



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Anticompetitive Practices Division
Bureau of Competition

Geoffrey Oliver
Deputy Assistant Director

Direct Dial
(202) 326-2275

November 26, 2002

Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071-1560

FAX: (213) 687-3702

Re: *In the Matter of Rambus Incorporated*
FTC Docket Number 9302

Dear Steve:

This letter is a follow-up to my letter to you dated November 23, 2002, our exchange of e-mails this weekend, and our telephone discussion today. Based on your representation that you will issue a subpoena to Mr. Reese Brown for a deposition in this Part III litigation, I have excluded the investigational hearing transcript of Mr. Brown from the scope of my proposed agreement concerning the use of prior deposition testimony in the private litigation in our Part III hearing.

Based on this modification, I propose that, if any individual listed on Complaint Counsel's Second Supplemental Witness List, dated October 22, 2002, or on Respondent's Preliminary Witness List, dated October 17, 2002, were to be unavailable, as that term is defined in Rule 3.33(g)(1) of the Commission's Rules of Practice, at time of the Part III hearing in this matter, the transcript of any prior deposition or trial testimony of the unavailable individual taken

in connection with the private litigation¹ would be admissible at the Part III hearing in this matter to the same extent as would a deposition transcript of the unavailable individual taken pursuant to Rule 3.33 of the Commission's Rules of Practice following reasonable notice to Complaint Counsel and Respondent. This proposal would not include any future deposition or trial testimony taken in any of the private litigation.

This proposal, if accepted by you, taken together with our prior understandings, would mean that, with respect to any individual listed on either of our respective preliminary witness lists (other than a current or former director, officer, employee or agent of Rambus²): (1) any prior deposition and trial transcripts from the private litigation could be used for purposes of impeachment to the same extent as a deposition transcript taken in Part III litigation in this matter, should the individual appear and testify in person at the Part III hearing; (2) neither any deposition or trial transcript from the above-referenced private litigation nor any deposition transcript from this Part III litigation would be admissible in the Part III hearing unless the individual is unavailable as defined in Rule 3.33(g)(1) of the Commission's Rules of Practice; and (3) if any of these individuals is unavailable, as so defined, any prior deposition or trial transcript from the private litigation would be admissible in the Part III hearing to the same extent as would a deposition transcript of the unavailable individual taken pursuant to Rule 3.33 of the Commission's Rules of Practice.

I would further propose that, should a transcript of a deposition conducted in the private litigation be admissible by virtue of the witness being unavailable at the Part III hearing, Complaint Counsel (which was not represented at the deposition) would retain the right to object on grounds of form, as well as on other grounds, to the admissibility of any specific questions and responses in the transcript.

We expect that this modified proposal, if acceptable to you, would treat relevant prior testimony of the witnesses on our respective witness lists in a manner equivalent to testimony in a deposition conducted pursuant to the Part III rules, and thus eliminate any need to duplicate in a

¹ By the "private litigation" I refer to *Rambus Inc. v. Infineon AG* (E.D. Va.), *Micron Technologies, Inc. v. Rambus Inc.* (D.Del.) and *Hynix Semiconductor Inc. v. Rambus Inc.* (N.D. Cal.).

² I have excluded the prior transcripts of current or former directors, officers, employees or agents of Rambus because, unlike the prior testimony of third party witnesses, they might be admissible in the Part III hearing as a party admission regardless of the availability of the witness. Complaint Counsel reserves the right to seek introduction of any such transcripts as substantive evidence in the Part III hearing. Nothing in this letter reflects agreement regarding the admissibility of any such transcript, and Respondent reserves the right to object to the admissibility of any such transcript.

Part III deposition the substance of a witness's prior testimony. Please let me know if this modified proposal is acceptable to you.

Sincerely,



Geoffrey D. Oliver

cc: A. Douglas Melamed, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1402
FAX: (202) 663-6363