



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 (DISCLOSURE)

UPON the Claimant having issued Claim No. CL-2016-000304 on 18 May 2016 in the High Court (the “Claim”), which was transferred to the Competition Appeal Tribunal by the order of Mr Justice Foxton dated 5 October 2022, and which claim relies on the European Commission (the “Commission”) decision in Case COMP/38511 DRAMs dated 19 May 2020 (the “Decision”) addressed to, amongst others, the Defendant and the Part 20 Defendant

AND UPON the Claimant having discontinued the Claim against the First, Third, Fourth and Fifth Defendants: Infineon Technologies AG; Mitsubishi Electric Europe BV; SK hynix UK Limited; and Toshiba Electronics Europe GmbH (the “Former Defendants”)

AND UPON the Claim having not been served on Elpida Memory (Europe) GmbH (the former First Defendant); Hitachi Europe Limited (the former Second Defendant); and Renesas Electronics Europe GmbH (the former Sixth Defendant)

AND UPON Micron Technology Inc.; Micron Semiconductor (Deutschland) GmbH; Samsung Electronics Co. Ltd.; Samsung Semiconductor Europe GmbH; Samsung Semiconductor France Sarl; Hynix Semiconductor Inc.; Hynix Semiconductor Europe Holding Ltd.; SK hynix UK

Limited (formerly Hynix Semiconductor United Kingdom Ltd); Hynix Semiconductor Deutschland GmbH; Infineon Technologies AG; NEC Corporation; Renesas Electronics Europe GmbH; NEC Electronics (UK) Ltd.; Hitachi Ltd.; Hitachi Europe Ltd.; Toshiba Corp.; Toshiba Electronics Europe GmbH; Mitsubishi Electric Corp.; Mitsubishi Electric Europe BV; Elpida Memory Inc.; Elpida Memory (Europe) GmbH; and Nanya Technology Corp being addressees of the Decision but not defendants in these proceedings (together, the “Non-Party Addressees”)

AND UPON the following Non-Party Addressees no longer being active companies: Samsung Semiconductor France Sarl; Hynix Semiconductor Europe Holding Ltd; NEC Electronics (UK) Ltd; and Elpida Memory (Europe) GmbH (the “Inactive Non-Party Addressees”)

AND UPON the full text confidential version of the Decision has been provided to the Defendant and Part 20 Defendant (the “Confidential Decision”)

AND UPON the Part 20 Defendant having confirmed that it holds copies of certain documents on the Commission’s administrative file relating to the DRAM investigation which it was granted access to in accordance with the Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty on condition that the information obtained thereby may only be used for the purposes of judicial or administrative proceedings for the application of Community competition rules at issue in the related administrative proceedings (the “SSEL Case File”)

AND UPON the Part 20 Defendant has confirmed that it was provided with a copy of the index to the SSEL Case File and that it retains a copy of that index (the “SSEL Case File Index”)

AND UPON the Defendant having confirmed that it holds a separate file of 244,353 documents, the precise provenance and nature of which is at present unknown (the “Micron File”)

AND UPON the Tribunal’s order made and drawn on 30 June 2023 establishing a confidentiality ring as between the Claimant and the Defendant and Part 20 Defendant (the “Confidentiality Ring Order”)

AND UPON the Claimant’s application dated 26 May 2023 seeking an order for disclosure of the confidential Commission Decision and case file, subject to limited redactions

IT IS ORDERED BY CONSENT THAT:

1. NOTIFICATION OF THE ORDER

1.1 By close of business on 27 June 2023, the Claimant shall write to each of the Non-Party Addressees providing them with copies of this Order and the Confidentiality Ring Order, as set out in paragraph 1.2.

1.2 The Non-Party Addressees shall be notified as follows:

- (a) In respect of the Non-Party Addressees which are Former Defendants or which are affiliated group companies of the Former Defendants, and including any relevant Inactive Non-Party Addressees, the Claimant shall send the notification referred to in paragraph 1.1 to the solicitors who were last known by the

Claimant to be acting in these proceedings for the respective Former Defendants.

