



U.S. Department of Justice

Antitrust Division

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January 20, 2006

Robert B. Pringle, Esq.
Thelen Reid & Priest LLP
101 Second Street
San Francisco, CA 94105

Re: NEC Corporation - Cooperation and Non-Prosecution Agreement

Dear Mr. Pringle:

This letter sets forth the terms and conditions of an agreement between the Antitrust Division of the United States Department of Justice ("Antitrust Division") and NEC Corporation ("NEC") concerning (i) NEC's cooperation with the Antitrust Division's criminal investigation of antitrust and related offenses in the DRAM industry in the United States and elsewhere and (ii) the Antitrust Division's non-prosecution commitments. For purposes of this Cooperation and Non-Prosecution Agreement, "DRAM" means dynamic random access memory semiconductor devices and modules, including synchronous DRAM, double data rate (DDR), and Rambus (RDRAM).

1. NEC agrees that it will cooperate fully and truthfully with the Antitrust Division in: (i) the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of DRAM in the United States; and (ii) litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively, (i)-(ii), "Federal Proceeding"). The ongoing, full, and truthful cooperation of NEC shall include, but not be limited to:

(a) at the request of the Antitrust Division, providing a full exposition of all facts known to NEC as a result of its internal investigation relating to any possible violation of federal antitrust and related criminal laws involving the manufacture or sale of DRAM in or for the United States;

(b) producing to the Antitrust Division all non-privileged documents, information, and other materials (with translations in English), wherever located, in the possession, custody, or control of NEC, requested by the Antitrust Division in connection with any Federal Proceeding;

(c) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraphs 2 and 3 below, of NEC's subsidiaries (companies in which NEC has a

direct or indirect ownership interest of greater than 50% and which were engaged in the manufacture or sale of DRAM in the United States) and the current and former directors, officers, and employees of NEC and its subsidiaries as may be requested by the Antitrust Division – but excluding Choei Matsushima, Osamu Fujiwara, Akihiko Furusawa, Hiroshi Higuchi, and Dimitrios James (“Jim”) Sogas – including making these persons available in the United States at mutually agreed-upon locations, not at the expense of the Antitrust Division, for interview and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

2. The ongoing, full, and truthful cooperation of each subsidiary described in Paragraph 1(c) above will be subject to the procedures and protections of this agreement, and shall include, but not be limited to producing to the Antitrust Division all non-privileged documents, information, and other materials (with translations in English), wherever located, in the possession, custody, or control of such subsidiary, requested by the Antitrust Division in connection with any Federal Proceeding.

3. The ongoing, full, and truthful cooperation of each person described in Paragraph 1(c) above will be subject to the procedures and protections of this agreement and shall include, but not be limited to:

(a) producing in the United States and at mutually agreed-upon locations all non-privileged documents (with translations into English), including claimed personal documents and other materials, wherever located, requested by attorneys and agents of the Antitrust Division in connection with any Federal Proceeding;

(b) making himself or herself available for interview in the United States at mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the Antitrust Division in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the Antitrust Division in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the Antitrust Division with any non-privileged material or information not requested in (a)-(c) of this Paragraph that he or she may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the Antitrust Division in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503).

4. Subject to NEC’s satisfaction of the cooperation requirements of Paragraph 1 above, the Antitrust Division agrees that it will not bring criminal charges against NEC for any act or offense committed before the date of this agreement that was undertaken in furtherance of an

antitrust conspiracy involving the manufacture or sale of DRAM in the United States and elsewhere or undertaken in connection with any investigation of such conspiracy (“Relevant Offense”). The non-prosecution terms of this Paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

5. Subject to NEC’s satisfaction of the cooperation requirements of Paragraph 1 above, the Antitrust Division also agrees to the following:

(a) subject to the exceptions noted in Paragraph 5(c), the Antitrust Division will not bring criminal charges against any subsidiary or any current or former director, officer, or employee of NEC or its subsidiaries for any Relevant Offense committed before the date of this agreement and while that person was acting as a director, officer, or employee of NEC or a subsidiary. The protections granted by this Paragraph shall not apply to Choei Matsushima, Osamu Fujiwara, Akihiko Furusawa, Hiroshi Higuchi, and Dimitrios James (“Jim”) Sogas;

