

1 NIAL E. LYNCH (State Bar No. 157959)
NATHANAEL M. COUSINS (State Bar No. 177944)
2 MAY Y. LEE (State Bar No. 209366)
BRIGID S. BIERMANN (State Bar No. 231705)
3 Antitrust Division
U.S. Department of Justice
4 450 Golden Gate Avenue
Box 36046, Room 10-0101
5 San Francisco, CA 94102
Telephone: (415) 436-6660

6 Attorneys for the United States
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA

13 v.

14 SAMSUNG ELECTRONICS COMPANY, LTD.
15 and SAMSUNG SEMICONDUCTOR, INC.

16 Defendants.
17

) Case No. CR-05-643 (PJH)

) UNITED STATES AND SAMSUNG'S
) JOINT SENTENCING
) MEMORANDUM AND REQUEST
) FOR EXPEDITED SENTENCING
) UNDER L.R. 32-1(b)

) DATE: November 30, 2005

) TIME: 2:30 p.m.

) COURT: Hon. Phyllis J. Hamilton
18

19 **JOINT SENTENCING MEMORANDUM**

20 The United States of America and the defendants, Samsung Electronics Company,
21 Ltd. ("SEC") and Samsung Semiconductor, Inc. ("SSI") (hereinafter referred to collectively as
22 "Samsung"), file this Joint Sentencing Memorandum in support of their recommendation that the
23 Court sentence the defendants to pay a single fine of \$300 million, payable in agreed installments
24 with interest over five years. The parties also request that sentence be imposed as soon as
25 possible, but no later than November 30, 2005, based on the current record without need of an
26 evidentiary sentencing hearing or a presentence report.

27 **INTRODUCTION**

28 On October 13, 2005, the United States filed an Information charging Samsung with

1 participating in a conspiracy in the United States and elsewhere to suppress and eliminate
2 competition by fixing the prices of DRAM to be sold to certain OEM customers from on or about
3 April 1, 1999, to on or about June 15, 2002, in violation of the Sherman Antitrust Act, 15 U.S.C.
4 § 1. Samsung is scheduled for a change of plea and possible sentencing on November 30, 2005.
5 Samsung will waive Indictment and plead guilty under Fed. R. Crim. P. 11(c)(1)(C).

6 The United States and Samsung jointly submit this memorandum to request that the Court
7 sentence Samsung on an expedited basis pursuant to Crim. L.R. 32-1(b). This memorandum also
8 outlines the material terms of the Plea Agreement between the United States and Samsung, in the
9 event the Court grants the parties' request to impose a sentence immediately on November 30,
10 2005, after accepting Samsung's guilty plea. In conjunction with this Joint Sentencing
11 Memorandum the United States and Samsung have filed a Stipulation and Proposed Order for
12 Expedited Sentencing Under L.R. 32-1(b).

13 The United States and Samsung respectfully submit that this memorandum and the Plea
14 Agreement provide sufficient information for the Court to impose a sentence immediately without
15 a presentence report. In addition, an expedited sentencing would accommodate SEC's counsel,
16 who is traveling from Korea for the plea hearing. If the Court finds that the Plea Agreement and
17 this memorandum do not provide sufficient information to allow for the imposition of sentence on
18 the scheduled date of the plea hearing, the parties are prepared to submit additional information
19 requested by the Court. A copy of the Samsung 11(c)(1)(C) Plea Agreement is attached as exhibit
20 A.

21 MATERIAL TERMS OF SAMSUNG PLEA AGREEMENT

22 The material terms of the Samsung Plea Agreement include:

23 1. Samsung will waive indictment, waive all rights as enumerated in the Plea
24 Agreement, and plead guilty to a one-count Information charging it with participating in a
25 conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing the
26 prices of DRAM to be sold to certain OEM customers during at least certain periods of time from
27 on or about April 1, 1999, to on or about June 15, 2002, (the "relevant period") in violation of the
28 Sherman Antitrust Act, 15 U.S.C. § 1. The conspiracy directly affected these OEMs in the United

1 States: Dell Inc., Hewlett-Packard Company, Compaq Computer Corporation, International
2 Business Machines Corporation, Apple Computer Inc., and Gateway, Inc. During the relevant
3 period, Samsung was engaged in the sale of DRAM in the United States and elsewhere and
4 employed more than 5,000 employees. During the relevant period, Samsung's DRAM sales,
5 directly affected by the conspiracy, to OEMs in the United States totaled \$1.2 billion.

6 2. The United States and Samsung agree that the appropriate sentence in this case is a
7 single fine of \$300 million and a special assessment of \$400 for each defendant. The fine is to be
8 paid in installments over five-years, with interest as set forth in the plea agreement. Samsung
9 agrees to have its sentence determined under the United States Sentencing Guidelines ("U.S.S.G."
10 or "Guidelines"), although Samsung understands the Guidelines are advisory, not mandatory. The
11 United States contends that had this case gone to trial, the United States would have presented
12 evidence to prove that the gain derived from or the loss resulting from the charged offense is
13 sufficient to justify a fine of \$300 million, pursuant to 18 U.S.C. § 3571(d). For purposes of this
14 plea and sentencing only Samsung waives its right to contest this calculation.

