



Neutral citation [2025] CAT 48

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

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

20 August 2025

Before:

ANDREW LENON KC
(Chair)

Sitting as a Tribunal in England and Wales

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 ELECTRONIC EUROPE BV~~
~~(4) SK HYNIX UK LIMITED~~
(5) TOSHIBA ELECTRONICS EUROPE GMBH

Defendant/Part 20 Claimant

- and -

SAMSUNG SEMICONDUCTOR EUROPE LIMITED

Part 20 Defendant

RULING (DISCLOSURE)

A. INTRODUCTION

1. OT Computers Limited (“OTC”) has applied for additional disclosure from Samsung Semiconductor Europe Limited (“SSEL”). The Application was originally made at a case management conference but was adjourned to enable SSEL to file further evidence and to be determined on the papers.
2. The Application is supported by the fifth and sixth witness statements of Mr Andrew Bartlett (partner, Osborne Clarke LLP), together with OTC’s written submissions. The Application is opposed by SSEL via the first and second witness statements of Ms Laurie-Anne Eliane Marie Grelier (special counsel, Covington & Burling LLP) (“Covington”), the first and second witness statements of Dr Martin Helmer (general counsel, Samsung Semiconductor Europe GmbH (“SSEG”)), and by SSEL’s written submissions.

B. BACKGROUND

3. OTC was a UK personal computer (“PC”) manufacturer which traded in the 1990s and early 2000s under the name “Tiny” until it became insolvent and entered into administration, ceasing trading in January 2002. SSEL is a former sales entity within the Samsung group of companies which has been dormant since 2015.
4. In 2016, OTC and the two other Claimants brought a “follow-on” claim for competition law damages resulting from a cartel in the supply of Dynamic Random Access Memory computer chips (“DRAMs”) to certain PC manufacturers (referred to as the “Major PC/Server OEMs”). The claim relied on a Decision in Case COMP/38511 (the “Decision”) of the European Commission (the “Commission”), issued on 19 May 2010, in order to establish liability for the cartel on the part of Micron Europe Limited (“Micron”) and four other Defendants. The Decision found that the cartel operated from 1 July 1998 until 15 June 2002. OTC was not itself a Major PC/Server OEM but claimed that the prices which it paid for DRAMs were adversely affected by the cartel.

5. In 2018, the Claimants reached confidential settlements with three of the Defendants. A preliminary issue trial was heard in January 2020 to determine the issue of limitation, which resulted in a February 2020 judgment ([2020] EWHC 415 (Comm)), upheld on appeal to the Court of Appeal ([2021] EWCA Civ 501), that the claims of two of the Claimants were time-barred but that OTC's claim was not.
6. A further confidential settlement with the First Defendant, Infineon Technologies AG ("Infineon"), was reached in September 2022, leaving Micron as the sole remaining active defendant. SSEL had originally been joined as a Part 20 Defendant by Infineon. Following the settlement and discontinuance of the claim against Infineon, Micron brought a fresh Part 20 claim against SSEL (the "Part 20 Claim"). The Part 20 Claim was transferred, at Micron's request, to the Tribunal in October 2022.
7. The Part 20 Claim was stayed pending determination of OTC's claim against Micron. OTC and Micron reached a settlement in June 2024. As part of that settlement, Micron assigned to OTC its rights in respect of the Part 20 Claim in settlement of OTC's claim for costs against Micron. Following the assignment, OTC applied for: (i) permission to be substituted for Micron as the Part 20 Claimant; (ii) permission to amend the Claim Form and Particulars of Claim in the Part 20 Claim; and (iii) to lift the stay of the Part 20 Claim. By consent, that application was granted in an Order dated 20 August 2024.

