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6 UNITED STATES DISTRICT COURT
7
8 CENTRAL DISTRICT OF CALIFORNIA

| | | |
|---------------------------|---|-------------------------------------|
| |) | CASE NO.: 8:09-cv-00275-AG-AN |
| UNITED STATES OF AMERICA, |) | Hon. Andrew J. Guilford |
| |) | |
| Plaintiff, |) | CORRECTED NOTICE OF MOTION |
| |) | AND MEMORANDUM OF THE UNITED |
| |) | STATES IN SUPPORT OF ENTRY |
| v. |) | OF FINAL JUDGMENT |
| |) | |
| MICROSEMI CORPORATION, |) | HEARING: FEBRUARY 1, 2010 |
| |) | TIME: 10:00 A.M. |
| Defendant. |) | ORAL ARGUMENT WAIVED |
| |) | |

16 PLEASE TAKE NOTICE that on Monday, February 1, 2010 at 10:00
17 a.m., or as soon thereafter as counsel may be heard, plaintiff,
18 the United States of America ("United States"), by and through
19 the undersigned counsel, will move this Court, pursuant to
20 Section 2(b) of the Antitrust Procedures and Penalties Act, 15
21 U.S.C. § 16(b)-(h) ("APPA"), for entry of the proposed Final
22 Judgment filed in this civil antitrust proceeding. The proposed
23 Final Judgment (Ex. 1 to Docket #130 and attached hereto) may be
24 entered at this time without further hearing if the Court
25 determines that entry is in the public interest. Pursuant to
26 Local Rule 7-15, counsel for Plaintiff United States and
27 Defendant Microsemi Corporation consent to waiver of oral
28 argument on the motion. The Competitive Impact Statement

1 ("CIS"), filed in this matter on August 20, 2009 (Docket #132),
2 explains why entry of the proposed Final Judgment would be in the
3 public interest. The United States filed with this Motion and
4 Memorandum a Certificate of Compliance setting forth the steps
5 taken by the parties to comply with all applicable provisions of
6 the APPA and certifying that the statutory waiting period has
7 expired (Docket #135).

8 **I. Background**

9 On July 14, 2008, defendant Microsemi Corporation
10 ("Microsemi") acquired most of the assets of Semicoa. After
11 investigating the competitive impact of that acquisition, the
12 United States filed a civil antitrust Complaint on December 18,
13 2008, seeking an order compelling Microsemi to divest the Semicoa
14 assets and other relief to restore competition. The Complaint
15 alleges that the acquisition significantly lessened competition
16 in the development, manufacture and sale of certain high
17 reliability small signal transistors and ultrafast recovery
18 rectifier diodes used in aerospace and military applications, in
19 violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and
20 Section 2 of the Sherman Act, 15 U.S.C. § 2. As a result of the
21 acquisition, prices for these products did or would have
22 increased, delivery times would have lengthened, and terms of
23 service would have become less favorable. Pursuant to an Order
24 to Preserve and Maintain Assets, which was entered on December
25 24, 2008 and modified on August 6, 2009, Microsemi may not,
26 without written consent of the United States, dispose of the
27

1 acquired assets prior to resolution of this proceeding.

2 Concurrent with the filing of the CIS on August 20, 2009,
3 the United States and Microsemi filed a Stipulation Regarding
4 Proposed Final Judgment and a proposed Final Judgment. These
5 filings were designed to restore competition through a
6 divestiture of the acquired assets. The proposed Final Judgment
7 requires Microsemi to divest the Semicoa assets, thus restoring
8 the competition that was lost as a result of the acquisition.¹

9 The United States and Microsemi have stipulated that the
10 proposed Final Judgment may be entered after compliance with the
11 APPA. Entry of the Final Judgment would terminate this action,
12 except that the Court would retain jurisdiction to construe,
13 modify, or enforce the provisions of the Final Judgment and to
14 punish violations thereof.

