

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JANUARY 1, 2016, TO JUNE 30, 2016

IN THE MATTER OF

NXP SEMICONDUCTORS N.V.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4560; File No. 151 0090
Complaint, November 25, 2015 – Decision, January 21, 2016

This consent order addresses the \$11.8 billion acquisition by NXP Semiconductors N.V. of certain assets of Freescale Semiconductor Ltd. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in the worldwide market for RF power amplifiers. The consent order requires NXP to divest its RF power amplifier assets to Jianguang Asset Management Co., Ltd. The assets to be divested include a manufacturing facility located in Cabuyao (Philippines), a building in Nijmegen (the Netherlands) to house management and certain R&D and testing labs, all manufacturing and R&D assets used primarily for the RF power amplifier business, and customer support equipment.

Participants

For the *Commission*: Mac Conforti and Meredith Levert.

For the *Respondent*: Peter Guryan, Simpson Thacher & Bartlett LLP; and Erik Pinjacker Hordjik, De Brauw, Blackstone, and Westbroek.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent NXP Semiconductors N.V. (“NXP”), a corporation

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subject to the jurisdiction of the Commission, has agreed to acquire Freescale Semiconductor, Ltd. (“Freescale”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent NXP is a public limited liability company organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located in Eindhoven, the Netherlands.

2. Freescale is a public limited liability company organized, existing, and doing business under and by virtue of the laws of Bermuda, with its office and principal place of business located at 6501 William Cannon Drive West, Austin, Texas 78735.

3. Respondent NXP is engaged in the design, manufacture, and sale of a range of semiconductor products used in a variety of electronic systems for automotive, communications, industrial, consumer, and other applications.

4. Freescale is engaged in the design, manufacture, and sale of a range of semiconductor products used in a variety of electronic systems for automotive, communications, industrial, consumer, and other applications.

5. Respondent and Freescale are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

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II. THE PROPOSED ACQUISITION

6. Pursuant to an Agreement and Plan of Merger dated March 1, 2015, Respondent and Freescale agreed that NXP would acquire Freescale for approximately \$11.8 billion (“the Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

7. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is RF power amplifiers. RF power amplifiers (also called RF power transistors) are high power (>1 watt average output power) semiconductors that amplify radio signals used to transmit information between electronic devices.

8. For the purposes of this Complaint, the relevant geographic market in which to analyze the effects of the Acquisition in the RF power amplifier market is worldwide. Transportation costs are low for RF power amplifiers, which are routinely shipped from manufacturing facilities around the globe to customer locations worldwide.

IV. STRUCTURE OF THE MARKET

9. The market for RF power amplifiers worldwide is highly concentrated. Freescale and NXP are the two largest manufacturers of RF power amplifiers, with a combined market share of more than 60% based on revenues. The proposed merger would increase the Herfindahl-Hirschman Index from 2,203 to 4,040, an increase of 1,837. This increase in concentration far exceeds the thresholds set out in the *Horizontal Merger Guidelines* for raising a presumption that the Acquisition would create or enhance market power.

V. ENTRY CONDITIONS

10. Given the substantial time and investment required to develop RF power amplifiers, entry sufficient to deter or

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counteract the anticompetitive effects created by the Acquisition is unlikely.

VI. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. The Acquisition would eliminate the direct competition between NXP and Freescale, which may lead to anticompetitive unilateral effects in the form of higher prices and reduced innovation.

VII. VIOLATIONS CHARGED

12. The allegations contained in Paragraphs 1 through 11 above are hereby incorporated by reference as though fully set forth here.

13. The Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 6, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-fifth day of November, 2015, issues its Complaint against said Respondent.

By the Commission.

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent NXP Semiconductors N.V. (“NXP”) of the outstanding voting securities of Freescale Semiconductor, Ltd. (“Freescale”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent NXP Semiconductors N.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Netherlands, with its corporate office and principal place of

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business located at High Tech Campus 60, Eindhoven 5656 AG, the Netherlands.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. “NXP” means NXP Semiconductors N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by NXP Semiconductors N.V. (including Freescale, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) JAC or (ii) any other Person that acquires the RF Power Assets pursuant to the Decision and Order.
- D. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger by and among NXP Semiconductors N.V., Nimble Acquisition Limited, and Freescale Semiconductor, Ltd., dated March 1, 2015.

