

Interlocutory Orders, Etc.

IN THE MATTER OF

RAMBUS INCORPORATED

Docket No. 9302 Order, October 16, 2008

Order granting the joint motion seeking an order authorizing Rambus to receive excess consideration incurred by contingent contractual rights pursuant to Paragraph 1 of the Commission's March 16, 2007 Stay Order.

**ORDER AUTHORIZING RESPONDENT TO RECEIVE EXCESS
CONSIDERATION HELD PURSUANT TO CONTINGENT
CONTRACTUAL OBLIGATION**

Paragraph 1.c. of the Commission *Order Granting in Part and Denying in Part Respondent's Motion for Stay of Final Order Pending Appeal* (March 16, 2007) ("Stay Order") permitted Respondent to incur contingent contractual rights to consideration in excess of that permitted by the Final Order issued in this matter if the consideration were payable to Respondent only upon the issuance by the Commission of an order authorizing Respondent to receive such consideration. The Commission stated in Paragraph 1.c. of the Stay Order that it would issue an order authorizing Respondent to receive such consideration promptly after receiving a mandate from a court of appeals.

On April 22, 2008, the District of Columbia Circuit Court of Appeals ordered that the Commission's orders in this matter be set aside and that this matter be remanded for further proceedings consistent with the Court's opinion. On August 26, 2008, the Court denied the Commission's petition for a rehearing en banc. On September 9, 2008, the Court issued its mandate. Accordingly,

IT IS ORDERED THAT, as used herein, the term "Excess Consideration" shall mean fees, royalties, payments, judgments, and other consideration in excess of that permitted by Paragraphs IV, V.A., VI, and VII of the Final Order; and

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IT IS FURTHER ORDERED THAT, within the meaning of Paragraph 1.c. of the Stay Order, Respondent may receive Excess Consideration (and accrued interest) payable pursuant to any contingent contractual obligation.

By the Commission.

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IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,
AND
WILD OATS MARKETS, INC.**

Docket No. 9324 Order, October 20, 2008

Order appointing an Administrative Law Judge for the remainder of the adjudicative proceeding.

ORDER DESIGNATING ADMINISTRATIVE LAW JUDGE

The Federal Trade Commission (“FTC”) issued an administrative complaint on June 27, 2007, alleging that Whole Foods Market, Inc.’s agreement to acquire Wild Oats Markets, Inc. violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act. The Commission retained jurisdiction over the matter pursuant to its authority under the Administrative Procedure Act (APA)¹ and the Commission Rules of Practice.² On August 7, 2007 the Commission issued an Order staying the administrative

¹ Section 556(b)(2) of the APA permits the Commission to determine whether the Commission itself, one or more Commissioners, or an administrative law judge appointed under 5 U.S.C. § 3105 of the APA will “preside at the taking of evidence” in adjudications conducted under Section 554 of the APA -- such as this adjudicative proceeding -- and to carry out all the functions permitted by Section 556(c) of the APA and Part 3 of the Commission Rules of Practice. *See* 5 U.S.C. § 556.

² Part 3 of the Commission Rules of Practice governs the procedures used in Commission adjudicative proceedings. *See* 16 C.F.R. § 3.1 *et seq.* (2008). Commission Rule 3.42 gives the Commission full discretion to determine whether it should preside over a particular adjudicative proceeding itself; designate one or more Members of the Commission to preside over the proceeding; or refer the proceeding to an administrative law judge. *See* 16 C.F.R. § 3.42.