15 **II. Compliance with the APPA**

16 The APPA requires a sixty-day period for the submission of
17 public comments on a proposed Final Judgment. See 15 U.S.C.
18 § 16(b). In compliance with the APPA, the United States filed
19 the CIS on August 20, 2009; published the proposed Final Judgment
20 and CIS in the *Federal Register* on September 1, 2009 (see *United*
21 *States v. Microsemi Corp.*, 74 Fed. Reg. 45242); and published
22 summaries of the terms of the proposed Final Judgment and CIS,
23 together with directions for the submission of written comments
24 relating to the proposed Final Judgment, in *The Washington Post*

25 _____

26 ¹ Microsemi completed the divestiture, in compliance with
27 the terms of the proposed Final Judgment and with the consent of
the United States, on August 20, 2009.

1 for seven days beginning on September 6, 2009 and ending on
2 September 12, 2009, and in *The Los Angeles Times* for seven days
3 beginning September 13, 2009 and ending September 19, 2009. The
4 sixty-day public comment period ended on November 18, 2009, and
5 the United States received no comments. The United States has
6 filed a Certificate of Compliance with this Motion and Memorandum
7 that states that all the requirements of the APPA have been
8 satisfied (Docket #135). It is now appropriate for the Court to
9 make the public interest determination required by 15 U.S.C.
10 § 16(e) and to enter the proposed Final Judgment.

11 **III. Standard of Judicial Review**

12 The Clayton Act, as amended by the APPA, requires that
13 proposed consent judgments in antitrust cases brought by the
14 United States be subject to a sixty-day comment period, after
15 which the Court shall determine whether entry of the proposed
16 Final Judgment "is in the public interest." 15 U.S.C.
17 § 16(e)(1). In making that determination, the court, in
18 accordance with the statute, as amended in 2004,² is required to
19 consider:

20 (A) the competitive impact of such judgment, including
21 termination of alleged violations, provisions for
22 enforcement and modification, duration of relief
sought, anticipated effects of alternative remedies

23 ² The 2004 amendments substituted "shall" for "may" in
24 directing relevant factors for the court to consider and amended
25 the list of factors to focus on competitive considerations and to
26 address potentially ambiguous judgment terms. Compare 15 U.S.C.
27 § 16(e) (2004) with 15 U.S.C. § 16(e)(1) (2006); see also *United
States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 11 (D.D.C. 2007)
(concluding that the 2004 amendments "effected minimal changes"
to Tunney Act review).

1 actually considered, whether its terms are ambiguous,
2 and any other competitive considerations bearing upon
3 the adequacy of such judgment that the court deems
4 necessary to a determination of whether the consent
5 judgment is in the public interest; and

6 (B) the impact of entry of such judgment upon
7 competition in the relevant market or markets, upon the
8 public generally and individuals alleging specific
9 injury from the violations set forth in the complaint
10 including consideration of the public benefit, if any,
11 to be derived from a determination of the issues at
12 trial.

13 15 U.S.C. § 16(e) (1) (A)-(B). In considering these statutory
14 factors, the court's inquiry is necessarily a limited one as the
15 government is entitled to "broad discretion to settle with the
16 defendant within the reaches of the public interest." *United*
17 *States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995);
18 *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp.
19 2d 1 (D.D.C. 2007) (assessing public interest standard under the
20 Tunney Act).

21 Under the APPA a court considers, among other things, the
22 relationship between the remedy secured and the specific
23 allegations set forth in the government's complaint, whether the
24 decree is sufficiently clear, whether enforcement mechanisms are
25 sufficient, and whether the decree may positively harm third
26 parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the
27 adequacy of the relief secured by the decree, a court may not
28 "engage in an unrestricted evaluation of what relief would best
serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462
(9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d
660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-

1 62. Courts have held that:

2 [t]he balancing of competing social and political
3 interests affected by a proposed antitrust consent
4 decree must be left, in the first instance, to the
5 discretion of the Attorney General. The court's role
6 in protecting the public interest is one of insuring
7 that the government has not breached its duty to the
8 public in consenting to the decree. The court is
9 required to determine not whether a particular decree
10 is the one that will best serve society, but whether
11 the settlement is "*within the reaches of the public*
12 *interest.*" More elaborate requirements might undermine
13 the effectiveness of antitrust enforcement by consent
14 decree.

