

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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	)	
In the Matter of	)	
	)	FILE NO. 9623002
SYNCRONYS SOFTCORP,	)	
a corporation,	)	AGREEMENT CONTAINING
	)	CONSENT ORDER
RAINER POERTNER,	)	
individually and as an officer	)	
of the corporation,	)	
	)	
DANIEL G. TAYLOR,	)	
individually and as an officer	)	
of the corporation, and	)	
	)	
WENDELL BROWN,	)	
individually and as an officer	)	
of the corporation.	)	

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The Federal Trade Commission has conducted an investigation of certain acts and practices of Synchronys Softcorp, a corporation, Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Synchronys Softcorp, by its duly authorized officers, and Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent Synchronys Softcorp is a Nevada corporation with its principal office or place of business at 3958 Ince Boulevard, Culver City, California 90232.

1.b. Proposed respondent Rainer Poertner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in

the draft complaint. His principal office or place of business is the same as that of Synchronys Softcorp.

1.c. Proposed respondent Daniel G. Taylor is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in the draft complaint. His principal office or place of business is the same as that of Synchronys Softcorp.

1.d. Proposed respondent Wendell Brown is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in the draft complaint. His principal office or place of business is the same as that of Synchronys Softcorp.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

#### ORDER

#### DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Random access memory (RAM)" is the primary working memory in a computer. The instructions provided by a computer program and the data being worked on are stored in RAM while the program is running. Additional RAM, measured in megabytes ("MBs"), can be purchased in the form of microchips that are physically inserted into a computer.

2. "Compression technology" is a process which allows more information to reside in RAM. Compression technology eliminates redundant data by utilizing various recipes for analyzing and transforming it.

3. "Windows 95" refers to the Windows 95 software operating system manufactured by Microsoft, Inc.

4. "Substantially similar product" shall mean any software product that uses or purports to use compression technology and that is intended or purports to increase the amount of RAM in a computer or to accomplish any effect similar to one that would be caused by increasing the amount of RAM in a computer. These effects include, but are not limited to, increase in speed of computer operations, increase in size or number of applications that can be run simultaneously, and expansion of systems resources or reduction or elimination of "insufficient memory" errors or messages.

5. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

6. Unless otherwise specified, "respondents" shall mean Synchronys Softcorp, a corporation, its successors and assigns and its officers; Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation; and each of the above's agents, representatives, and employees.

7. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

#### I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of SoftRAM<sup>95</sup> or any substantially similar product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that:

- A. Such product increases RAM in a computer using Windows 95 to a greater extent than other software products;
- B. Such product uses compression technology to increase the RAM available to a computer using Windows 95 or achieves RAM compression ratios of up to five times or higher in a computer using Windows 95;

- C. Such product produces the effect of increasing the RAM available to a computer using Windows 95;
- D. Use of such product in a computer will speed up Windows 95;
- E. Use of such product will permit a Windows 95 user to run larger applications on a computer or to open more applications simultaneously;
- F. Use of such product with Windows 95 will result in expanded systems resources on a computer and will substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s); or
- G. Microsoft, Inc. has licensed, endorsed, or otherwise approved such product for use with Windows 95.

## II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of SoftRAM, SoftRAM<sup>95</sup>, or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the relative or absolute performance, attributes, benefits, or effectiveness of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

## III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product intended to improve the performance of any computer in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product has been authorized, certified, licensed, endorsed, or otherwise approved

by any person or organization, unless such representation is true.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product intended to improve the performance of any computer in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the relative or absolute performance, attributes, benefits, or effectiveness of such product, unless, at the time it is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Synchronys Softcorp and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the

subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent Synchronys Softcorp and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

#### VII.

IT IS FURTHER ORDERED that respondent Synchronys Softcorp and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

