

PUBLIC

UNITED STATES FEDERAL TRADE COMMISSION

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Docket No. 9302
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In the Matter of

RAMBUS INC.,

A CORPORATION

MOTION OF
THE AMERICAN ANTITRUST INSTITUTE
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF NEITHER PARTY

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May 12, 2004

Pursuant to 16 C.F.R., §3.52(j), the American Antitrust Institute (“AAI”) respectfully moves for an Order granting it leave to file the accompanying *amicus curiae* brief in support of neither party in connection with the Commission’s consideration of Complaint Counsel’s appeal of the Initial Decision in this matter dated February 23, 2004, and in support thereof states as follows:

The AAI is an independent, not-for-profit organization dedicated to economic research, the study of the antitrust laws, and public education. The Advisory Board of the AAI consists of 66 prominent lawyers, law professors, economists and business leaders (the members of the Advisory Board and other information about the AAI may be found on its web site: www.antitrustinstitute.org). The members of the Advisory Board serve in a consultative capacity and their individual views may differ from the positions taken by the AAI. The AAI’s mission is to increase the role of competition and sustain the vitality of the antitrust laws.

The AAI and its supporters have a common interest in the systematic and consistent application of the antitrust laws.¹ Antitrust precedent is not well-developed in the area of standard-setting and the competitive consequences of the inadvertent incorporation of proprietary intellectual property rights by a standard-setting organization into an “open” compatibility standard. The Commission’s reasoning and decision in this matter, therefore, are likely to have a substantial impact on the future conduct of standard-setting bodies and their participants, which occupy an ever-

¹The AAI is supported by voluntary donations into its general treasury, and does not accept earmarked funds from private interests. A list of contributors of amounts in excess of \$1,000.00 is attached to the Brief as Appendix “A.”

increasingly important role in high-technology sectors of the modern U.S. economy.

AAI's brief presents an assessment of the appropriate application of the antitrust laws to the circumstances presented in this matter from an independent perspective. While the AAI has no special insight into the facts of this case (and therefore supports no particular outcome), the AAI does have expertise in antitrust law and its application to high-technology industries from a pro-competitive perspective. It is respectfully submitted that the AAI's independent status and concern for the vitality of competition can provide a useful perspective for determining the framework to be applied in resolving this case. Neither the initial decision nor the argument presented by Complaint Counsel in its brief adopts the economically-informed approach advocated by the AAI.

An *amicus curiae* brief supporting neither side is not expressly contemplated by the Commission's rules. Such briefs, however, are provided for by the Rules of the U.S. Supreme Court and by all federal appellate courts pursuant to Rule 29 of the Federal Rules of Appellate Procedure. Rule 29 permits *amicus curiae* briefs to be filed subsequent to the filing of the appellant's or petitioner's principal brief. The rationale for permitting *amici* to file briefs subsequent to the filing of the principal brief is to ensure that repetitive or superfluous material is not submitted.

Both the initial decision and the brief of Complaint Counsel in this matter were unusually extensive filings. In addition, several of AAI's Advisory Board members requested an opportunity to comment on the contents of the brief. Moreover, Respondent's brief is due on June 2, 2004, which provides sufficient time for

Respondent to address any matters raised in AAI's brief to which they may wish to respond. No injustice will result from granting leave to *amicus curiae* AAI to file its brief at this time and permitting the brief to be filed may yield substantial benefits to the public record in this matter and to the outcome.

BASED ON THE FOREGOING, the AAI respectfully requests an Order for leave to file the accompanying *amicus curiae* brief in support of neither party and to consider said brief to be timely filed. A proposed Order is attached.

Respectfully submitted,

/s/

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Dated: May 12, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2004, I caused true and correct copies of the Motion of the American Antitrust Institute for Leave to File an *Amicus Curiae* Brief in Support of Neither Party to be served as described below.

Service by hand delivery of paper copies, including an original, signed version, and 12 photocopies, and by electronic mail, was provided to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Rm. H-159
Washington, D.C. 20580

Service of two copies by hand delivery was provided to:

Counsel Supporting the Complaint:

Richard Dagen, Esq. (AD)
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Federal Trade Commission
Washington, D.C. 20850

Administrative Law Judge:

Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Rm. H-112
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Service of two copies by overnight delivery was provided to:

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/s/
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UNITED STATES FEDERAL TRADE COMMISSION

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PROPOSED ORDER

Upon consideration of the Motion of the American Antitrust Institute (“AAI”) for Leave to File an *Amicus Curiae* Brief in Support of Neither Party and for Enlargement of Time *Nunc Pro Tunc*, the Commission finds that the proposed *amicus curiae* brief may assist in the determination of the matters presented by this appeal. Accordingly,

IT IS ORDERED that the AAI is granted leave to file its *amicus curiae* brief.

By the Commission.

Issued:
