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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. CR 11-0162 WHA
	)	
SAMSUNG SDI COMPANY,	)	
LTD.	)	
	)	
DEFENDANT.	)	
_____	)	

SAN FRANCISCO, CALIFORNIA  
TUESDAY, AUGUST 16, 2011

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

FOR PLAINTIFF:	U.S. DEPARTMENT OF JUSTICE
	ANTITRUST DIVISION
	450 GOLDEN GATE AVENUE
	SAN FRANCISCO, CALIFORNIA 94102
BY:	<b>LIDIA MAHER</b>
	ASSISTANT UNITED STATES ATTORNEY

FOR DEFENDANT:	SHEPPARD MULLIN RICHTER & HAMPTON LLP
	FOUR EMBARCADERO CENTER
	17TH FLOOR
	SAN FRANCISCO, CA 94111
BY:	<b>GARY L. HALLING</b>
	<b>JIM MC GINNIS</b>
	ATTORNEY AT LAW

REPORTED BY:	JAMES YEOMANS, CSR 4039, RPR
	OFFICIAL REPORTER

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 TUESDAY, AUGUST 16, 2011

2:00 P.M.

2 (THE FOLLOWING PROCEEDINGS WERE HEARD IN OPEN COURT:)

3 **THE CLERK:** CALLING CRIMINAL CASE 11-162, UNITED

4 STATES VERSUS SAMSUNG.

5 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCE

6 FOR THE RECORD.

7 **MS. MAHER:** GOOD AFTERNOON, YOUR HONOR.

8 LIDIA MAHER ON BEHALF OF THE UNITED STATES.

9 **THE COURT:** WELCOME BACK.

10 **MR. HALLING:** GOOD AFTERNOON, YOUR HONOR.

11 GARY HALLING FOR SAMSUNG SDI.

12 **MR. MC GINNIS:** ALSO JAMES MC GUINNESS.

13 **MR. HALLING:** WE ALSO HAVE PRESENT MR. SANG SOO NOH

14 THE CORPORATE REPRESENTATIVE.

15 **THE COURT:** OUR INTERPRETER IS?

16 **THE INTERPRETER:** JACKI NOH, J-A-C-K-I, N-O-H,

17 CERTIFIED COURT INTERPRETER. I'VE ALSO BEEN SWORN.

18 **THE COURT:** HAVE YOU BEEN SWORN IN THE CASE BEFORE?

19 **THE INTERPRETER:** YES, I HAVE.

20 **THE COURT:** GOOD. THANK YOU.

21 WE'RE HERE FOR SENTENCING AFTER A PLEA OF GUILTY, AND

22 HAS THE -- LET ME ASK THE CORPORATE REPRESENTATIVE, IF HE HAS

23 READ THE OR INTERPRETED TO HIM THE PRESENTENCE REPORT?

24 **THE DEFENDANT:** YES.

25 **THE COURT:** ARE THERE ANY UNRESOLVED OBJECTIONS TO THE

1 REPORT BY THE DEFENSE?

2 **MR. HALLING:** NO, YOUR HONOR.

3 **THE COURT:** BY THE GOVERNMENT?

4 **MS. MAHER:** NO, YOUR HONOR.

5 **THE COURT:** SO WE FIRST HEAR FROM THE DEFENSE, AND  
6 THEN FROM THE GOVERNMENT AND THEN WE'LL LET THE CORPORATE  
7 REPRESENTATIVE ALLOCATE AT THE END.

8 SO, PLEASE, GO RIGHT AHEAD.

9 **MR. HALLING:** YOUR HONOR, I WILL ADDRESS BRIEFLY THE  
10 TWO ISSUES THAT YOU RAISED IN SOME OF YOUR PRIOR QUESTIONS.  
11 THEY'RE COVERED IN OUR WRITTEN PAPERS, BUT I WOULD JUST LIKE TO  
12 EMPHASIZE A COUPLE OF POINTS.

13 WITH RESPECT TO CRIMINAL RESTITUTION, IT'S A NARROW  
14 REMEDY THAT ONLY APPLIES TO PARTICULAR KINDS OF VICTIMS. THEY  
15 MUST BE FIRST CAREFULLY IDENTIFIED AND THE PRECISE LOSS  
16 CALCULATED.

17 AND THE WAY THAT WORKS IS YOU HAVE TO FIGURE OUT WHAT  
18 WOULD A PRICE -- WHAT PRICES WOULD HAVE BEEN IN A COMPETITIVE  
19 MARKET AND WHAT PARTICULAR PRODUCTS, WHAT PARTICULAR TIME  
20 PERIODS AND WHAT PARTICULAR VICTIMS WERE EFFECTED.

21 AND TYPICALLY THIS IS A COMPLEX ANALYSIS THAT IS  
22 ROUTINELY UNDERTAKEN IN CIVIL LITIGATION WHERE ECONOMISTS ARE  
23 HIRED BY BOTH SIDES AND THESE ISSUES ARE SERIOUSLY VETTED.

24 UNDER THE CRIMINAL RESTITUTION STATUTES THIS IS  
25 INAPPROPRIATE WE BELIEVE BECAUSE OF THE PROVISIO THAT YOU SHOULD

1 NOT ENTER SUCH AN ORDER IF IT WOULD UNDULY COMPLICATE, IF IT  
2 INVOLVES UNDUE COMPLICATION OR DELAY IN SENTENCING, AND IT  
3 WOULD CERTAINLY DO THAT.

4 THE PRESENTENCE REPORT AGREES WITH THAT POSITION. AND  
5 I CAN CITE PARTICULAR STATUTES AND THE LEGISLATIVE HISTORY, BUT  
6 I THINK IT'S IN OUR PAPERS.

7 THE OTHER ISSUE IS GAIN OR LOSS YOU ASKED ABOUT, AND  
8 THE GUIDELINE PROVISION FOR ANTITRUST CASES SECTION 2(R)1.1  
9 PROVIDES THAT IN LIEU OF PECUNIARY LOSS YOU SHOULD USE 20  
10 PERCENT OF THE VOLUME OF COMMERCE, AND I WOULD LIKE TO MAKE A  
11 COUPLE OF POINTS ABOUT THAT.

12 THE GUIDELINES IN THE COMMENTARY TO THAT SECTION  
13 PROVIDE THAT, I WILL READ IT, IT ESTIMATED THE AVERAGE GAIN  
14 FROM PRICE FIXING IS 10 PERCENT OF THE SELLING PRICE, SO WE'RE  
15 GOING TO USE 20 PERCENT, WHICH IS GENERALLY MORE THAN THE  
16 ACTUAL LOSS OR AT LEAST THE GAIN, BUT WE'RE GOING TO USE A  
17 HIGHER FIGURE 20 PERCENT.

18 AND THE REASON WE USE THE VOLUME OF COMMERCE, FOR THE  
19 SAME REASON THE RESTITUTION IS INAPPROPRIATE, IT'S A SIMILAR,  
20 VERY COMPLEX ANALYSIS THAT INVOLVES ECONOMISTS AND HEARINGS AND  
21 DISPUTES.

22 IT'S NOT APPROPRIATE TO DO THAT, ESPECIALLY WHEN  
23 THE -- AS THE GUIDELINES POINT OUT, STUDIES HAVE INDICATED THAT  
24 THE OVERCHARGE IS TYPICALLY MORE LIKE 10 PERCENT.

25 FURTHER, IN ADDITION TO USING A 20 PERCENT FIGURE AS A

1 STARTING POINT, THERE'S A MULTIPLIER THAT'S APPLIED TO BE SURE  
2 THAT THE FINE EXCEEDS THE GAIN OR LOSS, AND THE MINIMUM  
3 MULTIPLIER IS .75.

4 IN THIS CASE THE MINIMUM MULTIPLIER USED IN  
5 CALCULATING THE SENTENCE WAS 1.6, SO WE END UP WITH A GUIDELINE  
6 RANGE OF 28.5 TO 57 MILLION AND A FINE THAT'S BEEN NEGOTIATED  
7 OF 32 MILLION.

8 SO THAT'S STARTING WITH 20 PERCENT, ADDING THE 1.6  
9 PERCENT MULTIPLIER AND THEN THE FINE IS ABOVE THE MINIMUM  
10 RANGE.

11 IT ALSO REPRESENTS 36 PERCENT OF, APPROXIMATELY, OF  
12 THE VOLUME OF COMMERCE. SO IF THE AVERAGE OVERCHARGE IS 10  
13 PERCENT, THIS FINE ALREADY IS IN THE RANGE OF 36 PERCENT.

14 AND, FINALLY, I WOULD JUST NOTE THAT IN THESE KINDS OF  
15 CASES, TYPICALLY IN THIS DISTRICT THE ANTITRUST PRICE FIXING  
16 CASES ARE OFTEN RESOLVED BY FINES THAT ARE BELOW THE MINIMUM OF  
17 THE GUIDELINES. THIS CASE IT ACTUALLY EXCEEDS IT.

