

**ATTACHMENT TO TO DEFENDANT'S OBJECTIONS TO GOVERNMENT'S
PROPOSED COCONSPIRATOR EVIDENCE**

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CHARLES BYRD (Hynix)

The government has failed to lay the necessary foundation for admission of any of the emails it associates with Mr. Byrd. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. Byrd did not have any pricing authority; he could only make recommendations to Korean management. Nowhere in its Witness Summary for Mr. Byrd does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing the Korean senior management to monitor or police their price fixing agreements. The government's Summary only describes exchanges of price information among competitors -- which is not itself illegal and does not prove membership in the conspiracy. The government has failed to prove that Mr. Byrd was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 40: This is an email, dated September 25, 1998, from Mr. Byrd to Mr. Swanson. It describes how Dell moved sales from one supplier to another and reports information about competitors' pricing. Mr. Byrd then makes a price recommendation based on that information that is above some and below others' prices. The exhibit does not show any agreement on prices, either directly or indirectly.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the "statement". Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The "statement" is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and he intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor price information and customer actions based on competitor pricing, and makes a price recommendation to others for decisions on what price to quote based on a variety of factors -- which is ignored by the government.

Gov. Exh. 43: This is an email string, dated November 11, 1998, with two alleged “coconspirator statements”. The earlier “statement” is an email report by Mr. Byrd concerning price activities by Samsung and nothing more which is not illegal. The second “statement” is from Mr. C.K. Chung to Mr. Byrd and others, and simply reports that they cannot raise prices in light of the information. It shows independent decision-making, not an agreement for November. Absent a foundation by the declarant Chung that he intended to convey information to the recipients of the email that an agreement had been reached to raise prices in December and that they need to monitor and police Samsung’s price actions at Dell to support the agreement, all this email says is that Samsung intends to increase prices in December and reflects a loose use of the word “promised” by a foreign national. The request by Mr. Chung to Mr. Byrd to watch Samsung’s actions belies the existence an agreement.

Objections:

A. Mr. Byrd’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and he intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor price information.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1, 2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than two years later.
3. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung was a member of the conspiracy at the time of the statement

and that he intended to advance the objectives of the conspiracy; the best evidence of his intention is not Mr. Byrd but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of competitor market intelligence, reflecting independent decisions on what price to quote to a customer based on competitor price information.

Gov. Exh. 50: This is an email from Mr. Byrd, dated January 26, 1999, and simply reflects gathering of market intelligence re competitors' prices. Mr. Byrd makes a recommendation not to raise prices because the company will lose business at Dell if it does. The email only reflects an independent decision on pricing based on market factors and customer reaction.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the "statement". Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The "statement" is from January 1999, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is simply a narrative description of competitor price information, reflecting independent decisions on what price to quote to a customer based on competitor price information and customer reaction.

Gov. Exh. 51: This email is dated February 23, 1999, and simply reflects Mr. Byrd providing market intelligence obtained from the customer, Gateway, and competitors. It shows uncertainty about competitors' activities, speculation about who is the key competition at Gateway, information about Samsung offering a special deal at Dell, and other competitors aggressively lower price to gain market share at Gateway. He recommends that they offer the lowest price in order "to maintain our share" and "in-case Micron really goes into Gateway at \$77." This is ordinary market intelligence gathering, which is not illegal, and reflects no illegal agreement with any competitors about pricing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the "statement". Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The "statement" is from February 1999, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of customer-provided price information and of competitor price information, and reflects independent decisions on what price to quote to a customer based on competitor price information and customer reaction.

Gov. Exh. 54: This lengthy email from Mr. Byrd reflects a serious effort to gain business at Dell. Hynix had taken away from Samsung's 100% market share but is having some problems. H.K. Minn puts pressure on Mr. Byrd to increase sales as they did not meet their target last month. Mr. Byrd reports a variety of competitive price information, including that Siemens "told Dell that they will match whatever is the lowest price period!" He also reports competitive information received from Dell that may not be true. There is nothing in this email that reflects any illegal agreement but only reflects gathering of competitive market intelligence for use in making an independent decision.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged

conspiracy that can be associated with this exhibit.

2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, almost two years later.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is simply a narrative description of customer provided price information and of competitor price information, and reflects independent decisions on what price to quote to a customer based on competitor price information and customer reaction.

Gov. Exh. 116: This email from Mr. Byrd reflects nothing more than gathering market intelligence from the customer and competitors. Micron says that it is not going to move price down and Hynix is already below them in price. Putting this all together leads Mr. Byrd to conclude: “I decided there is no reason to drop this price, as it cannot buy us anything from the Dell side. If we as a company can cut a deal with SCI or Solectron and get more business we should do it.” There is nothing but independent decision-making based on the market intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of customer provided price information and of competitor price information, and reflects independent decisions on what price to quote to a customer based on competitor price information and customer reaction.

Gov. Exh. 121: This email reflects, in part, the non-price aspects of competition for customers' business: "Between Samsung leveraging LCD/Rambus/leading edge tech, and Toshiba multiple products/and Micron prowess, there is less M[arket]S[hare] left than before. We have to differentiate ourselves in some way and that will take some time and strategic products." The government's highlighted portion of the email reflects efforts to verify what the customer has set as its target response, lack of knowledge of what competitors will do but guess that no one will lower to the Dell target: "Main reason, no demand, no upside." All together it reflects uncertainty of what to do and independent decision: "just does not make sense to do this."

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of customer provided price information and an attempt to verify that information, of non-price competitive factors that give competitors an advantage, and use of uncertain competitor information for making an independent decision on what price to quote to a customer.

Gov. Exh. 134: This is an email string containing three alleged "coconspirator statements." There are two from Mr. Byrd which reflect nothing more than gathering of competitive price information. The second is in response to a request for market intelligence from Mr. Chung -- the other alleged "coconspirator statement" -- so that Korean management can "take our position after looking into the two guy's pricing." They reflect nothing more than use of market intelligence for independent decision-making.

Objections:

A. Mr. Byrd's "statements":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the "statement".

4. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of market intelligence for the purpose of making an independent decision on what price to quote to a customer.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy by requesting the sales managers to gather market intelligence and the best evidence of his intentions is not Mr. Byrd but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a simple request for market intelligence, reflecting independent decisions on what price to quote to a customer based on competitor price information.

Gov. Exh. 140: In the email Mr. Byrd reflects his dismay at Samsung’s aggressively low prices. (Mr. Swanson does not receive this email.) He speculates: “Purposefully trying to put us out of business??” In fact, this speculation is reflective of the conspiracy among Micron, Infineon and Samsung to lower prices to drive Hynix out of the market. Mr. Byrd was not in any position to direct Mr. Tabrizi (a vice president) to do anything. The email is nothing more than the musings of a frustrated salesman who is losing business precisely because there is no price fixing agreement in place at the time as alleged in the indictment. If Mr. Byrd was suggesting that Mr. Tabrizi try to get Samsung to agree on prices, that would be something new and different from what was readily apparent did not exist in the market place at the time of this email.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy it is simply musings of a frustrated salesman facing vigorous price competition to such a degree that he thinks Samsung is trying to put Hynix out of business -- which was in fact the case -- and reflects that fact that there was no price

fixing agreement in place at the time as alleged in the indictment.

Gov. Exh. 162: At this point, Dell had stopped doing business directly with Hynix due to efforts by Samsung. The email reflects nothing more than a narrative report of market intelligence which may be inaccurate. There is no indication that this information will be used for anything other than independent decisions on prices to be quoted to customers.

Objections:

A. Mr. Byrd's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of market intelligence for the purpose of making an independent decision on what price to quote to a customer.

B. Mr. Chung's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Byrd but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a simple request for market intelligence, reflecting independent decisions on what price to quote to a customer based on competitor price information.

C.K. CHUNG (Hynix)

Mr. Chung was not a member of the conspiracy before April 1, 2001. He is an admitted coconspirator through his guilty plea but only for the period from April 1, 2001 through June 15, 2002. (See Information filed March 1, 2006, p. 2.) This is consistent with the government's "Witness Summary" for Mr. Chung: (i) He "met in person two or three times and spoke on the telephone once or twice a month" with Young Woo Lee of Samsung during the period 1997-1999. (Summary, p. Chung -- 2.) The Summary says nothing about illegal price fixing agreements during this period. (ii) He spoke with Sun Woo Lee of Samsung beginning in 1999. However, only during the time period April 2001 through June 15, 2002 does the government state that Mr. Chung and Mr. Lee had "telephone calls in which they reached understandings on price." (*Id.* p. Chung -- 3.) (iii) Similarly, with Mr. Kang, they just talked about ten times and met several times during 2001-2002. (*Ibid.*) Therefore, consistent with his plea and the "Witness Summary", Mr. Chung was not engaged in price fixing prior to April 1, 2001.

The government's evidence fails to establish that Mr. Swanson was a knowing member of the conspiracy during the alleged time period. The government carefully sidesteps the issue of Mr. Swanson's knowledge of Mr. Chung's involvement in any price fixing agreements or "understandings on price". The Summary only says that "Chung is expected to testify that Swanson knew about Chung's pricing coordination with competitors." (*Ibid.*) The government does not say how Mr. Chung knew that Swanson "knew" about Chung's "understandings on price" -- we are only left to guess about that key fact.

Gov. Exh. 25: The government has market two alleged “coconspirator statements” in this email string from December 1997. The first email is from Mr. Byrd reporting to Mr. Swanson and Mr. Chung customer target price information, and competitive price information relating to Samsung and Micron. This is nothing more than competitive market intelligence. Mr. Chung then sends an email to Mr. Swanson. His report of market intelligence casts Mr. Byrd’s report in some question. He also asks Mr. Swanson to gather market intelligence regarding Micron. Before he gets any further information, Mr. Chung suggests his idea of how to start the negotiations with IBM. The exhibit does not show any agreement on prices, either directly or indirectly, but only the gathering and independent use of market intelligence

Objections:

A. Mr. Byrd’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Byrd, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Byrd, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than three years later.
4. The “statement” is from 1997, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Byrd was a member of the conspiracy and intended to advance the objectives of the conspiracy, and the best evidence of his intention is not Mr. Chung but is Mr. Byrd, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of competitor price information.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1, 2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than three years later.
3. The “statement” is from 1997, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no

evidence that Mr. Chung was a member of the conspiracy at the time of the statement and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor market intelligence, the uncertainty associated with that information, and an independent decision on what price to quote to a customer based on competitor price information.

Gov. Exh. 33: The government has marked two alleged “coconspirator statements” in this email string from June 1998. The first is an email from Mr. Palonsky, whom the government intends to call as a witness. In his email Mr. Palonsky simply reports competitive market information. In his response, Mr. Chung indicates that the recipient’s need to watch Samsung and Toshiba “very closely and give us your in-puts so that we can adjust our position.” This indicates simply the use of competitive market intelligence for the purpose of making independent decisions on the price to be quoted to a customer.

Objections:

A. Mr. Palonsky’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, was a member of the conspiracy; simply gathering and reporting information through competitor contacts is not, without more, knowing participation in a conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Palonsky was a member of the conspiracy and intended to advance the objectives of the conspiracy; the best evidence of his intention is not Mr. Chung but is Mr. Palonsky himself, whom the government intends to call as a witness, and (ii) it is a narrative description of competitor price information.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1,

2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than two years later.

3. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung was a member of the conspiracy at the time of the statement and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor market intelligence, and the intention to make an independent decision on what price to quote to a customer based on future market intelligence.