15 *Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).³

16 In making its public interest determination, a district court
17 "must accord deference to the government's predictions about the
18 efficacy of its remedies, and may not require that the remedies
19 perfectly match the alleged violations." *SBC Commc'ns*, 489 F.
20 Supp. 2d at 17; see also *Microsoft*, 56 F.3d at 1461 (noting need
21 for courts to be "deferential to the government's predictions as
22 to the effect of the proposed remedies"); *United States v.*
23 *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003)
24 (noting that the court should grant due respect to the prediction
25 of the United States as to the effect of proposed remedies, its

26 ³ Cf. *BNS*, 858 F.2d at 464 (holding that the court's
27 "ultimate authority under the [APPA] is limited to approving or
28 disapproving the consent decree"); *United States v. Gillette Co.*,
29 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way,
30 the court is constrained to "look at the overall picture not
31 hypercritically, nor with a microscope, but with an artist's
32 reducing glass"), *aff'd sub nom. Maryland v. United States*, 460
33 U.S. 1001 (1983). See generally *Microsoft*, 56 F.3d at 1461
34 (discussing whether "the remedies [obtained in the decree are] so
35 inconsonant with the allegations charged as to fall outside of
36 the 'reaches of the public interest'").

1 perception of the market structure, and its views of the nature
2 of the case).

3 Courts have greater flexibility in approving proposed
4 consent decrees than in crafting their own decrees following a
5 finding of liability in a litigated matter. "[A] proposed decree
6 must be approved even if it falls short of the remedy the court
7 would impose on its own, as long as it falls within the range of
8 acceptability or is 'within the reaches of public interest.'" *United States v. AT&T Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982)
9 (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716); see
10 also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622
11 (W.D. Ky. 1985) (approving the consent decree even though the
12 court would have imposed a greater remedy). To meet this
13 standard, the United States "need only provide a factual basis
14 for concluding that the settlements are reasonably adequate
15 remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d
16 at 17.

18 Moreover, the Court's role under the APPA is limited to
19 reviewing the remedy in relationship to the violations that the
20 United States has alleged in its Complaint, and does not
21 authorize the Court to "construct [its] own hypothetical case and
22 then evaluate the decree against that case." *Microsoft*, 56 F.3d
23 at 1459. Because the "court's authority to review the decree
24 depends entirely on the government's exercising its prosecutorial
25 discretion by bringing a case in the first place," it follows
26 that "the court is only authorized to review the decree itself,"
27

1 and not to "effectively redraft the complaint" to inquire into
2 other matters that the United States did not pursue. *Id.* at
3 1459-60. Courts "cannot look beyond the complaint in making the
4 public interest determination unless the complaint is drafted so
5 narrowly as to make a mockery of judicial power." *SBC*
6 *Communications*, 489 F. Supp. 2d at 15.

7 In its 2004 amendments, Congress made clear its intent to
8 preserve the practical benefits of utilizing consent decrees in
9 antitrust enforcement, adding the unambiguous instruction
10 "[n]othing in this section shall be construed to require the
11 court to conduct an evidentiary hearing or to require the court
12 to permit anyone to intervene." 15 U.S.C. § 16(e)(2). This
13 instruction explicitly writes into the statute the standard
14 intended by the Congress that enacted the Tunney Act in 1974 , as
15 Senator Tunney then explained: "[t]he court is nowhere compelled
16 to go to trial or to engage in extended proceedings which might
17 have the effect of vitiating the benefits of prompt and less
18 costly settlement through the consent decree process." 119 Cong.
19 Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the
20 procedure for the public interest determination is left to the
21 discretion of the court, with the recognition that the scope of
22 the court's "review remains sharply proscribed by precedent and
23 the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F.
24 Supp. 2d at 11.⁴

25
26 ⁴ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17
27 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the
28 court to make its public interest determination on the basis of

1 **IV. Conclusion**

2 For the reasons set forth in this Motion and Memorandum and
3 in the CIS, the Court should find that the proposed Final
4 Judgment is in the public interest and should enter the Final
5 Judgment without further hearings. The United States respectfully
6 requests that the Final Judgment annexed hereto be entered as
7 soon as possible.

