



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1537/5/7/22(T)

BETWEEN:

OT COMPUTERS LIMITED (IN LIQUIDATION)

Claimant

- v -

MICRON EUROPE LIMITED

Defendant/Part 20 Claimant

- and -

SAMSUNG SEMICONDUCTOR EUROPE LIMITED

Part 20 Defendant

ORDER

UPON the European Commission having issued a decision in Case COMP/38511 DRAMs dated 19 May 2010 addressed to, amongst others, the Defendant and the Part 20 Defendant (the “Decision”), and the Decision having become final against all addressees

AND UPON the terms of the Decision, the Defendant and Part 20 Defendant each having been found liable for a single and continuous infringement of Articles 101 of the Treaty on the Functioning of the European Union and 53 of the European Economic Area (“EEA”) Agreement (“the Infringement”) by their participation in anti-competitive courses of conduct (“the Cartel”) amounting to price coordination in respect of the sale of Dynamic Random Access Memory (“DRAMs”) to customers who were major personal computer/server Original Equipment Manufacturers throughout the EEA

AND UPON the proceedings issued in the High Court under Claim No. CL-2016-000304 on 18 May 2016 having been transferred to the Competition Appeals Tribunal by Order dated 5 October 2022

AND UPON the applications of the Claimant dated 26 May 2023 (i) for disclosure of the confidential version of the Decision and of documents from the European Commission's administrative file and (ii) for the proceedings to be costs managed

AND UPON the application of the Defendant dated 26 May 2023 for disclosure by the Claimant

AND UPON the Defendant agreeing to the Claimant re-amending its Particulars of Claim in the agreed form

AND UPON the Claimant having confirmed by its letter of 9 June 2023 that it agrees that certain categories of documents and data identified by the Defendant as now set out in modified form in Annex 1 to that letter are relevant to the issues in dispute and should be disclosed by the Claimant in so far as they are identified

AND UPON the Part 20 Defendant reserving its right to seek permission to adduce expert evidence in due course

AND UPON the following definitions applying for the purposes of this Order:

“Confidentiality Ring” means the confidentiality ring established in these proceedings pursuant to an Order of the Tribunal made and drawn 30 June 2023 (the “Confidentiality Ring Order”); and

“Commission File Order” means the Order of the Tribunal in these proceedings made and drawn 30 June 2023 providing for disclosure by the Defendant of a less redacted version of the Decision and documents from the European Commission's administrative file relating to the DRAM investigation, the “SSEL Commission File” as defined in such Order;

AND UPON hearing counsel for the Claimant, leading counsel for the Defendant and leading counsel the Part 20 Defendant at a case management conference on 13 June 2023

IT IS ORDERED THAT:

1. PLEADINGS

- 1.1 The Claimant shall file and serve re-amended Particulars of Claim in the agreed form.
- 1.2 The Defendant may file and serve a consequentially re-amended Defence within 28 days of service of the re-amended Particulars of Claim.
- 1.3 The Claimant may file and serve a consequentially amended Reply within 28 days of service of any re-amended Defence.

2. TRIAL DATE

- 2.1 The trial of the Claim shall be listed for 4 weeks within the window starting 17 March 2025 and ending on 28 April 2025.
- 2.2 A pre-trial review shall be listed on a date approximately 4 weeks before the trial with a time estimate of half a day.

3. DISCLOSURE BY THE CLAIMANT

- 3.1 The Claimant shall undertake reasonable and proportionate searches to identify documents relating to the issues identified in Schedule 1 to this Order, and produce for inspection to the parties copies of any documents identified by 29 September 2023.
- 3.2 The Claimant shall conduct searches, without limitation, of the boxes of documents held by its liquidator which are listed at Schedule 2 to this Order.
- 3.3 The disclosure list provided by the Claimant in accordance with paragraph 3.1 shall specify which box each disclosed document came from, by reference to the box number referred to in the Claimant's list of boxes as previously provided to the Defendant.
- 3.4 The Claimant's disclosure shall be accompanied by a Disclosure Statement by an appropriate person who shall (a) set out the extent of the search that has been made in order to locate the documents ordered to be disclosed; (b) specify the manner in which the search has been limited on reasonableness and proportionality grounds and why; and (c) certify that to the best of their knowledge and belief the disclosure ordered has been provided.

4. INITIAL DISCLOSURE BY THE DEFENDANT AND PART 20 DEFENDANT

- 4.1 The Defendant and the Part 20 Defendant shall provide disclosure in stages. The documents to be disclosed by way of first stage disclosure are as follows.
- 4.2 The Defendant shall provide disclosure and inspection of a less redacted version of Decision and Commission File in accordance with the terms of the Commission File Order.
- 4.3 The Defendant shall provide disclosure and inspection of the following categories of documents and data by 29 September 2023:
 - (a) The data identified at items C11 to C14 of the Annex to the Defendant's Disclosure Report dated 6 September 2022;
 - (b) To the extent it is not covered in paragraph 4.3(a) above, legacy sales data for all customers of DRAM in the UK from July 1996 to the end of the financial year in which June 2004 falls;
 - (c) Documents referred to in the First Witness Statement of Michael Bokan dated 20 November 2019, to include in particular pricing policy information including guidelines and internal discussions, information on the relative pricing of the distribution channels, pricing tools and guidelines, and historic quotations, to

the extent that they are able to be located using reasonable and proportionate searches;

- (d) Any relevant expert reports produced in relation to the US proceedings within the Defendant's control, to the extent that they are able to be located using reasonable and proportionate searches.