Gov. Exh. 36: The government has marked two alleged “coconspirator statements” by Mr. Chung in this email string from August 1998. In this email, Mr. Chung reports competitive information received from Samsung. The second email reflects his uncertainty relating to the competitive information and therefore a wait-and-see attitude towards making a quote to IBM. Mr. Palonsky opines: “I agree with your proposal that we should stay flat as our final position based on the current data and market trends.” These statements demonstrate the lack of any agreement with competitors regarding pricing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1, 2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than two years later.
3. The “statements” are from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
4. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung was a member of the conspiracy at the time of the statement and intended to advance the objectives of the conspiracy by reporting competitive information, and (ii) it is a narrative description of competitor market intelligence, and the intention to make an independent decision on what price to quote to a customer based on future market intelligence.

Gov. Exh. 41: This email is dated November 9, 1998. This is an email from Mr. Chung to Mr. Swanson. It reflects a report by Mr. Chung regarding competitor market intelligence. Mr. Chung then asks Mr. Swanson for his recommendation and ideas on what course of action to take. The email, thereby, clearly indicates that Mr. Chung had not entered into any agreement with competitors as to the pricing actions that they collectively would take.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1, 2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than two years later.
3. This “statement” is from 1998, before the conspiracy is alleged to have begun and is not in the course of the conspiracy.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung was a member of the conspiracy at the time of the statement and intended to advance the objectives of the conspiracy by simply asking for Mr. Swanson’s “thought, idea, proposal” on the pricing strategy, and (ii) it is simply a narrative description of competitive market intelligence, showing the uncertainty relating to the information and leading to an independent decision on the price that will be quoted to the customer.

Gov. Exh. 94: The basic email here is from Mr. Chung to Mr. Swanson. Mr. Chung is reporting market intelligence from both customers Compaq and HP, and information from Micron -- part of which is labeled a “rumor”, information about the spot market, and information about Samsung. Mr. Chung then asks Mr. Swanson to contact his “counterpart at Micron (Mike Sadler?)” and find further competitive information. There is no indication that this is for anything other than being able to make a more informed, independent decision on the price to be quoted to the customer. (Mr. Swanson did not contact Mr. Sadler in response to this request by Mr. Chung.)

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement.”
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy by asking Mr. Swanson to gather market intelligence, and (ii) it is a narrative description of competitive information and there is no evidence that Mr. Chung intended Mr. Swanson to contact Micron and reach an agreement as to prices to be charged. There is nothing unlawful about gathering competitive market intelligence.

Gov. Exh. 128: Mr. Chung reports to D. S. Kim that he heard from both Mr. Swanson and Mr. Tabrizi that Mr. Sadler of Micron wanted to talk with them about “measures to stabilize the market price.” Mr. Chung goes on to say that he will arrange a meeting through Farhad in San Jose. (The evidence will show that Mr. Swanson did not speak with Mr. Sadler at any time after June 20, 2001. This is almost two weeks prior to the report of the “conversation”.) Further, there is no evidence that Mr. Sadler intended to talk about price fixing. There were legitimate trade association activities which were designed to increase demand in the marketplace for DRAMs, which would have the effect of stabilizing market prices.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. There is no evidence that Mr. Swanson and Mr. Sadler talked to each other after June 20, 2001.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) there is no evidence that the proposed meeting was for the purposes of price

fixing, as there are numerous legitimate ways for companies to act together to increase market demand.

Gov. Exh. 184: This is an email from Mr. Chung to Mr. D.S. Kim in which Mr. Chung describes the additional products that HP would like to receive in January. He tells Mr. Kim that they told HP it would not be possible to do this, and is concerned about some of the problems that may cause. Mr. Chung then speculates to Mr. Swanson that he thinks Micron is not fully committed to supporting HP. “Good timing for your diplomacy as we discussed with DS this morning and it’s designed to do with enemies, right?” (Mr. Swanson did not make contact with Mr. Sadler.) The government’s Summary does not state that the term “diplomacy” is intended to mean that the parties would engage in price fixing. It states that “diplomacy” means “coordinating pricing strategy with Micron.” “Diplomacy” as a term is ambiguous and the government’s description of its meaning is also ambiguous. If it meant price fixing, the government knows how to state that Mr. Chung meant price fixing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement.”
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of past events regarding negotiations with customers and the status of competitors activities, and there is no evidence that Mr. Chung intended Mr. Swanson to engage in price fixing or to gather price information to police existing agreements through his use of the term “diplomacy”.

Gov. Exh. 185: This is an email from Mr. Chung to Mr. Swanson and others. The basic email is a narrative report of the prices being offered at HP/Compaq. Chung then goes on to discuss the strategy to be used in providing quotations to these customers and it shows only independent decisions on prices to quote based on the available market intelligence, and no agreements on prices. The government emphasizes that Mr. Chung describes what Micron appears to be not doing in support of HP. Mr. Chung suggests “you need to do diplomacy as soon as possible.” (The evidence will show Mr. Swanson did not contact anyone at Micron.)

Objections:

1. The government has not proceed the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) it shows uncertainty and independent decision making not a price fixing agreement, and the government’s description of the meaning of “diplomacy” is ambiguous and does not establish an instruction to fix prices.

Gov. Exh. 186: This is the string of emails including an article about prices going up due to the introduction of Intel’s new chip set. Mr. Chung directs comments to Mr. Swanson about the interesting article and suggesting that Mr. Swanson call Micron and Samsung “and say hello to them. We need to do some diplomacy for DDR pricing.” (The evidence will show that Mr. Swanson did not contact anyone at Micron or Samsung in response to this suggestion.) The use of the term “diplomacy”, as described previously, is ambiguous and can mean nothing more than the gathering of market intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at this time.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy by saying “hello” to competitors, and (ii) the statement is ambiguous and may mean nothing more than the simple gathering of market intelligence, but in any event no telephone call was placed.

Gov. Exh. 206: In this email, Mr. Chung reports to Mr. D.S. Kim about market intelligence concerning prices in February for IBM and Compaq. Two of the government's alleged coconspiratorial statements by Mr. Chung are nothing more than the gathering of pricing information. The third statement: "It's very difficult to predict what will be the final . . . maybe flat to January price or \$30." What this statement demonstrates is the fact of uncertainty and the lack of any agreement with competitors as to pricing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".
3. The "statement" is not in furtherance because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) it is nothing more than a narrative description of the current conditions in the market, where competitors are, an uncertainty about what will take place in the marketplace; therefore no agreement as to prices. There is nothing unlawful about gathering market intelligence and using it to independently to make decisions about what prices to quote to customers.

Gov. Exh. 207: The operative email is from Mr. Chung to Mr. Byrd and Mr. Swanson with a copy to D.S. Kim and Mr. Tabrizi. Mr. Chung reports that Micron has a "special pricing deal" with Dell which is about 15% lower than the other suppliers. He asked: "Gary -- can we help ourselves?" Mr. Chung's request is ambiguous. The request could be to Mr. Swanson as to what Hynix itself could do to solve this problem, or it could be to contact someone at Micron. However, there is no evidence that Mr. Chung ever told Mr. Swanson that what he meant by this statement was that Mr. Swanson was to agree on pricing with Micron. (Mr. Swanson made no call to anyone at Micron.)

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) it is simply a narrative description of competitor price information, and contains an ambiguous statement to Mr. Swanson about what action Hynix can take to help itself.

Gov. Exh. 215: There are three emails in this string and the alleged “coconspirator statements” are in the first two. In those, Mr. Chung reports to Mr. Kim competitive price information in the marketplace, indicating that prices are possibly going to be increasing 20-25%. (Mr. Swanson was not a recipient of either of those emails.) The final email reports the actual results of the price negotiations to the various OEMs, and Mr. Swanson was a recipient of that email. In the end, the string shows Hynix finished the same or a little below the other competitors, indicating a lack of any price agreement.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) they are simply narrative descriptions of past events in the marketplace, the results, the uncertainty regarding achieving those results, and a lack of any agreement.

Gov. Exh. 225: This is an email from Mr. Chung to Mr. D.S. Kim with a copy to Mr. Swanson and others. Mr. Chung reports information from Samsung regarding the results of their pricing at Compaq and a discussion of what they may or may not be able to do for the next round of pricing. What this email shows in the final analysis is uncertainty of what to do, and Mr. Chung requests guidance from Mr. Kim. This shows that there was no agreement between Hynix and Samsung or Infineon, and there is no evidence that any agreement was, in fact, reached between the parties.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) they are simply a narrative reports of competitors’ past action in the marketplace and uncertainty regarding actions to take, demonstrating a lack of any agreement with competitors.

Gov. Exh. 227: The government's designation of this exhibit is confusing. The basic part of the exhibit is the email from Mr. Chung which is the same as Exhibit 225 and shows the same highlighted language which supposedly designates the "coconspirator statement". This exhibit also contains a response from Mr. D.S. Kim which has no language designated as a "coconspirator statement".

Mr. Kim's response to Mr. Chung shows that there was no agreement when he states: "It sounds like we have no choice but to follow S's for DDR and 2H pricing." Mr. Kim's response demonstrates that Hynix was simply a price follower based on market conditions.

Objections: [See Exhibit 225]

Gov. Exh. 230: This is an email from Mr. Chung to Mr. Palonsky and a copy to Mr. Swanson relating competitive market intelligence received by Mr. Chung. The email does nothing more than show that Hynix was using the competitive market intelligence to simply "follow our competitor's lead." It does not establish any price fixing agreement, but shows the use of competitive price information to be a market follower.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) it is a simply a narrative description of actions taken in the marketplace and independent actions to be taken by Hynix based on that information.

Gov. Exh. 232: In the basic email, Mr. Chung reports to Mr. Kim with a copy to Mr. Swanson that he received information from Samsung that Micron did not raise prices at Dell and was in trouble at Compaq. "They sounded like they would stay FLAT." Mr. Kim responds: "We have no choice but to stay flat if our comps don't move." The two "statements" reflect a gathering of market intelligence and an uncertainty as to what, in fact, competition would do -- "sounded like" is not an agreement. The ultimate decision by Mr. Kim to stay flat because they have "no choice" simply reflects the independent use of market intelligence in the situation of a price follower. It does not demonstrate an illegal price fixing agreement.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. Mr. Chung’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy, and (ii) it is simply a narrative description of actions taken in the marketplace and independent actions to be taken by Hynix in the marketplace based on that information. Mr. Kim’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kim intended to advance the objectives of the conspiracy, and the best evidence of his intention is not Mr. Chung but is Mr. Kim, himself, whom the government intends to call as a witness, (ii) it is simply evidence independent actions to be taken by Hynix in the marketplace based on market intelligence.

Gov. Exh. 247: This is an email from Mr. Chung to Mr. Palonsky with a copy to Mr. Swanson. Mr. Chung reports that he heard from Mr. Tabrizi that Micron will lower their prices effective May 13th. He then asks Mr. Palonsky to check, at his end, for market information regarding Micron, Samsung, and Infineon.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy by asking Mr. Palonsky to gather additional market intelligence, and (ii) it is simply a narrative description of competitor price information and reflects a request by the recipient to gather additional market intelligence.

