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24 **RAMBUS INC.**

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
26 **COUNTY OF SAN FRANCISCO**

27 **RAMBUS INC.,**  
28 Plaintiff,  
vs.  
**MICRON TECHNOLOGY, INC., et al.,**  
Defendants.

**AND RELATED CROSS-ACTIONS**

**FILED**  
San Francisco County Superior Court  
JAN 27 2009  
BY: **GORDON PARKILL, Clerk**  
Deputy Clerk

Case No.: 04-431105

**DECLARATION OF KEITH R. D. HAMILTON IN SUPPORT OF RAMBUS INC.'S OPPOSITIONS TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**

**VOLUME # 6**

Date: February 23, 2009  
Time: 1:30 p.m.  
Dept: 304  
Judge: Hon. Richard A. Kramer

Complaint Filed: May 5, 2004  
Trial Date: March 16, 2009

**REDACTED PUBLIC VERSION**

6933069.1

From ckchung  
To dskim  
CC Gary Swanson, Clint Miller, YoungSik Park, wscho, KC Suh, trkim, Seung Lee  
BCC  
Subject HP, etc  
Date 12/12/2001 9 37 58 PM

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Attachments

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Met Samsung guys over the lunch HP related update from them

1 Core supplier selection According to them, Samsung didn't/couldn't agree to BPO In the meantime, HPD invited Micron and had meeting on Monday The two core suppliers would be Micron and Infineon It supposed to be announced tomorrow

2 DDR Pricing Samsung quoted \$40 for 256MB DDR to HPD Samsung DDR is not qualified at HPD, anyway Micron price at \$31 range

Gary I need your support on Micron  
Clint, you need to check what's SS' price at Compaq Our price will be \$38.57 for the 2nd half of December

3 Samsung agrees to the gap based DDR pricing

KC I was on/off for taking calls over the lunch Other key things to add?

Best Regards,

C K Chung  
Memory Sales & Marketing Division  
Hynix Semiconductor  
Tel 408-232-8303  
Mobile 408-315-0558  
ckchung@hynix.com <mailto:ckchung@hynix.com>

PKS  
DT 5/10/09  
WIT Chae Kyun Chung  
SERENA WONG  
CSR NO 10250  
EXH 22

**From:** blauer  
**Sent:** Thursday, January 24, 2002 8:39 AM  
**To:** sthosen  
**Cc:** msadler  
**Subject:** scary message

Maybe we should close the SDR/DDR price gap by moving in both directions. SDR to \$30 and DDR to \$32, for example.

Rambus exec downplays demise of four-bank design  
By Jack Robertson <mailto:jroberts@cmp.com>  
EBN <<http://www.ebnews.com>>  
(01/23/02, 04:33:11 PM EST)

Rambus Inc. on Wednesday said the demise of the four-bank Direct RDRAM is not a problem, because prices of the once-high premium RDRAM memory chip have now dropped to parity with the rival DDR devices. Frank Fox, vice president and general manager of RDRAM Solutions Division, said the four-bank chip was originally designed to be a lower cost version to make Direct Rambus more competitive. "It is no longer needed now because RDRAM prices have dropped to the competitive levels where the four-bank version was originally targeted," he told EBN. He cited PriceWatch listings this week that showed the 800-MHz 128-Megabit RDRAM selling at \$3.40, compared with a 128-Mbit 266MHz DDR at \$3.30.

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HIGHLY CONFIDENTIAL

MU00057332



U. S. Department of Justice

Antitrust Division

Office of the Deputy Assistant Attorney General

950 Pennsylvania Ave., Suite 3736  
Washington, D.C. 20530

William J. Barr, Esq.  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004

Gary R. Spratling, Esq.  
Gibson, Dunn & Crutcher LLP  
One Montgomery Street  
San Francisco, CA 94104

Re: Micron Technology, Inc.

Dear Messrs. Barr and Spratling:

This letter sets forth the terms and conditions of an agreement between the Antitrust Division of the United States Department of Justice and Micron Technology, Inc. ("Micron"), in connection with possible price fixing or other conduct violative of Section 1 of the Sherman Act, 15 U.S.C. § 1, in the dynamic random access memory ("DRAM") industry in the United States and elsewhere. This agreement is conditional and depends upon Micron satisfying the conditions set forth below. After all of these conditions are met, the Division will notify Micron in writing that the application has been granted. It is further agreed that disclosures made by counsel for Micron in furtherance of the amnesty application will not constitute a waiver of the attorney-client privilege or the work-product privilege.

