

**Neelie Kroes**

European Commissioner for Competition Policy

**Commission accepts commitments  
from Rambus lowering memory chip  
royalty rates**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

Opening remarks at press conference

**Brussels, 9<sup>th</sup> December 2009**

Ladies and gentlemen,

The Commission has today adopted a decision that renders legally binding commitments offered by US company Rambus Incorporated. In particular, these commitments put a cap on royalty rates charged by Rambus for certain patents for "Dynamic Random Access Memory" microchips (DRAMS). DRAMS are used to temporarily store data, for example in PCs' "working memory".

The Commission initially had concerns that Rambus may have infringed EU antitrust rules on the abuse of a dominant market position by claiming abusive royalties for the use of these patents.

The Commission's decision confirms that it now considers the commitments from Rambus are adequate to address these competition concerns.

The case is important because it highlights the crucial importance of transparency in the process of setting technical standards.

I will explain the background to this case. A US standard-setting organisation called JEDEC developed an industry-wide standard for DRAM chips. The standard was very successful. JEDEC-compliant DRAM chips represent around 95% of the worldwide market and are used in virtually all PCs. In 2008, worldwide DRAM sales exceeded 23 billion euros.

Rambus is claiming royalty payments on all these products, which represents a very substantial cost to industry. The Commission was concerned that Rambus may have only been able to charge these royalties because of a so-called "patent ambush", in breach of EU antitrust rules' ban on abuse of a dominant market position.

A "patent ambush" means that during the standard-setting process a company intentionally conceals that it holds essential intellectual property rights relevant to technology used in the standard being developed. It only starts asserting its intellectual property rights, and claiming royalties on them, after the standard has been agreed, once other companies are "locked in" to using it.

A company that engages in such deception can exclude potentially competing technologies from the market. Moreover a successful patent ambush can artificially inflate prices for intellectual property rights because the rights holder knows everyone must use that technology. In some cases, it can even allow companies to charge a royalty which, in the absence of the industry standard, they would not have been able to charge at all. This type of behaviour goes against EU antitrust rules that require standard setting to be open and transparent.

In response to the Commission's concerns, Rambus offered to charge lower royalty rates than before and in some cases to apply zero rates. Rambus has committed to put a cap on its royalty rates for products compliant with the JEDEC standards for five years.

In particular, as part of an overall package, Rambus has agreed in the future:

- not to charge any royalties whatsoever for the Single Data Rate (SDR) and Double Data Rate (DDR) microchip standards adopted when Rambus was part of the JEDEC standard-setting process and
- to charge a maximum royalty rate of 1.5% for the later generations of JEDEC DRAM standards.

Altogether, this amounts to substantially lower royalties than the 3.5% Rambus has been charging in its existing contracts.

These caps will be in place for five years providing predictability and certainty which has a clear value for business. Potential new market entrants will also have a clear perspective of future royalty costs, facilitating a decision on whether or not to enter the market.

In light of the commitments offered, there are no longer grounds for antitrust action in the present case. However, this does not mean that the Commission will stop monitoring standardisation processes.

### **Lessons learned for standardisation**

The Commission is currently revising the antitrust guidelines for horizontal agreements and intends to improve the existing chapter on standardisation to provide more guidance on standard-setting. The draft will be ready for public consultation in early 2010. Lessons learned from recent experiences such as the Rambus case will be reflected in this document.

Standardisation involves competitors sitting around the table agreeing technical developments for their industry. Normally, antitrust rules do not allow competitors to jointly decide on market conditions. However, the Commission recognises the general benefits that standardisation brings, and so standard-setting is acceptable under antitrust rules provided this takes place under strict conditions of openness and transparency. This is essential to avoid standards being abused by narrow commercial interests.

This is why many standards organisations require not only disclosure of potentially relevant intellectual property rights, but also a commitment to license those intellectual property rights on fair, reasonable and non-discriminatory - in other words FRAND - terms. These conditions precisely aim to prevent one company unlawfully capturing a standard and overcharging for its technology.

There is an important pro-competitive rationale behind requiring disclosure of patents and patent applications in the framework of standard setting **before** a standard is set, thus helping to avoid "patent ambushes."

The US competition authorities are taking the same approach. Federal Trade Commission Chairman Jon Leibowitz has recently stated that standard-setting is generally pro-competitive and that behaviour that could undermine its benefits for competition would need to be tackled. Assistant Attorney General Christine Varney of the US Department of Justice stated before Congress that "a significant intersection between antitrust and intellectual property is the application of the antitrust laws to standard-setting organizations" and that she hopes to bring further clarity to this increasingly important aspect.

The European Commission does not use the antitrust rules to prescribe specific schemes to industry and standard-setting bodies but rather to set the limits within which they are free to adopt the policies of their own choosing. Different rules may be appropriate for different bodies and sectors.

Should the need arise, then the Commission will also step in to support standard setting bodies, to help to design their rules so as to avoid "capture" of a standard by a "patent ambush" after it has been adopted.

We are often asked, for example, for our views on whether prior disclosure of maximum royalty rates and licensing terms that would apply should a company's technology be made the standard would be allowed under antitrust rules. In my view, this would allow for the choice of technology in a given standard to be based on a full understanding of the price and quality trade-offs. The US Department of Justice has already indicated in two cases that such schemes did not pose any competition problems.

An effective standard-setting process should take place in a non-discriminatory, open and transparent way to ensure competition on the merits and to allow consumers to benefit from technical progress and innovation.

Abusive practices in standard setting can harm innovation and lead to higher prices for companies and consumers.

For its part, the Commission will continue to vigorously enforce the EU's antitrust rules in this area, for the benefit of technical progress and European consumers.