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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA)	Case No. CR
)	
12)	INFORMATION
13 v.)	VIOLATIONS:
14)	Title 15, United States Code,
)	Section 1 – Price Fixing and Bid
15 ELPIDA MEMORY, INC.)	Rigging
)	San Francisco Venue
16 Defendant.)	
17)	

18
19 COUNT I - CONSPIRACY TO RESTRAIN TRADE BY PRICE FIXING

20 The United States of America, acting through its attorneys, charges:

21 I.

22 DESCRIPTION OF THE OFFENSE

23 1. ELPIDA MEMORY, INC. (“ELPIDA” or Defendant) is made a defendant on the
24 charge stated below.

25 2. From on or about April 1, 1999, until on or about June 15, 2002, Defendant
26 ELPIDA and its coconspirators, entered into and engaged in a combination and conspiracy in the
27 United States and elsewhere to suppress and eliminate competition by fixing the prices of
28 Dynamic Random Access Memory (“DRAM”) to be sold to certain original equipment

INFORMATION

1 manufacturers of personal computers and servers (“OEMs”). The combination and conspiracy
2 engaged in by the Defendant and its coconspirators was in unreasonable restraint of interstate and
3 foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

4 3. The charged combination and conspiracy consisted of a continuing agreement,
5 understanding, and concert of action among the Defendant and its coconspirators, the substantial
6 terms of which were to agree to fix the prices for DRAM to be sold to certain OEMs.

7 4. For the purpose of forming and carrying out the charged combination and
8 conspiracy, the Defendant and its coconspirators did those things that they combined and
9 conspired to do, including, among other things:

- 10 (a) participating in meetings, conversations, and communications in the
11 United States and elsewhere to discuss the prices of DRAM to be sold to
12 certain OEMs;
- 13 (b) agreeing, during those meetings, conversations, and communications, to
14 charge prices of DRAM at certain levels to be sold to certain OEMs;
- 15 (c) issuing price quotations in accordance with the agreements reached; and
- 16 (d) exchanging information on sales of DRAM to certain OEM customers, for
17 the purpose of monitoring and enforcing adherence to the agreed-upon
18 prices.

19 II.

20 DEFENDANTS AND COCONSPIRATORS

21 5. ELPIDA is a corporation organized and existing under the laws of Japan. From
22 April 1, 1999 until on or about March 1, 2001, HITACHI, LTD. (“Hitachi”) and NEC
23 CORPORATION (“NEC”), corporations organized and existing under the laws of Japan, sold
24 DRAM products into various markets, including the U.S. market. On December 20, 1999,
25 Hitachi and NEC (collectively, the “Corporate Founders”) formed Defendant ELPIDA.
26 Beginning on or about March 1, 2001, the Defendant sold DRAM products into various markets,
27 including the U.S. market. During the period covered by Count I of this Information, ELPIDA,
28 and its Corporate Founders, were engaged in the business of producing and selling DRAM to

1 customers in the United States and elsewhere.

2 6. Various corporations and individuals, not made defendants in this Information,
3 participated as coconspirators in the offense charged in this Information and performed acts and
4 made statements in furtherance of it.

5 7. Whenever in this Information reference is made to any act, deed, or transaction of
6 any corporation, the allegation means that the corporation engaged in the act, deed, or transaction
7 by or through its officers, directors, employees, agents, or other representatives while they were
8 actively engaged in the management, direction, control, or transaction of its business or affairs.

9 III.

10 TRADE AND COMMERCE

11 8. DRAM is the most commonly used semiconductor memory product. DRAM
12 provides high-speed storage and retrieval of electronic information in personal computers,
13 servers, and other devices. All references to DRAM in this Information include semiconductor
14 memory devices and modules.

