

TAB A

1 **DEFENDANT SWANSON'S PROPOSED JURY INSTRUCTION No. 9 [Revised 2/20/08]¹**
 2 **MULTIPLE CONSPIRACIES (Instruction at End of Trial)**

3 The government has charged that the defendant joined and participated in a single
 4 conspiracy to fix prices from about April 1, 2001 to about June 15, 2002. You must decide
 5 whether the conspiracy charged existed, and, if it did, whether defendant knowingly joined and
 6 became a member in the conspiracy with one or more DRAM manufacturers who were members
 7 of the conspiracy. Defendant claims that there was not one single on-going conspiracy to fix
 8 prices throughout this period. Evidence was submitted that may allow you to conclude (i) there
 9 were periods when Hynix was a target of other conspiracies among its competitors to drive Hynix
 10 out of business, and (ii) there was a conspiracy led by Micron and several Taiwanese and Japanese
 11 competitors to restrict production. If you find that a single price fixing conspiracy charged against
 12 the defendant did not exist during April 1, 2001 to June 15, 2002 period, then you must return a
 13 not guilty verdict, even though you may find that some other conspiracies existed. Similarly, if you
 14 find that the defendant was not a member of the charged single continuing conspiracy, then you
 15 must find the defendant not guilty, even though there may have been other conspiracies in which
 16 DRAM manufacturers participated.

17
 18
 19
 20
 21 ¹ *Manual of Model Criminal Jury Instructions for the Ninth Circuit*, No. 8.17 (2000 Edition),
 22 modified to reflect there is a single defendant, and the facts in the record. *See also*, United States
 23 Attorneys' Manual, Title 7 (Antitrust), Ch. 7, Elements of the Offense:

24 ***Single Versus Multiple Conspiracies:*** *In addition to proving the elements of*
 25 *the offense, it is always necessary to determine the scope of the conspiracy and*
 26 *the actors who participated in it. The most difficult issue in many of these*
 27 *cases involves the determination of what constitutes the conspiracy. In price-*
 28 *fixing and bid-rigging cases, it is especially important to determine whether a*
single, continuing conspiracy was in existence involving numerous price
changes or bid awards, or whether certain isolated price changes or bid
awards were the subject of separate conspiracies.

(http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title7/ant00007.htm)

JURY INSTRUCTION No. 9

MULTIPLE CONSPIRACIES

1
2
3 The government has charged that the defendant joined and participated in a single
4 conspiracy to fix prices from about April 1, 2001 to about June 15, 2002. You must decide
5 whether the conspiracy charged existed, and, if it did, whether defendant knowingly joined and
6 became a member in the conspiracy with one or more DRAM manufacturers who were members
7 of the conspiracy. Defendant claims that there was not one single on-going conspiracy to fix
8 prices throughout this period. Evidence was submitted that may allow you to conclude (i) there
9 were periods when Hynix was a target of other conspiracies among its competitors to drive Hynix
10 out of business, and (ii) there was a conspiracy led by Micron and several Taiwanese and Japanese
11 competitors to restrict production. If you find that a single price fixing conspiracy charged against
12 the defendant did not exist during April 1, 2001 to June 15, 2002 period, then you must return a
13 not guilty verdict, even though you may find that some other conspiracies existed. Similarly, if you
14 find that the defendant was not a member of the charged single continuing conspiracy, then you
15 must find the defendant not guilty, even though there may have been other conspiracies in which
16 DRAM manufacturers participated.

17
18
19
20
21
22
23
24
25
26
27
28