



IN THE COMPETITION
APPEAL TRIBUNAL

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

BETWEEN:

OT COMPUTERS LIMITED (IN LIQUIDATION)

Part 20 Claimant

- v -

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, Micron Europe Limited ("**Micron**") and Samsung Semiconductor Europe Limited ("**SSEL**") (the "**Decision**"), and the Decision having become final against all addressees

AND UPON OT Computers Limited (In Liquidation) ("**OTC**") issuing proceedings in the High Court under Claim No. CL-2016-000304 on 18 May 2016, and those proceedings having been transferred to the Competition Appeal Tribunal by Order dated 5 October 2022 (the "**Main Claim**")

AND UPON Micron having brought an additional claim pursuant to the Civil Procedure Rules, r. 20.7 against SSEL (the "**Part 20 Claim**")...

AND UPON OTC and Micron having agreed to the terms of settlement of the Main Claim set out in a confidential settlement agreement dated 10 June 2024

AND UPON the Order of 20 August 2024 substituting OTC in place of Micron as the Part 20 Claimant following the assignment of the Part 20 Claim by Micron to OTC

AND UPON OTC's application for a costs management order dated 20 December 2024 (“**Costs Management Order Application**”)

AND UPON OTC's applications for directions in the Part 20 Claim in respect of (i) SSEL's pleadings dated 3 January 2025 (the "**OTC Pleadings Application**"); and (ii) disclosure from SSEL filed on 3 January 2025 (and expanded on 15 January 2025) (the “**OTC Disclosure Application(s)**”)

AND UPON SSEL’s applications in respect of: (i) permission to file its Re-Re-Amended Defence to the Part 20 Claim (the "Amendment Application"); (ii) permission to adduce expert evidence in the fields of economics and the Federal Law of the United States of America; (iii) disclosure from OTC; and (iv) security for costs (the "Security Application"), all dated 3 January 2025

AND UPON OTC consenting to the Amendment Application, subject to OTC reserving its right to apply for summary judgment in respect of the foreign law arguments raised by SSEL

AND UPON hearing solicitor advocate for OTC and counsel for SSEL at a Case Management Conference on 23 January 2025 (the "**CMC3**")

IT IS ORDERED THAT:

(1) Pleadings in the Part 20 Claim

1. SSEL has permission to file and serve a Re-Re-Amended Defence to the Part 20 Claim in the form provided to the Tribunal within 7 days of the date of this Order.
2. OTC has permission to file and serve an Amended Reply, any amendments to be limited to consequential amendments responsive to the Re-Re-Amended Defence, within 21 days of service of the Re-Re-Amended Defence.
3. The OTC Pleadings Application is dismissed.

(2) **Disclosure by OTC**

4. OTC shall provide disclosure and inspection of the categories of documents set out in Annex 1 to this Order by 5pm on the Disclosure Date, to the extent these documents have not already been provided to SSEL. For the avoidance of doubt, OTC is not required to provide disclosure and inspection of publicly available documents.

(3) **Expert Evidence**

5. OTC and SSEL shall each be permitted to adduce expert evidence from one expert on the Federal Laws of the United States of America ("**US Law**").

(a) SSEL shall file and serve any expert evidence of US Law by the Report Date;

(b) OTC shall file and serve any responsive evidence on US Law by the Response Date;

(c) The experts on matters of US Law shall meet and shall prepare a joint memorandum summarising the areas of agreement and disagreement (with concise reasons) by 5pm on the Joint Memorandum Date.

6. SSEL's application for permission to adduce expert evidence in the field of economics is dismissed.

(4) **OTC Disclosure Application(s)**

7. The OTC Disclosure Application(s) be adjourned to be determined on paper, for the purposes of which:

(a) SSEL shall file and serve any further evidence in response to the OTC Disclosure Application (as expanded) by 5pm on 10 February 2025 (the "**Response Evidence**").

(b) OTC shall file and serve any evidence in reply to SSEL's Response Evidence by 5pm on 24 February 2025.

(c) OTC shall file and serve any written submissions in support of the OTC Disclosure Application(s) by 5pm on 3 March 2025 (including proposals as to the timetable for disclosure).

(d) SSEL shall file and serve any written submissions in response to the OTC Disclosure Application(s) by 5pm on 13 March 2025.

(5) Costs Management / Security for Costs / Directions

8. SSEL's Security Application is adjourned pending the preparation of costs budgets in accordance with paragraph 9(a) of this Order.

9. Within 21 days of the Tribunal's determination of the OTC Disclosure Application(s):

(a) OTC and SSEL shall each file and exchange Precedent H cost budgets relating to the steps up to and including the trial.

(b) The parties shall seek to agree a directions timetable to trial. The "Disclosure Date", "Report Date", "Response Date" and "Joint Memorandum Date" (as referred to in this Order) shall be determined by the Tribunal as part of the directions timetable if not agreed between the parties.

10. Within 14 days of OTC and SSEL having exchanged Precedent H costs budgets, the parties shall liaise and seek to agree whether (i) SSEL's Security Application, and (ii) directions to trial are suitable for determination on the papers or require a hearing, and write to the Tribunal confirming their position (on an agreed basis, if possible).

11. There be liberty to apply.

12. The Parties may vary the scope of the Issues for Disclosure in Annex 1 to this Order by written agreement.

13. 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.

(6) Costs

14. OTC's costs of and occasioned by the amendments on the issue of foreign law in the Re-Re-Amended Defence shall be paid by SSEL, to be subject to detailed assessment if not agreed.

15. SSEL's costs of its application for permission to amend its Re-Amended Defence to the Part 20 Claim be paid by OTC, to be subject to detailed assessment if not agreed.

16. All other costs of the applications made at CMC3 and the costs of CMC3 shall be costs in the case.

Andrew Lenon KC
Chair of the Competition Appeal Tribunal

Made: 21 February 2024
Drawn: 21 February 2024

ANNEX 1– ISSUES FOR OTC’S DISCLOSURE

1. **Issue 1:** Whether the Infringement had an effect on prices paid by both Major-OEMs and non- Major OEMs for DRAMs. In particular:
 - a. The pricing of DRAMs to different types of customers and the effects of the Infringement, including the decision making processes of cartelists.
 - b. Manufacturing costs data and sales volumes.
 - c. The structure of, and inter-relationship between, the sales channels (of the cartelists) relating to the sale of DRAM to Major-OEMs and non-Major OEMs and the communications between them.
 - d. The structure of the market for DRAMs.
 - e. Supply and demand factors impacting upon the pricing of DRAMs.
2. **Issue 2:** Just and equitable share:
 - a. Best available data in respect of the market shares of DRAM manufacturers.
3. Any documents disclosed by OTC, Micron and Infineon in these Proceedings which have not been provided to SSEL (subject to any right to withhold inspection of documents on the ground of privilege).
4. Third-party reports on market shares, costs, pricing (including across Major OEMs and Non-Major OEMs), supply and/or demand for DRAM:
 - a. during the Relevant Period (as defined in the Particulars of Claim in the Main Claim); and
 - b. 2 years before and after.