#### VIII.

IT IS FURTHER ORDERED that respondents Rainer Poertner, Daniel G. Taylor, and Wendell Brown, for a period of five (5) years after the date of issuance of this order, shall each notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any company engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product intended to improve the performance of any computer in or affecting commerce. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

SYNCRONYS SOFTCORP

By: \_\_\_\_\_  
RAINER POERTNER  
President



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RAINER POERTNER, individually  
and as an officer of the  
corporation

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DANIEL G. TAYLOR, individually  
and as an officer of the  
corporation

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WENDELL BROWN, individually  
and as an officer of the  
corporation

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JULIE GEARTY  
Counsel for the Federal Trade  
Commission

APPROVED:

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MICHAEL JOEL BLOOM  
Director  
New York Regional Office

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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SYNCRONYS SOFTCORP, )  
a corporation, )  
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RAINER POERTNER, )  
individually and as an officer )  
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DOCKET NO. )  
)  
DANIEL G. TAYLOR, )  
individually and as an officer )  
of the corporation, and )  
)  
WENDELL BROWN, )  
individually and as an officer )  
of the corporation. )

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COMPLAINT

The Federal Trade Commission, having reason to believe that Synchronys Softcorp, a corporation, and Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Synchronys Softcorp is a Nevada corporation with its principal office or place of business at 3958 Ince Boulevard, Culver City, California 90232.
2. Respondent Rainer Poertner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Synchronys Softcorp.

3. Respondent Daniel G. Taylor is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Synchronys Softcorp.

4. Respondent Wendell Brown is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Synchronys Softcorp.

5. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed to the public software products intended to improve the performance of personal computers, including "SoftRAM" and "SoftRAM<sup>95</sup>."

6. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

#### Background

7. For a computer to work, it must "load" its own operating instructions, the applications programs being used (such as word processing, spreadsheet, and database programs), and the data being worked on into its "random access memory," often referred to as "RAM." As computers' operating instructions and applications programs have become more powerful, they generally have become more "memory intensive," *i.e.*, they have needed more RAM to load and run properly. This has been true of the "Windows" operating systems manufactured by Microsoft, Inc. -- the predominant operating systems in personal computers -- and for applications programs sold for use with them.

8. When a computer has inadequate RAM for a user's demands, the computer may operate sluggishly, refuse to run large or multiple programs, or "crash," in effect shutting down catastrophically with resultant loss of data. Additional RAM, however, generally can be purchased and installed in a computer in order to mitigate or remedy these problems. RAM is measured in "megabytes," often abbreviated as "MB," and is purchased in the form of memory chips that are inserted into the computer's processor. Additional RAM is relatively expensive, and personal computer users often spend several hundred dollars to purchase and install additional RAM adequate to their needs.

9. In or about May 1995, respondents began marketing a software product called "SoftRAM." As is more fully described subsequently, respondents promoted SoftRAM to users of the Windows 3.0, 3.1, and 3.11 operating systems (collectively "Windows 3.x") as a substantially less expensive, but functionally identical, alternative to the purchase and installation of additional RAM. To date, respondents have sold approximately 100,000 copies of SoftRAM for that purpose.

10. In or about August 1995, Microsoft, Inc. introduced "Windows 95," a much publicized and awaited operating system said to embody numerous and substantial improvements over Windows 3.x. At the time of its release, it was expected that there would be an unparalleled demand for Windows 95, both as installed in new computers and as "upgrades" to computers using Windows 3.x. Both before and after the introduction of Windows 95, considerable notice was taken by prospective purchasers of the fact that Windows 95 and applications sold for use with it would be particularly "memory hungry," requiring at least eight megabytes of RAM and preferably sixteen. The great number of computer users with only four or eight megabytes of RAM in their computers were frequently cautioned that they could upgrade effectively to Windows 95 only by acquiring additional RAM.