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- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Confidential Information” means any and all of the following information:
 - 1. all information that is a trade secret under applicable trade secret or other law;
 - 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures, and architectures;
 - 3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
 - 4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result

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of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

- G. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- H. “Divestiture Agreement” means (i) the JAC Acquisition Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the RF Power Assets, including all related ancillary agreements (transitional services agreement, intellectual property transfer and license agreement, and manufacturing services agreement), schedules, exhibits, and attachments thereto.
- I. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the RF Power Assets to Acquirer.
- J. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

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- K. “RF Power Assets” means the assets identified in Paragraph I.V. of the Decision and Order.
- L. “RF Power Business” means the business conducted by NXP as of the date of the announcement of the Acquisition in respect of researching, designing, developing, testing, manufacturing, commercializing, packaging, marketing, distributing, selling and/or servicing high power RF Power transistors (from >1 watt peak power to more than 1kW) for applications including but not limited to cellular base stations, broadcast systems, radars, medical equipment and various industrial applications, which are manufactured using Silicon Lateral Diffused Metal Oxide Semiconductor (Si-LDMOS), Vertical Diffused Metal Oxide Semiconductor (VDMOS) or Gallium Nitride on Silicon Carbide (GaN-on-SiC) process technologies in order to be able to deliver the desired high output power and heat dissipation and any past and/or future generations of such transistors, technologies, or markets.
- M. “RF Power Employee” means any individual (i) employed by NPX on a full-time, part-time, or contract basis at any time as of and after the date of the announcement of the Acquisition and (ii) whose job responsibilities predominantly relate or predominantly related to the RF Power Business.

II.

IT IS FURTHER ORDERED that until the Divestiture Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the RF Power Assets and grant of the RF Power License; *provided, however,* that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements directly with each of the relevant Persons; and *provided further* that in the event Respondent is unable to obtain any consent, assignment, or waiver required by this Paragraph II., Respondent shall (i) provide such assistance as Acquirer may reasonably

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request in its efforts to obtain the consent or (ii) with the acceptance of Acquirer and the prior approval of the Commission, Respondent may substitute equivalent assets or arrangements.

III.

IT IS FURTHER ORDERED that during the time period before the Divestiture Date, Respondent shall operate the RF Power Business and RF Power Assets in the ordinary course of business consistent with past practices as of the date that Respondent announced the Acquisition, including but not limited to the following responsibilities:

- A. Respondent shall maintain (i) the RF Power Business and RF Power Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondent signs the Consent Agreement, and (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the RF Power Business and RF Power Assets;
- B. Respondent shall provide the RF Power Business with sufficient financial and other resources to (i) operate the RF Power Business and RF Power Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans and promotional activities in place prior to the Acquisition; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the RF Power Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, or expansion projects; and (iv) maintain the viability, competitiveness, and marketability of the RF Power Business and RF Power Assets.

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- C. Respondent shall preserve the RF Power Business and RF Power Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent's control, as a result of which the viability, competitiveness, and marketability of the RF Power Business and RF Power Assets would be diminished.

IV.**IT IS FURTHER ORDERED** that:

- A. Until the Divestiture Date, Respondent shall staff the RF Power Business and RF Power Assets with sufficient employees to maintain the viability and competitiveness of the RF Power Business and RF Power Assets, including but not limited to, providing each RF Power Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the RF Power Assets.
- B. Respondent shall cooperate with and assist Acquirer to evaluate and retain any RF Power Employee necessary to operate the RF Power Business in substantially the same manner as NXP prior to the divestiture, including but not limited to:
1. Not later than twenty (20) days before the Divestiture Date, Respondent shall (i) identify all RF Power Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all RF Power Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any RF Power Employee;
 2. Respondent shall (i) not offer any incentive to any RF Power Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any RF Power Employee from

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accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere the recruitment, hiring, or employment of any RF Power Employee by Acquirer;

3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any RF Power Employee who accepts an offer of employment from Acquirer and (ii) provide each RF Power Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
4. For a period of two (2) years after the RF Power Assets are divested, Respondent shall not solicit the employment of any RF Power Employee who becomes employed by Acquirer at the time the RF Power Assets are divested; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the

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RF Power Business or RF Power Assets; *provided, however,* that Respondent may disclose or use such Confidential Information in the course of:

1. Performing its obligations or as permitted under this Order to Maintain Assets, Decision and Order, or Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the RF Power Business or RF Power Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph V.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph V. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph V., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

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VI.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint Advolis S.A. to serve as Monitor.
- B. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order to Maintain Assets and in consultation with the Commission:
 - 1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order to Maintain Assets and the Decision and Order, and (ii) act in a fiduciary capacity for the benefit of the Commission;
 - 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order to Maintain Assets and the Decision and Order, or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order to Maintain Assets;
 - 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of

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Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after the Acquisition Date for a period of one year, (ii) every ninety (90) days thereafter until Respondent has completed all obligations required by Paragraph II. of the Decision and Order, and (iii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order to Maintain Assets and the Decision and Order.
- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

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- E. The Monitor's power and duties under this Order to Maintain Assets shall terminate at the time this Order to Maintain Assets terminates, or at such other time as directed by the Commission.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
 - 1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 - 2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain Assets on the same terms and conditions as provided in this Paragraph VI.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.

Order to Maintain Assets

VII.**IT IS FURTHER ORDERED** that:

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and Decision and Order within thirty (30) days from the date Respondent signs the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates.
- B. With respect to the divestiture required by Paragraph II. of the Decision and Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the RF Power Assets; (ii) a description of all substantive contacts with a proposed acquirer (other than JAC); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

VIII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the RF Power Business and RF Power Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

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- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement

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pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

- B. Three (3) business days after the date that Respondent completes the divestiture required by Paragraph II.A. of the Decision and Order; *provided, however*, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent NXP Semiconductors N.V. (“NXP”) of the outstanding voting securities of Freescale Semiconductor, Ltd. (“Freescale”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other

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than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule § 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and enters the following Decision and Order ("Order"):

1. Respondent NXP Semiconductors N.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Netherlands, with its corporate office and principal place of business located at High Tech Campus 60, Eindhoven 5656 AG, the Netherlands.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. "NXP" means NXP Semiconductors N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by NXP Semiconductors N.V. (including Freescale, after the Acquisition) and the respective directors, officers,

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employees, agents, representatives, successors, and assigns of each.

- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) JAC or (ii) any other Person that acquires the RF Power Assets pursuant to this Order.
- D. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger by and among NXP Semiconductors N.V., Nimble Acquisition Limited, and Freescale Semiconductor, Ltd., dated March 1, 2015.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “BY Building” means the building located at Halfgeleiderweg 8, 6534 AV, Nijmegen, The Netherlands.
- G. “Confidential Information” means any and all of the following information:
 - 1. all information that is a trade secret under applicable trade secret or other law;
 - 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
 - 3. all information concerning the relevant business (which includes historical and current financial

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statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and

4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

- H. "Contract" means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.
- I. "Corporate Trade Names" means all NXP's commercial names, trade names, doing business as (d/b/a) names, registered and unregistered trademarks and service marks.
- J. "Cost" means the actual cost of raw materials, direct labor, and administrative expenses, and reasonably allocated operations and factory and shared corporate services overhead used to develop, manufacture, and supply the relevant good or service.

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- K. “Divestiture Agreement” means (i) the JAC Acquisition Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the RF Power Assets, including all related ancillary agreements (transitional services agreement, intellectual property transfer and license agreement, and manufacturing services agreement), schedules, exhibits, and attachments thereto.
- L. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the RF Power Assets to Acquirer.
- M. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph V. of this Order.
- N. “Intellectual Property” means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and tradedress; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (vi) and all rights in internet web sites and internet domain names presently used.
- O. “JAC” means Beijing Jianguang Asset Management Co., Ltd., a limited liability company organized, existing, and doing business under, and by virtue of, the laws of China, with its corporate office and principal place of business located at Beijing International Club Office Tower, Room 902, NO. 21, Jian Guo Men Wai Street, Beijing, China 100020.