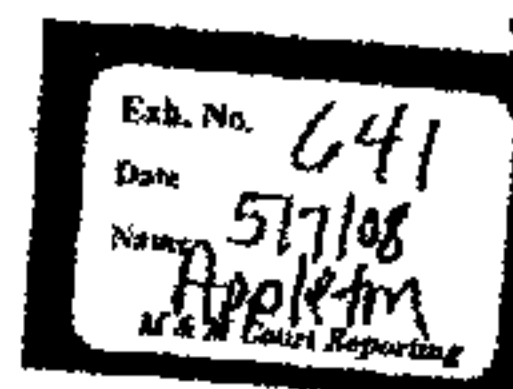
**AGREEMENT**

1. **Representations:** Micron desires to report to the Antitrust Division possible price fixing activity or other conduct violative of the Sherman Act in the DRAM industry in the United States and elsewhere ("the anticompetitive activity being reported"). Micron represents to the Antitrust Division that, in connection with the anticompetitive activity being reported, it:

- (a) took prompt and effective action to terminate its part in the anticompetitive activity being reported upon discovery of the activity; and
- (b) did not coerce any other party to participate in the activity and was not the leader in, or the originator of, the anticompetitive activity being reported.

2. **Cooperation:** Micron agrees to provide full, continuing and complete cooperation to the Antitrust Division in connection with the activity being reported, including, but not limited to, the following:

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- (a) providing a full exposition of all facts known to Micron relating to the anticompetitive activity being reported;
- (b) providing promptly, and without requirement of subpoena, all documents or other items relating to the anticompetitive activity being reported in its possession, custody or control, wherever located, requested by the Antitrust Division, to the extent not already produced;
- (c) using its best efforts to secure the ongoing, full and truthful cooperation of the current and former directors, officers and employees of Micron, and encouraging such persons voluntarily to provide the Antitrust Division with any information they may have relevant to the anticompetitive activity being reported;
- (d) facilitating the ability of current and former directors, officers and employees to appear for such interviews or testimony in connection with the anticompetitive activity being reported as the Antitrust Division may require at the times and places designated by the Antitrust Division;
- (e) using its best efforts to ensure that current and former directors, officers and employees who provide information to the Antitrust Division relevant to the anticompetitive activity being reported respond completely, candidly and truthfully to all questions asked in interviews and grand jury appearances and at trial;
- (f) using its best efforts to ensure that current and former directors, officers and employees who provide information to the Antitrust Division relevant to the anticompetitive activity being reported make no attempt either falsely to protect or falsely to implicate any person or entity; and
- (g) making all reasonable efforts, to the satisfaction of the Antitrust Division, to pay restitution to any person or entity located in the United States injured as a result of the anticompetitive activity being reported, in which Micron was a participant.

3. **Corporate Leniency.** Subject to verification of Micron's representations in paragraph 1 above, and subject to its full, continuing and complete cooperation, as described in paragraph 2 above, the Antitrust Division agrees conditionally to accept Micron into Part B of the Corporate Leniency Program, as explained in an Antitrust Division policy statement dated August 10, 1993 (attached). Pursuant to that policy, the Antitrust Division agrees not to bring any criminal prosecution against Micron for any act or offense it may have committed prior to the date of this letter in connection with the anticompetitive activity being reported. The commitments in this paragraph are binding only upon the Antitrust Division, although, upon request of Micron, the Antitrust Division will bring this Agreement to the attention of other prosecuting offices or administrative agencies. If the Antitrust Division at any time determines that Micron has violated this Agreement, this Agreement shall be void, and the Antitrust Division may revoke the conditional

acceptance of Micron into the Corporate Leniency Program. Should the Antitrust Division revoke the conditional acceptance of Micron into the Corporate Leniency Program, the Antitrust Division may thereafter initiate a criminal prosecution against Micron, without limitation. Should such a prosecution be initiated, any documentary or other information provided by Micron, as well as any statements or other information provided by any current or former director, officer or employee of Micron to the Antitrust Division pursuant to this Agreement, may be used against Micron in any such prosecution.