KEN HELLER (Hynix)

The government has failed to lay the necessary foundation for admission of any of the emails it associates with Mr. Heller. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. Heller did not have any pricing authority; he could only make recommendations to Korean management. Nowhere in its Witness Summary for Mr. Heller does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing the Korean senior management to monitor or police their price fixing agreements. The government's Summary only describes exchanges of price information among competitors -- which is not itself illegal and does not prove membership in the conspiracy. The government has failed to prove that Mr. Heller was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 35: The principle email here is dated August 17, 1998, and is from Mr. Chung to Mr. Palonsky with copies to Mr. Heller and Mr. Swanson. In the context of pricing for IBM in September, Mr. Chung reports competitive information he received from his Samsung contact. Mr. Chung concludes: "The situation is fluid, but, I don't think we need to adjust our prices down in September at the final negotiation stage." This email simply demonstrates the reporting of competitive information and the uncertainty about that information. The use of that information results in a tentative but independent decision not to try to reduce prices in September.

Objections:

A. Mr. Heller: Mr. Heller made no "statement" associated with this exhibit. The designated statement is by Mr. Chung. Mr. Heller should not be allowed to lay the necessary foundation for the "statement" because it is not obvious from the "statement" that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intention is not Mr. Heller but is Mr. Chung, himself, whom the government intends to call as a witness.

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Heller, was a member of the conspiracy at the time of the “statement”.
3. The government has not provided sufficient evidence that the declarant, Mr. Heller, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Heller was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor price information and the uncertainty surrounding that information, resulting in a tentative price decision on what they should try to quote to the customer in the upcoming negotiations.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1, 2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than two years later.
3. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung was a member of the conspiracy at the time of the statement and intended to advance the objectives of the conspiracy and the best evidence of his intention is not Mr. Heller but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of competitor price information and the uncertainty surrounding that information, resulting in a tentative price decision on what they should try to quote to the customer in the upcoming negotiations.

Gov. Exh. 38: The identified “coconspirator statement” is in an email dated September 16, 1998 from Mr. Chung to Mr. Swanson, stating he agrees with Mr. Swanson’s recommendation on modules pricing for the first pass quote to IBM but suggest a different price for loose parts. The prices are below some competitors and above others. “But considering the product . . . availability and prices of Samsung and LG, let’s start at \$9.00.” This email reflects nothing more than independent decision-making based upon market intelligence.

Objections:

A. Mr. Heller: Mr. Heller made no “statement” associated with this exhibit. The designated statement is by Mr. Chung. Mr. Heller should not be allowed to lay the necessary foundation for the “statement” because it is not obvious from the “statement” what Mr. Chung intended.

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Heller, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Heller, and Mr. Swanson were members of the conspiracy at the time of the statement. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Heller was a member of the conspiracy, and (ii) it is a narrative description of competitor price information and the uncertainty surrounding that information, resulting in a tentative price decision on what they should try to quote to the customer in the upcoming negotiations.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until on or about April 1, 2001, and Mr. Chung pled to joining the conspiracy only on or about April 1, 2001 -- both more than two years later.
3. The “statement” is from 1998, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung was a member of the conspiracy at the time of the “statement” and intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Heller but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of

competitor price information and reflects independent decisions on what price to quote to a customer based on competitor price information and other market factors.

Gov. Exh. 96: This is an email from Mr. Chung to Mr. Swanson with a copy to Mr. Heller among others. Mr. Chung reports competitive information that Micron is lowering the price at strategic accounts. “As we discussed, I hope you can do something Mike.” This statement by Mr. Chung is ambiguous as to what the “something” is that Mr. Swanson is suppose to do with “Mike”. The government in its Summary says that Mr. Heller is expected to testify that “Chung is asking Swanson to contact Sadler and ask him to keep Micron’s prices up.” There is no foundation in the government’s Summary that indicates Mr. Heller has any basis for testifying as to what Mr. Chung intended by this ambiguous statement. (Mr. Swanson did not place a telephone call or receive a telephone call from Mr. Sadler.)

Objections:

A. Mr. Heller: Mr. Heller made no “statement” associated with this exhibit. The designated statement is by Mr. Chung. Mr. Heller should not be allowed to lay the necessary foundation for the “statement” because it is not obvious from the “statement” what Mr. Chung intended.

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Heller, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Heller, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Heller was a member of the conspiracy, and (ii) it is a narrative description of competitive market intelligence, and is an ambiguous request to Mr. Swanson. Gathering market intelligence from “Mike” is not itself illegal.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intention is not Mr. Heller but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of competitive market intelligence, and is an ambiguous request to Mr. Swanson. Gathering market intelligence from “Mike” is not itself illegal.

Gov. Exh. 98: This is an email from Mr. Heller to Mr. McBroom. Mr. Heller instructs Mr. McBroom not to state in emails that he spoke with a competitor because lawyers might mischaracterize efforts to obtain market intelligence as agreements with a competitor. Mr. Swanson was not a recipient of this email.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The email is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Heller was a member of the conspiracy and intended to advance the objectives of the conspiracy, and (ii) the statement does not clearly show that it was intended to conceal a price fixing conspiracy because gathering price information from competitors is not illegal, and the fact of gathering information regarding competitor prices would still be disclosed.

YEONGHO KANG (Samsung)

Mr. Kang only had contacts with Korean executives at Hynix. He had no contact with Mr. Swanson or any other U.S. individuals. Thus, to the extent he did more than collect pricing information that he and Samsung account managers in the United States received from the competition and funneled it back to Korean executives for use in setting prices -- which is not illegal -- those activities were not communicated by him to any of the Americans in Hynix.

Gov. Exh. 99: This is an email from H.J. Kim to J.H. Park in which Mr. Kim relates a conversation that he had with Mr. Kang. Mr. Kim simply reports some customer, product, manufacturing and price strategy information. Mr. Kim only reports that Mr. Kang's "only concern are 128 M DDR pricing strategy. (He didn't ask any other information to me.) I didn't give our price status to him." This email simply reflects a narrative description of a particular company's market situation.

Objections:**A. Mr. Kim:**

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Kim, was a member of the conspiracy at the time of the "statement".
3. The government has not provided sufficient evidence that Mr. Kim and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The "statement" by Mr. Kim is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kim intended to advance the objectives of the conspiracy and the best evidence of his intention is not Mr. Kang but is Mr. Kim, himself, whom the government does not intend to call as a witness but who could be available under the cooperation provisions of the Hynix plea agreement, and (ii) it is a narrative description of competitor market intelligence, and does not reflect any purpose relating to price fixing.

B. Mr. Kang: Mr. Kang did not make this statement; it was Mr. H.J. Kim of Hynix. Mr. Kang should not be allowed to lay the necessary foundation for the "statement" because it is not obvious from the "statement" what Mr. Kim intended, and Mr. Kim would be available to testify through the cooperation provisions of the Hynix plea agreement.

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".

3. The “statement” by Mr. Kang is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor market intelligence, and does not reflect any purpose relating to price fixing.

Gov. Exh. 109: (There is no description of this exhibit in the government’s Witness Summary for Mr. Kang, and defendant has no idea how Mr. Kang would testify about the “statement” by Mr. Harriman designated in the exhibit.) The government has highlighted two paragraphs out of a series of emails: (1) In the earliest email, Mr. Harriman of Samsung reports that “Hynix has been polling the DRAM competitors trying to stir up consensus for 128Mb SDR price increases. Hynix has proposed about a 5% increase to Compaq.” (2) The next day Mr. Harriman reports that Hynix apparently does not intend to try to increase prices at Compaq. These “statements” indicate nothing more than a report of market intelligence. The final email in the string -- not designated -- simply reflects an independent decision on what to quote to the customer based upon the competitive information and on Samsung’s own particular product situation.

Objections:

A. Mr. Kang: Mr. Kang made no “statement” associated with this exhibit. The designated statements are by Mr. Harriman. Mr. Kang should not be allowed to lay the necessary foundation for the “statements” because it is not obvious from the “statements” what Mr. Harriman intended.

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Harriman, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Harriman, and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Harriman was a member of the conspiracy and intended to advance the objectives of the conspiracy and (ii) they are narrative descriptions of competitor price information and potential customer reaction to supplier pricing, and the uncertainty shown with respect to this information.

B. Mr. Harriman’s “statements”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Harriman, was a member of the conspiracy.

3. The government has not provided sufficient evidence that the declarant, Mr. Harriman, and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Harriman was a member of the conspiracy and intended to advance the objectives of the conspiracy and the best evidence of Mr. Harriman’s intention is not Mr. Kang but Mr. Harriman, himself, and (ii) they are narrative descriptions of competitor price information and potential customer reaction to supplier pricing, and the uncertainty shown with respect to this information.

Gov. Exh. 149: This is an email from Mr. Kang to Mr. Cerrato reporting that he got a call from Hynix. They were upset with prices which the customer told them that Samsung had quoted. Mr. Kang “was not able to respond” if the report was true or not because he did not have information of what Samsung had quoted. This email reflects nothing other than the report of competitive market intelligence, embodied in a complaint regarding a competitors pricing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this statement.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy by reporting market intelligence, and (ii) it is a narrative description of competitor information and shows no response by the declarant to Hynix.

Gov. Exh. 152: This email string is a follow-up to the prior Exhibit 149. It contains three designated “coconspirator statements”. The first two are from Mr. Cerrato who reports to Mr. Kang that Samsung’s price is \$13.40, not \$12.80 as reported by Hynix. He speculates that Micron will lower the price soon and that Hynix will follow. Mr. Kang responds confirming that Hynix was at \$12.80. These emails reflect nothing more than a sharing of competitive market intelligence, and examples of how that information may be erroneous.

Objections:

A. Mr. Cerrato's "statements":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Cerrato, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Cerrato, and Mr. Swanson were members of the conspiracy at the time of the "statement."
4. The "statements" are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Cerrato was a member of the conspiracy and intended to advance the objectives of the conspiracy and the best evidence of his intention is not Mr. Kang but Mr. Cerrato, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Samsung plea agreement, and (ii) they are a narrative description of competitor price information, market speculation, and customer reactions to the market activity.

B. Mr. Kang's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor market intelligence, reflecting independent decisions on what price to quote to a customer based on competitor price information.

Gov. Exh. 157: The first is an email from Mr. Kang to a large number of Samsung Korean executives. He reports that Hynix and Micron have agreed to raise spot market prices for the week. The second email is from I.U. Kim to a large number of Samsung Korean executives. Mr. Kim instructs the Samsung Korean executives to contact branch and main office heads of Hynix, Micron and Infineon to persuade them to mutually cooperate.

Mr. Swanson was never contacted by anyone from Samsung relating to any market information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the alleged conspiracy.

3. Mr. I.U. Kim is the best evidence of what he intended by his statement, not Mr. Kang. Mr. Kim's plea agreement requires him to cooperate with the government and testify at any trial if asked by the government, so he is available but has not been designated by the government as a witness from Samsung.

Gov. Exh. 163: This exhibit is two emails. The first is from Mr. Kang to a large number of Samsung Korean executives. He reports that Samsung and Hynix have "agreed to trust each other and defend the price." The second email is from I.U. Kim to a large number of Samsung Korean executives. Mr. Kim instructs Mr. Kang to contact the Korean management team in the U.S. because Hynix is "most worrisome" and the Korean team there is playing the role of the "Main Office". Hynix purportedly agreed not to participate in an HP auction but went ahead and did so anyway. Mr. Swanson was never contacted by anyone from Samsung relating to any market information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
4. The government has not provided sufficient evidence that Mr. Swanson was a member of the alleged conspiracy.
2. Mr.I.U. Kim is the best evidence of what he intended by his statements, not Mr. Kang. Mr. Kim's plea agreement requires him to cooperate with the government and testify at any trial if asked by the government, so he is available but has not been designated by the government as a witness from Samsung.