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- P. “JAC Acquisition Agreement” means the asset purchase agreement between NXP and JAC Newco, dated October 27, 2015, including related ancillary agreements, amendments, schedules, exhibits, and attachments, thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- Q. “License-Back” means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license to Respondent from Acquirer under any Intellectual Property included in the RF Power Assets (that is not exclusively related to the operation of the RF Power Business) for use in any business operated by Respondent that does not compete with the RF Power Business.
- R. “Monitor” means the Person appointed by the Commission pursuant to Paragraph IV. of this Order.
- S. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- T. “Products” means (i) LDMOS and MOSCAP wafers relating to the RF Power Business and associated grinding and backside metallization and testing services, currently performed at NXP’s factory in Nijmegen, Netherlands, and NXP’s factory in Hamburg, Germany, and (ii) finished product supply services relating to the RF Power Business currently performed at NXP’s assembly plant in Kaoshiung, Taiwan, including assembly and final testing.
- U. “Qubic Intellectual Property” means all Intellectual Property related to NXP’s Qubic Bi-CMOS process technology, whether used in or for the research, development, design, or manufacture of products, and

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any patents or other Intellectual Property Rights associated therewith.

- V. “RF Power Assets” means all of Respondent’s right, title, and interest in and to all property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the RF Power Business, including, but not limited to:
1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of the RF Power Business since the date of the announcement of the Acquisition, and not replaced, unless such Tangible Personal Property was removed in the ordinary course of business and has a replacement cost of less than \$5,000;
 3. all inventories, including all raw materials, finished goods, dies, semi-finished goods, work in progress, and goods in transit;
 4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
 5. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent assignable;

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6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);
7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone and telecopy listings;
8. all insurance benefits, including rights and proceeds; and
9. all rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof;

Provided, however, that the RF Power Assets need not include NXP's right, title, and interest in the (i) Retained Assets or (ii) Retained Intellectual Property.

- W. "RF Power Business" means the business conducted by NXP as of the date of the announcement of the Acquisition in respect of researching, designing, developing, testing, manufacturing, commercializing, packaging, marketing, distributing, selling and/or servicing high power RF Power transistors (from >1 watt peak power to more than 1kW) for applications including but not limited to cellular base stations, broadcast systems, radars, medical equipment and various industrial applications, which are manufactured using Silicon Lateral Diffused Metal Oxide Semiconductor (Si-LDMOS), Vertical Diffused Metal Oxide Semiconductor (VDMOS) or Gallium

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Nitride on Silicon Carbide (GaN-on-SiC) process technologies in order to be able to deliver the desired high output power and heat dissipation and any past and/or future generations of such transistors, technologies, or markets.

- X. “RF Power Employee” means any individual (i) employed by NXP on a full-time, part-time, or contract basis at any time as of and after the date of the announcement of the Acquisition and (ii) whose job responsibilities predominantly relate or predominantly related to the RF Power Business.
- Y. “RF Power License” means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license under:
 - 1. The Retained Intellectual Property sufficient for JAC or other Acquirer to operate the RF Power Business in substantially the same manner as NXP prior to the Acquisition, including the freedom to extend existing products and develop new products;
 - 2. Any Intellectual Property owned or licensed (as licensor or licensee) by NXP sufficient for JAC or other Acquirer to research, design, develop, test, manufacture, commercialize, package, market, distribute, sell and service “mmWave” RF power products (signal frequency > 10GHz) for 5G (or subsequent generation standards of) telecom infrastructure applications consisting of RF transceiver and PAs in the form of ICs and modules up to and including the antenna interface, manufactured in one of three specialty process technologies, being Si-LDMOS, GaN-on-SiC and RFCMOS, and for the avoidance of doubt, not in SiGe process technology, with respect to the existing roadmap of the RF Power Business prior to the Acquisition; and

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3. Such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable JAC or other Acquirer to use the rights;

Provided, however, that for any Retained Intellectual Property or other Intellectual Property licensed by NXP from a third-party, the RF Power License shall include only those rights licensed from such third-party.

- Z. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

- AA. “Retained Assets” means:

1. Corporate Trade Names and portions of website content, domain names, or e-mail addresses that contain Corporate Trade Names;
2. Real property (except for the BY Building and the related land thereof and the SiPS Building);
3. Trade accounts receivable accrued or prepaid by or owed to NXP prior to the date of completion of the Acquisition; and
4. Tangible Personal Property relating to both the operation of the RF Power Business and any other business owned by NXP prior to the Acquisition, unless such Tangible Personal Property is primarily used by the RF Power Business.