(b) should the Antitrust Division determine that any current or former director, officer, or employee of NEC or its subsidiaries (except Choei Matsushima, Osamu Fujiwara, Akihiko Furusawa, Hiroshi Higuchi, and Dimitrios James (“Jim”) Sogas) may have information relevant to any Federal Proceeding, the Antitrust Division may request that person’s cooperation under the terms of this agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for NEC) or, if the individual is not known to the Antitrust Division to be represented, to the undersigned counsel for NEC;

(c) if any person requested to provide cooperation under Paragraph 5(b) fails to comply with his or her obligations under Paragraph 3, then the terms of this agreement as they pertain to that person, and the agreement not to prosecute that person granted in this agreement, shall be rendered void, and any leniency, immunity, or non-prosecution granted to such a person under the agreement may be revoked by the Antitrust Division;

(d) should any leniency, immunity, or non-prosecution granted be revoked, the Antitrust Division may thereafter prosecute such person criminally, and the agreement in 5(e) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void, and any statements or other information provided by such person to the Antitrust Division under this agreement may be used against him or her in such prosecution;

(e) except as provided in Paragraph 5(c), information provided by a person described in Paragraph 5(b) to the Antitrust Division under the terms of this agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

(f) the non-prosecution terms of this Paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and

(g) documents provided under Paragraphs 1(b), 2, and 3(a) shall be deemed responsive to the outstanding grand jury subpoena issued to NEC Electronics America, Inc.

6. Notwithstanding any other provision of this Agreement, the obligations of NEC described in Paragraph 1 above and the obligations of each person or subsidiary described in Paragraph 1(c) above under this agreement shall relate solely to events occurring prior to the effective date of this Agreement.

7. The Antitrust Division agrees that when any person travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this agreement, or for meetings with counsel in preparation therefor, the Antitrust Division will take no action, based upon any Relevant Offense, to subject such person to arrest, detention, or service of process, or to prevent such person from entering or departing the United States. This Paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making a false statement (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony or information provided or requested in any Federal Proceeding.

8. The commitments in Paragraphs 4 and 5(a) of this agreement bind only the Antitrust Division, although, upon the request of NEC, the Antitrust Division will bring this agreement to the attention of other prosecuting offices or administrative agencies.

9. Should the Antitrust Division determine in good faith that NEC has failed to provide full and truthful cooperation, as described in Paragraph 1 of this agreement, or has otherwise violated any provision of this agreement, the Antitrust Division will notify counsel for NEC in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this agreement (except its obligations under this Paragraph), and NEC shall be subject to prosecution for any federal crime of which the Antitrust Division has knowledge, including, but not limited to, the substantive offenses relating to the investigation resulting in this agreement. NEC may seek Court review of any determination made by the Antitrust Division under this Paragraph to void any of its obligations under this agreement. NEC agrees that, in the event that the Antitrust Division is released from its obligations under this agreement and brings criminal charges against NEC for any offense referred to in Paragraph 4 of this agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this agreement and six (6) months after the date the Antitrust Division gave notice of its intent to void its obligations under this agreement. NEC understands and agrees that in any further prosecution of it resulting from the release of the Antitrust Division from its obligations under this agreement because of NEC's violation of this agreement, any documents, statements, information, testimony, or evidence provided by it or its current directors, officers, or employees of it, to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, NEC unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

10. The terms of this agreement are contingent on the Court's acceptance of the Antitrust Division's Plea Agreement with Elpida Memory, Inc. ("Elpida") and the Court's sentencing of

Elpida to the recommended sentence in the Plea Agreement. NEC, as well as Hitachi, Ltd., was a corporate founder of Elpida.

11. This agreement, upon its mutual execution, constitutes the entire agreement between the Antitrust Division and NEC, and supersedes all prior understandings, if any, whether oral or written, relating to the subject matter of this agreement.

The signatories below acknowledge the acceptance of the foregoing terms and conditions.

Sincerely yours,

_____/s/_____

Niall Lynch
Assistant Chief
San Francisco Field Office

_____/s/_____
NEC Corporation
by Robert B. Pringle
Attorney in Fact

January 26, 2006
Date

_____/s/_____
Robert B. Pringle
Attorney for NEC Corporation

January 26, 2006
Date