Gov. Exh. 164: This exhibit is comprised of three emails. The government highlights an email from Mr. Kang to senior management at Samsung reporting on a conversation that Mr. Kang had from some unknown person at Hynix. The email indicates that there were mutual assurances to advise each other should they change their pricing strategy in the marketplace.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the alleged conspiracy.

Gov. Exh. 172: This is an email from Mr. Kang to Mr. Quinn of Samsung. Mr. Kang purportedly will testify that he confirmed that Hynix did not participate in the Compaq auction. This is nothing more than a report of competitive information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statement” is not in furtherance of the conspiracy because, based on the text and the Witness Summary for Mr. Kang, it simply reflects historical information from the marketplace.

Gov. Exh. 192: This is an email from Mr. Kang to Mr. Quinn of Samsung in which Mr. Kang reports information regarding Hynix quotations at IBM, and asking Mr. Quinn to find out what is Micron’s pricing information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it simply gives a narrative report of past competitive market intelligence and asks an individual to simply gather further market intelligence.

Gov. Exh. 203: There are a series of emails involved in this exhibit with two highlighted passages. The earliest simply reflects a report by Mr. Kang about market “rumors” and a request from him to obtain Micron market price information. The second is in an email from Mr. I.U. Kim reflecting an independent decision on a pricing strategy, and then directing the employees to contact the competitors and inform them of the strategy.

Mr. Swanson was never contacted by anyone at Samsung regarding market information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. Mr. Kang’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy by reporting and gathering market intelligence, and (ii) it simply gives a narrative report of past competitive market intelligence and ask an individual to simply gather further market intelligence.
4. Mr. Kim’s “statement” is not in furtherance of the conspiracy because it is not clear that he intended to advance the objectives of the conspiracy, and Mr. Kim is the best evidence of what he intended by his statement. His plea agreement requires him to cooperate with the government and testify at any trial if asked, so he is available but has not been designated by the government as a witness from Samsung.

Gov. Exh. 213: This exhibit reflects two “statements” by Mr. Kang reporting price information from someone at Hynix. On February 7, he reports that Hynix plans to raise prices by 25% . On February 11, he reports that Hynix will increase price by 20%. These two emails reflect nothing more than reporting of competitive information and do not reflect any price fixing agreement.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy by passing on market intelligence to senior executives so -- according to the Witness Summary -- they could make a decision on prices, and (ii) it simply gives a narrative report of past competitive market activity and does not indicate any agreement regarding the prices to be charged.

Gov. Exh. 229: This exhibit is a series of emails reporting competitive price information involving Micron, Infineon, and Hynix. It also reflects competitive price information provided by the customer, IBM. There are four “statements” designated by the government, two from Mr. Mike Bocian and one each from Mr. K.O. Park and Mr. Kang. In the final analysis the “statements” reflect the reporting of market intelligence and uncertainty on pricing actions which demonstrate no agreement on prices.

Objections:

A. Mr. Kang’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy by passing on market intelligence, and (ii) it is simply a narrative description of competitor strategy. It does not reflect any price fixing agreement.

B. Mr. Bocian’s “statements”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Bocian, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Bocian, and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Bocian intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Kang but is Mr. Bocian, himself whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Samsung plea agreement, and (ii) it is a narrative description of competitor price information.

C. Mr. K.O. Park’s “statements”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Park, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Park, and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Park intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Kang but is Mr. Park, himself, whom the

government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Samsung plea agreement, and (ii) it is an independent pricing decision, with a direction to watch the market situation because things may change, which reflects the lack of any agreement.

Gov. Exh. 246: This is an email from Mr. Kang to Mr. I.U. Kim and numerous other Korean Samsung executives. Mr. Kang recounts the difficult situation that Hynix is in as a result of the negotiations with Micron collapsing. Mr. Kang further reports that he made a proposal to Mr. D.S. Kim of Hynix that Hynix should talk with Samsung management to continue cooperation. There is an implied threat in this statement indicating that Samsung “has more than enough surplus ammunition” to withstand a significant decrease in the market price, so the potential problem is on Hynix. This email is nothing more than a report of communications with competitors with a suggestion to get together in the future and an implied threat to drive Hynix out of business if they do not do so.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time statement was made.
3. The statement is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it is simply a narrative report of past events.

Gov. Exh. 251: This is a series of three emails from Mr. Kang to a number of Korean executives in Samsung and contains two designated “coconspirator statements”. (i) The first is a report that Hynix is “furious” about something and appreciative for something else -- neither of which is clear. Further, the Witness Summary does not have information about what Mr. Kang would testify to relating to this statement. (ii) The second statement relates to a DigiTimes article entitled, “Hynix Quits Flooding Supply, In Talks with Samsung to Stabilize DRAM Prices”. Mr. Kang reports that he heard that Hynix had sent a letter to DigiTimes. He indicated though that Samsung was not intending to do anything about the article.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time statement was made.

3. The first statement is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it simply reflects a report of market information -- which is unintelligible without explanatory testimony and the Witness Statement indicates there is none to be given.
4. The second statement is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it simply reports information referencing a press article -- what Hynix is doing in response and Samsung's intention to not to do anything.

Gov. Exh. 252: This is an email from Mr. Kang to a number of Samsung Korean executives. The email contains two designated "statements": (i) Mr. Kang reports on the difficult financial situation facing Hynix. He states that there has been an increase in the spot market apparently based upon cooperation between Hynix and Samsung "at least in this week or until next week." (ii) He speculates "they have no choice but to maintain the system of mutual cooperation" but then goes on to conclude that it is not clear what Hynix will do in the face of the very pressing cash needs: "there appear to be a possibility of making the worst choice in next weekend." At most this email reflects a temporary agreement which is contrary to the monolithic three year long price fixing conspiracy alleged by the government against the companies involved, and reflects uncertainty as to what Hynix will do in order to preserve itself.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time statement was made.
3. The first "statement" is not in furtherance of the conspiracy (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it is only a report that speculates on the cause of the price rise in the spot market.
4. The second "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy, and (ii) it reports only speculation regarding any future "mutual cooperation" and the uncertainty that Hynix might indeed crash the spot market.

Gov. Exh. 253: This is an email from Mr. K.C. Suh to several of the Hynix Korean executives -- not to Mr. Swanson. Mr. Suh responds to an email from Mr. C.Y. Choy in which Mr. Choy reports that the "present mutual cooperation" with Samsung has collapsed. Mr. Suh responds, apparently after talking with Mr. Kang, that Samsung is saying that "Co-work is still valid." According to the Witness Summary, Kang hoped that this message would be broadcast within Hynix in order to maintain the posture of cooperation.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time statement was made.
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Suh intended to advance the objectives of the conspiracy and the best evidence of his intention is not Mr. Kang but is Mr. Suh, himself, whom the government intends to call as a witness, and (ii) it simply reflects a narration of conflicting information provided by two different sources from within Samsung.

DAE SOO KIM (Hynix)

The government's Witness Summary for Mr. D.S. Kim does not say that he will testify that he engaged in price fixing:

- “[H]e was aware of, and permitted his subordinates . . . to engage in communications with representatives of other DRAM producers about the prices of DRAM sold to certain OEMs.” Communicating with competitors is not itself illegal.
- “[H]e asked Swanson to contact Mike Sadler of Micron for the purpose of finding out information about Micron’s pricing strategy.” Gathering market intelligence through competitors is not itself illegal.
- With Mr. Rha of Samsung, he “exchanged information on pricing with the effect of influencing the price of DRAM sold to certain OEMs.” Any market intelligence will have some influence on pricing decisions -- whether it comes from competitors, customers, or market analysts. That is why companies gather market intelligence.
- Also with Mr. Rha of Samsung, he “reached understandings, the effect of which was to stabilize and raise the price of DRAM sold to certain OEMs in the United States.” Agreements or “understandings” that may “effect” prices are not *per se* illegal which is the necessary foundation for the government’s criminal prosecution.

Mr. Kim, Mr. Swanson’s boss, will not provide any evidence that Mr. Swanson was a knowing member of the alleged conspiracy to fix prices.

Gov. Exh. 166: This is an email from Mr. Kim to Mr. Swanson: “Did you have a chance to talk with Mike.” The government’s Witness Summary implies that Mr. Kim previously asked Mr. Swanson to contact Mr. Sadler “to find out information about Micron’s DRAM strategy.” Gathering market intelligence is not illegal.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time statement was made.
3. The “statement” is not in furtherance of the conspiracy because (i) the statement is ambiguous, and (ii) Mr. Kim’s foundation testimony does not support any conclusion that the prior oral request to Mr. Swanson to gather market intelligence was to support a price fixing conspiracy.

DENNIS LEE (Infineon)

The government has failed to lay the necessary foundation for admission of any of the emails it associates with Mr. Lee. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. Lee did not have any pricing authority; he could only make recommendations to Infineon senior management. Nowhere in its Witness Summary for Mr. Lee does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing the Infineon senior management to monitor or police their price fixing agreements. He only had pricing conversations beginning in January of 2001. The government's Summary states that Mr. Lee will describe conversations where he and his competitor counterpart reached "a mutual understanding on what price to submit." This sounds like there was an agreement to fix prices. However, the Summary further states that Mr. Lee would report the information that he received from competitors to his superior, Rudd Corwin, and personnel in Munich. He would report the information and then ask Mr. Corwin "what should we quote?" Thus, there was no agreement with the competitor counterpart because the discussions were all subject to approval by Mr. Corwin who was not a party to the discussion. Mr. Lee "is expected to testify" that he was aware of "pricing contacts" by other Infineon employees. However, he will apparently not testify that he was aware of any price fixing agreements by other Infineon employees. The government has failed to prove that Mr. Lee was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 170: This exhibit consists of two designated “coconspirator statements”: The first is from Mr. Schaefer of Infineon simply reporting market price information from competitors. The second is from Mr. Corwin and simply states “read and burn”. The government’s Summary says that Mr. Corwin meant to destroy the email. However, there is no foundation for that conclusion, and normally one deletes an email, they do not burn it.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Lee was a member of the conspiracy.
3. The government has not provided sufficient evidence that Mr. Lee and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. Mr. Schaefer’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Lee but is Mr. Schaefer, himself, whom the government does not intend to call as a witness, even though he is available under the cooperation obligations of his plea agreement, and (ii) the statement is simply a narrative report of market intelligence.
5. Mr. Corwin’s “statement” is not in furtherance of the conspiracy because there is no evidence that he intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Lee but is Mr. Corwin, himself, whom the government does not intend to call as a witness, even though he is available under the cooperation obligations of his plea agreement.

Gov. Exh. 200: This is a string of emails from which the government has marked two as “coconspirator statements”. The first is from Joaquin Soucheiron (Infineon) and is simply a report of market price information and request for additional information because he does “NOT want to be any higher than our competitors.” The second “statement” is from Mr. Lee reporting Micron and Hynix price information at Gateway. In the final email of the string which is not designated by the government, Mr. Corwin describes the foregoing as “another data point.” These emails simply reflect the reporting and gathering competitive market intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.

2. The government has not provided sufficient evidence that the declarants, Mr. Lee and Mr. Soucheiron, were members of the conspiracy.
3. The government has not provided sufficient evidence that Mr. Lee, Mr. Soucheiron, and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. Mr. Soucheiron’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Lee but is Mr. Soucheiron, himself, whom the government does not intend to call as a witness, even though he is available under the cooperation obligations of Infineon’s plea agreement, and (ii) the statement is simply a narrative report of, and request for, market intelligence -- as Mr. Corwin would say nothing but “another data point” for making an independent decision regarding the prices to be quoted to Gateway.
5. Mr. Lee’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy, and (ii) the statement is simply a narrative report of market intelligence -- as Mr. Corwin would say nothing but “another data point” for making an independent decision regarding the prices to be quoted to Gateway.

