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14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17  
18 In re DYNAMIC RANDOM ACCESS  
19 MEMORY (DRAM) ANTITRUST  
20 LITIGATION

Master File No. M-02-1486-PJH

MDL No. 1486

**THIRD JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

21 This Document Relates to:

22 ALL ACTIONS

Date: July 15, 2004  
Time: 2:30 pm, 17th Floor  
Court: Hon. Phyllis J. Hamilton

1                    **THIRD JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

2                    The parties to this consolidated action jointly submit this Third Case Management  
3 Conference Statement in accordance with the Court’s Standing Order.

4                    **1.     Jurisdiction:**

5                    **A.     Subject Matter Jurisdiction:** Sixteen related cases, consolidated by  
6 the Judicial Panel on MultiDistrict Litigation and transferred to this Court, are brought as  
7 class actions and allege claims under the Sherman and Clayton Antitrust Acts based on  
8 alleged price-fixing and manipulation in the market for dynamic random access memory  
9 (“DRAM”) computer chips. Subject matter jurisdiction over all of the plaintiffs’ claims in  
10 these consolidated actions is allegedly founded on federal question jurisdiction. All  
11 domestic defendants were properly served and answered the Consolidated Amended Class  
12 Action Complaint (the “Consolidated Complaint”). In addition Infineon Technologies AG in  
13 Germany answered the Consolidated Complaint. Service of process is pending as to the  
14 three Taiwanese foreign defendants, namely, Mosel Vitelic Corp., Nanya Technology Corp.,  
15 and Winbond Electronics Corp. Accordingly, determination of the jurisdictional basis of  
16 potential counterclaims, if any, still remains premature as to the three Taiwanese defendants.  
17 Elpida Memory Inc. (a Japanese corporation), Hynix Semiconductor Inc., and Samsung  
18 Electronics Co., Ltd. (both Korean corporations) were all properly served under the Hague  
19 Convention and have answered the Consolidated Complaint.

20                    **B.     Personal Jurisdiction:** There are no potential personal jurisdiction  
21 issues for any of the defendants except for the three Taiwanese defendants who have yet to  
22 be served or answer the Consolidated Complaint. On March 19, 2004, this Court issued  
23 three letters rogatory to effect service of process on the three Taiwanese defendants. On  
24 March 23, 2004 plaintiffs sent all required documents for service of process to APS  
25 International, Ltd. - a special international process server. On April 12, 2004 APS  
26 International, Ltd. informed plaintiffs that the documents had been translated and sent to the  
27 United States Department of State, starting the formal process of effecting service of process  
28 on a Taiwanese corporation. APS International, Ltd. has informed plaintiffs counsel that

1 service of process on a Taiwanese corporation can take at least six to twelve months to  
2 effectuate service.

3 **2. Facts:**

4 Plaintiffs allege that they purchased DRAM computer chips directly from defendants  
5 or from their alleged co-conspirators. Plaintiffs sue to recover damages allegedly caused by  
6 the defendants' alleged conspiracy to fix prices and allocate markets for DRAM chips in the  
7 United States and elsewhere. Plaintiffs allege that the conspiracy began approximately  
8 November 1, 2001 and continued through at least June 30, 2002.

9 In June 2002, before the first of these lawsuits was filed, a Grand Jury was convened  
10 by the United States Department of Justice (the "DOJ") in the Northern District of  
11 California to investigate price-fixing in the DRAM market. The Grand Jury issued  
12 subpoenas to various DRAM manufacturers. The DOJ intervened in this action for the  
13 limited purpose of staying certain discovery pending completion of the Grand Jury  
14 proceedings. The parties to this action and the DOJ agreed to a Stipulation and Order  
15 Limiting the Scope of Discovery, which was entered by the Court on April 16, 2003. The  
16 parties have been proceeding under said Stipulation and Order, which limits discovery  
17 during the pendency of the Grand Jury. On January 14, 2004, the Court ordered that the  
18 stay remain in effect until July 15, 2004 and set a status conference for that date. Both  
19 defendants and the DOJ request that the stay remain in effect for an additional six months  
20 because the grand jury process is continuing. Plaintiffs question whether this stay is  
21 necessary and should be granted.

