



**IN THE COMPETITION
APPEAL TRIBUNAL**

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

BETWEEN:

~~(1) GRANVILLE TECHNOLOGY GROUP LIMITED (IN LIQUIDATION)~~

~~(2) VMT LIMITED (IN LIQUIDATION)~~

~~(3) OT COMPUTERS LIMITED (IN LIQUIDATION)~~

Claimant

- v -

~~(1) INFINEON TECHNOLOGIES AG~~

~~(2) MICRON EUROPE LIMITED~~

~~(3) MITSUBISHI ELECTRIC EUROPE BV~~

~~(4) SK HYNIX UK LIMITED~~

~~(5) TOSHIBA ELECTRONICS EUROPE GMBH~~

Defendant/Part 20 Claimant

- and -

SAMSUNG SEMICONDUCTOR EUROPE LIMITED

Part 20 Defendant

DIRECTIONS ORDER (SECOND CASE MANAGEMENT CONFERENCE)

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 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 (the “**DRAM Cartel**”);

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 Order of the Tribunal dated 30 June 2023 (as varied by the Order dated 29 September 2023) in respect of directions (the “**Directions Order**”);

AND UPON the Order of the Tribunal dated 30 June 2023 (as varied by the Order dated 10 July 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, including the “**SSEL Case File**”, as defined in such Order (the “**Commission File Order**”);

AND UPON the Order of the Tribunal dated 30 June 2023 establishing a confidentiality ring (the “**Confidentiality Ring**”) in the proceedings (the “**Confidentiality Ring Order**”);

AND UPON the applications of the Claimant dated 7 November 2023 for (i) permission to amend its particulars of claim; (ii) the removal of certain documents from the Confidentiality Ring (the “**Confidentiality Ring Application**”); (iii) an order for costs management (the “**Claimant’s Costs Management Application**”); (iv) case management directions in relation to the claim brought by the Defendant against the Part 20 Defendant (the “**Part 20 Claim Application**”); and (v) further disclosure by the Defendant (the “**Defendant Disclosure Application**”) and the Part 20 Defendant (the “**Claimant’s Part 20 Defendant Disclosure Application**”);

AND UPON the applications of the Defendant dated 7 November 2023 for (i) further and specific disclosure by the Claimant (the “**Claimant Disclosure Application**”); (ii) further disclosure by the Part 20 Defendant (the “**Defendant’s Part 20 Defendant Disclosure Application**”); (iii) security for costs to be ordered against the Claimant (the “**Security Application**”); and (iv) an order regarding mediation and a stay of proceedings (the “**Mediation Application**”);

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

AND UPON the Claimant agreeing to conduct certain searches and provide disclosure of relevant documents as set forth in the Fourth Witness Statement of Andrew Christopher Bartlett dated 17 November 2023, which the Defendant accepted and confirmed in its Fourth Letter of 23 November 2023 (“**Agreed Claimant Disclosure**”);

AND UPON the Defendant agreeing to conduct certain searches and provide disclosure of relevant documents as set forth in paragraphs 9 and 10 of the Defendant’s Skeleton Argument dated 24 November 2023 (“**Agreed Defendant Disclosure**”);

AND UPON hearing solicitor advocate for the Claimant, leading counsel for the Defendant and counsel for the Part 20 Defendant at a second case management conference on 28 November 2023 (the “**CMC**”);

AND UPON the Ruling of the Tribunal on Disclosure dated 29 December 2023, the Ruling of the Tribunal on Security for Costs dated 29 December 2023 and the oral judgment of the Tribunal on the Part 20 Claim Application at the CMC;

AND UPON the Defendant withdrawing the Defendant’s Part 20 Defendant Disclosure Application in light of the oral judgment of the Tribunal on the Part 20 Claim Application at the CMC;

AND UPON the Defendant agreeing to redesignate certain documents as not being confidential in Allen & Overy’s letter dated 15 November 2023 and third letter dated 23 November 2023 in response to the Confidentiality Ring Application;

AND UPON the Part 20 Defendant giving the undertaking set out in **Schedule 2** to this Order;

AND UPON the trial in the matter of *Granville Technology Group Limited (in liquidation) and others v. Innolux Corporation and others* (CL-2016-000758) (the “**LCD Proceedings**”) over four weeks in October and November 2023, with the Claimant being a party to that proceeding and the Commercial Court’s judgment pending;

IT IS ORDERED THAT:

1. PLEADINGS

1.1 The Claimant shall file and serve Re-Re-Amended Particulars of Claim in the form enclosed with Osborne Clarke’s letter of 20 November 2023 within 7 days of the date of this Order.

2. CASE MANAGEMENT – PART 20 CLAIM

2.1 The Tribunal makes the following directions in respect of the additional claim brought by the Defendant against the Part 20 Defendant pursuant to Rule 20.7 of the Civil Procedure Rules (the “**Part 20 Claim**”):

- (a) the trial of the Part 20 Claim shall be conducted separately from the trial of the claim by the Claimant against the Defendant (the “**Main Claim**”); and
- (b) the Part 20 Claim be stayed until 14 days after the final determination of the Main Claim, including the final determination of any appeal or application for permission to appeal in respect of the Main Claim, or the expiry of the time by which any such appeal could be brought.