C. THE APPLICATION

8. The Application was initially set out in its solicitors' letter dated 3 January 2025, as revised by a further letter dated 15 January 2025, and subsequently refined by a draft order dated 3 March 2025. The draft order requires SSEL to carry out reasonable and proportionate searches of the following document repositories:
 - (1) Documents held by its solicitors, Covington, as detailed in Section 1 of SSEL's Disclosure Report dated 6 September 2022 (the "Disclosure Report"); and

- (2) Data recorded on the management and/or accounting systems of SSEG, Samsung Electronics Co. Ltd., and Samsung Semiconductor France Sarl (together with SSEL, the “Samsung Addressees”).
- 9. The two main issues arising from the Application are as follows:
 - (1) Are documents relating to the Commission’s DRAM investigation (the “DRAM Investigation”), which are held by Covington but which are documents originating from Samsung Addressees other than SSEL, within SSEL’s control for the purposes of disclosure?
 - (2) What is the scope of the searches to be made in respect of those documents which SSEL accepts are within its control?
- 10. These issues are addressed in turn below.
 - (1) **Are documents of Samsung Addressees other than SSEL within SSEL’s control?**
- 11. The first issue arises in relation to both parts of the Application. SSEL’s position in relation to the first part is that the documents held by Covington and listed in Section 1 of the Disclosure Report (the “Covington Documents”) comprise documents generated in connection with the DRAM Investigation, of which only a subset are within SSEL’s control. SSEL accepts that the documents which are within its control comprise: (i) any documents that were jointly filed with the Commission by SSEL, and the other Samsung Addressees; and (ii) any documents originating from SSEL itself. SSEL contends that documents of the other Samsung Addressees that were not filed jointly with SSEL are not within this subset and that they were and are not in SSEL’s control.
- 12. More specifically, with regard to the Covington Documents, SSEL contends as follows:
 - (1) The Covington Documents came to be held by Covington because SSEL was previously represented by a law firm, Howrey LLP (“Howrey”), via

its Belgian office. Howrey was dissolved in or around 2011. The supervising partner at Howrey, Mr Peter Camesasca, was a Belgian qualified lawyer. Mr Camesasca joined the Belgian office of Covington in 2010 and has since left.

(2) Under the professional conduct rules applicable in Belgium, a lawyer is not permitted to share documents provided to him by one of his clients to another client even if the clients are jointly represented, save in so far as such documents are part of a joint submission on behalf of the clients in question to a court or authority.

(3) Ms Grelier exhibits a letter from Mr Alex Tallon, a former president of the Brussels Bar, former administrator of the Order of the Flemish Bars of Belgium in charge of deontology, and the current vice president of the Council of Bars and Law Societies of Europe, who states as follows:

“Since the relationship of trust between the lawyer and his client is personal and exclusive, it also applies between different clients of the same law firm. Different companies, even if they belong to the same group and are jointly represented, must be considered as separate legal entities and the lawyer is therefore obliged to respect his professional secrecy towards each legal entity. For the sake of completeness, I would like to add here that documents that were filed jointly with a court or authority for all entities also belong to the records of each entity separately. However, documents brought to the attention of the lawyer by only one entity and which are not part of a joint communication to a court or authority remain strictly covered by the professional secrecy binding the lawyer and may therefore not be transferred to other entities of the same group of companies.”

13. OTC’s response in summary, is, first, that the evidence relied on by SSEL is unsatisfactory. No attempt appears to have been made by SSEL to produce factual evidence from a person with direct knowledge of how documents were gathered and stored by Howrey or Covington. There is no evidence from a solicitor who has reviewed the contemporaneous document record in order to ascertain the way in which documents were gathered and or stored. Nor is there evidence from the English solicitor responsible for the conduct of the matter. Instead of carrying out further factual investigations, SSEL has chosen simply to rely on a generic opinion on confidentiality obligations under Belgian law combined with speculative inferences. Further, no permission was requested by or granted to SSEL to adduce evidence of Belgian law.

14. Second, OTC submits that, for the following reasons, there is clear evidence of a document sharing arrangement between the Samsung Addressees:

- (1) Although Dr Helmer states that “[t]here was and is no general arrangement pursuant to which [the Samsung Addressees] have access to each other’s documents or to [Samsung Electronics Co. Ltd.]’s documents” he goes on to acknowledge that “[a]ny such sharing occurs only in response to a specific request for a specific purpose ...”.
- (2) The Samsung Addressees acted jointly in their response to the Commission’s investigation, instructing a single law firm to make the leniency application and providing a single set of documents (“the SSEL Leniency File”) to the Commission. The SSEL Leniency File must have included documents from each of the Samsung Addressees. It is therefore clear that the Samsung Addressees pooled their documents for these purposes and shared access to them.
- (3) There is no dispute that SSEL has access to the large volume of documents held by Covington which relate to the DRAM Investigation. SSEL’s evidence does not make any assertion that these documents do not contain documents originating from the Samsung Addressees and the obvious inference must be that all the documents provided by the Samsung Addressees and SSEL (the joint clients of Howrey and then Covington) would have been stored and reviewed together during the investigation; any other course would have been wholly impractical and unworkable. The fact that SSEL’s witnesses are not aware of any document sharing arrangement does not mean that such an arrangement did not exist. Moreover, SSEL’s evidence does not address the question of whether Covington (as SSEL’s law firm/agent) has documents going beyond the SSEL Leniency File in its possession or control or whether the documents held by Covington, as SSEL’s law firm/agent, include documents originating from other Samsung Addressees. In order to make such an assertion, SSEL’s witnesses would have to have reviewed the Covington Documents and/or all the contemporaneous files showing

how the Covington Documents were being managed at the time of the investigation, but there is no suggestion that they have done this.

15. Third, OTC contends that the Samsung Addressees, and in particular SSEG, share with SSEL in the economic impact of the Part 20 Claim and it is therefore reasonable to infer that they will, acting in their own corporate best interests, provide reasonable assistance to SSEL in defending the Part 20 Claim. The Samsung Addressees would be liable to the same extent as SSEL in respect of any claim for contribution by Micron. SSEL would therefore be entitled to seek a contribution or indemnity from any or all of the Samsung Addressees in respect of any amount paid by SSEL by way of contribution in the Part 20 Claim. The Samsung Addressees therefore have a joint interest in the outcome of the Part 20 Claim, and it can reasonably be inferred that they will, acting in their own corporate interests, provide documents to SSEL that support SSEL's case.
16. Fourth, OTC contends that SSEG has been supporting SSEL in relation to the conduct of this litigation and it is reasonable to infer that this support will continue. Whilst Dr Helmer (general counsel of SSEG) denies that he has any decision-making authority regarding the conduct of this litigation, he acknowledges that he provides support "as requested by SSEL's directors from time to time". He previously confirmed that he provides support for SSEL "as and when needed". There is no suggestion in his evidence that he would not provide support if requested by the directors of SSEL. Moreover, SSEL's assets and business were transferred to SSEG in 2015. SSEL has to date relied on witness evidence from an employee of SSEG (Dr Helmer) and the future witness evidence that it proposes to rely on at trial will, inevitably, come from employees of other Samsung Addressees (most probably SSEG). SSEL has stated, most recently in its second letter of 16 January 2025 that it intends to call two witnesses but it has no employees of its own.
17. In a rejoinder submission, SSEL contends that, although Ms Grelier, as a lawyer at Covington, is able to access the pool of documents in respect of the DRAM Investigation held by the firm, including to ascertain whether or not they had come from SSEL and whether or not they fall within the scope of the Disclosure

Report, it does not follow that the whole pool of documents is within SSEL's control. She is unable to divulge the contents of other entities' documents to SSEL or to give SSEL access to the same or to give access to the same to OTC on SSEL's behalf.

(a) *The relevant principles*

18. Rule 60(3) of the Competition Appeal Tribunal Rules 2015 (the "Tribunal Rules") provides that the Tribunal may give directions as to how disclosure is to be given, including as to "what searches are to be undertaken, of where, for what, in respect of which time periods and by whom and the extent of any search for electronically stored documents." Rule 60(4) provides that:

"A party's duty to disclose documents is limited to documents which are or have been in its control; and for this purpose, a party has or has had a document in its control if—

- (a) the document is or was in its physical possession;
- (b) it has or has had a right to possession of the document; or
- (c) it has or has had a right to inspect or take copies of the document."