8
9 Dated: January 13, 2010

10
11 By: _____/s/_____
12 Lowell R. Stern
13 Attorney for Plaintiff
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21 _____
22 the competitive impact statement and response to comments
23 alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade
24 Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing
25 of corrupt failure of the government to discharge its duty, the
26 Court, in making its public interest finding, should . . .
27 carefully consider the explanations of the government in order to
28 determine whether those explanations are reasonable under the
circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6
(1973) ("Where the public interest can be meaningfully evaluated
simply on the basis of briefs and oral arguments, that is the
approach that should be utilized.").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of January, 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Brett J. Williamson
Darin J. Glasser
O'Melveny & Myers LLP
610 Newport Center Drive
17th Floor
Newport Beach, CA 92660-6429

Michael E. Antalics
Benjamin G. Bradshaw
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

_____/s/_____
Lowell R. Stern
Attorney for Plaintiff

1 NOW THEREFORE, before any testimony is taken, without trial
2 or adjudication of any issue of fact or law, and upon consent of
3 the parties, it is ORDERED, ADJUDGED AND DECREED:

4
5 **I. Jurisdiction**

6 This Court has jurisdiction over the subject matter of and
7 each of the parties to this action. The Complaint states a claim
8 upon which relief may be granted against Microsemi under Section
9 7 of the Clayton Act, 15 U.S.C. § 18, as amended, and Section 2
10 of the Sherman Act, 15 U.S.C. § 2.

11
12 **II. Definitions**

13 As used in this Final Judgment:

14 A. "Microsemi" means defendant Microsemi Corporation, a
15 Delaware corporation with its headquarters in Irvine, California,
16 its successors and assigns, and its subsidiaries, divisions,
17 groups, affiliates, partnerships, and joint ventures, and their
18 directors, officers, managers, agents, and employees.

19 B. "Semicoa" means Semicoa, a California corporation with
20 its headquarters in Costa Mesa, California, its successors and
21 assigns, and its subsidiaries, divisions, groups, affiliates,
22 partnerships, and joint ventures, and their directors, officers,
23 managers, agents, and employees.

24 C. "Acquirer" means the entity to whom defendant divests
25 the Divestiture Assets.

26 D. "Divestiture Assets" means all assets acquired by
27 Microsemi from Semicoa on July 14, 2008, including but not
28 limited to:

1 (1) all specifications, manufacturing plans, assembly
2 instructions, standard operating procedures, and
3 work instructions related to the manufacturing
4 process, including all right, title and interest
5 in or to all other assets of every kind and nature
6 used or intended to be used in the operation of
7 Semicoa's business, including, but not limited to,
8 any finished or unfinished devices, any materials,
9 data or know-how wherever found or of whatever
10 kind reasonably required to manufacture and sell
11 the goods and services previously produced by
12 Semicoa, as well as all books and records, and all
13 files, documents, papers and agreements that are
14 material to the continuing operation of Semicoa's
15 business;

16 (2) all finished goods, works in progress, piece parts
17 and materials inventory, packaging, and labels,
18 supplies and other related personal property,
19 except that which has been sold since the closing
20 of the July 14, 2008 transaction between Microsemi
21 and Semicoa;

22 (3) all equipment, machinery or software used in the
23 development, design, manufacturing and testing of
24 goods previously manufactured by Semicoa;

25 (4) all right, title and interest in, and all
26 information related to, any tooling, molds,
27 equipment and proprietary specifications Semicoa
28 previously had with any and all vendors from which

1 Semicoa purchased goods or services, whether or
2 not there are any "open" purchase orders issued to
3 such vendors, as well as names and other
4 information concerning any vendor that provides
5 goods or services that were material to the
6 operation of Semicoa's business;

7 (5) any list of customers to which Semicoa previously
8 sold products or provided services over the three
9 years prior to July 14, 2008, whether or not there
10 are any "open" sales orders from such customers;

11 (6) all sales, marketing and promotional literature,
12 cost and pricing data, promotion list, marketing
13 data and other compilations of names and
14 requirements, customer lists and other sales-
15 related materials;

16 (7) all intellectual property ("IP") assets or rights
17 that have been used in the development,
18 production, servicing, and sale of QML Small
19 Signal Transistors and QML Ultrafast Recovery
20 Rectifier Diodes, including but not limited to:
21 all licenses, rights, and sublicenses, trademarks,
22 trade names, service marks, service names,
23 technical information, computer software and
24 related documentation, know-how, trade secrets,
25 approvals, certifications, advertising literature,
26 and all manuals and technical information provided
27 to the employees, customers, suppliers, agents, or
28 licensees of Semicoa and used in connection with

1 the development, design, manufacture, testing,
2 markets, sale, or distribution of QML Small Signal
3 Transistors or QML Ultrafast Recovery Rectifier
4 Diodes;

5 (8) all rights under all contracts, licenses,
6 sublicenses, agreements, leases, building leases,
7 commitments, purchase orders, bids and offers; and

8 (9) all rights acquired pursuant to municipal, state
9 and federal franchises, permits, licenses,
10 agreements, waivers and authorizations.