- (b) In respect of the Non-Party Addressees which are affiliated group companies of the Defendant or the Part 20 Defendant, and including any relevant Inactive Non-Party Addressee, the Claimant shall send the notification referred to in paragraph 1.1 to the relevant solicitors who are acting in these proceedings for the Defendant and the Part 20 Defendant.
- (c) In respect of the Non-Party Addressees which are not the Defendant, the Part 20 Defendant or Former Defendants or affiliated group companies of such companies, and including any relevant Inactive Non-Party Addressees, the Claimant may send the notification referred to in paragraph 1.1 to the address(es) identified in Schedule 1.

1.3 Any of the Non-Party Addressees may within 14 days of receipt of the notification referred to in paragraph 1.1 of this Order apply to the Tribunal to set aside or vary this Order or the Confidentiality Ring Order made and drawn on 30 June 2023, such application to be:

- (a) made by application notice and served on the Claimant and the Defendant and Part 20 Defendant;
- (b) accompanied by a reasoned explanation of the application to set aside or vary this Order or the Confidentiality Ring Order together with any evidence relied on; and
- (c) at the applicant's risk as to costs.

2. DISCLOSURE OF THE COMMISSION DECISION

2.1 When notifying each of the Non-Party Addressees in accordance with paragraph 1.1 of this Order, the Claimant shall inform each of them of the following:

- (a) that the Defendant will disclose to the Claimant a version of the Confidential Decision (the "Redacted Confidential Decision") containing only those redactions which can be justified on the basis that the material they redact:
 - (i) forms part of or is a quotation from leniency statements, as defined in Article 2(16) of Directive 2014/104/EU ("Leniency Statements");
 - (ii) forms part of or is a quotation from settlement submissions, (as defined in Article 2(18) of Directive 2014/104/EU ("Settlement Submissions");
 - (iii) is subject to privilege ("Privileged Material"); or
 - (iv) is material that is protected from disclosure under Article 48 of the Charter of Fundamental Rights of the European Union and Article 339 of the Treaty on the Functioning of the European Union as applied in Case T-474/04 Pergan [2007] ECR II-4225 ("Pergan Material");

- (b) The Non-Party Addressees are invited to inform the Defendant by 5pm on 21 July 2023 of those passages of the Confidential Decision that they consider should remain redacted on the grounds of forming part of or being quotations from Leniency Statements and/or Settlement Submissions, and/or being Privileged Material and/or Pergan Material, and to provide an explanation of the basis for each redaction, signed by an English solicitor on behalf of the relevant Non-Party Addressee confirming that the requests for redaction are appropriate on one of the bases in 2.1(a) above, and confirming that such solicitor may accept service on behalf of the relevant Non-Party Addressee of any application to challenge the redaction(s).
- 2.2 The Part 20 Defendant shall inform the Defendant by 5pm on 21 July 2023 of those passages of the Confidential Decision that it considers should remain redacted on the grounds of forming part of or being quotations from Leniency Statements and/or Settlement Submissions, and/or being Privileged Material and/or Pergan Material, and to provide an explanation of the basis for each redaction, signed by an English solicitor on its behalf confirming that the requests for redaction are appropriate on one of the bases in 2.1(a) above.
- 2.3 By 5pm on 29 September 2023, the Defendant shall disclose and provide inspection of the Redacted Confidential Decision, subject only to any redactions requested by the Defendant or Part 20 Defendant or by a Non-Party Addressee on one of the grounds set out at paragraph 2.1(a) above. The Redacted Confidential Decision must be accompanied by:
 - (a) a description (in sufficient detail to enable the Claimant to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of any passages which remain redacted, and an explanation of the basis on which they remain redacted;
 - (b) an indication of which of the Defendant and Part 20 Defendant and/or the Non-Party Addressees have requested to maintain the redaction; and
 - (c) a copy of the letter referred to in 2.1(b), which is signed by the requesting party's English solicitors confirming that the requests for redaction are appropriate on one of the bases in 2.1(a) above, and confirming that such solicitor may accept service on behalf of the relevant Non-Party Addressee of any application to challenge the redaction(s).
- 2.4 The Redacted Confidential Decision shall be treated as Outer Confidentiality Ring Information (within the meaning set out in the Confidentiality Ring Order).