Gov. Exh. 222: This is a string of emails from which the government has marked two as “coconspirator statements”. The first is from Joaquin Soucheiron (Infineon) and is simply a report of market price information and request for additional information so that they can plan their price quotation the next day. The second is from Mr. Lee who responds that “Micron is around \$43.00 . . . that’s all I know so far.” This exhibit simply reflects the gathering of competitor price information and the use of it in the context with other information available in the marketplace in order to make an independent decision. There is no indication of any agreement to fix prices.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Lee and Mr. Soucheiron, were members of the conspiracy.
3. The government has not provided sufficient evidence that Mr. Lee, Mr. Soucheiron, and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. Mr. Soucheiron’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Lee but is Mr. Soucheiron, himself, whom the government does not intend to call as a witness, even though he is available under the cooperation obligations of Infineon’s plea agreement, and (ii) the statement is simply a narrative report of, and request for, market intelligence.

5. Mr. Lee's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy, and (ii) the statement is simply a narrative report of market intelligence.

Gov. Exh. 231: This is an email from Mr. Lee to Mr. Corwin reporting that Micron and Hynix are "planning to go flat at Gateway & \$44.00." This statement exhibits nothing more than competitive price information from the market place. There is no indication of any agreement or any coordination as to what would be done with this information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Lee was a member of the conspiracy.
3. The government has not provided sufficient evidence that Mr. Lee and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lee intended to advance the objectives of the conspiracy, and (ii) the statement is simply a narrative report of market intelligence.

JAY MCBROOM (Hynix)

The government has failed to lay the necessary foundation for admission of any of the emails it associates with Mr. McBroom. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. McBroom did not have pricing authority; he could only make recommendations to Korean management. Nowhere in its Witness Summary for Mr. McBroom does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of price information with competitors were for the purpose of allowing the Korean senior management to monitor or police their price fixing agreements. The government's Summary only describes exchanges of price information among competitors which is not itself illegal. Apparently Mr. McBroom will testify that on occasion Mr. Swanson asked "why is Micron lowering the price so much, since they don't have to." There is no indication that this is anything other than a rhetorical question, and Mr. McBroom was asked to do nothing about the statement. Further, Mr. McBroom may testify that Mr. Swanson told him "he had spoken to Sadler about the market and they discussed pricing trends." Standing alone this indicates nothing more than gathering general market intelligence. The government has failed to prove that Mr. McBroom was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE801(d)(2)(E).

Gov. Exh. 66: This exhibit consists of two emails in 2000 between Sun Choi and Mr. McBroom. The government has designated “coconspirator statements” in each. This exhibit simply reflects a request for competitive information regarding pricing at Gateway and Mr. McBroom’s response with information regarding Micron and Toshiba. There is no indication in this exhibit of any intention to use the market information for the purpose of fixing or policing price agreements.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Choi and Mr. McBroom, were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Choi, Mr. McBroom, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until April 1, 2001, more than a year later.
4. The “statements” are from 2000, before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
6. Mr. Choi’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. McBroom but is Mr. Lee, himself, whom the government does not intend to call as a witness, even though he is available under the cooperation obligations of Hynix’s plea agreement, and (ii) the statement is simply a narrative report of, and request for, market intelligence combined with an independent first pass price recommendation.
5. Mr. McBroom’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that he intended to advance the objectives of the conspiracy, and (ii) the statement is simply a narrative report of market intelligence.

Gov. Exh. 82: This exhibit is a September 2000 email from Mr. McBroom to three Korean managers and a copy to Mr. Swanson. It deals with Gateway pricing. It reports that he tried to raise price by \$0.50 but “Gateway pushed back heavily.” They stated other vendors were staying flat at \$67.00. Based on this information regarding competitors pricing which Mr. McBroom confirmed with Micron and Infineon, and based on the strength of the business with Gateway, “Gary and I agree that we need to match our competition.” This exhibit reflects nothing more than the use of competitive market intelligence from the customer and competitors, combined with other customer-related information to make an independent decision to match competition pricing. There is nothing illegal about matching competition pricing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement.” Mr. Swanson is not alleged to have joined the conspiracy until April 1, 2001, more than six months later.
4. The “statement” is made in 2000, before the conspiracy is alleged to have begun and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. McBroom intended to advance the objectives of the conspiracy, and (ii) it reflects the reporting of market intelligence from the customer and competitors, and an independent decision to match the competition’s price.

Gov. Exh. 85: This is an email chain from October 2000, indicating efforts to gather market intelligence as to whether competitors will reduce current market price at the request of the customer, Compaq. McBroom reports that Infineon will meet the customer demands and lower price, and that Micron will follow “guaranteed”. This exhibit reflects nothing more than the gathering and reporting of competitive information. The fact that Micron will take certain action “guaranteed” is nothing more than a statement of their independent intended actions.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”. The statement was made prior to April 1, 2001 the date upon which Mr. Swanson is alleged to have joined the conspiracy.
4. The “statement” is made in 2000, before the conspiracy is alleged to have begun and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. McBroom intended to advance the objectives of the conspiracy, and (ii) it reflects the reporting of market intelligence.

Gov. Exh. 106: This exhibit is a string of emails, but the government has designated one from Mr. McBroom, dated March 29, 2001 as a “coconspirator statement.” This “statement” is a report of competitive market intelligence with a proposal of the prices he will start with for negotiations at Gateway. The “statement” is nothing more than a straightforward report of competitive intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. McBroom intended to advance the objectives of the conspiracy, and (ii) it reflects the reporting of market intelligence and the independent use of that intelligence.

Gov. Exh. 360: This is an email from Mr. McBroom, dated June 1, 2000, to Mr. Chung and Mr. Swanson. He reports that they are the “highest priced supplier by a significant amount” and that it will have an effect on their sales in June. He also reports that the company is behind in technology development. “Infineon is poised to take market share” from us. Mr. McBroom asks his management to “please rethink our pricing strategies.” In this context, the government designates Mr. McBroom’s report of competitive information as a “coconspirator statement”. The “statement” is nothing more than a straightforward report of competitive intelligence for the purpose of getting the company to change its pricing strategy.

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. McBroom intended to advance the objectives of the conspiracy, and (ii) it reflects the reporting of market intelligence and the independent use of that intelligence.

JOHN OSTBERG (Micron)

The government has failed to lay the necessary foundation for admission of any of the emails it associates with Mr. Ostberg. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. Ostberg did not have any pricing authority; he could only make recommendations to management. Nowhere in its Witness Summary for Mr. Ostberg does the government say he will admit that he engaged in price fixing with competitors. The government's Summary only describes exchanges of price information among competitors- which is not itself illegal. The government has failed to prove that Mr. Ostberg was a member of the conspiracy at the time he wrote his emails, therefore that the emails are not admissible under FRE801(d)(2)(E).

Gov. Exh. 142: The government exhibit is a string of emails back and forth between Mr. Ostberg and Bill Lauer of Micron. The government has designated two passages from Mr. Ostberg and one from Mr. Lauer as "coconspirator statements". In the first, Mr. Ostberg reports that the Gateway buyer "says everybody else is at 16, except us. Peterson [Hynix] says he's at 18, no plans to change unless we do." Mr. Lauer responds: "Tell the others we are at \$17.25 or so. I don't believe the \$16.00 comment." Mr. Ostberg concludes: "I've told Peterson we don't plan on moving. I want to see what he does." These "statements" reflect an exchange of price information among competitors and the customer. They further reflect uncertainty as to what the suppliers will do, negating any price fixing agreement.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Ostberg and Mr. Lauer, were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Ostberg, Mr. Lauer, and Mr. Swanson were members of the conspiracy at the time of the "statement".

4. Mr. Ostberg's "statements" are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) they show chit chat between Micron employees about market intelligence from competitors and the customer; uncertainty about market information and actions, and result in independent actions- including misleading competitors- all contrary to any agreement to fix prices.
5. Mr. Lauer's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lauer intended to advance the objectives of the conspiracy and the best evidence of his intentions is Mr. Lauer, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) they show chit chat between Micron employees about market intelligence from competitors and the customer, uncertainty about market information and actions, and result in independent actions -- including misleading competitors -- all contrary to any agreement to fix prices.

Gov. Exh. 148: This is an exchange of emails between Mr. Ostberg and Mr. Addie of Micron transmitting telephone contact information for Mr. S.B. Lee of Samsung. The Witness Statement says that the purpose of Mr. Addie providing the telephone number was so that Mr. Ostberg "could begin to have pricing discussions with S.B. Lee of Samsung on the Gateway account." There is no evidence that the purpose was other than exchanging price information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Ostberg and Mr. Addie were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Ostberg and Mr. Addie, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. Mr. Ostberg's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) there is no evidence that the purpose of providing the telephone information was other than to have exchanges of price information, which itself is not illegal.
5. Mr. Addie's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Addie intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Ostberg but Mr. Addie himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micon amnesty agreement, and (ii) there is no evidence that the purpose of providing the telephone information was other than to have exchanges of price information, which itself is not illegal.

Gov. Exh. 155: This exhibit is two emails from Mr. Ostberg to Mr. Thorsen of Micron in which Mr. Ostberg provides competitive price information from the customer and from competitive suppliers. He concludes: “We probably need to match.” This exhibit simply reflects gathering of market intelligence and an independent decision as to the price to be quoted to the customer.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. Both “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) they simply constitute a narrative description of competitor price information, and reflect independent decisions on what price to quote a customer based upon the competitor and customer supplied price information.

Gov. Exh. 171: This exhibit reflects a series of emails among Micron employees which include substantial and detailed price information from IBM regarding the bids that they have received from the suppliers. Mr. Ostberg reports to Ms. Radford that Gateway has resigned to the fact that prices are going to go up. He concludes: “Infineon and Hynix have my back (or so they say).” The statement reflects nothing more than chit chat between competitors.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) it shows nothing more than a narrative of market information and an ambiguous statement of competitors’ uncertain intentions which belies the existence of an agreement.

Gov. Exh. 181: The exhibit consists of two emails one from Mr. Thorsen to the Micron sales team asking for feedback on customer reactions to discussions of possible price increases or competitive feedback regarding such actions. The second is Mr. Ostberg's reply that Hynix told him they will be raising prices at Gateway and at Compaq in the next few days. The government contends that there are four coconspirators statements in this email: (1) Thorsen to his sales team; (2) Ostberg to Thorsen relaying competitive information received from Hynix; (3) Hynix's employee's conversation with Mr. Ostberg (according to the Witness Summary, the Hynix employee is Mr. Peterson); and (4) Ostberg to Grant of Micron regarding the Compaq information. In the final analysis the point is that the statements do not reflect agreements to fix prices because Mr. Thorsen is simply asking for information so that at the meeting he has set they can discuss the matter "fully".

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants Mr. Ostberg, Mr. Thorsen, and Mr. Peterson were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants Mr. Ostberg, Mr. Thorsen, Mr. Peterson and Mr. Swanson were members of the conspiracy at the time of the "statements".
4. Mr. Thorsen's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Thorsen intended to advance the objectives of the conspiracy and the best evidence of his intentions not Mr. Ostberg but is Mr. Thorsen, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micon amnesty agreement, and (ii) it shows a request for market intelligence for the purpose of making independent decisions about prices to be quoted to a customer.
5. Mr. Ostberg's "statements" are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) they show nothing more than a report of market intelligence.
6. Mr. Peterson's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Peterson intended to advance the objectives of the conspiracy and the best evidence of his intentions not Mr. Ostberg but is Mr. Peterson, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) it evidences nothing more than market intelligence.