22 **3. Legal Issues:**

23 Whether a class of persons who purchased DRAM chips directly from defendants  
24 should be certified and whether plaintiffs adequately represent that class;

25 Whether plaintiffs have standing to prosecute their alleged claims under the Sherman  
26 and Clayton Antitrust Acts;

1 Whether defendants engaged in a contract, combination or conspiracy to fix,  
2 maintain or stabilize the prices of, and/or allocate the markets for, DRAM in the United  
3 States;

4 Whether the conduct of defendants that is allegedly unlawful under the Sherman and  
5 Clayton Antitrust Acts caused prices of DRAM in the United States to be artificially high  
6 and at anti-competitive levels; and

7 Whether plaintiffs and other members of the class alleged by plaintiffs were injured  
8 by the alleged unlawful conduct of defendants and, if so, the appropriate class-wide measure  
9 of damages.

10 **4. Narrowing of Issues:** The foregoing legal issues are in the Consolidated  
11 Complaint. On November 14, 2003, defendant Nanya Technology Corporation USA  
12 (“Nanya USA”) filed a motion to dismiss the Consolidated Complaint and the underlying  
13 federal actions on the grounds that the allegations in the Consolidated Complaint are  
14 insufficient to support any claim that Nanya USA participated in an antitrust conspiracy.  
15 Nanya USA’s Motion To Dismiss was denied on January 14, 2004.

16 **5. Motions:** Motions may be necessary should discovery disputes arise. A  
17 motion for class certification will be filed. One or more defendants may eventually file a  
18 motion for summary judgment and/or summary adjudication of issues.

19 **6. Discovery:** On April 16, 2003, the District Court entered an Order (the “April  
20 16, 2003 Order”) limiting discovery for the ensuing nine months. Under the terms of that  
21 Order, the Court was to conduct, and did conduct, a Discovery Status Conference before  
22 January 16, 2004 to determine whether the provisions of the order shall remain in effect. On  
23 January 14, 2004, this Court extended the April 16, 2003 Order another six months.

24 The April 16, 2003 Order provided that while in effect, the parties were permitted to  
25 conduct certain discovery specified in that Order. A summary of the key provisions of the  
26 April 16, 2003 Order, and the status of performance of each of those provisions is provided:

- 27 a. Subject to the limitations of the April 16, 2003 Order, thirty days  
28 after the entry of a Protective Order, each defendant was to

1 produce documents produced by each such defendant to the  
2 Grand Jury in compliance with subpoenas issued. The Order  
3 also provides that every 90 days thereafter, each defendant shall  
4 produce on a rolling basis all documents produced to the Grand  
5 Jury during the preceding 90 days (§ 4). A Stipulation and  
6 Protective Order was entered on July 11, 2003. Defendants  
7 timely tendered their Grand Jury documents. After numerous  
8 sessions relating to the form in which the documents would be  
9 produced, over two million documents were produced to  
10 plaintiffs counsel in electronic format. Plaintiffs are in the  
11 process of inspecting those documents. Since the last Status  
12 Conference on January 14, 2004, defendants have continued to  
13 make rolling document productions and have produced  
14 approximately an additional 550,000 documents which plaintiffs  
15 are in the process of reviewing.

16 b. Thirty days after the entry of a Protective Order, each plaintiff is  
17 to produce all documents referred to in its original complaint  
18 and, for each DRAM product purchased during the class period,  
19 documents sufficient to show the identity of the seller, the  
20 particular products purchased, the quantities purchased and the  
21 prices paid by each plaintiff (§ 5). These documents,  
22 collectively 505 in number, were timely produced.

23 c. The interrogatories that plaintiffs and defendants may propound  
24 are limited to seeking specified statistical data relating to certain  
25 sales and purchases of DRAM, identification of certain products  
26 purchased or sold and identification of distribution channels  
27 (§ 6). In February 2004 plaintiffs and defendants Micron  
28 Technology, Inc. and Micron Semiconductor Products, Inc.

1 propounded a First Set of Interrogatories. Plaintiffs and all  
2 defendants answered the respective interrogatories.

3 d. No depositions may be taken, except depositions of defendants'  
4 customers or suppliers or customer and supplier employees (but  
5 excluding those who are former employees of any defendant),  
6 which depositions are limited as set forth in the April 16, 2003  
7 Order (¶ 7). These depositions have not been taken pending the  
8 production of the Grand Jury documents.

9 e. In the event any of the three Taiwanese defendants denies  
10 personal jurisdiction in a motion or responsive pleading,  
11 plaintiffs may take appropriate discovery limited to evidence  
12 relating to the issue of personal jurisdictional, including  
13 depositions, of that defendant (¶ 9). Service is being effectuated  
14 on the three Taiwanese defendants.