11. As is more fully described subsequently, in or about August 1995, respondents began the promotion and sale of "SoftRAM<sup>95</sup>," bearing Microsoft's logo "Designed for Windows 95," to prospective and actual Windows 95 users as a substantially less expensive, but functionally identical, alternative to the purchase and installation of additional RAM. To date, respondents have sold approximately 600,000 copies of SoftRAM<sup>95</sup> for that purpose.

#### SoftRAM

12. Since at least May 1995, respondents have disseminated or have caused to be disseminated advertisements and product packaging that make a variety of effectiveness claims for SoftRAM. Respondents' advertisements and product packaging include, but are not necessarily limited to, the attached Exhibit 1. These advertisements and product packages contain the following statements:

- A. **"Double Your Memory**  
seamlessly with SoftRAM. Eliminate the expense and hassle of opening your PC to install hard RAM."  
(Emphasis in original; Exhibit 1).
- B. **"Imagine: 4MB becomes 8**

8 becomes 16 . . . You become doubly productive. Open more applications simultaneously and say good-bye to [computer screen messages indicating error due to insufficient memory]." (Emphasis in original; Exhibit 1).

C. **"SoftRAM's Patented Technologies**

take your Windows memory and effectively double it. And SoftRAM's unique RAM Analyst . . . pre-calculates the most efficient compression method for each RAM page of memory." (Emphasis in original; Exhibit 1).

13. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that:

- A. SoftRAM uses compression technology to double the RAM available to a computer using Windows 3.x;
- B. SoftRAM produces the effect of doubling RAM in a computer using Windows 3.x, such that a computer with 4MB of RAM will behave as though it had 8MB of RAM and a computer with 8MB of RAM will behave as though it had 16MB of RAM;
- C. Use of SoftRAM will permit a Windows 3.x user to open more applications simultaneously on a computer as though the amount of RAM in that computer had been doubled; and
- D. Use of SoftRAM in a computer using Windows 3.x will substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s).

14. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 13, at the time the representations were made.

15. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 13, at the time the representations were made. Therefore, the representation set forth in Paragraph 14 was, and is, false or misleading.

SoftRAM<sup>95</sup>

16. Since at least August 1995, respondents have disseminated or caused to be disseminated advertisements and product packaging that make a variety of effectiveness claims for SoftRAM<sup>95</sup>. Respondents' advertisements and product packaging include, but are not necessarily limited to, the attached Exhibits 2, 3, and 4. These advertisements and product packages contain the following statements and depictions:

- A. **"ANNOUNCING THE ONLY DISK THAT DOUBLES YOUR MEMORY FOR WINDOWS 95."** (Emphasis in original; Exhibit 2).
- B. "Why risk the technical nightmare and expense of adding hard RAM? Just click on SoftRAM<sup>95</sup>, the only software to instantly speed up Windows 95 and Windows 3.0 and higher." (Exhibit 2).
- C. "Doubling RAM doesn't have to be hard. Install SoftRAM<sup>95</sup> and instantly speed up Windows 95 and Windows 3.0 and higher. Run multimedia and RAM hungry applications. Open more applications simultaneously." (Emphasis in original; Exhibit 3).
- D. "4MB becomes at least 8MB. 8MB becomes at least 16MB. . . . (In fact, you can get up to 5 times more memory.)" (Exhibit 3).
- E. "Designed for Microsoft Windows 95 [depicting the Microsoft logo]." (Exhibit 4).
- F. **"Double Your Memory**  
and expand your System Resources seamlessly with SoftRAM<sup>95</sup>. Eliminate the expense and hassle of opening your PC to install HardRAM chips." (Emphasis in original; Exhibit 4).
- G. **"Imagine: 4MB becomes 8MB**  
8MB becomes 16MB . . . You become doubly productive." (Emphasis in original; Exhibit 4).
- H. "Say good-bye to 'Out-of-Memory' messages." (Exhibit 4).
- I. **"SoftRAM<sup>95</sup>'s Patent Pending**  
RAM compression technology takes your Windows memory and at least doubles it. In fact, SoftRAM<sup>95</sup> now achieves RAM compression ratios of up to 5x and higher." (Emphasis in original; Exhibit 4).