- BB. “Retained Intellectual Property” means any owned or licensed (as licensor or licensee) Intellectual Property (not included in the Retained Assets) relating to both the operation of the RF Power Business and any other business owned by NXP prior to the Acquisition,

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unless such Intellectual Property is predominantly used by the RF Power Business.

- CC. “SiPS Building” means the building located at Philips Avenue, LISP 1, Barrio Diezmo Cabuyao City, Laguna, Philippines.
- DD. “Support Services” means administrative and technical services and training, including but not limited to, services and training relating to (i) audits, (ii) environmental health and safety, (iii) exporting, (iv) finance and accounting, (v) human resources, (vi) information technology, (vii) intellectual property, (viii) legal services, (ix) maintenance and repair of facilities, (x) manufacturing, (xi) pensions, (xii) purchasing, (xiii) quality control, (xiv) R&D support, (xv) real estate, (xvi) regulatory compliance, (xvii) sales and marketing, (xviii) supply chain management, (xix) technology transfer, and (xx) warehousing.
- EE. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- FF. “Volcano Chip RFE001” means NXP’s Volcano chip RFE001 designed in Qubic technology as available today, without any further future amendment or updates.

II.

IT IS FURTHER ORDERED that:

- A. No later than ten (10) days after the Acquisition Date, Respondent shall divest the RF Power Assets and grant

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the RF Power License, absolutely and in good faith, to JAC pursuant to the JAC Acquisition Agreement.

- B. If Respondent has divested the RF Power Assets to JAC prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:
1. JAC is not acceptable as the acquirer of the RF Power Assets, then Respondent shall immediately rescind the JAC Acquisition Agreement, and shall divest the RF Power Assets and grant the RF Power License no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 2. The manner in which the divestiture or grant of license to JAC was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised JAC Divestiture Agreement) to the manner of divestiture of the RF Power Assets or grant of the RF Power License as the Commission may determine are necessary to satisfy the requirements of this Order.
- C. Notwithstanding any other provision of this Order, Respondent may (i) enter into an agreement with JAC or other Acquirer for a License-Back (subject to the prior approval of the Commission) or (ii) lease the SiPS Building to JAC or other Acquirer for a period not to exceed two (2) years prior to divesting the building absolutely to JAC or other Acquirer.
- D. No later than the Divestiture Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the RF

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Power Assets and grant of the RF Power License; *provided, however*, that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements directly with each of the relevant Persons; and *provided further* that in the event Respondent is unable to obtain any consent, assignment, or waiver required by this Paragraph II.D., Respondent shall (i) provide such assistance as Acquirer may reasonably request in its efforts to obtain the consent or (ii) with the acceptance of Acquirer and the prior approval of the Commission, Respondent may substitute equivalent assets or arrangements.

E. Respondent shall:

1. At the request of Acquirer and in a manner that receives the prior approval of the Commission, provide (a) Products for a period of up to sixty (60) months and (b) Support Services for a period of up to thirty-six (36) months, from the Divestiture Date (collectively “Transitional Assistance”); and
2. Provide the Transitional Assistance required by this Order at a price not to exceed Cost and in quality and quantity sufficient to enable Acquirer to operate the RF Power Business in substantially the same manner as NXP prior to the Acquisition, including the ability to develop new products and increase sales of current products;

Provided, however, that if the quantity of Transitional Assistance pursuant to a Divestiture Agreement is limited for any reason, Respondent shall give priority to Acquirer’s requirements over its own;

Provided further that the time periods for providing Transitional Assistance shall be extended, at the request of Acquirer, subject to the prior approval of the Commission; and

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Provided further that Respondent shall not (i) terminate its obligation to provide any Transitional Assistance because of a material breach by Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondent's breach of any agreement to provide Transitional Assistance.

F. No later than the Divestiture Date and in a manner that receives the prior approval of the Commission, Respondent shall:

1. Divest any and all Intellectual Property (excluding the Qubic Intellectual Property) to Acquirer necessary to enable Acquirer to redesign the Volcano Chip RFE001 using a process technology other than NXP's Qubic technology, including but not limited to, datasheets, application notes, PCB design files, PCB Gerber and Drill files, PCB BOM, software, architecture diagrams, block level design documents, simulation plan and reports, change reports, and problem report lists;

Provided, however, that NXP may license to Acquirer rights in software and other design documents relating to the Volcano Chip RFE001 that NXP also uses for other purposes;