Gov. Exh. 183: The government's Witness Summary says there are four coconspirators statements in this email. The first "statement" is from Mr. Thorsen to Mr. Ostberg stating that he does not want to be the price increase leader this time around, this statement is repeated in Ostberg's email to Mr. Herzog. The second and third "statements" are Mr. Ostberg's conversations with representatives of Hynix (Mr. Peterson) and Infineon (Mr. Lee) which involve market intelligence and are then (the fourth "statement") reported by Mr. Ostberg to Mr. Herzog.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Ostberg, Mr. Thorsen, Mr. Peterson and Mr. Lee, were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Ostberg, Mr. Thorsen, Mr. Peterson, Mr. Lee, and Mr. Swanson were members of the conspiracy at the time of the "statements".
4. Mr. Ostberg's "statements" are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) they show nothing more than a report of market intelligence.
5. Mr. Thorsen's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Thorsen intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Ostberg but is Mr. Thorsen, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) it shows a request for market intelligence for the purpose of making independent decisions about prices to be quoted to a customer.
6. Mr. Peterson's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Peterson intended to advance the objectives of the conspiracy and the best evidence of his intentions is Mr. Peterson, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) it evidences nothing more than market intelligence.
7. Mr. Lee's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lee intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Ostberg but is Mr. Lee, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Infineon plea agreement, and (ii) it evidences nothing more than market intelligence.

Gov. Exh. 216: The government's Witness Summary for this exhibit is misleading. Mr. Thorsen simply says that he "believes" that they may be able to achieve a mid-month price increase and reflects some uncertainty about that happening. He does not "know" what the competition will do. Mr. Ostberg simply reports subsequently the results of his quotation to the Gateway account.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants and Mr. Swanson were members of the conspiracy at the time of the "statements".
4. Mr. Ostberg's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and (ii) it only reports the quote to the customer.
5. Mr. Thorsen's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Thorsen intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Ostberg but is Mr. Thorsen, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) it shows an independent pricing strategy based on market intelligence that is uncertain because they have not yet seen what the competition has done.

PAUL PALONSKY (Hynix)

The Government has failed to lay the necessary foundation for admission of any of the emails that associates with Mr. Palonsky. He has not pled guilty and the government has not provided sufficient evidence that he is a knowing member of the conspiracy charged against Mr. Swanson. Mr. Palonsky had no pricing authority; he could only make recommendations to Korean management. Nowhere in its Witness Summary for Mr. Palonsky does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing the Korean senior management to monitor or police their price fixing agreements. The government's Summary only describes exchanges of price information among competitors- which is not itself illegal. The government has failed to prove that Mr. Palonsky was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 26: This exhibit is an email from Mr. Palonsky to Mr. Chung, dated May 20, 1998. Mr. Palonsky's states that IBM told him and Mr. Swanson that "our current pricing is somewhat uncompetitive." IBM gave them additional time to reconsider the pricing and focus on particular products. Mr. Palonsky concludes that they will try to get "more competitive feedback and information from our competitors and we will inform you of our final pricing idea by Friday." The email reflects nothing more than a plan to obtain competitive information in an attempt to verify customer's statements that the company's pricing is uncompetitive.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, and Mr. Swanson were members of the conspiracy at the time of the "statement". Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, almost three years later.

4. The email is from 1998 before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Palonsky intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of customer information and reflects only an intent to gather additional market intelligence and report back a recommendation so that Korean management can make an independent decision on the price to be quoted to the customer.

Gov. Exh. 32: The email is from Mr. Palonsky to several of the Korean managers with a copy to Mr. Swanson and other US managers, dated June 24, 1998. The email reflects nothing more than a report of competitive information to be used by Korean management to independently determine prices to be quoted to IBM.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, almost three years later.
4. The email is from 1998 before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Palonsky intended to advance the objectives of the conspiracy, and (ii) it reflects a narrative description of competitor price information and a recommendation to Korean management for independent decisions on what prices to be quoted to the customer.

Gov. Exh. 39: This exhibit is an email from Mr. Chung to several people including Mr. Palonsky, dated September 18, 1998, requesting Mr. Palonsky to bring all available competitive information on the initial price quotes made to IBM. The government describes this exhibit as “an example of . . . superiors requesting [Palonsky] gather information from his competitors.” The gathering of competitor information is not illegal, absent an agreement to fix prices.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement.” Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, more than two years later.
4. The email is from 1998 before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.
5. Mr. Chung’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) is simply a request to gather competitive information, which is not illegal absent an agreement to fix prices.

Gov. Exh. 45: This exhibit is an email from Mr. Chung to Mr. Palonsky with a copy to Mr. Swanson, and is dated November 20, 1998. This email reflects a request by Mr. Chung to gather competitive price information in the U.S., while they will gather information in Korea and Japan. There is no indication that any of this information is part of a price fixing agreement. The Witness Statement says: “Palonsky will testify that he and Chung were having pricing discussions with Hynix competitors to help them determine the price Hynix would offer IBM.” This is not a price fixing agreement.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the “statement.” Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, almost three years later.
4. The email is from 1998 before the conspiracy is alleged to have begun, and is not in the course of the conspiracy.

5. Mr. Chung's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Palonsky but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) is nothing more than a request to gather competitive market intelligence for the purpose, as Mr. Palonsky will apparently testify, "to help them determine the price Hynix would offer to IBM." It reflects nothing more than an independent decision regarding the prices to be quoted to IBM.

Gov. Exh. 105: This exhibit is two emails. The first is from Mr. Palonsky to Mr. Chung and others and reflects a detailed description of the competitive situation at IBM. IBM provided him with substantial information including pricing relative to competitors. Mr. Palonsky concludes: "Based on my discussions with IBM, I strongly recommend we stay FLAT with the following exceptions." Mr. Chung's response is the designated "coconspirator statement", and accepts Mr. Palonsky's recommendation, with the instruction to check on Samsung's activities because he has information that they may try to increase price at IBM. He instructs Mr. Palonsky that if he learns of a increase by Samsung that he should follow the lead. This simply reflects an uncertainty about pricing actions by competitors, and following a price leader in the market. Neither of which are illegal.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Chung, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Chung, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The statement is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Palonsky but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it reflects a narrative description of market intelligence, and the independent decision to follow the market leader if the circumstance is warranted -- not an agreement on prices to be quoted to IBM.

Gov. Exh. 120: This is a series of three emails between Mr. Palonsky and Mr. Choi of Korean management regarding prices to be quoted to IBM. In the initial email, Mr. Palonsky makes a price recommendation “to IBM”. The first designated “coconspirator statement”: Mr. Choi approves the proposal but ask him find more information regarding competitors pricing. He concludes “we will never let other guys steal our share.” Second designated “coconspirator statement”: Mr. Palonsky responds that he will hold off giving IBM the new pricing while he investigates what competitors are doing, “making sure we get the maximum reward from IBM for our price moves.” The email string simply reflects independent price decisions by Hynix in order to maintain and increase the business with IBM.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Choi and Mr. Palonsky, were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Palonsky and Mr. Choi, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. Mr. Choi’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Choi intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Palonsky but is Mr. Choi, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) it simply requests additional market information for the intention of not letting the competition take business away from them.
5. Mr. Palonsky’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Palonsky intended to advance the objectives of the conspiracy, and (ii) it simply reflects a customer strategy and an intention to gather competitive market intelligence for the purpose of making independent decisions on price quotations to IBM so that competition will “never” “steal our share.”

Gov. Exh. 161: This exhibit is two emails. In the first designated “coconspirator statement”, Mr. Chung asks the sales team for market intelligence regarding Infineon’s pricing strategy. In the second designated “coconspirator statement”, Mr. Palonsky responds with a report reflecting rumors and uncertainty in the marketplace.

Objections:

A. Mr. Palonsky’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged

conspiracy that can be associated with this exhibit.

2. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Palonsky, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Palonsky intended to advance the objectives of the conspiracy, and (ii) it simply reflects a narrative description of market intelligence demonstrating rumors and uncertainty.

B. Mr. Chung’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was members of the conspiracy at the time of the “statement”.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Palonsky but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it simply reflects a request for market intelligence and nothing more.

Gov. Exh. 362: This is an email from Mr. Chung to Mr. Palonsky with copies to others. Mr. Chung instructs Mr. Palonsky to be prepared to quote an increase to IBM but not for a couple of days. Mr. Chung reports that he heard that competitors had raised prices at other accounts, and Hynix simply followed the competitor’s lead. He concludes that he will update Mr. Palonsky on negotiation progress of other accounts which indicates an uncertainty as to what Hynix will quote to IBM.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the “statement”.
3. The statement is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Palonsky but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of market intelligence and reflects the use of that market intelligence to make an independent decision at sometime in the future regarding what price to quote to IBM.

MIKE PETERSON (Hynix)

The government has failed to lay the necessary foundation for admission of any of the emails it associates with Mr. Peterson. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. Peterson did not have any pricing authority; he could only make recommendations to Korean management. Nowhere in its Witness Summary for Mr. Peterson does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing the Korean senior management to monitor or police their price fixing agreements. The government's Summary only describes exchanges of information among competitors -- which itself is not illegal. The government has failed to prove that Mr. Peterson was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 110: This exhibit is one email from which the government designates three "coconspirator statements". The first is supposedly Mr. Ostberg of Micron who gave Mr. Peterson some market intelligence. The second is supposedly Mr. Lee of Infineon who gave Mr. Peterson some market intelligence. The third is Mr. Peterson's report of this information and its uncertainty to G.T. Kim. Mr. Peterson further reports that he will make an attempt with Gateway to see if they can increase the sales volume. But, if Gateway is unwilling to agree to any increase, then he proposes certain pricing. The implication is that they would offer a lower price if they can get an increase in part sales.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Peterson, Mr. Ostberg, and Mr. Lee were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Peterson, Mr. Ostberg, Mr. Lee, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. Mr. Peterson's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Peterson intended to advance the objectives of the conspiracy,

and (ii) it is a narrative description of market intelligence, and reflects an intention to offer a discount to increase sales volume, but if the customer will not agree to the increase in volume then a price to be quoted to Gateway.

5. Mr. Ostberg's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Peterson but is Mr. Ostberg, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) his purported narrative report of competitive market intelligence is not illegal.
6. Mr. Lee's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lee intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Peterson but is Mr. Lee, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Infineon plea agreement, and (ii) his purported narrative report of competitive market intelligence is not illegal.

Gov. Exh. 160: The government designates three "separate coconspirator statements" in this exhibit: The first is in the initial email is a request by Mr. Chung for market intelligence based on rumors that Infineon is attempting to increase prices at strategic accounts. The second is the Infineon market intelligence supposedly given by Mr. Lee to Mr. Peterson's Gateway's sales representative and reported in Mr. Peterson's email. The third is Mr. Peterson's report of the Infineon information. The email reflects nothing more than a request to gather competitive information and a response to that request. There is no indication of any agreement to fix prices.

Objections:

A. Mr. Peterson's and Mr. Lee's "statements":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Peterson and Mr. Lee, were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Peterson and Mr. Lee, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. Mr. Peterson's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Peterson intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of market intelligence.
5. Mr. Lee's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lee intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Peterson but is Mr. Lee, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Infineon plea agreement, and (ii) his purported narrative report of competitive market intelligence is not illegal.

