent Broadcom Limited is a limited company organized, existing, and doing business under and by virtue of the laws of the Republic of Singapore, with a principal place of business located at 1320 Ridder Park Drive, San Jose, CA 95131.
2. Respondent Brocade Communications Systems, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 130 Holger Way San Jose, CA 95134.
3. The Commission has jurisdiction of the subject matter of this proceeding of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Broadcom," means Broadcom Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Broadcom and the respective directors, officers, employees, agen

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3. all information concerning bid proposals and all related documents, data, and materials, including initial bid terms, final bid terms, and documents that support cost structures underlying the bids;
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 Business 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 Business 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.

M. "Fibre Channel ASIC" means an ASIC used in a Fibre Channel Switch. Tw T* a2(a)41(Ce)-1(66

2. Only Authorized Individuals shall have access to the Firewall Entity facilities; provided, however, that access to the Firewall Entity by personnel whose regular duties require such access (e.g., IT services, secretarial, janitorial, security personnel) shall not violate this provision so long as those personnel do not also have responsibility for the development, production, sale, or marketing of Fibre Channel ASICs or Fibre Channel Switches for Respondents' Brocade business unit; and
3. Respondents shall provide the Firewall Entity with an information technology ("IT") system with security protocols assuring access only by Authorized Individuals.

B. Respondents shall require from each Authorized Individual:

1. No later than twenty (20) days after Respondents execute the Agreement Containing Consent Order, a signed nondisclosure agreement and a statement attesting that he or she has received a copy of this Order, will comply with its terms, and will take all reasonable steps to assure that employees that report to him or her will comply with its terms;
2. No later than ten (10) days after becoming an Authorized Individual by replacing, pursuant to Paragraph III.D., someone specifically identified in Appendix A signed nondisclosure agreement and statement in the same form and substance as that required by Paragraph III.B.1.; and
3. That any Authorized Individual who accessed Cisco Confidential Business Information that leaves his or her position in Firewall Entity shall not, for twelve (12) months, work in the development, production, sale, or marketing of Fibre Channel ASICs for Respondents' Brocade business unit or in the development, production, sale, and marketing of Fibre Channel Switches; provided, however that this provision shall not prohibit Broadcom's Senior Vice President and General Manager of the ASIC Product Division or its corporate officers with contemporaneous responsibility for supervising the development, production, sale, and marketing of other Broadcom ASICs from performing their duties, subject to their obligations under Paragraphs III.D. and III.E.

C. Respondents shall change Authorized Individuals only pursuant to the following procedures:

1. Respondents shall replace individuals who report (directly or indirectly) to the people, functions or positions specifically identified in Confidential Appendix A only in accordance with the usual and customary business practices of Respondents;

days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the sale of the proposed Monitor.

- C. No later than one (1) week after the Monitor is appointed by the Commission, Respondents shall enter into the Monitor Agreement, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order. If Respondents enter into the Monitor Agreement and that agreement is approved by the Commission prior to the Acquisition Date, the Monitor Agreement shall become effective no later than the Acquisition Date. Respondents shall transfer to and confer upon the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his or her duties and responsibilities in a manner consistent with the purposes of the Orders.
- D. The Monitor shall serve for a period of five (5) years after the Acquisition Date; provided, however, (a) the Commission may extend or modify this period, and direct that the Monitor be reinstated, as may be necessary to accomplish the purposes of this Order, and (b) the Commission may shorten this period upon a determination that Respondents no longer have access to Cisco Confidential Business Information (if Cisco ceases developing Fibre Channel ASICs with Respondent Broadcom).
- E. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission or Commission staff, including, but not limited to:

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such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor a

9. Respondents may require the Monitor and each of the Monitor's consultants,

VI.

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

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing

CONFIDENTIAL APPENDIX A

[Redacted from the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL APPENDIX B

[Redacted from the Public Record Version, But Incorporated By Reference]