2. Provide technical assistance as requested by Acquirer at a price not to exceed Cost to enable Acquirer to redesign the Volcano Chip RFE001 using a process technology other than NXP's Qubic technology;
3. For a period of up to sixty (60) months, manufacture and deliver the Volcano Chip RFE001 exclusively for Acquirer at a price not to exceed Cost and in such quantity and quality as requested

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by Acquirer; *provided, however*, that the time period set forth in this Paragraph II.F. 3. shall be extended, at the request of Acquirer, subject to the prior approval of the Commission; and

4. Not join, file, prosecute, or maintain any suit, in law or equity, against Acquirer or any Person working on behalf of Acquirer under the Qubic Intellectual Property, if such suit would have the potential to limit or interfere with Acquirer's freedom to use the Volcano Chip RFE001 or the redesigned Volcano Chip RFE001 in any application of the RF Power Business;

Provided further that Respondent shall not (i) terminate its obligation to provide any assistance pursuant to Paragraphs II.F.2. or II.F.3. because of a material breach by Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondent's breach of any agreement to such assistance.

- G. Notwithstanding any provision of this Order, Respondent shall permit Acquirer to use the name "NXP Semiconductors" or "NXP," or any abbreviation thereof, or any name, logo, or lettering which is similar, in the operation of the RF Power Business for a period of up to nine (9) months from the Divestiture Date.
- H. Respondent shall cooperate with and assist Acquirer to evaluate and retain any and all RF Power Employees necessary to operate the RF Power Business in substantially the same manner as NXP prior to the divestiture, including but not limited to:
 1. Not later than twenty (20) days before the Divestiture Date, Respondent shall (i) identify all

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RF Power Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all RF Power Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any RF Power Employee;

2. Respondent shall (i) not offer any incentive to any RF Power Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any RF Power Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any RF Power Employee by Acquirer;
3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any RF Power Employee who accepts an offer of employment from Acquirer and (ii) provide each RF Power Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
4. For a period of two (2) years after the RF Power Assets are divested, Respondent shall not solicit the employment of any RF Power Employee who becomes employed by Acquirer at the time the RF Power Assets are divested; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so

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long as such employees were not solicited by Respondent in violation of this paragraph.

- I. The Commission may order Respondent to divest additional Tangible Personal Property relating to the RF Power Business not included in the RF Power Assets or effect other appropriate arrangements relating to such divestitures as the Commission determines are necessary to ensure the divestiture of the RF Power Assets as an ongoing viable enterprise, except for such Tangible Personal Property or other appropriate arrangements which can readily be obtained from sources other than Respondent.
- J. The purpose of the divestiture of the RF Power Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondent and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the RF Power Business or RF Power Assets; *provided, however*, that Respondent may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or Divestiture Agreement; or
 - 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions

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threatened or brought against the RF Power Business or RF Power Assets, or as required by law.

- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph III.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph III. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

IV.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint Advolis S.A. to serve as Monitor. The Monitor may be the same person as the Monitor appointed pursuant to the Order to Maintain Assets.
- B. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to

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permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:

1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;
3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

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5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after the Acquisition Date for a period of one (1) year, (ii) every ninety (90) days thereafter until Respondent has completed all obligations required by Paragraph II. of this Order (including a final report when Respondent has completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order.
 - D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
 - E. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph IV.C.(ii) of this Order, or at such other time as directed by the Commission.
 - F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
 1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after

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notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph IV.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the RF Power Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a

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Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive

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power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Divestiture Assets.

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

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4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the

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Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

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- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VI.**IT IS FURTHER ORDERED** that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondent shall comply with all terms of the agreement. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondent under such agreement.
- B. If any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Respondent shall not modify, replace, or extend the terms of the Divestiture

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Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

VII.**IT IS FURTHER ORDERED** that:

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
 - 1. Thirty (30) days from the date this Order is issued and every thirty (30) days thereafter for a period of one (1) year and every ninety (90) days thereafter until Respondent has fully complied with the provisions of Paragraph II.E. of this Order; and
 - 2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.
- B. With respect to the divestiture required by Paragraph II. of this Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the RF Power Assets; (ii) a description of all substantive contacts with a proposed acquirer (other than JAC); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

Decision and Order

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger, or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on January 21, 2026.

