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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA

16 v.

17 INFINEON TECHNOLOGIES AG,
18 Defendant.

19 Case No. CR-04-299 (PJH)

20 UNITED STATES AND INFINEON
21 TECHNOLOGIES AG's JOINT
22 SENTENCING MEMORANDUM
23 AND REQUEST FOR EXPEDITED
24 SENTENCING UNDER L.R. 32-1(b)

25 DATE: October 20, 2004

26 TIME: 1:30 p.m.

27 COURT: Hon. Phyllis J. Hamilton

28 **JOINT SENTENCING MEMORANDUM**

29 The United States of America and the defendant, Infineon Technologies AG ("Infineon"),
30 file this Joint Sentencing Memorandum in support of their recommendation that the Court
31 sentence the defendant to pay a fine of \$160 million, payable in agreed installments with interest
32 over five years. The parties also request that sentence be imposed as soon as possible, but no later
33 than October 20, 2004, based on the current record without need of an evidentiary sentencing
34 hearing or a presentence report.

35 **INTRODUCTION**

36 On September 15, 2004, the United States filed an Information charging Infineon with
37 participating in a conspiracy in the United States and elsewhere to suppress and eliminate

38 JOINT SENTENCING MEMORANDUM -- PAGE 1

1 competition by fixing the prices of DRAM to be sold to certain OEM customers from on or about
2 July 1, 1999, to on or about June 15, 2002, in violation of the Sherman Antitrust Act, 15 U.S.C.
3 § 1. Infineon is scheduled for a change of plea and possible sentencing on October 20, 2004.
4 Infineon will waive Indictment and plead guilty under Fed. R. Crim. P. 11(c)(1)(C).

5 The United States and Infineon jointly submit this memorandum to request that the Court
6 sentence Infineon on an expedited basis pursuant to Crim. L.R. 32-1(b). This memorandum also
7 outlines the material terms of the Plea Agreement between the United States and Infineon, in the
8 event the Court grants the parties' request to impose a sentence immediately on October 20, 2004,
9 after accepting Infineon's guilty plea.¹

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

18 MATERIAL TERMS OF INFINEON PLEA AGREEMENT

19 The material terms of the Infineon Plea Agreement include:

20 1. Infineon will waive indictment, waive all rights as enumerated in the Plea
21 Agreement, including any rights it may have under *Blakely v. Washington*, 2004 WL 1402697
22 (June 24, 2004), and plead guilty to a one-count Information charging it with participating in a
23 conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing the
24 prices of DRAM to be sold to certain OEM customers from on or about July 1, 1999, to on or
25 about June 15, 2002, (the "relevant period") in violation of the Sherman Antitrust Act, 15 U.S.C.

26
27 ¹ In conjunction with this Joint Sentencing Memorandum the United States and Infineon
28 have filed a Stipulation and Proposed Order for Expedited Sentencing Under L.R. 32-1(b).

1 § 1. For purposes of the Plea Agreement, "DRAM" means dynamic random access memory
2 semiconductor devices and modules, including synchronous dynamic random access memory
3 ("SDRAM"), Rambus dynamic random access memory ("RDRAM"), and double data rate
4 dynamic random access memory ("DDR") semiconductor devices and modules. The conspiracy
5 directly affected these OEMs in the United States: Dell Inc., Hewlett-Packard Company, Compaq
6 Computer Corporation, International Business Machines Corporation, Apple Computer Inc., and
7 Gateway, Inc. During the relevant period, Infineon was engaged in the sale of DRAM in the
8 United States and elsewhere and employed more than 5,000 employees. During the relevant
9 period, Infineon's DRAM sales, directly affected by the conspiracy, to OEMs in the United States
10 totaled \$1.05 billion.