18 SO IN TERMS OF COMFORT THAT THE GAIN OR LOSS  
19 CALCULATION, WHICH WOULD BE VERY COMPLICATED TO DO, WOULD BE  
20 ACTUALLY LESS, WE HAVE EVERY REASON TO BELIEVE IT WOULD BE LESS  
21 THAN USING THE GUIDELINE PROVISION. THAT'S WHAT THE GUIDELINE  
22 PROVISION IS DESIGNED FOR.

23 **THE COURT:** ALL RIGHT. LET'S HEAR FROM THE  
24 GOVERNMENT.

25 **MS. MAHER:** YOUR HONOR, THE GOVERNMENT HAS ATTEMPTED

1 TO ANSWER THE COURT'S QUESTIONS AS RAISED HERE AND IN THE  
2 VARIOUS ORDERS THAT HAVE BEEN ISSUED BY YOUR HONOR, AND WE'D BE  
3 HAPPY TO ANSWER ANY ADDITIONAL QUESTIONS YOU MAY HAVE.

4 I'M HOPEFUL YOU RECEIVED OUR SUPPLEMENTAL FILING THIS  
5 MORNING?

6 **THE COURT:** I DID.

7 **MS. MAHER:** HAD AN OPPORTUNITY TO LOOK OVER THAT.  
8 SHOULD YOUR HONOR HAVE ANY ADDITIONAL QUESTIONS ABOUT THE GRAND  
9 JURY INVESTIGATION OR ANYTHING OF THAT NATURE, I'D BE HAPPY TO  
10 ANSWER THOSE QUESTIONS OR ANY OTHER QUESTIONS YOU HAVE.

11 I'D JUST LIKE TO NOTE THAT THE GOVERNMENT HAS SPENT  
12 SIGNIFICANT TIME INVESTIGATING THIS MATTER, AND THE PARTIES  
13 HAVE SPENT SIGNIFICANT TIME NEGOTIATING THIS PLEA AGREEMENT,  
14 AND WE AGREE AND NOW THE PROBATION OFFICE AGREES AS WELL, THIS  
15 IS AN APPROPRIATE RESOLUTION TO THE MATTER BEFORE THE COURT.

16 SO WE RESPECTFULLY REQUEST THAT YOUR HONOR ACCEPT THIS  
17 PLEA AGREEMENT.

18 **THE COURT:** WHAT IS -- THE PROBATION OFFICER FAILED TO  
19 PUT IN THE RECOMMENDATION SECTION WHAT THE OFFENSE ADJUSTED  
20 OFFENSE LEVEL WAS, WHAT DOES THAT WORK OUT TO BE HERE?

21 **THE PROBATION OFFICER:** I'M SORRY, YOUR HONOR.

22 **THE COURT:** THIS DOCUMENT RIGHT HERE DOESN'T HAVE  
23 THE -- NORMALLY YOUR OFFICE PUTS IN WHAT THE GUIDELINE RANGE IS  
24 AND IT'S OMITTED HERE.

25 **THE PROBATION OFFICER:** ARE YOU ASKING ABOUT THE

1 CULPABILITY SCORE?

2 **THE COURT:** IF YOU GO BACK INTO THE TEXT OF YOUR  
3 DOCUMENT YOU HAVE THE OFFENSE LEVEL AND THEN HAVE A BUNCH OF  
4 PLUSES AND ZEROS, AND I NEVER -- SEE WHERE YOU TOTALED IT UP,  
5 IT'S A MINUS. SO WHAT IS THE BOTTOM LINE GUIDELINE  
6 CALCULATION?

7 **THE PROBATION OFFICER:** A CORPORATE CASE, YOUR HONOR,  
8 DOESN'T HAVE A BOTTOM LINE GUIDELINE CALCULATION. YOU HAVE A  
9 BASE, OFFENSE LEVEL WHICH IS 12, WHICH THEN ARE NUMBERS THAT  
10 ARE USED FOR THE BASE FINE CALCULATION AND THE CULPABILITY  
11 SCORE.

12 IT DOESN'T CORRESPOND TO A CHART WITH -- LIKE THE  
13 SENTENCING CHART YOU FIND IN CHAPTER FIVE IN THE PRESENTENCE  
14 REPORT. THAT'S WHY THE FORMAT IS FOLLOWED THAT WAY.

15 **THE COURT:** NONE OF THAT IS IN THE SUMMARY  
16 RECOMMENDATION SO, ALL RIGHT. STILL NOT VERY CLEAR TO ME. LET  
17 ME ASK THE CORPORATE REPRESENTATIVE TO LET HIM SAY WHATEVER HE  
18 WOULD LIKE TO SAY.