15 3. The United States will not seek restitution in this case in light of the civil cases
16 filed against Samsung, including *In re DRAM Antitrust Litigation*, No. M-02-1486-PJH, MDL
17 No. 1486, in the United States District Court, Northern District of California, and *DRAM Cases*,
18 No. CJC-03-004265, in the Superior Court, San Francisco, California, and others which
19 potentially provide for a recovery of a multiple of actual damages.

20 4. The United States agrees that it will not bring further criminal charges against
21 Samsung and its current and former officers, directors, and employees (except for the Samsung
22 individuals specifically excluded from the Plea Agreement) for their participation in the DRAM
23 conspiracy. In return, Samsung and its executives agree to cooperate fully in the ongoing DRAM
24 investigation. Samsung has agreed to make executives available to the United States for
25 interviews and produce documents located outside the country, which are beyond the
26 jurisdictional reach of the government's grand jury subpoenas. The documents to be produced
27 and interviews to be conducted, as well as additional proffered cooperation, will substantially
28 assist the Division in furthering its investigation.

1 **UNITED STATES SENTENCING GUIDELINES CALCULATIONS**

2 The parties agree to the following Guidelines calculations, which are based on Samsung's
3 DRAM sales in the United States to certain OEMs of \$1.2 billion. The volume of commerce
4 calculation does not include sales of asynchronous dynamic random access memory ("ASYNC")
5 or Graphics semiconductor devices and modules, and includes only a portion of RDRAM sales.

6	1.	Base Fine (20% of \$1.2 billion (Volume of Affected Commerce) (§ 2R1.1(d)(1) & § 8C2.4(b))	\$240 million
7			
8	2.	Culpability Score	
9	i.	Base (§ 8C2.5(a))	5
10	ii.	Involvement in or Tolerance of Criminal Activity (§ 8C2.5(b)(1))	5
11	iii.	Prior History (§ 8C2.5(c))	0
12	iv.	Violation of Order (§ 8C2.5(d))	0
13	v.	Obstruction of Justice (§ 8C2.5(e))	0
14	vi.	Effective Program to Prevent and Detect Violations of Law (§ 8C2.5(f))	0
15	vii.	Self-Reporting, Cooperation, and Acceptance of Responsibility (§ 8C2.5(g)(2))	-2
16	c.	Total Culpability Score:	8
17	d.	Minimum and Maximum Multipliers (§ 8C2.6)	1.6 - 3.2
18	e.	Minimum and Maximum Fine Range (§ 8C2.7)	\$384 - \$768 million

19 The United States will move, pursuant to § 8C4.1 of the Sentencing Guidelines, for a
20 downward departure from the minimum Guidelines fine to a fine of \$300 million due, in part, to
21 Samsung's substantial assistance in the United States' DRAM investigation. Additionally,
22 Samsung has agreed to produce relevant documents, from the United States and abroad, and has
23 agreed to make available several employees for extensive interviews as a condition to the
24 government entering into the Plea Agreement. Samsung has also agreed to continue to assist in
25 the government's ongoing investigation.

26 ///

27 ///

28 ///

1 DATED: November 22, 2005

2 Respectfully submitted,

3

4 BY: [Signature]
Samsung Electronics Company, Ltd.
250, 2-Ga, Taepyong
Jung-gu, Seoul 100-742
5 Republic of Korea

6
7 BY: [Signature]
Samsung Semiconductor, Inc.
3655 North First Street
8 San Jose, CA 95134

9
10 BY: [Signature]
Gary L. Halling, CA No. 66087
Sheppard, Mullin, Richter & Hampton LLP
11 Four Embarcadero Center
Seventeenth Floor
12 San Francisco, CA 94111
Tel: (415) 774-3234
13 Fax: (415) 434-3947

14 BY: [Signature]
David A. Donohoe
15 Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Ave., N.W.
16 Washington, D.C. 20036
Tel: (202) 887-4000
17 Fax: (202) 887-4288

18 BY: [Signature]
Mark C. Schechter
19 Howrey LLP
1299 Pennsylvania Ave., N.W.
20 Washington, D.C. 20004
Tel: (202) 383-6890
21 Fax: (202) 383-6610

22
23
24
25
26
27
28

BY: [Signature]
Niall E. Lynch, CA No. 157959
Nathanael M. Cousins, CA No. 177944
May Y. Lee, CA No. 209366
Brigid S. Biermann, CA No. 231705
Trial Attorneys
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, CA 94102
Tel: (415) 436-6660
Fax: (415) 436-6687