**4. Non-Prosecution Protection For Corporate Directors, Officers And Employees:** Subject to Micron's full, continuing and complete cooperation, the Antitrust Division agrees that current directors, officers and employees of Micron, as well as former Micron personnel who do not consult or work, and have not consulted or worked since leaving Micron, for any other DRAM producer, who admit their knowledge of, or participation in, and fully and truthfully cooperate with the Antitrust Division in its investigation of the anticompetitive activity being reported, shall not be prosecuted criminally by the Antitrust Division for any act or offense committed prior to the date of this letter in connection with the anticompetitive activity being reported. Such full and truthful cooperation shall include, but not be limited to:

- (a) producing in the United States all documents and records, including personal documents and records, and other materials requested by attorneys and agents of the United States;
- (b) making himself or herself available for interviews in the United States upon the request of attorneys and agents of the United States;
- (c) responding fully and truthfully to all inquiries of the United States in connection with the anticompetitive activity being reported, without falsely implicating any person or intentionally withholding any information;
- (d) otherwise voluntarily providing the United States with any materials or information, not requested in (a) - (c) of this paragraph, that he or she may have relevant to the anticompetitive activity being reported; and
- (e) when called upon to do so by the United States, testifying in trial and grand jury or other proceedings in the United States, fully, truthfully and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402) and obstruction of justice (18 U.S.C. § 1503), in connection with the anticompetitive activity being reported.

The commitments in this paragraph are binding only upon the Antitrust Division, although, upon the request of Micron, the Antitrust Division will bring this Agreement to the attention of other prosecuting offices or administrative agencies. In the event a current or former director, officer or employee of Micron fails to comply fully with his/her obligations hereunder, this Agreement as it pertains to such individual shall be void, and any leniency, immunity or non-prosecution granted to such individual under this Agreement may be revoked by the Antitrust Division. Should any

leniency, immunity or non-prosecution granted be revoked, the Antitrust Division may thereafter prosecute such person criminally, and any statements or other information provided by such person to the Antitrust Division pursuant to this Agreement may be used against him/her in such prosecution.

5. **Entire Agreement:** This letter constitutes the entire agreement between the Antitrust Division and Micron, and supersedes all prior understandings, if any, whether oral or written, relating to the subject matter herein.

6. **Authority And Capacity:** The Antitrust Division and Micron represent and warrant each to the other that the signatories to this Agreement on behalf of each party hereto have all the authority and capacity necessary to execute this Agreement and to bind the respective parties hereto.

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

Sincerely yours,

Date: 10/2/02

  
James M. Griffin  
Deputy Assistant Attorney General  
Antitrust Division

  
Kevin O'Sullivan  
Micron Technology, Inc.

Date: 10/25/02

  
William J. Bacri  
Counsel for Micron Technology, Inc.

Date: 10/21/02

  
Gary R. Spatling  
Counsel for Micron Technology, Inc.

Date: October 18, 2002

U.S. Department of Justice  
Antitrust Division

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# Corporate Leniency Policy

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*August 10, 1993*



DOJ-DRAM-0021743

### CORPORATE LENIENCY POLICY

The Division has a policy of according leniency to corporations reporting their illegal antitrust activity at an early stage, if they meet certain conditions. "Leniency" means not charging such a firm criminally for the activity being reported. (The policy also is known as the corporate amnesty or corporate immunity policy.)

#### A. Leniency Before an Investigation Has Begun

Leniency will be granted to a corporation reporting illegal activity before an investigation has begun, if the following six conditions are met:

1. At the time the corporation comes forward to report the illegal activity, the Division has not received information about the illegal activity being reported from any other source;
2. The corporation, upon its discovery of the illegal activity being reported, took prompt and effective action to terminate its part in the activity;
3. The corporation reports the wrongdoing with candor and completeness and provides full, continuing and complete cooperation to the Division throughout the investigation;
4. The confession of wrongdoing is truly a corporate act, as opposed to isolated confessions of individual executives or officials;

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5. Where possible, the corporation makes restitution to injured parties; and
6. The corporation did not coerce another party to participate in the illegal activity and clearly was not the leader in, or originator of, the activity.