B. Mr. Chung's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of the "statement".
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Peterson but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it simply reflects a request for market intelligence and nothing more.

Gov. Exh. 199: This exhibit is an email string between Michael Peterson, H.J. Kim, and Mr. Chung. In the initial email Mr. Peterson reports competitive price information from Micron and Infineon that they intend to raise prices the next day at Gateway, and he identifies the prices. He states he intends to do the same effective the next day. Mr. Chung responds that he does not "think M[icron] and I[nfineon] quoted that price at Gateway." He then states what prices should be used. Mr. Peterson responds that "this is what they told me they were doing today." "Anyway, I was under impression you wanted us to match or go a little lower than Micron. Let me know what you want and we will do it." "I don't know why Micron or Infineon would tell me lower price than what they actually submitted. Seems strange. Anyway let me know."

The government's Summary relating to this exhibit ignores these last two portions of the email string. It designates the Micron and Infineon market information as two separate "coconspirator statements" and Mr. Peterson's report of the information as the third "coconspirator statement". These emails clearly reflect a use of competitive market information for making independent decisions regarding prices to quote to a customer, and uncertainty regarding the validity of information received from competitors.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarants, Mr. Peterson, Mr. Ostberg, and Mr. Lee were members of the conspiracy.
3. The government has not provided sufficient evidence that the declarants, Mr. Peterson, Mr. Ostberg, Mr. Lee, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. Mr. Peterson's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Peterson intended to advance the objectives of the conspiracy,

and (ii) it is a narrative description of market intelligence, and reflects an intention to independently be a follower of market leaders.

5. Mr. Ostberg's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Ostberg intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Peterson but is Mr. Ostberg, himself, whom the government does intend to call as a witness and (ii) his purported narrative report of competitive market intelligence is not illegal.
6. Mr. Lee's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lee intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Peterson but is Mr. Lee, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Infineon plea agreement, and (ii) his purported narrative report of competitive market intelligence is not illegal.

Gov. Exh. 214: This exhibit reflects an email string of communications between Mr. Peterson and Mr. Chung. The government designates four "coconspirator statements" from the exhibit. (1) Mr. Chung's report of market intelligence. (2) Mr. Peterson's request for pricing guidance. (3) Mr. Chung's direction to Mr. Peterson as what prices to quote. (4) Mr. Peterson's response that he will implement the prices. The email reflects nothing more than the use of competitive information to make an independent pricing decision to follow the market leaders.

Objections:

A. Mr. Peterson's "statements":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Peterson, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Peterson, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The "statements" are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Peterson intended to advance the objectives of the conspiracy, and (ii) they are simply a request for instructions and an acquiescence in those instructions.

B. Mr. Chung's "statements":

1. The government has not provided sufficient evidence of the existence of the charged

conspiracy that can be associated with this exhibit.

2. The government has not provided sufficient evidence that Mr. Swanson was members of the conspiracy at the time of the “statement”.
3. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) the statements simply reflect a narrative report of market intelligence and independent direction based on that intelligence and nothing more.

MIKE SADLER

The government failed to lay the necessary foundation for admission of any statements by Mr. Sadler. He has not pled guilty and the government has not shown that he was a knowing member of the conspiracy charged against Mr. Swanson. Nowhere in the Witness Summary for Mr. Sadler does the government say that Mr. Sadler agreed with a competitor regarding the prices that they should quote to a customer. The Summary only reflects a sharing of information, which while giving some indication of the other company's intentions, does not itself amount to a price fixing agreement. In fact, the Summary states that Mr. Sadler will testify he told his sales staff about his conversations with Mr. Swanson, "and gave them the pricing information he received from Swanson *to help Micron set its prices.*" (Emphasis added.)

K.C. SUH (Hynix)

The government's Witness Summary for Mr. Suh states that Mr. Suh is "expected to testify that Swanson knew about these understandings and agreements with competitors," but fails to state the basis for such testimony. There is no evidence that he told Mr. Swanson about such matters, and the exhibits associated with Suh do not indicate the transmission of such knowledge or information to Mr. Swanson. The government's evidence fails to establish a link between Mr. Suh's activities and any knowledge on the part of Mr. Swanson regarding such activities.

Gov. Exh. 99: This is an email from H.J. Kim to J.H. Park in which Mr. Kim relates a conversation that he had with Mr. Kang. Mr. Kim's simply reports some detail, customer, product, manufacturing and price strategy information. Mr. Kim only reports that Mr. Kang "only concern are 128 M DDR pricing strategy. (He didn't ask any other information to me.) I didn't give our price status to him." This email simply reflects a narrative description of a particular company's market situation.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that declarant, Mr. H.J. Kim, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. H.J. Kim, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. H.J. Kim intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Suh but is Mr. Kim, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) it is a narrative description competitor market intelligence and does not reflect any purpose relating to price fixing.

Gov. Exh. 103: This is an email string among Hynix employees and the government has designated six “coconspirator statements” in this exhibit: (1) This is an email report by Mr. Miller to Mr. Chung regarding market intelligence relating to Samsung. (2) Mr. Chafin reports market intelligence relating to Micron and Infineon. (3) Mr. Kim asks Mr. Chung for customer feedback and additional competitor information. (4) Mr. Chung responds providing customer and competitor market intelligence and concerns about future directions. (5) Mr. Chung asks Mr. Suh to contact Samsung for market intelligence. (6) Mr. Suh reports market intelligence and promises to keep Mr. Chung updated.

Mr. Swanson received copies of emails (1) and (2) which reflect nothing more than a narrative report market intelligence. The remaining emails are among Korean executives of Hynix. Mr. Swanson is not a recipient of any of those emails. These emails reflect nothing more than rumors, uncertainty and chit chat among competitors.

Objections:

A. Mr. Miller’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Miller and Mr. Swanson were members of the conspiracy at the time of this “statement”.
3. Mr. Miller’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Miller intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. Miller, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) is shows a narrative report of market intelligence.

B. Mr. Chafin’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Chafin and Mr. Swanson were members of the conspiracy at the time of this “statement”.
3. Mr. Chafin’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chafin intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. Chafin, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) is shows a report of market intelligence.

C. Mr. Kim’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a

member of the conspiracy at the time of this “statement”.

3. Mr. Kim’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kim intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. Kim, himself, whom the government intends to call as a witness, and (ii) it shows a request for market intelligence for the purpose of making independent decisions about prices to be quoted to a customer.

D. Mr. Chung’s “statements”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this “statement”.
3. Mr. Chung’s “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) are narrative reports of market intelligence, and a request for market intelligence.

E. Mr. Suh’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this “statement”.
3. Mr. Suh’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Suh intended to advance the objectives of the conspiracy, and (ii) is a narrative description of market intelligence.

Gov. Exh. 158: This is an email from Mr. Suh to a number of people within Hynix. He reports information supposedly given to him by Mr. Swanson who had gotten it from Mr. Sadler. The report is that Micron is seeing some increased demand from the OEMs and projects that the market will not go down so drastically by the end of the year. Sadler also speculates that the current market price spike comes from a balance between demand and supply. This is nothing more than reporting general market intelligence information and has no relation to any agreements regarding pricing.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this statement.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Suh intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of general market intelligence and has no relationship to an agreement to fix prices.

Gov. Exh. 165: This is an email from Mr. H.J. Kim to Mr. Swanson, Mr. Tabrizi and Mr. Kassak with a copy to Mr. Suh. The government’s Summary states that this email is a request to Mr. Swanson “to contact Sadler to get Micron’s reaction to the recent price increase and what they intend to do in the future on pricing.” The email says nothing of the sort. It clearly seeks information on channel sales, inventory levels, basic sales strategy, short term market forecast, response to the recent market, and other competitive information. This is general market intelligence having nothing to do with price fixing. It is also at the time when Hynix and Micron were beginning negotiations on a potential merger, and is information potentially useful in the negotiation strategy.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that declarant, Mr. H.J. Kim, and Mr. Swanson were members of the conspiracy at the time of this “statement”.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. H.J. Kim intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. H.J. Kim, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Hynix plea agreement, and (ii) it is nothing more than a request for general market intelligence, showing nothing to do with any price fixing agreement.

Gov. Exh. 182: This exhibit reflects two emails one from Mr. Chung and one from Mr. Suh.¹ In the first email Mr. Chung reports information regarding HP that he learned from Samsung. He reports Micron's price as being quite low, and states: "Gary: I need your support on Micron." The government's Summary states: "This statement is a request to Gary Swanson to contact Mike Sadler at Micron to encourage them to raise prices on DDR." The statement in the email says nothing so direct, and Mr. Suh is not the author and is not qualified to say what Mr. Chung intended by that statement. Mr. Swanson made no telephone call to Mr. Sadler at this time frame. The second email is from Mr. Suh's simply reporting general market information from Samsung.

Objections:

A. Chung's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this "statement".
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Chung intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. Chung, himself, whom the government intends to call as a witness, and (ii) it is a narrative description of competitive information, and there is no evidence that Mr. Chung intended Mr. Swanson to contact Micron and reach an agreement as to prices to be charged.

B. Suh's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this statement.
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Suh intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of general market intelligence and has no relationship to an agreement to fix prices.

¹ The government has designated portions of both emails. However, it describes only information from the Chung email. Presuming simply an error, defendant has addressed both emails.

Gov. Exh. 187: This is an email from Mr. Suh to a number of Hynix executives. Mr. Suh reports market intelligence from Samsung about market pricing in the coming month. The government's Summary identifies the information in Mr. Suh's email as a "coconspirator statement" and the conversation with Mr. Kang where Mr. Suh learned the information as a "coconspirator statement".

Objections:

A. Suh's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this statement.
3. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Suh intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitive information, and there is no evidence that Mr. Suh entered any agreement or understanding with Samsung regarding the market price activities.

B. Kang's "statement":

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this statement.
3. Mr. Kang's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Kang intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Suh but is Mr. Kang, himself, whom the government intends to call as a witness, and (ii) it is nothing more than a report of market intelligence, and there is no evidence that there was an agreement to fix prices.

Gov. Exh. 253: This is a email from Mr. Suh to several Korean executives. Mr. Suh states that Samsung reports that “co-work is still valid and there’s no specific direction from HQ to change it yet.” This is in response to a email which is part of the string in which Mr. Choy reports that “mutual cooperation” is over. (This email was in Korean.)

Mr. Swanson was not a recipient of either email.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that Mr. Swanson was a member of the conspiracy at the time of this statement.
3. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Suh intended to advance the objectives of the conspiracy, and (ii) it is simply a narrative description of the status of the relationship between Hynix and Samsung, and is in conflict with prior information which casts doubt as to the validity of it altogether.

STEVE THORSEN (Micron)

The government has failed to lay the necessary foundation for admission of any of the emails that associates with Mr. Thorsen. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Nowhere in its Witness Summary for Mr. Thorsen does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing Micron's senior management to monitor or police price fixing agreements. The government's Summary only describes exchanges of price information among competitors -- which is not itself illegal. Therefore, the government has failed to prove that Mr. Thorsen was a member of the conspiracy at the time he wrote his emails and the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 176: This is a string of emails among Micron employees. The government points to the first in the string dated December 9, 2001 from Mr. Thorsen to his sales team. He states the "current plan" for price increases by Micron, but ask them to get information regarding the competition. He then states that Micron's plan is not to be the "first" and not the "highest" but right in behind the leader. This email evidence is nothing more than independent decision-making based upon competitive market intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Thorsen, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Thorsen, and Mr. Swanson were members of the conspiracy at the time of the "statement".
4. Mr. Thorsen's "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Thorsen intended to advance the objectives of the conspiracy, and (ii) is simply a request to gather competitive market intelligence, and demonstrates the intention to use that information to be a market follower, which is not illegal.