19 **THE DEFENDANT:** I HAVE NOTHING TO ADD, YOUR HONOR.

20 **THE COURT:** ALL RIGHT. MS. MAHER, YOU'RE SEEKING A  
21 JUDGMENT OF -- A FINE OF 32 MILLION AND SPECIAL ASSESSMENT OF  
22 \$400 PERIOD; IS THAT CORRECT?

23 **MS. MAHER:** THAT'S CORRECT.

24 **THE COURT:** NO SUPERVISED RELEASE, NOTHING LIKE THAT?

25 **MS. MAHER:** NO, YOUR HONOR. GIVEN THAT THE

1 CORPORATION IS PREPARED TO PAY THE FINE IN FULL UPON IMPOSITION  
2 OF SENTENCE WE HAVE NOT SOUGHT ANY KIND OF PROBATION.

3 **THE COURT:** ALL RIGHT. HERE'S THE WAY THE COURT FEELS  
4 ABOUT IT. ORDINARILY I'M IN AGREEMENT, PLEA AGREEMENT THAT HAS  
5 A COOPERATION PROVISION AS THIS ONE DOES IS A NOT 11(C)(1)(C),  
6 THOSE ARE VERY RARE. DO YOU UNDERSTAND THAT?

7 **MS. MAHER:** I UNDERSTAND.

8 **THE COURT:** MAYBE THERE 10 IN THE ENTIRE UNITED  
9 STATES, BUT MOST OF THEM ARE B PROVISIONS.

10 **MS. MAHER:** UNDERSTAND. OUR OFFICE AT THE ANTITRUST  
11 DIVISION HAS A PRACTICE OF NEGOTIATING THESE 11(C)(1)(C) DEALS,  
12 I UNDERSTAND THEY MAY NOT BE COMMON GENERALLY SPEAKING.

13 **THE COURT:** THERE'S GOOD REASON FOR IT TO BE A B  
14 PROVISION, THAT IS, SO THAT THE COURT CAN SEE HOW WELL THE  
15 COOPERATIONS HAS PANNED OUT BEFORE DECIDING ON WHAT THE  
16 SENTENCE OUGHT TO BE.

17 SO THAT IS THE NORMAL -- THAT IS THE WAY IT'S WORKED.  
18 IN FACT, IN 12 YEARS THIS IS THE FIRST TIME ANYONE HAS EVER  
19 PRESENTED A 11(C)(1)(C) WITH A COOPERATION AGREEMENT.

20 YOUR OFFICE NORMALLY DOES 11(C)(1)(B), THE REST OF  
21 YOUR OFFICE, NOT ANTITRUST DIVISION, BUT LAWYERS WHO PRACTICE  
22 IN THE CRIMINAL AREA WOULD SAY 11(C)(1)(B).

23 NONETHELESS, YOU DON'T HAVE TO SAY ANYTHING, I'M GOING  
24 TO APPROVE THIS. THE REASON FOR THAT, IS I HAVE GONE TO  
25 EXTRAORDINARY LENGTHS TO TRY TO EXTRACT FROM THE GOVERNMENT,



1 WHICH YOU GENEROUSLY PROVIDED SOME UNDER SEAL INFORMATION WHICH  
2 I READ, AND THAT CONVINCES ME THIS IS A REASONABLE AND FAIR --  
3 REASONABLE AND FAIR SENTENCE YOU NEGOTIATED.

4 AND FURTHER THAT SAMSUNG HAS, IN FACT, GIVEN THE KIND  
5 OF COOPERATION THAT YOU HAD BARGAINED FOR, AT LEAST, UP TO  
6 TODAY, AND I THINK THAT THAT'S WORTHY OF APPROVING THIS DEAL.  
7 SO THAT'S WHAT I'M GOING TO DO.

8 NOW, IF THERE ARE ANY FOLLOW ON CASES, I WANT TO BE  
9 REAL CLEAR ON THIS, IF THERE ARE FOLLOW ON CASES? MAYBE THERE  
10 WILL, MAYBE WON'T BE, I DON'T KNOW THE ANSWER TO THAT, THAT ARE  
11 RELATED TO THIS AND I WIND UP GETTING?

12 I WILL NOT ACCEPT ANYMORE 11(C)(1)(C). SO THEY WOULD  
13 HAVE TO BE PRESENTED AS A 11(C)(1)(B), BUT I DON'T KNOW WHETHER  
14 THIS WILL HAPPEN OR NOT AND THAT'S FOR THE FUTURE.