**8. Alternative Requirements for Leniency**

If a corporation comes forward to report illegal antitrust activity and does not meet all six of the conditions set out in Part A, above, the corporation, whether it comes forward before or after an investigation has begun, will be granted leniency if the following seven conditions are met:

1. The corporation is the first one to come forward and qualify for leniency with respect to the illegal activity being reported;
2. The Division, at the time the corporation comes in, does not yet have evidence against the company that is likely to result in a sustainable conviction;
3. The corporation, upon its discovery of the illegal activity being reported, took prompt and effective action to terminate its part in the activity;
4. The corporation reports the wrongdoing with candor and completeness and provides full, continuing and complete cooperation that advances the Division in its investigation;
5. The confession of wrongdoing is truly a corporate act, as opposed to isolated confessions of individual executives or officials;

6. Where possible, the corporation makes restitution to injured parties; and

7. The Division determines that granting leniency would not be unfair to others, considering the nature of the illegal activity, the confessing corporation's role in it, and when the corporation comes forward.

In applying condition 7, the primary considerations will be how early the corporation comes forward and whether the corporation coerced another party to participate in the illegal activity or clearly was the leader in, or originator of, the activity. The burden of satisfying condition 7 will be low if the corporation comes forward before the Division has begun an investigation into the illegal activity. That burden will increase the closer the Division comes to having evidence that is likely to result in a sustainable conviction.

C. Leniency for Corporate Directors, Officers, and Employees

If a corporation qualifies for leniency under Part A, above, all directors, officers, and employees of the corporation who admit their involvement in the illegal antitrust activity as part of the corporate confession will receive leniency, in the form of not being charged criminally for the illegal activity, if they admit their wrongdoing with candor and completeness and continue to assist the Division throughout the investigation.

If a corporation does not qualify for leniency under Part A, above, the directors, officers, and employees who come forward with the corporation will be considered for immunity from criminal prosecution on the same basis as if they had approached the Division individually.

D. Leniency Procedure

If the staff that receives the request for leniency believes the corporation qualifies for and should be accorded leniency, it should forward a favorable recommendation to the Office of Operations, setting forth the reasons why leniency should be granted. Staff should not delay making such a recommendation until a fact memo recommending prosecution of others is prepared. The Director of Operations will review the request and forward it to the Assistant Attorney General for final decision. If the staff recommends against leniency, corporate counsel may wish to seek an appointment with the Director of Operations to make their views known. Counsel are not entitled to such a meeting as a matter of right, but the opportunity will generally be afforded.

Issued August 10, 1993



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### Micron Technology, Inc., Responds to Recent Article

Contact Info

Boise, Idaho, November 11, 2004 -- Micron Technology, Inc., today clarified and corrected a recent story about the company that appeared in the November 3, 2004, issue of Electronics Weekly regarding the pending U.S. Department of Justice (DOJ) investigation into pricing in the DRAM industry.

Since the beginning of the investigation, Micron has indicated it is cooperating fully and actively with the DOJ. Micron's cooperation is pursuant to the terms of the DOJ's Corporate Leniency Policy, which provides that in exchange for Micron's full, continuing and complete cooperation in the pending investigation, Micron will not be subject to prosecution, fines, or other penalties.

Micron's Chairman, Chief Executive Officer and President Steve Appleton stated, "Today's business environment demands broad company awareness and adherence to the principles of good corporate governance and legal compliance. It also requires cooperation with government agencies in investigations of possible wrongdoing."

Appleton continued, "Although a recent Electronics Weekly article suggested that I believe it is not possible to control prices in this industry and that the DOJ's investigation is theoretical, neither is the case. The DOJ's investigation revealed evidence of price fixing by Micron employees and its competitors on DRAM sold to certain computer and server manufacturers. Nevertheless, if Micron fully complies with the Corporate Leniency Policy, Micron will not be subject to criminal sanctions or fines, notwithstanding Micron's involvement in the misconduct."

Appleton stated further, "Micron deplors any effort to fix or stabilize prices and is committed to rectifying past behavior and ensuring any misconduct will not recur. Micron is dedicated to strong governance practices and comprehensive compliance programs. These efforts include global programs to ensure our employees understand how to interact appropriately with competitors, suppliers and customers. Our belief in these principles guides the company's long-standing commitment to strong governance practices and our implementation of up-to-date, comprehensive compliance programs. Micron continues to cooperate fully and actively with the DOJ in its investigation."

Micron Technology, Inc., is one of the world's leading providers of advanced semiconductor solutions. Through its worldwide operations, Micron manufactures and markets DRAM, Flash memory, CMOS image sensors, other semiconductor components and memory modules for use in leading-edge computing, consumer, networking, and mobile products. Micron's common stock is traded on the New York Stock Exchange (NYSE) under the MU symbol. To learn more about Micron Technology, Inc., visit its Web site at [www.micron.com](http://www.micron.com).