11 E. "QML Ultrafast Recovery Rectifier Diode" means each
12 JAN, JANS, JANTX, and JANTXV part listed on slash sheets 477 and
13 590 in the Qualified Products Database maintained by the Defense
14 Supply Center Columbus.

15 F. "QML Small Signal Transistor" means each JAN, JANS,
16 JANTX, and JANTXV part listed on slash sheets 182, 251, 253, 255,
17 270, 290, 291, 301, 317, 336, 349, 354, 366, 374, 376, 382, 391,
18 392, 394, 395, 423, 455, 512, 534, 535, 544, 545, 558, 559, 560,
19 and 561 in the Qualified Products Database maintained by the
20 Defense Supply Center Columbus.

21
22 **III. Applicability**

23 This Final Judgment applies to Microsemi, as defined above,
24 and all other persons in active concert or participation with it
25 who receive actual notice of this Final Judgment by personal
26 service or otherwise.

1 **IV. Divestiture**

2 A. Microsemi is hereby ordered and directed, within thirty
3 (30) calendar days after the filing of the proposed Final
4 Judgment in this matter, or five (5) calendar days after notice
5 of the entry of this Final Judgment by the Court, whichever is
6 later, to divest the Divestiture Assets to an Acquirer in a
7 manner consistent with this Final Judgment. The United States,
8 in its sole discretion, may agree to one extension of this time
9 period, not to exceed thirty (30) calendar days, and shall notify
10 the Court of such extension. Microsemi agrees to use its best
11 efforts to divest the Divestiture Assets as expeditiously as
12 possible.

13 B. Microsemi shall provide the Acquirer and the United
14 States information relating to the personnel involved in the
15 development, production, operation, testing, management, or sales
16 at the Divestiture Assets to enable the Acquirer to make offers
17 of employment. Microsemi will not interfere with any
18 negotiations by the Acquirer to employ any Microsemi employee
19 whose primary responsibility was the development, production,
20 operation, testing, management, or sales at the Divestiture
21 Assets.

22 C. Microsemi shall permit the Acquirer to have reasonable
23 access to personnel and to make inspections of the physical
24 facilities included in the Divestiture Assets; access to any and
25 all environmental, zoning, and other permit documents and
26 information; and access to any and all financial, operational, or
27 other documents and information customarily provided as part of a
28 due diligence process.

1 D. Microsemi shall warrant to the Acquirer that each asset
2 will be operational on the date of sale.

3 E. Microsemi shall not take any action that will impede in
4 any way the permitting, operation, or divestiture of the
5 Divestiture Assets.

6 F. Microsemi shall warrant to the Acquirer that there are
7 no material defects in the environmental, zoning, permitting,
8 qualification, or other permits pertaining to the operation of
9 the Divestiture Assets, and that following the sale of the
10 Divestiture Assets, Microsemi will not undertake directly or
11 indirectly, any challenges to the environmental, zoning, or other
12 permits relating to the operation of the Divestiture Assets.

13 G. Unless the United States otherwise consents in writing,
14 the divestiture pursuant to Section IV of this Final Judgment
15 shall include the entire Divestiture Assets, and shall be
16 accomplished in such a way as to satisfy the United States, in
17 its sole discretion, that the Divestiture Assets will remain
18 viable and the divestiture of such assets will remedy the
19 competitive harm alleged in the Complaint. The divestitures,
20 whether pursuant to Section IV or Section V of this Final
21 Judgment,

22 (1) shall be made to an Acquirer that, in the United
23 States's sole judgment, has the intent and
24 capability (including the necessary managerial,
25 operational, technical and financial capability)

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1 of competing effectively in the business of
2 developing, producing, and selling QML Small
3 Signal Transistors and QML Ultrafast Recovery
4 Rectifier Diodes; and

5 (2) shall be accomplished so as to satisfy the United
6 States, in its sole discretion, that none of the
7 terms of any agreement between an Acquirer and
8 Microsemi give Microsemi the ability unreasonably
9 to raise the Acquirer's costs, to lower the
10 Acquirer's efficiency, or otherwise to interfere
11 in the ability of the Acquirer to compete
12 effectively in the business of developing,
13 producing and selling QML Small Signal Transistors
14 or QML Ultrafast Recovery Rectifier Diodes.