15 9. During the period covered by Count I of this Information, Defendant and its
16 coconspirators sold and distributed DRAM in a continuous and uninterrupted flow of interstate
17 and foreign trade and commerce to customers located in states or countries other than the states
18 or countries in which the defendant and its coconspirators produced DRAM. The OEMs that
19 were affected by the conspiracy to suppress and eliminate competition were: Dell Inc., Compaq
20 Computer Corporation, Hewlett-Packard Company, Apple Computer, Inc., International Business
21 Machines Corporation, and Gateway, Inc.

22 10. The business activities of the Defendant and its coconspirators that are the subject
23 of Count I of this Information were within the flow of, and substantially affected, interstate and
24 foreign trade and commerce.

25 IV.

26 JURISDICTION AND VENUE

27 11. The combination and conspiracy charged in Count I of this Information was
28 carried out, in part, in the Northern District of California, within the five years preceding the

1 filing of this Information.

2 COUNT II - CONSPIRACY TO RESTRAIN TRADE BY BID RIGGING

3 The United States of America, acting through its attorneys, charges:

4 I.

5 DESCRIPTION OF THE OFFENSE

6 12. ELPIDA is made a defendant on the charge stated below.

7 13. Defendant ELPIDA and its coconspirators had discussions and reached
8 agreements on how it would allocate and divide a bid offered by Sun Microsystems, Inc. ("Sun")
9 in a DRAM auction on or about March 26, 2002. The combination and conspiracy engaged in
10 by the Defendant and its coconspirators was in unreasonable restraint of interstate and foreign
11 trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

12 14. The charged combination and conspiracy consisted of a continuing agreement,
13 understanding, and concert of action among the Defendant and its coconspirators, the substantial
14 terms of which were to agree to allocate and divide a bid for the purchase of one lot of 1
15 Gigabyte Next-Generation Dual In-Line Memory Modules ("1 GB NG DIMM") by Sun.

16 15. For the purpose of forming and carrying out the charged combination and
17 conspiracy, the Defendant and its coconspirators did those things that they combined and
18 conspired to do, including, among other things:

- 19 (a) participating in meetings, conversations, and communications in the
20 United States and elsewhere to discuss allocating (*i.e.*, dividing up) a bid
21 offered by Sun among themselves;
- 22 (b) agreeing, during those meetings, conversations, and communications, to
23 allocate a bid offered by Sun;
- 24 (c) allocating, in accordance with the agreements reached, a bid offered by
25 Sun among themselves, denying Sun a competitive price;
- 26 (d) participating in meetings, conversations, and communications to discuss
27 the submission of prospective bids for a bid offered by Sun to purchase
28 one lot of 1GB NG DIMM;

- 1 (e) agreeing, during those meetings, conversations, and communications, to
2 submit complementary bids to ensure the success of their agreement; and
3 (f) submitting complementary bids for one lot of 1GB NG DIMM, denying
4 Sun a competitive price.

5 II.

6 DEFENDANTS AND COCONSPIRATORS

7 16. ELPIDA is a corporation organized and existing under the laws of Japan. During
8 the period covered by Count II of this Information, ELPIDA was engaged in the business of
9 producing and selling DRAM to customers in the United States and elsewhere.

10 17. Another corporation and various individuals, not made defendants in this
11 Information, participated as coconspirators in the offense charged in Count II of this Information
12 and performed acts and made statements in furtherance of it.

13 III.

14 TRADE AND COMMERCE

15 18. During the period covered by Count II of this Information, the Defendant and its
16 coconspirators sold and distributed DRAM in a continuous and uninterrupted flow of interstate
17 and foreign trade and commerce to customers located in states or countries other than the states
18 or countries in which the defendant and its coconspirators produced DRAM.

19 19. The business activities of the Defendant and its coconspirators that are the subject
20 of Count II of this Information were within the flow of, and substantially affected, interstate and
21 foreign trade and commerce.

22 IV.

23 JURISDICTION AND VENUE

24 20. The combination and conspiracy charged in Count II of this Information was
25 carried out, in part, in the Northern District of California, within the five years preceding the
26 filing of this Information.

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1 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

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