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2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
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6 UNITED STATES OF AMERICA,)
7 Plaintiff,) CASE NO.: 8:09-cv-00275-AG-AN
8 v.) **FINAL JUDGMENT**
9 MICROSEMI CORPORATION,)
10 Defendant.) Hon. Andrew J. Guilford
11 _____)

12 **FINAL JUDGMENT**

13 WHEREAS, plaintiff, United States of America, filed its
14 Complaint on December 18, 2008, and the United States and
15 Microsemi Corporation ("Microsemi"), by their respective
16 attorneys, have consented to the entry of this Final Judgment
17 without trial or adjudication of any issue of fact or law, and
18 without this Final Judgment constituting any evidence against or
19 admission by any party regarding any issue of fact or law;

20 AND WHEREAS, Microsemi agrees to be bound by the provisions
21 of this Final Judgment pending its approval by the Court;

22 AND WHEREAS, the essence of this Final Judgment is the
23 prompt and certain divestiture of certain rights and assets by
24 Microsemi to assure that competition is substantially restored;

25 AND WHEREAS, Microsemi has represented to the United States
26 that the divestiture required below can and will be made and that
27 Microsemi will later raise no claim of hardship or difficulty as
28 grounds for asking the Court to modify any of the provisions
contained below;

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:
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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.
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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.

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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.

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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

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

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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.

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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