David T. Parker  
Micron Technology, Inc.  
[dparker@micron.com](mailto:dparker@micron.com)  
(208) 368-4400

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**SUMMARY OF THE GOVERNMENT'S CASE AGAINST IL UNG KIM**

**A. Overview**

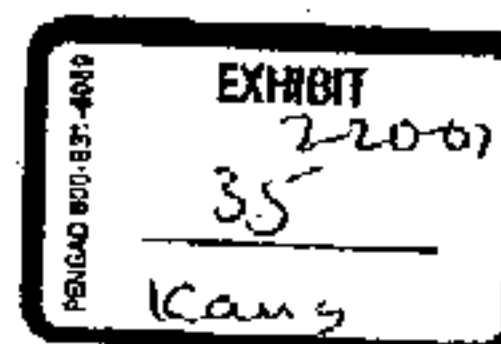
During the period that Il Ung Kim is charged with participating in the conspiracy, on or about April 1, 2001 to on or about June 15, 2002 (the "relevant period"), all the major DRAM manufacturers were engaged in a conspiracy to fix, maintain, raise, and stabilize the prices of DRAM sold to certain OEMs.<sup>1</sup> The companies that participated in the conspiracy include: Samsung Electronics, Inc. ("Samsung") and its U.S. subsidiary Samsung Semiconductor Inc. ("SSI"), Hynix Semiconductor Inc. ("Hynix"), [REDACTED], Infineon Technologies AG ("Infineon"), [REDACTED], Elpida Memory Inc., and [REDACTED].

In furtherance of the conspiracy, employees, officers, and directors of these companies had hundreds of pricing discussions with each other relating to their respective companies' pricing intentions to major OEM customers. The pricing discussions among the competitors revolved around the once- or twice-a-month price negotiations with the major OEMs. These discussions led to both implied and express agreements to fix, stabilize, and maintain the price of DRAM. The conspiracy also involved group boycotts of OEM DRAM auctions, including an auction sponsored by Compaq.

The conspiracy had three goals: (1) to coordinate pricing among the competition to ensure no supplier was so out of line that it would lose market share by being too high or "leave money on the table" by being too low; (2) to stabilize prices and prevent them from falling too low in downward markets; and (3) to raise prices when the opportunity arose. To accomplish these goals, in an upward market, when supplies were tight or demand was strong, competitors talked and agreed on when and by how much the price should go up, sometimes discussing their initial price for their negotiations as well as their intended final price in negotiations with the customer. In declining markets, when demand was low or there was an oversupply in the market, competitors discussed ways to stabilize the price to prevent it from falling lower and agreed to maintain certain floor prices. In flat markets, the competitors discussed the need to keep prices stable and agreed to maintain prices in the face of customer pressure to reduce prices.

The participants' primary mode of communication was one-on-one telephone calls. The telephone was used partly to hide the conspiratorial activity and partly by necessity, given the frequency of price negotiations. The number of phone calls varied among the conspirators, based on their positions and their involvement in the conspiracy. Some lower-level salesmen had hundreds of phone calls with their competitors. High-level executives had fewer direct contacts with competitors, but instead directed subordinates to handle the bulk of the communications

<sup>1</sup> The OEMs affected by this conspiracy are Dell Inc. ("Dell"), Compaq Computer Corporation ("Compaq"), Hewlett-Packard Company ("Hewlett-Packard"), Apple Computer, Inc. ("Apple"), International Business Machines Corporation ("IBM"), and Gateway, Inc. ("Gateway").



with competitors. At times, however, some of the higher-level executives had direct meetings or conversations with their counterparts in which they acknowledged or endorsed what their subordinates were doing or actually reached agreements with their coconspirators.

In terms of the day-to-day implementation, high-level executives at each of the DRAM producers directed their sales account managers for the major OEMs to contact and coordinate pricing with the competition. These sales managers would contact competitors by phone as frequently as once or twice a week. Through these conversations, the sales account managers exchanged future pricing information and entered into implicit and explicit pricing agreements for the upcoming price negotiation with each of the large OEMs.

