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Antitrust: Commission accepts commitments from Rambus lowering memory chip royalty rates - frequently asked questions

(see also [IP/09/1897](#))

How do these commitments meet the Commission's competition concerns?

The Commission provisionally considered that Rambus was abusing its dominant position on the market for DRAM microchip technology by claiming unreasonable royalties for the use of its patents against JEDEC-compliant DRAM manufacturers at a level which absent its conduct, it would not have been able to charge.

By making the commitments legally binding on Rambus, the Commission's decision enables DRAM manufacturers to sign a bundled licence for the use of Rambus' technologies incorporated in the JEDEC standards at rates representing a considerable improvement on the status quo.

As part of an overall package, Rambus agreed to charge zero royalties for the Single Data Rate (SDR) and Double Data Rate (DDR) chip standards that were adopted when Rambus was a JEDEC member, in combination with a maximum royalty rate of 1.5% for the later generations of JEDEC DRAM standards (DDR2 and DDR3), which is substantially lower than the 3.5% Rambus is charging for DDR.

Under the commitments, why does Rambus not charge for SDR and DDR microchip technology but asks for royalties on DDR2 and DDR3 technology?

The SDR and DDR standards were adopted during the time in which the Commission provisionally considered Rambus may have engaged in intentional deceptive conduct. It is therefore proportionate that Rambus agrees not to charge royalties for these standards.

Due to the fact that industry is locked in to the JEDEC standards, the effects of the alleged abusive behaviour extend to subsequent standards. Therefore, the fact that Rambus commits to maximum royalty rates for the DDR 2 and DDR 3 standards is adequate and proportionate.

Why are royalties for chips and controllers not the same?

Memory controllers are distinct products from DRAM chips. However, as they interface with DRAM chips they need to comply with the same JEDEC DRAM standards. Therefore the commitments offered by Rambus cover not only chips, but also memory controllers to the extent they need to comply with the JEDEC DRAM standards.

Market data analysed by the Commission show that the memory controller industry is different in many respects from the chips industry. Based on these data, the Commission considers that the rates proposed by Rambus for all of its patents for the memory controllers that comply with the relevant JEDEC DRAM standards are not unreasonable.

Why is the commitment worldwide?

Rambus offered a worldwide commitment.

How are the royalties calculated?

The royalties are calculated on the basis of worldwide sales. This is appropriate given the worldwide nature of the market.

Why do the commitments last five years?

The Commission considers this duration necessary and proportionate as 5 year contracts appear to be established industry practice. In particular, Rambus' previous licence agreements were concluded for a term of five years.

Furthermore, the five-year validity ensures that the decision will cover any claims of Rambus based on patents, and patent applications, dating back to the time when Rambus was a member of JEDEC and reading on the JEDEC standards included in the commitments.

Does the commitments decision affect private litigation?

No. The commitments offered by Rambus are not conditional upon third parties settling ongoing patent litigation with Rambus, so third parties can sign a licence without conditions. By making the commitments binding on Rambus through the commitments decision, the Commission is therefore not taking any position on ongoing litigation involving Rambus, such as, for example, that linked to patent law.

Will the Commission monitor Rambus' compliance with the commitments?

Yes. Should the need arise, the Commission may require Rambus, licensees and potential licensees to provide all information necessary to assess Rambus' compliance with the commitments.

How will Rambus' commitments be implemented in practice?

Within one week of the date on which Rambus is notified of the commitments decision, Rambus undertakes to post on its website two default licence contracts - for DRAM chips and memory controllers respectively - compliant with the commitments.

Prospective licensees are free to download and sign these default contracts. The possibility is of course left open for parties to negotiate a better deal than the proposed rates, as these represent the **maximum** royalty rates Rambus commits to charge for its technologies.

Are the template licence agreements compliant with the commitments? Will the Commission review/clear them prior to publication on Rambus' website?

Rambus expressly states in the commitments annexed to the commitments decision that the template contracts that will be posted on Rambus' website, by which the commitments will be implemented in practice, will be compliant with the commitments.

The Commission can still take action against Rambus for infringement of its commitments, should any clause of the template contracts be in breach of them.

Will the Commission's Decision have an impact on standard-setting organisations?

The Commission's Decision emphasises that 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 development and innovation. Standards bodies have a responsibility to design clear rules respecting these principles and hence reduce the risk of competition problems, such as patent ambushes.

What is a "patent ambush"?

A "patent ambush" is a system failure of the standard-setting process. It occurs when a company taking part in the standard-setting process hides the fact that it holds essential Intellectual Property Rights (IPRs) over the standard being developed, and starts asserting such IPRs only after the standard has been agreed and other companies are therefore "locked in" to using it.

Why is a "patent ambush" harmful for competition?

When a "patent ambush" occurs during the standard-setting process, the competition among different technologies for incorporation into the standard can be distorted, as crucial information on the cost of one of the competing technologies is intentionally hidden.

If successful, the company that engages in the deception may therefore gain control over a standard, unfairly excluding potentially competing technologies from the market and erecting an unjustified barrier to entry allowing it to charge an artificially inflated, ex-post monopoly price for its IPRs or to even charge a royalty which, in the absence of the industry standard, it would not have been able to charge at all.

How do you assess what a reasonable royalty is in general?

Obviously, it depends on the specifics of every case. The *ex ante* price that was being charged for a technology before a standard was set could be a good benchmark.