UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of RAMBUS INCORPORATED, a corporation.	Docket No. 9302 **PUBLIC**

COMPLAINT COUNSEL'S RESPONSE TO RAMBUS'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO REOPEN RECORD

"[P]roof of price fixing by DRAM manufacturers . . . is immaterial to the issues in this case, including whether Rambus' conduct alleged in the Complaint could tend to injure competition."

Judge Timony, Opinion Supporting Order Granting Motion of the United States Department of Justice to Limit Discovery Relating to the Grand Jury at 7 (January 15, 2003).

In its Supplemental Brief, Rambus again fails to address the fundamental problem in its motion: the material it seeks to add to the record is irrelevant to this proceeding. Indeed, the information submitted by Rambus in its Supplemental Brief confirms this.

The Samsung plea agreement attached to Rambus's brief states, "The charged violation with respect to RDRAM occurred at times during the period from January 1, 2001 to June 15, 2002." Samsung Plea Agreement, ¶ 4(d) (October 13, 2005). Thus, according to this description submitted by Rambus, the asserted RDRAM conspiracy did not begin until long after

Rambus's conduct at issue in this case. Indeed, the RDRAM conspiracy apparently did not begin until:

- *after* the industry had implemented use of the JEDEC SDRAM standard;
- *after* JEDEC adopted the DDR SDRAM standard;
- *after* JEDEC had completed substantial work on the DDR 2 SDRAM standard;
- *after* Rambus succeeded in obtaining patents covering multiple technologies contained in the SDRAM and DDR SDRAM standards;
- *after* Rambus had conducted "Shred Day 1998" and its "1999 shredding party" in preparation for litigation;
- *after* the industry had designed, produced and introduced to the marketplace a large volume of DDR SDRAM products;
- *after* Intel had decided, for technical reasons, to abandon exclusive support of RDRAM products and to support JEDEC-compliant products;
- *after* Rambus had sued Hitachi, Infineon, Micron and Hynix in the United States and overseas for patent infirngement;
- *after* FTC staff instituted an investigation of Rambus and the Commission approved issuance of compulsory process; and
- *after* Rambus instituted its largest round of document destruction in December 2000.

Indeed, according to this description, the vast majority of this alleged RDRAM conspiracy that Rambus seeks to inject into this proceeding occurred *afte*r Rambus submitted a White Paper to FTC staff on February 20, 2001, containing false statements in a further attempt to cover up its scheme to control the JEDEC standards. *See* Complaint Counsel's Reply Brief at 54-56.

Rambus asks the Commission to delay until after February 2006, and then to reopen the record in a manner that would require thereafter an extended procedure of designations, objections, replies, rulings, proposed findings and reply findings. The entire time, of course,

Rambus would continue to collect royalties on JEDEC-compliant DRAMs. No delay is warranted in rejecting Rambus's motion, which seeks to admit documents on an issue that is plainly irrelevant to the Commission's Complaint in this matter.

The Department of Justice has acted promptly, resolutely and vigorously to ensure that consumers do not have to pay collusively-set prices for DRAM. Complaint Counsel commend the Department's work. But the job remains half-done; consumers continue to pay monopoly prices. It now falls to the Commission to act with equal promptness, resolution and vigor to complete the task of restoring competitive conditions to DRAM-related markets.

For these reasons, Complaint Counsel urge the Commission to deny Rambus's motion to reopen the record and to rule promptly on the merits of this matter.

Respectfully submitted,

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