11 2. The United States and Infineon agree that the appropriate sentence in this case is a
12 fine of \$160 million, a special assessment of \$400, and no term of probation. The fine is to be
13 paid in installments over five-years, with interest. Infineon agrees to have its sentence determined
14 under the United States Sentencing Guidelines ("U.S.S.G."). The parties agree that the
15 recommended fine, which is in excess of the \$10 million maximum fine set forth in 15 U.S.C. § 1,
16 is appropriate under the provisions of the Alternative Fine Act, 18 U.S.C. § 3571(d). The United
17 States and Infineon agree that, pursuant to 18 U.S.C. § 3571(d), the recommended fine is \$160
18 million. This agreement was reached as a result of negotiations between the United States and
19 Infineon concerning complicated questions of law and fact regarding the application of U.S.S.G.
20 and Section 3571.

21 3. The United States will not seek restitution in this case in light of the civil cases
22 filed against Infineon, including *In re DRAM Antitrust Litigation*, No. M-02-1486-PJH, MDL No.
23 1486, in the United States District Court, Northern District of California, and *DRAM Cases*, No.
24 CJC-03-004265, in the Superior Court, San Francisco, California, which potentially provide for a
25 recovery of a multiple of actual damages.

26 4. The United States agrees that it will not bring further criminal charges against
27 Infineon and its officers, directors, and employees (except for the four Infineon individuals
28 specifically excluded from the Plea Agreement) for their participation in the DRAM conspiracy.

1 In return, Infineon and its executives agree to cooperate fully in the ongoing DRAM investigation.
 2 Infineon has already produced documents and made available some of its executives, in the
 3 United States and overseas, for extensive interviews by Division attorneys and agents. Moreover,
 4 Infineon will continue to make many additional executives available to the United States for
 5 interviews and will produce documents located outside the country, which are beyond the
 6 jurisdictional reach of the government's grand jury subpoenas. The documents produced and
 7 interviews conducted, as well as additional proffered cooperation, have substantially assisted the
 8 Division in furthering its investigation.

9 **UNITED STATES SENTENCING GUIDELINES CALCULATIONS**

10 The parties agree to the following Guidelines calculations, which are based on Infineon's
 11 DRAM sales in the United States to certain OEMs of \$1.05 billion:

12	1.	Base Fine (20% of \$1.05 billion (Volume of Affected Commerce) (§ 2R1.1(d)(1) & § 8C2.4(b))	\$210 million
13			
14	2.	Culpability Score	
15		i. Base (§ 8C2.5(a))	5
16		ii. Involvement in or Tolerance of Criminal Activity (§ 8C2.5(b)(1))	5
17		iii. Prior History (§ 8C2.5(e))	0
18		iv. Violation of Order (§ 8C2.5(d))	0
19		v. Obstruction of Justice (§ 8C2.5(e))	0
20		vi. Effective Program to Prevent and Detect Violations of Law (§ 8C2.5(f))	0
21		vii. Self-Reporting, Cooperation, and Acceptance of Responsibility (§ 8C2.5(g)(2))	-2
22	c.	Total Culpability Score:	8
23	d.	Minimum and Maximum Multipliers (§ 8C2.6)	1.6 - 3.2
24	e.	Minimum and Maximum Fine Range (§ 8C2.7)	\$336 - \$672 million

25 The United States will move, pursuant to § 8C4.1 of the Sentencing Guidelines, for a
 26 downward departure from the minimum Guidelines fine to a fine of \$160 million due, in part, to
 27 Infineon's substantial assistance in the United States' DRAM investigation. Infineon's
 28 cooperation in this matter is timely -- it is the first DRAM conspirator to agree to plead guilty.

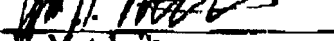
1 Additionally, Infineon has produced relevant documents, from the United States and abroad, and
2 has made available several employees for extensive interviews as a condition to the government
3 entering into the Plea Agreement. The Infineon witnesses have advanced the government's
4 investigation, and the company has agreed to continue to assist in the government's investigation.

5
6 DATED: October 8, 2004


7 Respectfully submitted,


8 INFINEON TECHNOLOGIES AG

U.S. DEPARTMENT OF JUSTICE

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