Gov. Exh. 188: This exhibit is a string of emails beginning December 27, 2001 and ending January 2, 2002 between Messrs. Thorsen, Grant, and Weinstock of Micron, which the government says contains four “coconspirator statements.” (1) Report by Mr. Thorsen about competitive market intelligence and asking for input on “how to proceed.” (2) Mr. Grant reports market intelligence that he “heard” and suggests an initial approach to the customer. (3) Mr. Thorsen agrees with Grant’s suggestion on initial price quotations. (4) Thorsen gives direction to entire sales team based on additional market information, and “draft in behind the comps if possible.” The emails simply report competitive market information and rumors regarding what might be happening with the competitors and with the customers.

The last email is from Thorsen suggesting to the sales team to start the next round in negotiations at \$19.00 if the competitors don’t reduce their prices. This starting point of \$19.00 for the negotiation is based upon an earlier email in the string which the government ignores from Mr. Weinstock which reports that IBM accepted his \$18.00 bid, but “I think I left about \$0.50 to \$1.00 on the table, sorry about that. Best I can tell, all majors are \$19.00 or higher. My guesses”. This is the information that provides the basis for Mr. Thorsen suggesting starting negotiations at \$19.00, not any conspiratorial activity.

Objections:

A. Mr. Thorsen’s “statements”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Thorsen, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Thorsen and Mr. Swanson were members of the conspiracy at the time of the “statements”.
4. The “statements” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Thorsen intended to advance the objectives of the conspiracy, and (ii) they simply reflect a narrative descriptions of market price information and chit chat among Micron employees with the clear reflection of independent decision-making based upon the market intelligence received.

B. Mr. Grant’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Grant, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Grant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” are not in furtherance of the conspiracy because (i) there is no evidence that Mr. Grant intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Thorsen but is Mr. Grant, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) it is a

narrative report of market intelligence and an independently proposed plan of action based on that information.

Gov. Exh. 197: This exhibit is principally an email from Mr. Thorsen to his sales team regarding “core pricing”. He states that he is “quite confident that competitive pricing is moving” up. He states he wants to be there when that happens, so he simply instructs his sales team to move forward with price negotiations with the customers to help lay the foundation to get to that level when and if the market moves. He asks them to report any feedback as the process develops. Contrary to the government’s characterization of this email, it reflects nothing more than a direction to the sales team based upon market intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Thorsen intended to advance the objectives of the conspiracy, and (ii) it simply reflects independent decisions being made based upon market intelligence, and demonstrates in uncertainty as to whether or not the decision will have to be modified depending upon events in the marketplace.

KEITH WEINSTOCK (Micron)

The government has failed to lay the necessary foundation for admission of any of the emails that associates with Mr. Weinstock. He has not pled guilty and the government has not provided sufficient evidence that he was a knowing member of the conspiracy charged against Mr. Swanson. Mr. Weinstock did not have pricing authority; he could only make recommendations to Micron management. Nowhere in its Witness Summary for Mr. Weinstock does the government say he will admit that he engaged in price fixing with competitors or that his exchanges of information with competitors were for the purpose of allowing Micron's senior management to monitor or police price fixing agreements. The government's Summary only describes exchanges of price information among competitors --which is not itself illegal. The government has failed to prove that Mr. Weinstock was a member of the conspiracy at the time he wrote his emails, therefore the emails are not admissible under FRE 801(d)(2)(E).

Gov. Exh. 65: This is an email dated March 26, 2000, from Mr. Lauer to his sales team regarding "core pricing". He instructs his sales team to start talking price increase with the customers on Monday. He also instructs the sales team to contact their competitors and "make sure they are seeing the same thing." The Lauer email simply instructs his sales team to gather competitive information and discuss market conditions with their counterparts.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Lauer, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Lauer and Mr. Swanson were members of the conspiracy at the time of the "statement". Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001 more than a year after this statement was made.
4. The "statement" is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lauer intended to advance the objectives of the conspiracy and the

best evidence of his intentions is not Mr. Weinstock but is Mr. Lauer, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) it is simply an instruction to gather competitive market information and contains no implication of any agreement to fix prices.

Gov. Exh. 69: This exhibit is an email from Mr. Lauer to the sales team dated May 16, 2000. Mr. Lauer instructs his sales team to “get more aggressive on the price” because he has market intelligence that “other majors are moving price up.” However, he further instructs them to “make sure someone else is moving before you go in.” This statement simply reflects market information and its uncertainty and in independent decision to be a market follower on price should the situation warrant.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Lauer, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Lauer, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001 almost a year after this statement was made.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lauer intended to advance the objectives of the conspiracy and the best evidence of his intentions is not Mr. Weinstock but is Mr. Lauer, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) it reflects independent decisions based upon some uncertain market intelligence.

Gov. Exh. 73: This exhibit consists of three emails, all dated June 14, 2000. The first two emails from Mr. Weinstock and Mr. Grant, according to the government’s description of them contained in the Witness Summary, reflect nothing more than the gathering and transmission of competitive market intelligence and independent decisions based on that information. Mr. Weinstock has suggested certain prices based upon his information, and Mr. Grant counters with a different proposal based on his information. The final so called coconspirator statement is from Mr. Lauer to his sales team to keep “price discussions off e-mail” because they are “*only guesses* and in no way do you actually know what the comp is

doing, it could be construed as some kind of inside tip.” Emphasis added. The government characterized this as an effort to conceal competitor contacts. That appears to be the case, but for different reasons than the government would have the court believe. He recognizes that there is no way to actually know what the competition is doing and seems to believe that reporting such information could be construed by someone (i.e., lawyers) some kind of “inside tip” that misuses confidential information.

Objections:

A. Mr. Weinstock’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Weinstock, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Weinstock and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001 almost a year after this statement was made.
4. Mr. Weinstock’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Weinstock intended to advance the objectives of the conspiracy, and (ii) it reflects use of market intelligence to make and independent price decision.

B. Mr. Grant’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Grant, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Grant and Mr. Swanson were members of the conspiracy at the time of the “statement.” Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001 almost a year after this statement was made.
4. The “statement” is not in furtherance of the conspiracy because Mr. Grant’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Grant intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Weinstock but is Mr. Grant, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) it reflects use of market intelligence to make and independent price decision.

C. Mr. Lauer’s “statement”:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Lauer,

was a member of the conspiracy.

3. The government has not provided sufficient evidence that the declarant, Mr. Lauer and Mr. Swanson were members of the conspiracy at the time of the “statement.” Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001 almost a year after this statement was made.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lauer intended to advance the objectives of the conspiracy, and the best evidence of his intentions is not Mr. Weinstock but is Mr. Lauer, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) does not reflect concealment of a price fixing agreement but clearly reflects lack of knowledge as to what competitors are actually doing and the potential for someone to misconstrue the information as abuse of confidential information.

Gov. Exh. 74: This exhibit contains two of the three same emails from the prior exhibit no. 73. The only alleged coconspirator statement is contained in the email from Mr. Weinstock to the sales team dated June 14, 2000. The next email is a response by Mr. Grant. The final email is from Mr. Lauer who says that he agrees, “but follow the lead of the other suppliers”. The government asserts that Mr. Weinstock’s email is a coconspirator statement because it provides competitive price information in making a price determination. However, the next email by Mr. Grant contradicts Mr. Weinstock’s information with competitive information of his own. Taken together these three emails simply reflect the use of competitive information to make independent business decisions regarding prices to be charged.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Weinstock was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Weinstock and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, almost a year after this statement was made.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Weinstock intended to advance the objectives of the conspiracy, and (ii) it simply reflects the gathering and independent use of competitive market information.

Gov. Exh. 84: This is an email from Mr. Lauer, dated September 14, 2000, to his sales team regarding “anti-trust”. Mr. Lauer reports that they had had a meeting with the Micron

lawyers regarding antitrust and that “meeting with the comp to talk about price is bad.” Mr. Lauer does not say they were told it was illegal. Mr. Lauer further says, “Naturally, we will continue to interview candidates as we always have, so if you meet a competitor over a job interview, simply document it.” Weinstock will apparently testify that Lauer meant to use job interviews as a cover for continuing to talk with competitors about pricing. There is no evidence that substantiates that interpretation because Micron employees continued to report that they had gathered market price intelligence directly from competitors and there is no evidence of any “employee interviews” being used to report market intelligence.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Lauer, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Lauer, and Mr. Swanson were members of the conspiracy at the time of the “statement”. Mr. Swanson is not alleged to have joined the conspiracy until about April 1, 2001, five months after this statement was made.
4. Mr. Lauer’s “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Lauer intended to advance the objectives of the conspiracy, and the best evidence of his intentions is Mr. Lauer, himself, whom the government does not intend to call as a witness, even though he would be available under the cooperation obligations of the Micron amnesty agreement, and (ii) the plain meaning of the words is contrary to any conspiratorial activity.

Gov. Exh. 107: This is an email from Mr. Weinstock to Mr. Lauer regarding pricing quoted to IBM. In response to Mr. Lauer’s inquiry as to the reaction of IBM to a proposed price increase, Mr. Weinstock responds that there has been no response yet. He then reports that he “believes that both [Hynix] and Infineon are trying to make small increase stick.” This email reflects nothing more than a report of competitive market information.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Weinstock, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Weinstock and Mr. Swanson were members of the conspiracy at the time of the

“statement.”

4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Weinstock intended to advance the objectives of the conspiracy, and (ii) it is a narrative description of competitor price information, and there is no evidence of any attempt to fix or further any price fixing agreements.

Gov. Exh. 108: This exhibit reflects a series of emails beginning with one from Mr. Weinstock to his sales team in which he proposes to make a small increase at IBM for the month. This is based on his “belief” that “at least one other major raised price and another plans to.” Two days later he reports that all the other major competitors stayed flat at IBM and he has “had calls from all levels at IBM to date” As a result he had to change the quotation to IBM “back to flat.” The exhibit reflects nothing more than the use of market information and the uncertainty of related thereto. It shows clearly there was no agreement on the price quoted to IBM.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Weinstock, was a member of the conspiracy.
3. The government has not provided sufficient evidence that the declarant, Mr. Weinstock, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Weinstock intended to advance the objectives of the conspiracy, and (ii) it reflects a narrative description of competitive price information and independent use thereof, and the full text of the exhibit demonstrates that there was no agreement as Micron had to lower its price because other competitors did so.

Gov. Exh. 175: This exhibit reflects a report by Mr. Weinstock of competitive price information and an independent decision regarding what price they would then quote to IBM.

Objections:

1. The government has not provided sufficient evidence of the existence of the charged conspiracy that can be associated with this exhibit.
2. The government has not provided sufficient evidence that the declarant, Mr. Weinstock, was a member of the conspiracy.

3. The government has not provided sufficient evidence that the declarant, Mr. Weinstock, and Mr. Swanson were members of the conspiracy at the time of the “statement”.
4. The “statement” is not in furtherance of the conspiracy because (i) there is no evidence that Mr. Weinstock intended to advance the objectives of the conspiracy, and (ii) it is a narrative description regarding competitive price information and reflects an independent decision on what price to quote to a customer based on that price information.