4.4 The Part 20 Defendant shall provide disclosure and inspection of any data in its control recording any DRAM sales it made to the Claimant, Tiny Computer Technology Limited, Future Upgrades Limited or companies headquartered in the UK whose corporate name includes the word "Tiny" or "Opus" between 1 July 1998 and 29 January 2002.

4.5 The Defendant and Part 20 Defendant may designate any disclosed document as confidential in accordance with the terms of the Confidentiality Ring Order.

5. EXPERT EVIDENCE

5.1 The Claimant and the Defendant shall each have permission to adduce expert evidence from one expert witness in the field of economics.

5.2 The need for expert evidence in additional fields will be considered at the second CMC.

6. COSTS MANAGEMENT

6.1 By 17 October 2023, the parties shall serve and file costs budgets in the form prescribed by Precedent H.

6.2 By 14 November 2023, the parties shall serve and file budget discussion reports.

7. SECOND CASE MANAGEMENT CONFERENCE

7.1 A further case management conference ("CMC") shall be listed for one day on 28 November 2023 at which the Tribunal will consider further directions to trial, including without limitation (and subject to the necessary applications being made):

- (a) What further disclosure, if any, should be given by the Claimant, Defendant and/or Part 20 Defendant;
- (b) Permission to rely on expert evidence in additional areas of expertise;
- (c) The pre-trial timetable;
- (d) Whether an order should be made for security for costs; and

7.2 Whether a costs management order should be made in relation to the Claim and, if so, to consider the costs budgets prepared by the parties unless the budgets are agreed between the parties. The parties shall actively engage before the CMC to seek agreement on these matters and/or narrow the issues to be decided.

7.3 The parties shall file and serve any applications to be considered at the CMC and evidence in support of those applications by 31 October 2023.

7.4 The parties shall file and serve any evidence in response by no later than 14 November 2023.

8. MISCELLANEOUS

8.1 Costs of and occasioned by the re-amended Particulars of Claim referred to in paragraph 1.1 above be paid by the Claimants.

8.2 Costs of the case management conference shall be in the case.

8.3 There be liberty to apply.

Andrew Lenon K.C.

Chair of the Competition Appeal Tribunal

Made: 30 June 2023

Drawn: 30 June 2023

SCHEDULE 1 - CLAIMANT DISCLOSURE ISSUES

(1) Volume of commerce potentially affected

1. Did the Claimant purchase any DRAMs that were supplied by the Defendant or by other participants in the Infringement (whether directly to the Claimant or via intermediary third parties) from 1 July 1998, being the commencement of the Cartel Period, to 29 January 2002, being the date on which the Claimant entered into administration (“**Relevant Period**”)? If so, what was the total volume of relevant purchases?
2. In particular, as to the Claimant’s DRAM purchases during the Relevant Period:
 - a. What type of DRAM products were purchased including those incorporated into PC base units and Notebooks (“**Incorporated DRAMs**”) purchased by the Claimant;
 - b. From whom did the Claimant purchase DRAMs;
 - c. At what price were they purchased;
 - d. Were they Contract Sales or DRAMs purchased on the Spot Market?

(2) Liability, causation and loss

3. Did the Cartel cause the prices at which the Claimant purchased DRAMs (or Incorporated DRAMs) to be higher than they would otherwise have been had there not been an Infringement (“**Overcharge**”) during the Relevant Period? In particular:
 - a. Did the Infringement, which, as found by the Decision concerned only sales to Major OEMs, cause an increase in prices charged by cartel participants to non-Major OEMs and, in particular, any increase in prices charged to the Claimant?
 - b. Did the Infringement cause an increase in prices charged for DRAMs not manufactured by cartel participants and, in particular, any increase in the prices charged to the Claimant in respect of such DRAMs?
 - c. To the extent that there was an Overcharge, what was the level of any such Overcharge?
4. To the extent that there was such an Overcharge, did this cause a corresponding increase in prices charged to the Claimant’s customers (i.e. was all or any of the Overcharge passed on)?
5. If there was any such passing on in the form of increased prices to the Claimant’s customers did that lead to lost sales by the Claimant? Did any such lost sales result in the Claimant suffering financial loss, and if so in what amount?

SCHEDULE 2 – List of OTC Boxes to be included in Claimant's search

604156/000	634123/000	635702/000
606587/000	634125/000	635712/000
606588/000	634128/000	637304/000
606589/000	634133/000	638274/000
606590/000	634498/000	638280/000
606591/000	634508/000	638384/000
606598/000	634510/000	660934/000
606691/000	634512/000	667467/000
607136/000	634514/000	667748/000
607139/000	634516/000	667753/000
607149/000	634519/000	667765/000
607165/000	634521/000	667766/000
607174/000	634524/000	667769/000
607182/000	634525/000	667770/000
607185/000	634526/000	667775/000
607249/000	634529/000	667776/000
607291/000	634530/000	667779/000
607292/000	634533/000	667793/000
607295/000	635529/000	667794/000
607305/000	635534/000	667801/000
607459/000	635539/000	667815/000
607556/000	635540/000	667822/000
608562/000	635543/000	667825/000
610041/000	635553/000	667833/000
612404/000	635689/000	667840/000
634109/000	635701/000	667842/000

667843/000	806360/000	823899/000
800536/000	809813/000	824275/000
800544/000	809828/000	824276/000
802732/000	820046/000	824434/000
802733/000	820056/000	824798/000
802740/000	820058/000	824852/000
802750/000	820093/000	824864/000
802752/000	820097/000	824873/000
802753/000	822353/000	824876/000
803318/000	822729/000	824879/000
803329/000	822793/000	857422/000
806199/000	822967/000	
806228/000	823203/000	