By the Commission.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT**INTRODUCTION**

The Federal Trade Commission (“Commission”) has accepted from NXP Semiconductors N.V. (“NXP”), subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) designed to remedy the anticompetitive effects resulting from NXP’s proposed acquisition of Freescale Semiconductor Ltd. (“Freescale”).

On March 1, 2015, NXP and Freescale executed an Agreement and Plan of Merger (“Merger Agreement”) pursuant to which NXP will acquire all of Freescale’s common stock in a transaction valued at approximately \$11.8 billion (“Acquisition”). The proposed Acquisition would combine the two largest suppliers of RF power amplifiers. The Commission’s Complaint alleges that the proposed 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, as amended, 15 U.S.C. § 45, by substantially lessening competition in the worldwide market for RF power amplifiers.

Under the terms of the proposed Decision and Order (“Order”) contained in the Consent Agreement, NXP is required, no later than ten days from the close of the NXP/Freescale transaction, to divest its RF power amplifier assets to Jianguang Asset Management Co., Ltd. (“JAC”). The divestiture package includes a manufacturing facility, manufacturing equipment, intellectual property, and customer and supplier contracts. NXP’s RF power employees, including the leadership of the business, will also transfer to JAC. The Consent Agreement provides JAC with everything needed to compete effectively in the RF power amplifier market.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and decide

Analysis to Aid Public Comment

whether it should withdraw from the Consent Agreement, modify it, or make it final.

THE PARTIES

Headquartered in the Netherlands, NXP is a semiconductor developer and manufacturer specializing in high performance mixed signal devices for a variety of industries. NXP designs, manufactures, and sells RF power amplifiers, among other products, through its Secure Interface & Power division.

Headquartered in Austin, Texas, Freescale is a manufacturer of stand-alone semiconductors that perform dedicated power usage functions in a variety of electronic systems for automotive, networking, industrial, and consumer applications. Freescale designs, manufactures, and sells RF power amplifiers through its Radio Frequency division.

THE RELEVANT MARKET AND MARKET STRUCTURE

The relevant line of commerce in which to analyze the effects of the Acquisition is no broader than RF power amplifiers. RF power amplifiers (also referred to as RF power transistors) are high power (>1 watt average output power) semiconductors that increase the strength of radio signals transmitted between electronic devices. The largest application for RF power amplifiers, accounting for roughly 70% of revenues, is wireless infrastructure—i.e., cellular base stations (cell towers). Other applications include aviation, industrial, broadcasting, and non-cellular communications such as land mobile radio, as well as potential future applications for cooking and lighting. RF power transistors are manufactured using specialty process technologies in order to deliver high output power and heat dissipation. The two principal technologies are (i) silicon based laterally-diffused metal oxide semiconductor (“LDMOS”) and (ii) gallium nitride on silicon carbide substrate (“GaN”). LDMOS technology accounts for roughly 90% of RF power amplifiers used in wireless infrastructure. According to customers and other market participants, there are no substitutes for RF power amplifiers.

Analysis to Aid Public Comment

The relevant geographic market for RF power amplifiers is worldwide. The three major RF power amplifier suppliers (see below) manufacture the products in facilities around the world, and ship the products from those facilities to customer locations worldwide. There are currently no regulatory barriers, tariffs, or technical specifications that impede worldwide trade, and transportation costs are low.

The RF power amplifier market is characterized by a limited number of suppliers, including Freescale, the largest supplier with 36.6% of the market, and NXP, the second-largest supplier with 25.1% of the market. Infineon Technologies AG (“Infineon”) is the third largest supplier. Freescale, NXP, and Infineon are the only meaningful suppliers of LDMOS-based RF power amplifiers. Infineon, however, has a significantly smaller RF power portfolio than either Freescale or NXP. Several additional companies supply GaN-based RF power amplifiers only, but have small market shares.

The proposed NXP/Freescale combination would cause a moderately concentrated market for RF power amplifiers to become highly concentrated, increasing the Herfindahl-Hirschman Index from 2,203 to 4,040 (a delta of 1,837). This increase in concentration far exceeds the thresholds set out in the *Horizontal Merger Guidelines* for raising a presumption that the Acquisition would create or enhance market power.