15 f. Certain conditions attach to notice requirements for depositions  
16 and written discovery and the provision of responses to written  
17 discovery (¶ 8).

18 g. During the pendency of the Grand Jury proceedings, no other  
19 discovery or disclosures will be conducted, including any initial  
20 disclosure obligations under Fed. R. Civ. P. 26 or the local rules  
21 (¶ 10).

22 7. **Relief:** Plaintiffs seek money damages, including treble damages, for alleged  
23 violations of the antitrust laws and injunctive relief against alleged continued illegal  
24 practices. It is too early to determine how purported damages would be computed.

25 8. **ADR:** The parties agree that ADR procedures are not appropriate at this time.

26 9. **Settlement:** The parties agree that settlement discussions are premature at  
27 this time.

1           **10. Magistrate Judge Trials:** The parties do not consent to have a magistrate  
2 judge conduct all further proceedings including trial.

3           **11. Trial:** Plaintiffs demanded trial by jury. The parties are not presently in a  
4 position to address whether: (a) it is feasible or desirable to bifurcate issues for trial; (b) to  
5 estimate the anticipated length of trial; or (c) it is possible to reduce the length of the trial by  
6 stipulation, use of summaries or other expedited means of presenting evidence.

7           **12. Federal Related Cases:** All known related cases have been consolidated in  
8 this multidistrict litigation. On June 21, 2004, the Clerk of this Court received the Judicial  
9 Panel's Order transferring the case captioned Dawn Thompson v. Micron Technology, D.  
10 Massachusetts, C.A. No. 1:04-10778 to the Northern District of California where we  
11 understand it will be included in the instant MDL proceeding. On June 23, 2004, the  
12 Northern District Clerk requested that the files and records of that case be transferred to this  
13 court, but they have not yet arrived. Prior to the transfer, a motion to remand was pending  
14 before the Massachusetts district court. The Dawn Thompson case seeks "equitable relief  
15 in the nature of disgorgement and/or restitution of defendants' unjust enrichment "on behalf  
16 of a class of Massachusetts residents. (Thompson Cplt., prayer for relief, paragraph 2) .

17           **13. Class Action Allegations:** Plaintiffs have brought these consolidated actions  
18 on behalf of a putative class of persons who, during the period beginning approximately  
19 November 1, 2001 through at least June 30, 2002 (the "Class Period"), allegedly purchased  
20 DRAM directly from defendants or their subsidiaries. Excluded from the class are  
21 defendants and their parents, subsidiaries, affiliates, all governmental entities and co-  
22 conspirators.

23           **14. Scheduling:**

- 24                   a. Discovery While the April 16, 2003 Order is in Effect. The  
25                   April 16, 2003 Order limits discovery during the pendency of  
26                   the Grand Jury. On January 14, 2004, the Court ruled that the  
27                   stay was to remain in effect until July 15, 2004. The entry of the  
28                   Protective Order referred to above triggered the commencement

1 of certain specific discovery obligations. As provided for in the  
2 April 16, 2003 Order, a Discovery Status Conference should be  
3 held every six months or as deemed appropriate.

4 b. Class Certification. Plaintiffs intend to file and serve at the  
5 appropriate time a motion for class certification. The parties will  
6 propose a briefing and hearing schedule at the time the class  
7 certification motion is filed.

8 c. Further Case Management Conferences. The parties propose  
9 that the Court consider the need for a further Case Management  
10 Conference in six months for an update on service of the  
11 Taiwanese defendants and status of discovery.

12 **15. Other Matters:** On December 17, 2003 a criminal Information was filed  
13 against Mr. Censullo, a Regional Sales Manager for defendant Micron Technology, Inc.  
14 ("Micron"), for obstruction of justice. The Information charges Mr. Censullo with  
15 obstruction of justice by, inter alia, having altered his handwritten notations in his notebooks  
16 subpoenaed by the DOJ. Defendants believe that the Information is irrelevant to this case.

17 In April 2003, a federal grand jury subpoenaed Devin Cole, a former employee of  
18 Samsung Semiconductor Inc. When Mr. Cole was ordered to turn over certain documents,  
19 he declined, citing the Fifth Amendment. U.S. District Judge Susan Illston denied Mr.  
20 Cole's motion to quash and entered a contempt order that Mr. Cole has appealed to the Ninth  
21 Circuit. Defendants also believe that these proceedings are irrelevant to this case and note  
22 that the entry of a contempt order was necessary for Mr. Cole to appeal the ruling.



1 Dated: July 8, 2004

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