3. DISCLOSURE OF THE SSEL CASE FILE

- 3.1 When notifying each of the Non-Party Addressees in accordance with paragraph 1.1 of this Order, the Claimant shall give notice to the Non-Party Addressees of the following:
 - (a) That the Defendant will disclose by list and provide inspection of all documents within the SSEL Case File which are currently within the Part 20 Defendant's possession or control. The following categories of documents (or parts of

documents) may be redacted or withheld from inspection (in the “Redacted SSEL Case File”):

- (i) Leniency Statements;
 - (ii) Settlement Submissions; and
 - (iii) Privileged Materials.
- (b) The Non-Party Addressees are invited to inform the Defendant by 5pm on 21 July 2023 of any documents within the SSEL Case File that they consider it appropriate to redact or withhold on the basis of any, or all, Leniency Statements, Settlement Submissions, and/or Privileged Materials, and to provide an explanation (in sufficient detail to enable the Claimant to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of the basis for each redaction or withholding, and to identify the documents they wish to designate as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information pursuant to the Confidentiality Ring Order, signed by an English solicitor on behalf of the relevant Non-Party Addressee confirming that the requests for withholding and/or redaction are appropriate on one of the bases in 3.1(a) above, and confirming that such solicitor may accept service on behalf of the relevant Non-Party Addressee of any application to challenge the redaction(s) and/or withholding(s).

3.2 The Part 20 Defendant shall inform the Defendant by 5pm on 21 July 2023 of any documents within the SSEL Case File that it considers it appropriate to redact or withhold on the basis of any, or all, Leniency Statements, Settlement Submissions, and/or Privileged Materials, and to provide an explanation (in sufficient detail to enable the Claimant to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of the basis for each redaction or withholding, and to identify the documents it wishes to designate as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information pursuant to the Confidentiality Ring Order, signed by an English solicitor on its behalf confirming that the requests for withholding and/or redaction are appropriate on one of the bases in 3.1(a) above.

3.3 By 5pm on 29 September 2023, the Defendant shall:

- (a) disclose to the Claimant by list and provide inspection of the documents within the SSEL Case File as provided to the Defendant by the Part 20 Defendant subject only to a right to redact or withhold material on one of the grounds set out at paragraph 3.1(a) above, including the SSEL Case File Index;
- (b) provide a description (in sufficient detail to enable the Claimant to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) identifying any documents which have been redacted or withheld by the Defendant and Part 20 Defendant and the basis on which they have been redacted or withheld;
- (c) provide a copy of the letter referred to in 3.1(b), which is signed by an English solicitor on behalf of the relevant Non-Party Addressee confirming that the requests for withholding and/or redaction are appropriate on one of the bases in

3.1(a) above, and confirming that such solicitor may accept service on behalf of the relevant Non-Party Addressee of any application to challenge the redaction(s) and/or withholding(s); and

- (d) identify which documents are to be designated pursuant to the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information.

4. FURTHER STEPS TO BE TAKEN BY THE DEFENDANT

4.1 By 5pm on 11 September 2023, the Defendant will:

- (a) make reasonable further enquiries as to the nature of the documents comprising the Micron File; and
- (b) inform the Claimant and the Part 20 Defendant, in writing, of the results of the above exercise.

5. GENERAL PROVISIONS

5.1 The Defendant is not required to review the validity of requests by the Non-Party Addressees or by the Part 20 Defendant to withhold or redact parts of the Confidential Decision and/or the SSEL Case File.

