

ANSI Legal Issues Forum

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Antitrust Update

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In the Matter of Rambus, Inc.

2006 WL 2330117, No. 9302 (F.T.C. Aug. 2, 2006)

- Holding: “Rambus’s acts of deception constituted exclusionary conduct under Section 2 of the Sherman Act . . . Rambus unlawfully monopolized the markets for four technologies incorporated into the JEDEC standards in violation of Section 5 of the FTC Act.”
- Technology Markets:
 - Latency
 - Burst length
 - Data acceleration
 - Clock synchronization

In the Matter of Rambus, Inc.

- Challenged exclusionary conduct:
 - Made misleading statements and material omissions regarding patent portfolio and plans
 - Concealed patents and pending applications
 - Within months of joining JEDEC, made plans to later claim infringement
 - Used information from JEDEC meetings to tailor patent applications so as to maximize coverage
 - Ended JEDEC membership to avoid estoppel of claims
 - Committed all these acts with knowledge and notice of obligation to fully disclose

In the Matter of Rambus, Inc.

- Briefs filed in September addressing remedies issues:
 - Means for determining reasonable royalty rates
 - Alternative mechanisms and procedures for determining reasonable royalty rates, such as an independent arbitrator, a special master, or an ALJ
 - Qualitative characteristics descriptive of appropriate relief, against which specific royalty proposals might be evaluated; and
 - Appropriate injunctive and other provisions

In the Matter of Rambus, Inc.

- Key issues:
 - Proper definition of relevant markets
 - Exclusionary nature of “deceptive conduct”
 - Nature of remedy

Broadcom v. Qualcomm

2006 WL 2528545 (D.N.J. Aug. 31, 2006)

- Key allegation: Qualcomm violated several antitrust statutes by representing to ETSI that it would license on FRAND terms and then failing to do so
- Plaintiff claims that Qualcomm:
 - Induced SDO to include patents in standard
 - Refused to license technology on FRAND terms
 - Used these practices to:
 - Monopolize WCDMA technology market
 - Leverage this power into UMTS chipset market
- Court dismissed all antitrust claims

Broadcom v. Qualcomm

- No antitrust violation arises out of failure to agree on license terms for technology subject to FRAND obligations
- Key issues:
 - Market power in technology markets
 - Enforcement of FRAND commitments
 - Licensing freedom

Golden Bridge Tech. v. Nokia

416 F. Supp. 2d 525 (E.D. Tex. Feb. 17, 2006)

- Alleged conspiracy to exclude patented technology from standard stated a claim for *per se* illegal restraint of trade in form of group boycott
- Background:
 - Plaintiff GBT's CPCH technology was optional part of 3GPP standard for WCDMA
 - GBT alleged that defendants - members of 3GPP - conspired to remove CPCH from standard
 - GBT claimed *per se* antitrust violation
- Defendants moved to dismiss pleading, *inter alia*, on ground that alleged conduct is not *per se* unlawful

Golden Bridge Tech. v. Nokia

- Court declined to apply rule of reason analysis
 - Group boycott would “always or almost always tend to restrict competition and decrease output”
 - Exclusion from standard = exclusion from market
- Court declined to hold Supreme Court decision in *Allied Tube* as requiring application of rule of reason
- Key issues:
 - Extent of permissible standards discussions
 - Extent of *per se* rule applicability

Globespanvirata v. TI

2006 WL 543155 (D.N.J. Mar. 3, 2006)

■ Key allegations:

- Defendants own patents necessary for manufacturing products compliant with ADSL standards
- Only standards-compliant products commercially viable
- Unlawful monopolization, attempt to monopolize, and conspiracy to monopolize “ADSL Technology” and “ADSL Non-Standards Technology” markets, as well as “ADSL Systems” market
- Each claim based on allegation that defendants used their alleged monopoly power with respect to ADSL Standards Technology to establish monopoly power in the relevant markets

Globespanvirata v. TI

- Court dismissed claims on pleadings, holding that plaintiff's failure to allege facts showing market share precluded finding of monopoly power
- Allegations of anticompetitive conduct alone insufficient to state claim
 - Must allege facts showing monopoly power
 - Market share is most significant factor
 - Mere ownership of essential patents insufficient

Globespanvirata v. TI

- *Per se* rule inapplicable to tying arrangements where license essential to standard tied to by related non-essential license
 - Court distinguished product tying from patent tying
 - Licensees are not required to use non-essential tied licenses
 - License packaging may provide procompetitive benefits and efficiencies
- Key issues:
 - Market power in technology markets
 - Licensing freedom