15
16 **V. Appointment of Trustee to Effect Divestiture**

17 A. If Microsemi has not divested the Divestiture Assets
18 within the time period specified in Section IV(A), Microsemi
19 shall notify the United States of that fact in writing. Upon
20 application of the United States, the Court shall appoint a
21 trustee selected by the United States and approved by the Court
22 to effect the divestiture of the Divestiture Assets.

23 B. After the appointment of a trustee becomes effective,
24 only the trustee shall have the right to sell the Divestiture
25 Assets. The trustee shall have the power and authority to
26 accomplish the divestiture to an Acquirer acceptable to the
27 United States at such price and on such terms as are then
28 obtainable upon reasonable effort by the trustee, subject to the

1 provisions of Sections IV, V, and VI of this Final Judgment, and
2 shall have such other powers as this Court deems appropriate.
3 Subject to Section V(D) of this Final Judgment, the trustee may
4 hire at the cost and expense of Microsemi any investment bankers,
5 attorneys, or other agents, who shall be solely accountable to
6 the trustee, reasonably necessary in the trustee's judgment to
7 assist in the divestiture.

8 C. Microsemi shall not object to a sale by the trustee on
9 any ground other than the trustee's malfeasance. Any such
10 objections by Microsemi must be conveyed in writing to the United
11 States and the trustee within ten (10) calendar days after the
12 trustee has provided the notice required under Section VI.

13 D. The trustee shall serve at the cost and expense of
14 Microsemi, on such terms and conditions as the United States
15 approves, and shall account for all monies derived from the sale
16 of the Divestiture Assets and all costs and expenses so incurred.
17 After approval by the Court of the trustee's accounting,
18 including fees for its services and those of any professionals
19 and agents retained by the trustee, all remaining money shall be
20 paid to Microsemi and the trust shall then be terminated. The
21 compensation of the trustee and any professionals and agents
22 retained by the trustee shall be reasonable in light of the value
23 of the Divestiture Assets and based on a fee arrangement
24 providing the trustee with an incentive based on the price and
25 terms of the divestiture and the speed with which it is
26 accomplished, but timeliness is paramount.

27 E. Microsemi shall use its best efforts to assist the
28 trustee in accomplishing the required divestiture. The trustee

1 and any consultants, accountants, attorneys, and other persons
2 retained by the trustee shall have full and complete access to
3 the personnel, books, records, and facilities of the business to
4 be divested, and Microsemi shall develop financial and other
5 information relevant to such business as the trustee may
6 reasonably request, subject to reasonable protection for trade
7 secret or other confidential research, development, or commercial
8 information. Microsemi shall take no action to interfere with or
9 to impede the trustee's accomplishment of the divestiture.

10 F. After its appointment, the trustee shall file monthly
11 reports with the United States and the Court setting forth the
12 trustee's efforts to accomplish the divestiture ordered under
13 this Final Judgment. To the extent such reports contain
14 information that the trustee deems confidential, such reports
15 shall not be filed in the public docket of the Court. Such
16 reports shall include the name, address, and telephone number of
17 each person who, during the preceding month, made an offer to
18 acquire, expressed an interest in acquiring, entered into
19 negotiations to acquire, or was contacted or made an inquiry
20 about acquiring, any interest in the Divestiture Assets, and
21 shall describe in detail each contact with any such person. The
22 trustee shall maintain full records of all efforts made to divest
23 the Divestiture Assets.

24 G. If the trustee has not accomplished the divestiture
25 ordered under this Final Judgment within six (6) months after its
26 appointment, the trustee shall promptly file with the Court a
27 report setting forth: (1) the trustee's efforts to accomplish
28 the required divestiture; (2) the reasons, in the trustee's

1 judgment, why the required divestiture has not been accomplished;
2 and (3) the trustee's recommendations. To the extent such
3 reports contain information that the trustee deems confidential,
4 such reports shall not be filed in the public docket of the
5 Court. The trustee shall at the same time furnish such report to
6 the United States, which shall have the right to make additional
7 recommendations consistent with the purpose of the trust. The
8 Court thereafter shall enter such orders as it shall deem
9 appropriate to carry out the purpose of the Final Judgment, which
10 may, if necessary, include extending the trust and the term of
11 the trustee's appointment by a period requested by the United
12 States.

