<u>**PUBLIC**</u>

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In the matter of	)	
	)	
RAMBUS INCORPORATED,	)	Docket No. 9302
	)	
a corporation.	)	
	)	

HYNIX'S MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

Non-parties Hynix Semiconductor, Inc., Hynix Semiconductor America Inc., and Hynix Semiconductor Deutschland GmbH (collectively, "Hynix") hereby move pursuant to Federal Trade Commission Rule of Practice 16 C.F.R. section 3.45(b) ("Section 3.45(b)") for an order directing *in camera* treatment of certain highly confidential excerpts from Hynix documents that Complaint Counsel propose to enter into evidence at the hearing of this matter. The documents consist of six internal marketing strategy reports. Hynix seeks *in camera* treatment of just those portions of the reports that contain specific cost, price, and yield information on the grounds that if this information were revealed to competitors, the result would be direct, immediate, and serious injury to Hynix in the marketplace.

Background

Hynix has received notice both from Rambus and Complaint Counsel that they intend to introduce some 450 Hynix documents into evidence. (*See* Declaration of Susan van Keulen in Support of Hynix's Motion for *In Camera* Treatment of Proposed Evidence ("van Keulen Declaration"), <u>Exhibits</u> <u>A</u> and <u>B</u>, ¶ 2.) Hynix reviewed all of those documents and here seeks to protect selected information from just six marketing reports. The excerpts at issue from these

reports are attached in full to the confidential Declaration of D.S. Chung in Support of Hynix's

Motion for *In Camera* Treatment of Proposed Evidence ("Chung Declaration") as <u>Exhibits</u> <u>A</u>

through <u>F</u>.

Hynix produced the reports in this action pursuant to subpoena, but not without securing

the "confidential discovery material" level of protection afforded by the Protective Order

Governing Discovery Material here. (*See* van Keulen Declaration, ¶ 3, <u>Exhibit</u> <u>C</u>.) Hynix also

produced these reports in the related case entitled *Hynix Semiconductor, Inc., et al. v. Rambus*

Inc., United States District Court for the Northern District of California case no. CV 00-20905

RMW ("*Hynix v. Rambus*") (*id.*, ¶ 4), subject to confidential treatment pursuant to the Protective

Order in that action. (*See* van Keulen Declaration, <u>Exhibit</u> <u>C</u>.)

Specifically, Hynix seeks to have the following Bates numbered pages from the Chung

Declaration exhibits given *in camera* treatment:

EXHIBIT	BATES NOS. OF PAGES REQUIRING *IN CAMERA* TREATMENT	
A	HR905_089450 HR905_089451 HR905_089452	HR905_089453 HR905_089454 HR905_089455
B	HR905_089400 HR905_089407	HR905_089408
C	HR905_089393 HR905_089396	
D	HR905_089370 HR905_089373 HR905_089374 HR905_089375 HR905_089376 HR905_089377	HR905_089379 HR905_089380 HR905_089381 HR905_089382 HR905_089383 HR905_089384

E	HR905_089282	HR905_089298
	HR905_089291	HR905_089299
	HR905_089292	HR905_089300
	HR905_089296	HR905_089301
	HR905_089297	

F	HR905_089272	
	HR905_089273	

Argument

Hynix is not a party to this proceeding. Its request for *in camera* treatment, therefore, "deserve[s] special solicitude." (*See In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (1984).) Moreover, it is unlikely that a "public understanding of this proceeding" will depend on public access to these internal Hynix marketing analyses. (*Id.*)

The Chung Declaration sets forth how release of the subject reports to the public will result in "clearly defined serious injury" to Hynix. (*See Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977).) In particular, were the reports to be introduced into evidence at the hearing of this matter without *in camera* protection, Hynix's internal analyses regarding its ongoing and future product planning and position in the marketplace would be readily available to its competitors for the first time. (*See* Chung Decl., ¶¶ 5 – 6.) Hynix's competitors would know, for example, how Hynix structures its manufacturing costs and could adjust their own pricing, overhead expenses, or supply costs to undercut Hynix in the market. This would have an immediate and detrimental effect on Hynix's ability to compete, while Hynix would enjoy no offsetting advantage over its competitors (whose marketing analyses would remain unknown to Hynix).