#### B. Summary of Evidence against Kim

Il Ung Kim was Vice President of Marketing, Memory Division, at Samsung's Korean headquarters. In that role, he was responsible for creating price guidelines for all DRAM sales worldwide. He worked closely with Y.H. Park, Vice President of Sales, to set pricing for the larger OEM customers. Kim directly reported to his codefendant, Young Bae Rha, Vice President of Sales and Marketing. In furtherance of the conspiracy, Kim had direct contact with Hynix and Infineon executives with whom he reached agreements to set price floors and to boycott an auction sponsored by Compaq. Kim also directed subordinates to participate in the conspiracy. Kim directed sales and marketing executives to contact competitors to ensure the competition would hold or raise prices at different points in the conspiracy.

##### 1. Meetings and Conversations with Competitors

During the relevant period, Kim attended meetings and participated in telephone conversations with competitors to discuss the prices of DRAM to be sold to certain OEMs. Kim agreed during these meetings and telephone conversations to charge DRAM prices at certain levels to be sold to certain OEMs.

Heinrich Florian was Vice President for Sales, Marketing and Logistics, for Infineon, and was responsible for setting worldwide DRAM prices. Florian first met I.U. Kim in Seoul, Korea on June 28, 2001 at a "bench marking" meeting between Infineon and Samsung sales and marketing executives. Throughout the time period of the conspiracy, high-level executives at the major DRAM producers held several of these bench marking meetings. During this meeting, Samsung and Infineon exchanged their views on the market, including supply, demand, new product developments, and pricing trends. After this meeting, Kim and Florian exchanged phone numbers and continued to contact each other.

Kim attended meetings and participated in telephone conversations with Heinrich Florian where they reached an agreement to fix the price of DRAM. On November 8, 2001, at a meeting in Munich, Germany, Kim told Florian that Samsung was going to increase the price of DRAM in the near future. Kim specifically mentioned a target price for the standard DRAM module price as being an appropriate price target. Florian agreed that sounded like a good target to reach. Through this conversation, Kim and Florian reached an agreement to raise the price of DRAM.

In furtherance of the conspiracy, I.U. Kim, Y.H. Park, and [redacted], all of Samsung, attended a meeting at a restaurant in Korea in May 2002 with D.S. Kim and [redacted] of Hynix, at which Hynix and Samsung agreed to charge a specific floor price on two DRAM component prices. These component prices were, in fact, a proxy for all DRAM components and modules in the marketplace. I.U. Kim played an active role in the meeting and was the one who suggested the floor price. After this meeting, lower-level Samsung sales and marketing executives were told that Samsung had reached an agreement with Hynix on pricing and were asked to monitor the market to ensure that Hynix was abiding by the agreement.

### 2. The November 29, 2001 Compaq Auction

In November 2001, Heinrich Florian called Kim and asked him if Samsung was going to participate in the Compaq auction on November 29, 2001. At that time, Compaq was introducing an on-line auction as a new purchasing method for buying DRAM. Many of the suppliers disliked the auctions, which had already been adopted by Sun Microsystems, because they drove prices down. Florian was concerned that if the DRAM manufacturers participated in the auction it would sabotage their ability to raise prices on December 1, 2001. Therefore, Florian wanted to get Kim's assurance that Samsung would not participate in the auction. Kim told Florian that Samsung would not participate and they agreed to boycott the auction. The DRAM suppliers involved in the conspiracy agreed to not participate in the auction and thereafter successfully raised prices on December 1, 2001 to the major OEMs.

### 3. Directing Subordinate Employees to Fix Prices

During the relevant period, Kim authorized, ordered, and consented to the participation of several subordinate employees in the price-fixing conspiracy including the following: Sun Woo "Sunny" Lee, Senior Manager for DRAM Sales for Samsung; Young Woo Lee, Senior Sales Manager for Samsung Europe; Yeongho Kang, Associate Director, DRAM Marketing for SSI; Thomas Quinn, Vice President of Marketing for SSI; [redacted]

At certain periods during the relevant period, Kim asked subordinate employees to contact competitors in order to raise or maintain the price of DRAM sold to certain OEMs. In response, the subordinate employees did, in fact, contact their counterparts at the competition and reach agreements on the price levels their respective companies would charge to certain OEMs. Furthermore, during the relevant period, these subordinate employees had regular pricing discussions with competitors and reached agreements on the prices at which they would sell DRAM to certain OEMs. Kim was aware of these communications and the agreements reached with Samsung's competitors.