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VI. Notice of Proposed Divestiture

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A. Within two (2) business days following execution of a definitive divestiture agreement, Microsemi or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Microsemi. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from

1 Microsemi, the proposed Acquirer, any other third party, or the
2 trustee, if applicable, additional information concerning the
3 proposed divestiture and the proposed Acquirer. Microsemi and
4 the trustee shall furnish any additional information requested
5 within fifteen (15) calendar days of the receipt of the request,
6 unless the parties shall otherwise agree.

7 C. Within thirty (30) calendar days after receipt of the
8 notice or within twenty (20) calendar days after the United
9 States has been provided the additional information requested
10 from Microsemi, the proposed Acquirer, any third party, and the
11 trustee, whichever is later, the United States shall provide
12 written notice to Microsemi and the trustee, if there is one,
13 stating whether or not it objects to the proposed divestiture.
14 If the United States provides written notice that it does not
15 object, the divestiture may be consummated, subject only to
16 Microsemi's limited right to object to the sale under Section
17 V(C) of this Final Judgment. Absent written notice that the
18 United States does not object to the proposed Acquirer or upon
19 objection by the United States, a divestiture proposed under
20 Section IV or Section V shall not be consummated. Upon objection
21 by Microsemi under Section V(C), a divestiture proposed under
22 Section V shall not be consummated unless approved by the Court.

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VII. Financing

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Microsemi shall not finance all or any part of any purchase
or divestiture made pursuant to Section IV or V of this Final
Judgment.

1 **VIII. Preserving and Maintaining Divestiture Assets**

2 Until the divestiture required by this Final Judgment has
3 been accomplished, Microsemi shall take all steps necessary to
4 comply with the Order Approving Stipulation Modifying Order to
5 Preserve and Maintain Assets and Stipulation Modifying Order to
6 Preserve and Maintain Assets. Microsemi shall take no action
7 that would jeopardize the divestiture ordered by this Court.

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9 **IX. Affidavits**

10 A. Within twenty (20) calendar days of the filing of the
11 proposed Final Judgment in this matter, and every thirty (30)
12 calendar days thereafter until the divestiture has been completed
13 under Section IV or V, Microsemi shall deliver to the United
14 States an affidavit as to the fact and manner of its compliance
15 with Section IV or V of this Final Judgment. Each such affidavit
16 shall include the name, address, and telephone number of each
17 person who, during the preceding thirty (30) calendar days, made
18 an offer to acquire, expressed an interest in acquiring, entered
19 into negotiations to acquire, or was contacted or made an inquiry
20 about acquiring, any interest in the Divestiture Assets, and
21 shall describe in detail each contact with any such person during
22 that period. Each such affidavit shall also include a
23 description of the efforts Microsemi has taken to solicit buyers
24 for the Divestiture Assets, and to provide required information
25 to prospective Acquirers, including the limitations, if any, on
26 such information. Assuming the information set forth in the
27 affidavit is true and complete, any objection by the United
28 States to information provided by Microsemi, including limitation

1 on information, shall be made within fourteen (14) calendar days
2 of receipt of such affidavit.

3 B. Within twenty (20) calendar days of the filing of the
4 proposed Final Judgment in this matter, Microsemi shall deliver
5 to the United States an affidavit that describes in reasonable
6 detail all actions Microsemi has taken and all steps Microsemi
7 has implemented on an ongoing basis to comply with Section VIII
8 of this Final Judgment. Microsemi shall deliver to the United
9 States an affidavit describing any changes to the efforts and
10 actions outlined in Microsemi's earlier affidavits filed pursuant
11 to this section within fifteen (15) calendar days after the
12 change is implemented.

13 C. Microsemi shall keep all records of all efforts made to
14 preserve and divest the Divestiture Assets until one year after
15 such divestiture has been completed.