19. It is common ground between the parties that the principles applicable to whether third party documents are in the control of a party to proceedings are conveniently summarised in *Berkeley Square Holdings Ltd and Ors v Lancer Property Asset Management Ltd and Ors* [2021] EWHC 849 (Ch) ("*Berkeley Square*"). Those principles include the following:

- (1) The "starting point" is that a party does not normally have control over documents held by a third party unless it has a legal right to access those documents. This is the case even if there is a close relationship between the persons in question. As was made clear by the House of Lords in *Lonrho v Shell* [1980] 1 WLR 627, a parent company does not automatically have control of the documents held by a subsidiary: *Berkeley Square*, [28].
- (2) In the absence of a legal right to access documents, third party documents will only be in a party's control if there is, as a matter of

established fact, an arrangement or understanding that the party who is said to have control will be able to access the documents held by the custodian one way or another, even though it may still need to be agreed precisely how that access should be achieved: *Berkeley Square*, [44], [46(ii)].

- (3) The arrangement may be general in that it applies to all documents held by the third party, or it could be limited to a particular class or category of documents. It must not be limited to a specific request: *Berkeley Square*, [46(iii)], [46(vi)].
- (4) The existence of the arrangement or understanding may be inferred from the surrounding circumstances. Evidence of past access to documents in the same proceedings is a highly relevant factor: *Berkeley Square*, [46(iv)].

(b) The Tribunal's conclusion on the first issue

- 20. Applying the principles referred to above, the onus is on OTC to establish that there is an arrangement or understanding by which SSEL is able to access relevant documents belonging to other Samsung Addressees which are now held by Covington. OTC invites the Tribunal to infer that there is such an arrangement or understanding having regard to Samsung Addressees' common involvement in the DRAM Investigation.
- 21. OTC invites the Tribunal to infer from the fact that the Samsung Addressees were "in the same boat" in relation to the Commission investigation, in that they acted jointly in their response to the Commission's investigation, instructed a single law firm to make the leniency application and provided the SSEL Leniency File to the Commission, that there was a general document sharing arrangement. It does not, however, follow from the fact that the Samsung Addressees appointed a single firm and pooled those documents which were provided to the Commission as part of a joint leniency application that there was a general document sharing arrangement whereby each Samsung Addressee was granted access to all documents provided by the others.

22. The evidence from Mr Tallon is that, under Belgian law, the fact that a document has been provided to a jointly instructed lawyer by one entity does not entail any sharing of that document with other instructing entities. Dr Helmer denies that there was or is any general arrangement pursuant to which SSEL had access to documents of other Samsung subsidiaries. The evidence of Ms Grelier is that, having made enquiries of Covington's "Matter Management department", there is no copy of the engagement letter between Howrey and SSEL and "that SSEL does not have access to documents of any other companies within the Samsung Electronics group."
23. Moreover, contrary to OTC's submission, it does not follow from the fact that the Samsung Addressees, and in particular SSEG, are said to share with SSEL in the economic impact of the Part 20 Claim, that a document sharing arrangement can be inferred between these entities. Nor can such an arrangement be inferred from the fact that SSEG has been supporting SSEL in relation to the conduct of this litigation. Dr Helmer's evidence, which I accept, is that there is no document sharing arrangement and that any sharing by another Samsung Addressee is in response to a specific request. Providing a document in response to a specific request is not sufficient to give SSEL control of the documents of the other entity (see the *Berkeley Square* principle referred to at paragraph 19(3) above).
24. I take account of the criticisms made by OTC of SSEL's evidence on this issue, in particular the absence of direct evidence from individuals personally involved in the document sharing and storage arrangements. However, there is, in my judgment, force in SSEL's riposte that the nature of the evidence reflects the historic nature of the arrangements in question made by a long-dissolved firm of solicitors. It is not surprising that SSEL's witnesses have no direct knowledge of the arrangements.
25. In short, I am not persuaded that there is or was an understanding or arrangement as to the sharing of documents between SSEL and other Samsung Addressees. I am therefore not satisfied that either: (i) the Covington Documents in so far as they comprise documents of entities other than SSEL, with the exception of jointly filed documents; or (ii) data recorded on the management and/or

accounting systems of the other Samsung Addressees; are within SSEL's control.