5.2 There shall be liberty to apply, including by Non-Party Addressees as appropriate.

Andrew Lenon K.C.
Chair of the Competition Appeal Tribunal

Made: 30 June 2023
Drawn: 30 June 2023

SCHEDULE 1

Paragraph 1.2(a) of the Order: Non-Party Addressees which are Former Defendants or affiliated group companies of Former Defendants (including any relevant Inactive Non-Party Addressees)		
Non-Party Addressee	Address for Notice	Explanatory Note
Infineon Technologies AG	Slaughter and May, 1 Bunhill Row, London EC1Y 8YY	Former First Defendant
Mitsubishi Electric Europe BV	Baker McKenzie, 100 New Bridge St, London EC4V 6JA	Former Third Defendant
Mitsubishi Electric Corp.	As for Mitsubishi Electric Europe BV	Affiliated group company of the Former Third Defendant
SK hynix UK Limited (formerly Hynix Semiconductor United Kingdom Ltd.)	Simmons & Simmons LLP, CityPoint, 1 Ropemaker St, London EC2Y 9SS	Former Fourth Defendant
Hynix Semiconductor Inc. (now known as SK hynix Inc.)	As for SK hynix UK Limited	Affiliated group company of the Former Fourth Defendant
Hynix Semiconductor Deutschland GmbH (now known as SK hynix Deutschland GmbH)	As for SK hynix UK Limited	See above
Hynix Semiconductor Europe Holding Ltd. (Inactive Non-Party Addressee)	As for SK hynix UK Limited	See above
Toshiba Electronics Europe GmbH	Latham & Watkins LLP, 99 Bishopsgate, London EC2M 3XF	Former Fifth Defendant

Toshiba Corp.	As for Toshiba Electronics Europe GmbH	Affiliated group company of the Former Fifth Defendant
Paragraph 1.2(b) of the Order:		
Non-Party Addressees which are affiliated group companies of the Defendant and/or the Part 20 Defendant (including any relevant Inactive Non-Party Addressees)		
Non-Party Addressee	Address for Notice	Explanatory Note
Micron Technology Inc.	Allen & Overy LLP, One Bishops Square, London E1 6AD	Affiliated group company of the Defendant
Micron Semiconductor (Deutschland) GmbH	As for Micron Technology Inc.	See above
Elpida Memory Inc. (now known as Micron Memory Japan, K.K.)	As for Micron Technology Inc.	See above
Elpida Memory (Europe) GmbH (Inactive Non-Party Addressee)	As for Micron Technology Inc.	See above, as prior to Elpida Memory (Europe) GmbH ceasing to trade in was a group company of Elpida Memory Inc. which is now itself an affiliated group company of the Defendant
Samsung Electronics Co. Ltd.	Covington & Burling LLP, 22 Bishopsgate, London EC2N 4BQ	Affiliated group company of the Part 20 Defendant
Samsung Semiconductor Europe GmbH	As for Samsung Electronics Co. Ltd	See above
Samsung Semiconductor France Sarl (Inactive Non-Party Addressee)	As for Samsung Electronics Co. Ltd	See above

Paragraph 1.2(c) of the Order: Non-Party Addressees which are not the Defendant, the Part 20 Defendant or Former Defendants or affiliated group companies of such companies (including any relevant Inactive Non-Party Addressees)		
Non-Party Addressee	Address for Notice	Explanatory Note
Hitachi Ltd.	6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo, 100- 8280 Japan Sefton Park, Bells Hill, Stoke Poges, Buckinghamshire, England, SL2 4HD	Headquarters address in Japan and registered company address in the UK of affiliate company Hitachi Europe Ltd
Hitachi Europe Ltd.	Sefton Park, Bells Hill, Stoke Poges, Buckinghamshire, England, SL2 4HD	Registered company address in the UK
NEC Corporation	7-1, Shiba 5-chome Minato- ku, Tokyo 108-8001 Japan Freshfields Bruckhaus Deringer, 9 Av. de Messine, 75008 Paris, France (FAO Rafique Bachour) Freshfields Bruckhaus Deringer, 100 Bishopsgate, London EC2P 2SR (FAO David Aitman)	Headquarters address in Japan and address of solicitors understood by the Claimant to be acting for NEC Corporation in recent unrelated matters
NEC Electronics (UK) Ltd. (Inactive Non-Party Addressee)	As for NEC Corporation	See above, as prior to NEC Electronics (UK) Ltd. ceasing to trade it was an affiliated group company of NEC Corporation

Renesas Electronics Europe GmbH	Unit 2 Dukes Meadow, Bourne End, Millboard Road, SL8 5FH	UK branch office address
Nanya Technology Corp	No. 98, Nanlin Rd., Taishan Dist, New Taipei City 243, Taiwan (R.O.C.) pilee@ntc.com.tw	Address of headquarters in Taiwan and email address of Pei-Ing Lee (President of Nanya Technology Corp) sourced from Nanya Technology Corp 2021 Annual Report