17. Through the means described in Paragraph 16, respondents have represented, expressly or by implication, that:

- A. SoftRAM<sup>95</sup> increases RAM in a computer using Windows 95 to a greater extent than other software products;
- B. SoftRAM<sup>95</sup> uses compression technology to at least double the RAM available to a computer using Windows 3.x or Windows 95, and achieves RAM compression ratios of up to five times and higher in such a computer;
- C. SoftRAM<sup>95</sup> produces the effect of at least doubling RAM in a computer using Windows 3.x or Windows 95, such that a computer with 4MB of RAM will behave as though it had 8MB of RAM and a computer with 8MB of RAM will behave as though it had 16MB of RAM;
- D. Use of SoftRAM<sup>95</sup> in a computer will speed up Windows 3.x or Windows 95 as though the amount of RAM in that computer had been at least doubled;
- E. Use of SoftRAM<sup>95</sup> will permit a Windows 3.x or Windows 95 user to run larger applications on a computer, and to open more applications simultaneously, as though the amount of RAM in that computer had been at least doubled;
- F. Use of SoftRAM<sup>95</sup> with Windows 3.x or Windows 95 will result in expanded systems resources on a computer and will substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s); and
- G. Microsoft, Inc. has licensed, endorsed, or otherwise approved SoftRAM<sup>95</sup> for use with Windows 95.

18. In truth and in fact,

- A. SoftRAM<sup>95</sup> does not increase RAM in a computer using Windows 95 to a greater extent than other software products;
- B. SoftRAM<sup>95</sup> does not use compression technology or at least double the RAM available to a computer using Windows 95, nor does it achieve RAM compression ratios of up to five times and higher in a computer using Windows 95; in fact, SoftRAM<sup>95</sup> does not increase the RAM available to a computer using Windows 95;

- C. SoftRAM<sup>95</sup> does not produce the effect of at least doubling RAM in a computer using Windows 95, such that a computer with 4MB of RAM will behave as though it had 8MB of RAM and a computer with 8MB of RAM will behave as though it had 16MB of RAM; in fact, SoftRAM<sup>95</sup> does not produce the effect of increasing RAM in a computer using Windows 95;
- D. Use of SoftRAM<sup>95</sup> in a computer will not speed up Windows 95 as though the amount of RAM in that computer had been at least doubled; in fact, use of SoftRAM<sup>95</sup> will not speed up Windows 95;
- E. Use of SoftRAM<sup>95</sup> will not permit a Windows 95 user to run larger applications on a computer, or to open more applications simultaneously, as though the amount of RAM in that computer had been at least doubled; in fact, use of SoftRAM<sup>95</sup> will not permit a Windows 95 user to run larger applications or to open more applications simultaneously;
- F. Use of SoftRAM<sup>95</sup> with Windows 95 will not result in expanded systems resources on a computer and will not substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s); and
- G. Microsoft, Inc. has not licensed, endorsed, or otherwise approved SoftRAM<sup>95</sup> for use with Windows 95.

Therefore, the representations set forth in Paragraph 17, to the extent applicable to Windows 95, were, and are, false or misleading.

19. Through the means described in Paragraph 16, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 17, subparagraphs A through F, at the time the representations were made.

20. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 17, subparagraphs A through F, at the time the representations were made. Therefore, the representation set forth in Paragraph 19 was, and is, false or misleading.

21. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or



affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this        day of  
,        , has issued this complaint against respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibits 1-4 attached to paper copies, but not available in  
electronic form]

## ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Synchronys Softcorp, Rainer Poertner, Daniel G. Taylor, and Wendell Brown. The proposed respondents are marketers of computer software products, including SoftRAM and SoftRAM<sup>95</sup>.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents made the following unsubstantiated representations about SoftRAM: (1) SoftRAM uses compression technology to double the random access memory ("RAM") available to a computer using any of Microsoft, Inc.'s Windows 3.0, 3.1, or 3.11 operating systems (collectively "Windows 3.x"); (2) SoftRAM produces the effect of doubling RAM in a computer using Windows 3.x; (3) use of SoftRAM will permit a Windows 3.x user to open more applications simultaneously on a computer; and (4) use of SoftRAM in a computer using Windows 3.x will substantially reduce or eliminate the occurrence of computer screen messages that indicate insufficient memory.

With respect to SoftRAM<sup>95</sup>, the complaint charges that the proposed respondents made the following unsubstantiated representations: (1) SoftRAM<sup>95</sup> increases RAM in a computer using Microsoft, Inc.'s Windows 95 operating system ("Windows 95") to a greater extent than other software products; (2) SoftRAM<sup>95</sup> uses compression technology to at least double the RAM available to a computer using Windows 3.x or Windows 95, and achieves RAM compression ratios of up to five times and higher in such a computer; (3) SoftRAM<sup>95</sup> produces the effect of at least doubling RAM in a computer using Windows 3.x or Windows 95; (4) use of SoftRAM<sup>95</sup> in a computer will speed up Windows 3.x or Windows 95; (5) use of SoftRAM<sup>95</sup> will permit a Windows 3.x or Windows 95 user to run larger applications on a computer, and to open more applications simultaneously; and (6) use of SoftRAM<sup>95</sup> with Windows 3.x or Windows 95 will result in expanded systems resources on a computer and will substantially reduce or eliminate the occurrence of computer screen messages that indicate insufficient memory. The complaint also charges that claims (1) through (6) are false to the extent that they apply to use of SoftRAM<sup>95</sup> with Windows 95. Further, the complaint charges that the proposed respondents have falsely represented that Microsoft, Inc. has licensed, endorsed, or otherwise approved SoftRAM<sup>95</sup> for use with Windows 95.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order, in connection with SoftRAM<sup>95</sup> or any substantially similar product, prohibits the proposed respondents from misrepresenting that: (1) such product increases RAM in a computer using Windows 95 to a greater extent than other software

products; (2) such product uses compression technology to increase the RAM available to a computer using Windows 95 or achieves RAM compression ratios of up to five times or higher in a computer using Windows 95; (3) such product produces the effect of increasing the RAM available to a computer using Windows 95; (4) use of such product in a computer will speed up Windows 95; (5) use of such product will permit a Windows 95 user to run larger applications on a computer or to open more applications simultaneously; (6) use of such product with Windows 95 will result in expanded systems resources on a computer and will substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s); or (7) Microsoft, Inc. has licensed, endorsed, or otherwise approved such product for use with Windows 95.

Part II of the proposed order prohibits any representation which relates to the relative or absolute performance, attributes, benefits, or effectiveness of SoftRAM, SoftRAM<sup>95</sup>, or any substantially similar product, unless such representation is true and proposed respondents possess and rely upon competent and reliable evidence that substantiates the representation. Part III of the proposed order prohibits the proposed respondents from representing that any product intended to improve the performance of any computer has been authorized, certified, licensed, endorsed, or otherwise approved by any person or organization, unless such representation is true. In addition, Part IV prohibits any representation which relates to the relative or absolute performance, attributes, benefits, or effectiveness of any product intended to improve the performance of any computer, unless proposed respondents possess and rely upon competent and reliable evidence that substantiates the representation.

The proposed order (Part V) contains recordkeeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, the proposed order (Part VI) requires distribution of a copy of the consent decree to current and future officers and agents. Further, Part VII provides for Commission notification upon a change in the corporate respondent and Commission notification when each of the individual respondents changes his present business or employment (Part VIII). The proposed order also requires the filing of compliance report(s) (Part IX).

Finally, Part X provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.