3. DISCLOSURE BY THE CLAIMANT AND THE PART 20 DEFENDANT

- 3.1 The Claimant shall provide disclosure and inspection arising from the Agreed Claimant Disclosure by 13 May 2024.
- 3.2 The Defendant’s Claimant Disclosure Application is dismissed.
- 3.3 The Claimant’s Part 20 Defendant Disclosure Application is dismissed.

4. DISCLOSURE BY THE DEFENDANT

- 4.1 The Defendant shall provide disclosure and inspection arising from the Agreed Defendant Disclosure by 13 May 2024.
- 4.2 The Defendant shall conduct reasonable and proportionate searches of the following document repositories by reference to the categories of documents and data identified in **Schedule 1** to this Order (to the extent such searches have not already been conducted), and shall provide disclosure and inspection of the same by 13 May 2024:
 - (a) the Relevant Databases, as identified in the Fifth Witness Statement of Mr Jonathan Hitchin (“**Hitchin 5**”) at paragraph 43;
 - (b) the Legal Drives, as identified in Hitchin 5 at paragraph 51(f);
 - (c) a sub-set of the “**Micron File**” consisting of ca. 26,000 documents created by the application of key word searches, as identified in the second letter from the Defendant’s solicitors, Allen & Overy, dated 16 November 2023 at paragraph 18;
 - (d) the 15 hard copy boxes and 15 lever arch files identified in the Annex to the Defendant’s Disclosure Report dated 6 September 2022 at rows B8 and B9.

4.3 The disclosure provided in accordance with this paragraph 4 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) identify who has undertaken the searches; (c) specify the manner in which the search has been limited on reasonableness and proportionality grounds and why; and (d) certify that to the best of their knowledge and belief the disclosure ordered has been provided.

5. STAY OF PROCEEDINGS FOR MEDIATION

5.1 The Parties shall take reasonable steps to resolve their disputes by a mediation as soon as possible and in any event by 19 April 2024. If the case is not finally settled by 19 April 2024, the Parties shall inform the Tribunal by letter prior to the deadline for second stage disclosure what steps towards mediation have been taken and (without prejudice to matters of privilege) why such steps have failed. If the Parties have failed to initiate a mediation, the Case Management Conference is to be restored for further consideration of the case.

6. EXPERT EVIDENCE

6.1 The Claimant and the Defendant shall have liberty to apply for permission to adduce expert evidence in any additional fields of expertise by 14 June 2024.

7. DIRECTIONS TO TRIAL IN THE MAIN CLAIM

7.1 The Claimant and the Defendant shall each file and serve any factual witness statements, including on the Part 20 Defendant, by 5pm on 19 June 2024.

7.2 The Claimant and the Defendant shall each file and serve any responsive factual witness evidence, including on the Part 20 Defendant, by 5pm on 9 September 2024.

7.3 The Claimant and the Defendant shall each file and serve any permitted expert reports, including on the Part 20 Defendant, by 5pm on 17 October 2024.

7.4 The Claimant and the Defendant shall each file and serve any responsive expert evidence, including on the Part 20 Defendant, by 5pm on 20 December 2024.

7.5 The experts shall meet by no later than two weeks after exchange of responsive reports and shall prepare a joint memorandum summarising the areas of agreement and disagreement (with concise reasons) by 5pm on 20 January 2025.

8. REMOVAL OF DOCUMENTS FROM THE CONFIDENTIALITY RING

8.1 With regard to any documents in the SSEL Case File that originate from the Defendant or the Part 20 Defendant, the Claimant may write to the Defendant and/or the Part 20 Defendant (whichever is understood to be the originator of the relevant document(s)) and identify the document(s) in the SSEL Case File understood to have originated from them which the Claimant is proposing be removed from the Confidentiality Ring. Within seven working days of receipt of such letter, the Defendant / Part 20 Defendant (as relevant) (i) may object to the categorisation of such documents as documents originating from them, and/or (ii) may object to the removal of such documents from the Confidentiality Ring insofar as such documents originate from them. Absent any objection within this period, such documents shall be removed from the Confidentiality Ring.

9. COSTS MANAGEMENT

9.1 The Claimant and the Defendant shall file and serve revised costs budgets in the form prescribed by Precedent H by 5pm on 23 February 2024.

9.2 There be no further order as to costs management at this stage.

9.3 There be liberty to apply for an order for costs management in the proceedings.

10. SECURITY FOR COSTS

10.1 There be no order for security for costs at this stage.

10.2 Within 21 days of the Commercial Court determining any amounts to be paid to the Claimant in the LCD Proceedings by way of damages, the Claimant shall provide the Defendant with detailed information as to its finances and its ability to set aside a further amount by way of security for the Defendant's costs, as contemplated by paragraphs 18-22 of the Security for Costs Ruling.

10.3 There be liberty to apply for security for costs in the proceedings taking into account the rulings in the Security for Costs Ruling and the information provided pursuant to paragraph 10.2 of this Order.