The reports at issue each independently meet the criteria for *in camera* treatment under various factors set forth in *Bristol-Meyers*, *supra*, 90 F.T.C. at 456, and *In the Matter of General Foods Corporation*, 95 F.T.C. 352, 355 (1980). First, the information at issue is not at all known

outside the company except when it is produced in litigation under the protection of the *Hynix v. Rambus* or other applicable protective order. (Chung Declaration, ¶¶ 2, 4, 5, 7; van Keulen Declaration, ¶ 3.)

Second, the information is disclosed only to particular employees of Hynix on a "need to know" basis. (Chung Declaration, ¶ 4.) Although one document, <u>Exhibit</u> <u>E</u>, was shared with selected individuals employed by Rambus, Rambus is not a competitor of Hynix. It is a licensor of DRAM technology to Hynix, and at the time of receiving the information had no apparent interest in injuring Hynix's ability to compete (thereby threatening its ability to make royalty payments to Rambus).

Third, Hynix takes substantial measures to guard the secrecy of the reports at issue, limiting their dissemination to certain employees and taking every reasonable step to protect their confidentiality in litigation. (Chung Declaration, ¶ 5, 7; van Keulen Declaration, ¶ 3.) It therefore would be extremely difficult for Hynix's competitors to recreate the information in the reports at issue.

Fourth, the information is all highly valuable to Hynix because it is competitively sensitive. The reports set forth Hynix's internal "roadmap" for ongoing marketing strategies, which strategies are directed to outperforming the very competitors that would use the information to harm Hynix. (*See id.*, ¶¶ 2, 3, 6.)

Conclusion

In camera treatment of the documents at issue, therefore, is appropriate. Because of the relative longevity of the value in the marketplace of the information in the reports for which Hynix seeks protection (*see* Chung Declaration, ¶ 4), Hynix requests that the documents receive *in camera* treatment for the next ten (10) years. In the alternative, Hynix requests that the

documents receive an initial three (3) years' *in camera* treatment, and that at the end of the three years Hynix be given the opportunity to request an additional period of *in camera* treatment.

Dated: April 11, 2003

Respectfully submitted,

_____
David T. Beddow, Esq.
O'Melveny & Myers LLP

Counsel for Non-Parties
Hynix Semiconductor, Inc., Hynix
Semiconductor America Inc., and
Hynix Semiconductor Deutschland
GmbH

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing HYNIX'S MOTION FOR IN CAMERA

TREATMENT OF PROPOSED EVIDENCE was served this 11st day of April, 2003, on the

following:

The Honorable Stephen J. McGuire Administrative Law Judge Federal Trade Commission Room H-112 600 Pennsylvania Ave., N.W. Washington, D.C. 20580	(By Hand)
Malcolm Catt Richard B. Dagen - Assistant Director M. Sean Royall – Deputy Director Federal Trade Commission 600 Pennsylvania Ave., N.W. Washington, D.C. 20580	(By Hand) (By Hand) (By Hand)

Counsel for Rambus Incorporated

Steven M. Perry Munger, Tolles & Olson LLP 355 South Grand Avenue Los Angeles, CA 90071-1560	(By Facsimile and U.S. Mail)
A. Douglas Melamed Wilmer, Cutler & Pickering 2445 M Street, N.W. Washington, D.C. 20037-1402	(By Facsimile and U.S. Mail)

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Darren S. Tucker

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

	)	
In the matter of	)	
	)	
RAMBUS INCORPORATED,	)	Docket No. 9302
	)	
a corporation.	)	
	)	

[PROPOSED] ORDER GRANTING HYNIX'S MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

Upon consideration of non-parties Hynix Semiconductor, Inc., Hynix Semiconductor

America Inc., and Hynix Semiconductor Deutschland GmbH's (collectively, "Hynix") Motion

for *In Camera* Treatment Of Proposed Evidence, it is hereby ORDERED that Hynix's motion is

granted.

The following pages from certain Hynix marketing reports, listed by Bates number, shall

receive *in camera* treatment for a period of _____ years:

HR905_089450	HR905_089400	HR905_089393	HR905_089370	HR905_089282	HR905_089272
HR905_089451	HR905_089407	HR905_089396	HR905_089373	HR905_089291	HR905_089273
HR905_089452	HR905_089408		HR905_089374	HR905_089292	
HR905_089453			HR905_089375	HR905_089296	
HR905_089454			HR905_089376	HR905_089297	
HR905_089455			HR905_089377	HR905_089298	
			HR905_089379	HR905_089299	
			HR905_089380	HR905_089300	
			HR905_089381	HR905_089301	
			HR905_089382		
			HR905_089383		
			HR905_089384		

Dated: _____   _____