15 BUT FOR THIS DEAL DESPITE MY EARLIER RESERVATIONS, I  
16 THINK, COUNSEL CONVINCED ME THAT RESTITUTION IS NOT NEEDED HERE  
17 TO BE FAIR, THAT THE FINE IS OKAY.

18 SO THAT'S WHAT I'M GOING TO GO ALONG WITH YOUR  
19 PROPOSAL, BUT PRINCIPALLY ON ACCOUNT OF THE UNDER SEAL  
20 INFORMATION THAT YOU SUPPLIED ME WITH YESTERDAY, WHICH GOES TO  
21 MY -- SHOWS TO MY MIND SUBSTANTIAL COOPERATION THAT WARRANTS  
22 APPROVAL OF YOUR AGREEMENT.

23 SO FOR THAT REASON I'M GOING TO NOW PRONOUNCE THE  
24 JUDGMENT AS FOLLOWS:

25 PURSUANT TO THE SENTENCING REFORM ACT, IT IS THE

1 JUDGMENT OF THE COURT THAT SAMSUNG SDI COMPANY LIMITED SHALL  
2 PAY A FINE IN THE AMOUNT OF \$32 MILLION, WHICH IS DUE  
3 IMMEDIATELY.

4 CRIMINAL MONETARY PAYMENTS SHALL BE MADE TO THE CLERK  
5 OF THE U.S. DISTRICT COURT, ATTENTION FINANCE, 450 GOLDEN GATE  
6 AVENUE, BOX 36060 SAN FRANCISCO, CALIFORNIA 94102.

7 IT'S ORDERED THAT THE DEFENDANT ALSO PAY TO THE U.S. A  
8 SPECIAL ASSESSMENT OF \$400 ALSO DUE NOW.

9 PAYMENTS CAN BE MADE TO THE CLERK U.S. DISTRICT --  
10 SHALL BE MADE TO THE CLERK, U.S. DISTRICT COURT, 450 GOLDEN  
11 GATE AVENUE, BOX 36060, SAN FRANCISCO 94102.

12 I'M NOT GOING TO BOTHER TO REPEAT WHAT MR. MABIE PUT  
13 IN HERE, SO THE JUDGMENT WILL BE ENTERED AS STATED. YOU'VE  
14 WAIVED YOUR RIGHTS TO APPEAL.

15 ARE YOU GOING TO PUT THE MONEY ON DEPOSIT TODAY?

16 **MR. HALLING:** MAY WE HAVE A SHORT PERIOD OF TIME TO DO  
17 THAT?

18 **THE COURT:** NOON TOMORROW. BY NOON TOMORROW MONEY  
19 SHOULD BE PAID.

20 **MR. HALLING:** WELL, YOUR HONOR, THAT'S -- I DON'T KNOW  
21 THE ANSWER, IF WE MAY HAVE ONE MORE DAY I WOULD APPRECIATE IT?

22 BECAUSE WE'RE DEALING WITH FUNDS FROM OVERSEAS AND  
23 TIME DIFFERENCES OF 16 OR SO HOURS. MAY WE HAVE ONE MORE DAY?

24 **THE COURT:** ALL RIGHT. TOMORROW IS WEDNESDAY, I'LL  
25 GIVE YOU UNTIL THURSDAY AT NOON.

1           **MR. HALLING:** THANK YOU.

2           **THE COURT:** PAY MONEY TO THE CLERK OF THE COURT.

3 MS. MAHER, YOU MAKE SURE THAT'S DONE?

4           **MS. MAHER:** I WILL, YOUR HONOR.

5           **THE COURT:** ALL RIGHT. IS THERE ANYTHING MORE TO DO  
6 HERE?

7           **MR. HALLING:** NO, YOUR HONOR.

8           **THE COURT:** I THANK COUNSEL FOR YOUR HARD WORK, AND I  
9 KNOW I GAVE YOU A HARD TIME ON THIS CASE. MAYBE YOU DID OR DID  
10 NOT DESERVE IT, BUT YOU IN THE END PERSUADED ME THAT ALL OF MY  
11 RESERVATIONS WERE MAYBE GOOD QUESTIONS, BUT IN THE END YOU HAD  
12 GOOD ANSWERS TO THEM AND I THANK YOU FOR THAT ASSISTANCE. HAVE  
13 A GOOD DAY.

14           **MS. MAHER:** THANK YOU.

15           **MR. HALLING:** THANK YOU.

16

17                           (PROCEEDINGS ADJOURNED.)

18

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 22ND DAY OF AUGUST, 2011.

/S/ JAMES YEOMANS

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JAMES YEOMANS, CSR, RPR