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17 **X. Compliance Inspection**

18 A. For the purposes of determining or securing compliance
19 with this Final Judgment, or of determining whether the Final
20 Judgment should be modified or vacated, and subject to any
21 legally recognized privilege, from time to time authorized
22 representatives of the United States Department of Justice
23 Antitrust Division, including consultants and other persons
24 retained by the United States, shall, upon written request of an
25 authorized representative of the Assistant Attorney General in
26 charge of the Antitrust Division, and on reasonable notice to
27 Microsemi, be permitted:

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1 (1) access during Microsemi's office hours to inspect
2 and copy, or at the option of the United States,
3 to require Microsemi to provide hard copy or
4 electronic copies of, all books, ledgers,
5 accounts, records, data, and documents in the
6 possession, custody, or control of Microsemi,
7 relating to any matters contained in this Final
8 Judgment; and

9 (2) to interview, either informally or on the record,
10 Microsemi's officers, employees, or agents, who
11 may have their individual counsel present,
12 regarding such matters. The interviews shall be
13 subject to the reasonable convenience of the
14 interviewee and without restraint or interference
15 by Microsemi.

16 B. Upon the written request of an authorized
17 representative of the Assistant Attorney General in charge of the
18 Antitrust Division, Microsemi shall submit written reports or
19 response to written interrogatories, under oath if requested,
20 relating to any of the matters contained in this Final Judgment
21 as may be requested.

22 C. No information or documents obtained by the means
23 provided in this section shall be divulged by the United States
24 to any person other than an authorized representative of the
25 executive branch of the United States, except in the course of
26 legal proceedings to which the United States is a party
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1 (including grand jury proceedings), or for the purpose of
2 securing compliance with this Final Judgment, or as otherwise
3 required by law.

4 D. If at the time information or documents are furnished
5 by Microsemi to the United States, Microsemi represents and
6 identifies in writing the material in any such information or
7 documents to which a claim of protection may be asserted under
8 Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and
9 Microsemi marks each pertinent page of such material, "Subject to
10 claim of protection under Rule 26(c)(1)(G) of the Federal Rules
11 of Civil Procedure," then the United States shall give Microsemi
12 ten (10) calendar days notice prior to divulging such material in
13 any legal proceeding (other than a grand jury proceeding).

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XI. Notification

16 Unless such transaction is otherwise subject to the
17 reporting and waiting period requirements of the
18 Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended,
19 15 U.S.C. § 18a (the "HSR Act"), Microsemi, without providing
20 advance notification to the Antitrust Division, shall not
21 directly or indirectly acquire any assets of or any interest,
22 including any financial, security, loan, equity or management
23 interest, in any entity engaged in the development, production,
24 or sale of QML Small Signal Transistors or QML Ultrafast Recovery
25 Rectifier Diodes during the term of this Final Judgment.

26 Such notification shall be provided to the Antitrust
27 Division in the same format as, and per the instructions relating
28 to, the Notification and Report Form set forth in the Appendix to

1 Part 803 of Title 16 of the Code of Federal Regulations as
2 amended, except that the information requested in Items 5 through
3 9 of the instructions must be provided only about QML Small
4 Signal Transistors or QML Ultrafast Recovery Rectifier Diodes.
5 Notification shall be provided at least thirty (30) calendar days
6 prior to acquiring any such interest, and shall include, beyond
7 what may be required by the applicable instructions, the names of
8 the principal representatives of the parties to the agreement who
9 negotiated the agreement, and any management or strategic plans
10 discussing the proposed transaction. Early termination of the
11 waiting periods in this paragraph may be requested and, where
12 appropriate, granted in the same manner as is applicable under
13 the requirements and provisions of the HSR Act and rules
14 promulgated thereunder. This Section shall be broadly construed
15 and any ambiguity or uncertainty regarding the filing of notice
16 under this Section shall be resolved in favor of filing notice.

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18 **XII. No Reacquisition**

19 Microsemi may not reacquire any part of the Divestiture
20 Assets during the term of this Final Judgment.

21
22 **XIII. Retention of Jurisdiction**

23 This Court retains jurisdiction to enable any party to this
24 Final Judgment to apply to this Court at any time for further
25 orders and directions as may be necessary or appropriate to carry
26 out or construe this Final Judgment, to modify any of its
27 provisions, to enforce compliance, and to punish violations of
28 its provisions.

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XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____, 2009

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Honorable Andrew J. Guilford
United States District Judge