ENTRY

Entry into the RF power amplifier market is not likely to deter or counteract any anticompetitive effects of the proposed Acquisition. Entry is unlikely in light of high capital costs, significant switching costs by customers, and the considerable time it would take for customers to develop trust in a new entrant’s products. The same barriers would apply to an expansion into LDMOS-based RF power amplifiers by companies that currently supply only GaN-based RF power amplifiers.

Analysis to Aid Public Comment

EFFECTS OF THE ACQUISITION

Absent a divestiture, the proposed Acquisition is likely to cause competitive harm in the market for RF power amplifiers. NXP and Freescale compete directly for RF power amplifier sales, and customers benefit from that competition in terms of both pricing and product innovation. Customers describe NXP and Freescale as each other's closest competitors, and the parties appear to view each other the same way. By eliminating the competition between NXP and Freescale, the proposed Acquisition likely would lead to unilateral effects in the form of higher prices and reduced innovation, particularly in the wireless infrastructure segment.

THE CONSENT AGREEMENT

The Consent Agreement restores the competition lost from NXP's proposed acquisition of Freescale by requiring NXP to divest its RF power amplifier business to JAC, a Chinese private equity management fund. The proposed divestiture includes everything needed for JAC to compete effectively in the worldwide market for RF power amplifiers.

Under the Order, NXP is required, no later than ten days from the close of the NXP/Freescale transaction, to divest its RF power amplifier assets to JAC. The assets to be divested include a manufacturing facility located in Cabuyao (Philippines), a building in Nijmegen (the Netherlands) to house management and certain R&D and testing labs, all manufacturing and R&D assets used primarily for the RF power amplifier business, and customer support equipment. Additionally, the divestiture package includes all patents and technologies that are exclusively or predominantly used for the RF power amplifier business, and a royalty-free license to use all other NXP patents and technologies required by that business. Finally, the divestiture package includes the transition of NXP's RF power amplifier employees, including the complete management team, to JAC.

The manufacturing assets in the divestiture package include NXP's RF power amplifier back-end manufacturing assets (including the portion of the Philippines facility dedicated to these

Analysis to Aid Public Comment

products) but not its front-end manufacturing assets. Instead, JAC will outsource its front-end manufacturing to a third-party wafer foundry. In the interim, the Order requires that, at the request of JAC and in a manner approved by the Commission, NXP must provide front-end wafer manufacturing for a period of up to sixty months. Similarly, the Order also requires NXP to provide support services such as logistical and administrative support for a period of up to thirty-six months.

In addition, the Order includes other standard terms designed to ensure the viability of the divested business. NXP must assist JAC in hiring the existing work force of NXP's RF power amplifier business, and must refrain from soliciting those employees for two years. A Monitor will oversee NXP's compliance with the obligations set forth in the Order. If NXP does not fully comply with the divestiture and requirements of the Order, the Commission may appoint a Divestiture Trustee to divest the RF power amplifier assets and perform NXP's other obligations consistent with the Order.

Given the robustness of the divested business and the protections contained in the Order, the divestiture of NXP's RF power amplifier assets to JAC is likely to preserve competition. Potential customers have confirmed that the divested assets include everything necessary to compete effectively as a viable business. Similarly, potential customers have confirmed that JAC would be a workable option as a supplier.

OPPORTUNITY FOR PUBLIC COMMENT

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

Complaint

IN THE MATTER OF

DRUG TESTING COMPLIANCE GROUP, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4565; File No. 151 0048**Complaint, January 21, 2016 – Decision, January 21, 2016*

This consent order addresses Drug Testing Compliance Group, LLC's communication to a competitor in an attempt to arrange a customer allocation agreement. The complaint alleges that TC Group violated Section 5 of the Federal Trade Commission Act by inviting a competitor to enter a customer allocation agreement. Under the Order respondent DTC Group is required to cease and desist from communicating with its competitors about customers and prices. The Order also prohibits DTC Group from entering into, participating in, inviting, or soliciting an agreement with any competitor to allocate customers, to divide markets, or to fix prices.

Participants

For the *Commission*: *William Lanning*.

For the *Respondent*: *Michelle Points, Points Law, PLLC*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Drug Testing Compliance Group, LLC, has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. Drug Testing Compliance Group, LLC ("DTC Group") invited its closest rival to enter into a customer allocation agreement. By inviting collusion, DTC Group endangered competition and violated Section 5 of the FTC Act.