11. COSTS

11.1 The Defendant's costs of and occasioned by the Re-Re-Amended Particulars of Claim referred to in paragraph 1.1 above shall be paid by the Claimant, to be subject to detailed assessment if not agreed.

11.2 The costs of and occasioned by the applications made at the CMC and the costs of the CMC shall be costs in the case.

12. MISCELLANEOUS

12.1 The dates and time limits in this Order may be extended by agreement between the Parties by up to 14 days without the permission of the Tribunal.

12.2 There be liberty to apply.

**SCHEDULE 1 – CATEGORIES OF DISCLOSURE TO BE PROVIDED BY
THE DEFENDANT**

1. The effects of the anti-competitive conduct

- (a) Correspondence communicating reasons for pricing decisions for DRAM sales to the Defendant's customers during the Cartel Period. (For the avoidance of doubt, this does not extend to all correspondence with the Defendant's customers where this simply states the price of specific orders placed by the Defendant's customers, without any context for the reason for the price.)
- (b) Any internal documents discussing or relating to the implementation and effects of all aspects of the DRAM Cartel, including its effect on the market beyond the Major OEMs. (For the avoidance of doubt, this request includes documents relating to output / capacity strategy as well as all aspects of pricing.)
- (c) Any documents recording in aggregated form, price and/or capacity targets for DRAM agreed within the DRAM Cartel (to the extent that they were created after the date of the Statement of Objections).

2. Sales contracts and pricing decisions

- (a) Contracts relating to the sale of DRAM to Defendant's top 10 customers in each calendar year 1997 to 2003. (For the avoidance of doubt, this should include contracts for the Major OEMs).
- (b) Any standard terms of business (or similar template documents) relating to the sale of DRAM to the Defendant's other customers during the period 1997 to 2003.
- (c) Documents evidencing the Defendant's approach to setting the prices of DRAM during the period July 1997 to June 2003 including internal pricing guideline documents. (For the avoidance of doubt, this should include pricing strategy documents, price generators, pricing guidelines and minutes from meetings in which the approach to setting the prices of DRAM for the mentioned period was discussed. The documents should be provided in relation to each of the Defendant's sales channels/types.)

3. Financial reports/accounts

- (a) Board minutes and/or financial committee (or similar) minutes for the period 1997 to 2003 in which financial results, forecasts and/or strategy in relation to DRAM were discussed.

4. Expert reports and industry analysis

- (a) Third party reports on costs, pricing (including across different customer types), supply and/or demand in the DRAM market relating to the period 1997 to 2003. (This should include reports relating to: (i) the manufacturers of all types of DRAM modules, including details of the types and sizes produced by each, and the locations of their production facilities; (ii) the market shares of DRAM manufacturers; (iii) customer groups and volumes sold to each customer group.)

Best available data

6.1 Sales data

- (a) The Defendant's UK sales data throughout the period February 1992 to August 2007 for DRAM including data fields, where available, for customer name, date of order and date of delivery, number of units, total sales volumes, DRAM size, DRAM type, prices, currency, customer name, and country of delivery. This should of course include (without limitation) sales to the Claimant, or to Future Upgrades Limited, or Future Upgrades' parent company PC Components Limited (also known as PCCL or PCC Group Limited), and any companies notified to the Defendant as having supplied the Claimant. (We note from the Annex to Micron's Disclosure Report, together with Micron's evidence at the PI Trial, that these records should be available). The dataset should also identify the customer "channel" to which each customer belongs and should specify whether it relates to DRAM chips or DRAM modules (which contain multiples chips).
- (b) Any average/aggregated price/sales data relating to the DRAM market, broken down between contract and spot customer prices that may have been produced by WSTS or DRAMeXchange.
- (c) Datasets at the headquarters level showing sales volumes, revenues and profit margins relating to the production and distribution of DRAM by the Defendant and/or its affiliates during the period February 1992 to August 2007.

6.2 Production data (for the period February 1992 to August 2007)

- (a) DRAM production volumes on a daily basis, broken down by size/type and manufacturing facility/location.
- (b) DRAM production capacity (by month), broken down by size/type and manufacturing facility/location.
- (c) Utilisation rates (by month) for DRAM manufacturing facilities, broken down by size/type and manufacturing facility/location.

6.3 Input costs data

- (a) Data relating to DRAM input costs, including all significant cost factors (i.e. the fixed and variable costs of production) during the pre-Cartel Period, the Cartel Period and the post-Cartel Period (by the applicable costs data reporting period) (for the period February 1992 to August 2007).

**SCHEDULE 2 – FORM OF UNDERTAKING TO BE GIVEN BY THE PART 20
DEFENDANT**

The Part 20 Defendant undertakes to be bound by: (a) the judgment sums recoverable by the Claimant in Claim 1537/5/7/22(T) upon which the Part 20 Claimant's claim to contribution is based; and (b) any numerical findings by the CAT (or on appeal) as to the total volume of affected commerce, individual or aggregate levels of overcharge, pass on, net loss and interest in respect of the purchases upon which the Claimant in Claim 1537/5/7/22(T) bases its claim and upon which the Part 20 Claimant's claim to contribution in respect of Claim 1537/5/7/22(T) is based.