(2) Scope of searches in relation to documents within SSEL's control

26. SSEL accepts that it could in principle search the documents that it accepts are in its control, that is to say the Covington Documents which were provided to Mr Camesasca by SSEL itself or jointly filed by the Samsung Addressees with the Commission. SSEL submits, however, that any such searches would not only be laborious and time-consuming but that they would be unlikely to result in additional disclosure. This is because:

(1) SSEL already carried out a disclosure exercise as part of the DRAM Investigation and there is nothing to suggest that it failed to disclose relevant documents within its control to the Commission.

(2) Documents disclosed to the Commission will have been part of the DRAM Investigation case file which has already been disclosed to OTC (the "Commission Case File"). A file maintained for the purposes of a competition law investigation includes all documents obtained by the Commission during the investigation. SSEL contends that OTC has not put forward any grounds for suggesting that there was or might be a gap between what was provided to the Commission by SSEL (together with other Samsung Addressees) and what was indexed in the Commission Case File.

27. SSEL points out that it was a leniency applicant in the DRAM Investigation and contends that, as such, it had every reason to search for and provide the largest possible volume of potentially relevant information to the Commission since it was in its interests to cooperate with the Commission to the greatest possible degree. SSEL submits that the scope of what would have been considered relevant to the DRAM Investigation was no narrower than what would be relevant for these proceedings.

28. Ms Grelier's evidence is that what OTC refers to as the SSEL Leniency File, as meaning the material disclosed to the Commission, is not a single, self-contained file but is spread across a collection of about 10 CD-ROMs, 70 boxes of paper files and over 35GB of data stored electronically. Her evidence is that, in the light of the checks which she has carried out, these documents consist, for the most part, of: "(i) duplicates of contemporaneous evidence and responses to information requests submitted to the Commission [...]; (ii) preparatory work for and drafts of leniency statements or settlement submissions, which are both privileged and excepted from disclosure under the Commission File Order; (iii) attorney notes, client advice and other attorney work product related to the [DRAM Investigation]; and (iv) copies of communications with the Commission's case team", which are primarily administrative in nature.
29. In response, Mr Bartlett says that: there is no evidence as to the approach that was actually taken by SSEL when deciding what to disclose to the Commission; decisions as to what should be disclosed are nuanced and motivated by a range of issues; the issues in the Part 20 Claim, which relate primarily to the effects of the cartel rather than the infringement, are different from the issues in the Commission's investigation and SSEL's copy of the Commission Case File (the "SSEL Case File"), which only includes 1,764 documents, contains very limited information as to the effects of the cartel and the key issues relating to the inter-relationship between the sales channels for Major PC/Server OEMs and other customers. He points out that, according to SSEL's own evidence, Covington holds at least 35GB of documents on portable data carriers and shared repositories in Covington's IT systems relating to the DRAM cartel, whereas the documents on the SSEL Case File amount to only c. 0.151GB of data. OTC submits that SSEL has not undertaken any proper review of this material and that its evidence as to whether any further material was submitted to the Commission following the date of access to the Commission Case File in mid-2009 is entirely speculative.

(a) Conclusion on the second issue

30. Notwithstanding the objections raised by SSEL, I am satisfied that it would be consistent with the Tribunal's governing principles as set out in Rule 4 of the

Tribunal Rules to require SSEL to carry out reasonable and proportionate searches of the Covington Documents within its control i.e. the documents which were provided to Mr Camesasca by SSEL itself or which were filed with the Commission jointly by the Samsung Addressees. Although I recognise that such searches may be fruitless, to the extent that all relevant documents have already been disclosed via the Commission Case File, and that the searches will be labour intensive, I consider that there may well be relevant material that is not in the Commission Case File, including material submitted to the Commission following the date of access to the Commission Case File, which may come to light as a result of the searches and that it would not be disproportionate to require SSEL to carry out these searches.

D. DISPOSITION

31. The order that I make on OTC's application is therefore that SSEL must carry out reasonable and proportionate searches of documents held by its solicitors, Covington, as detailed in section 1 of the Disclosure Report in so far as these comprise documents of SSEL itself or documents filed with the Commission jointly by the Samsung Addressees. OTC's application is otherwise dismissed.

Andrew Lenon KC
Chair

Charles Dhanowa CBE KC (*Hon*)
Registrar

Date: 20 August 2025