

1 NIAL E. LYNCH (State Bar No. 157959)
NATHANAEL M. COUSINS (State Bar No. 177944)
2 MAY Y. LEE (State Bar No. 209366)
BRIGID S. BIERMANN (State Bar No. 231705)
3 CHARLES P. REICHMANN (State Bar No. 206699)
Antitrust Division
4 U.S. Department of Justice
450 Golden Gate Avenue
5 Box 36046, Room 10-0101
San Francisco, CA 94102
6 Telephone: (415) 436-6660

Filed 8/22/2006

7 Attorneys for the United States

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

11 UNITED STATES OF AMERICA)	Case No. CR 06-180 (PJH)
)	
12)	
13 v.)	UNITED STATES' AND
)	DEFENDANT YOUNG WOO
14)	LEE'S JOINT SENTENCING
15 YOUNG WOO LEE,)	MEMORANDUM
)	
16)	DATE: August 30, 2006
Defendant.)	TIME: 2:30 p.m.
_____)	COURT: Hon. Phyllis J. Hamilton

17 **JOINT SENTENCING MEMORANDUM**

18 The United States of America and Young Woo Lee ("Defendant"), file this Joint
19 Sentencing Memorandum in support of their recommendation that this Court: (1) sentence the
20 Defendant to pay a fine of \$250,000, payable in full before the fifteenth day after the date of
21 entry of judgment; (2) sentence the Defendant to a period of incarceration of seven months; (3)
22 recommend, pursuant to a request by the Defendant that is not opposed by the United States, that
23 the Defendant be placed in a federal minimum security camp, and specifically to the Lompoc
24 Prison Camp in Lompoc, California; (4) release Defendant on his own personal recognizance
25 under 18 U.S.C. § 3142(b) following imposition of sentence to allow the Defendant to self-
26 surrender to the designated institution on April 2, 2007; and (5) impose no period of supervised

27 Joint Sentencing Memo.
28 CR 06-180 (PJH)

1 release (“the recommended sentence”).

2 The parties have separately filed a motion under Criminal Local Rule 32-1(b) requesting
3 that the sentence be imposed immediately upon acceptance of the plea presently contemplated to
4 be entered on August 30, 2006, or as soon thereafter as possible, based on the current record and
5 without need of an evidentiary sentencing hearing or a presentence report.

6 **INTRODUCTION**

7 On March 22, 2006, the United States filed an Information charging that beginning on or
8 about April 1, 1999, and continuing until on or about June 15, 2002, Samsung Electronics
9 Company, Ltd. (“Samsung”) and Samsung Semiconductor, Inc. (“Samsung Semiconductor”),
10 and coconspirators, entered into and engaged in a combination and conspiracy in the United
11 States and elsewhere to suppress and eliminate competition by fixing the prices of Dynamic
12 Random Access Memory (“DRAM”) to be sold to certain original equipment manufacturers of
13 personal computers and servers (“OEMs”), in violation of the Sherman Antitrust Act, 15 U.S.C.
14 § 1. The Information further charged that the Defendant, an employee of Samsung’s European
15 subsidiary, Samsung Semiconductor Europe GmbH (“Samsung Europe”), joined and participated
16 in the charged conspiracy from on or about June 1, 2001 until on or about June 15, 2002.

17 Defendant is scheduled for a change of plea and possible sentencing on August 30, 2006.
18 Defendant will waive Indictment and plead guilty under Fed. R. Crim. P. 11(c)(1)(C). A copy of
19 the Defendant’s 11(c)(1)(C) Plea Agreement is attached to this Joint Sentencing Memorandum.
20

21 On October 13, 2005 the United States filed an Information charging Samsung, the
22 corporate parent of Samsung Europe, and Samsung Semiconductor. On November 30, 2005,
23 Samsung and Samsung Semiconductor pleaded guilty to participating in the DRAM price-fixing
24 conspiracy and was sentenced to pay a \$300 million fine. *United States v. Samsung Electronics
25 Company, Ltd. and Samsung Semiconductor Inc.*, CR No. 05-643 PJH.

26 ///

1 **MATERIAL TERMS OF PLEA AGREEMENTS**

2 The material terms of the Plea Agreements include:

3 1. The Defendant will waive indictment, waive all rights enumerated in the Plea
4 Agreement, and plead guilty to a one-count Information charging him with participating in a
5 conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing
6 the prices of DRAM to be sold to certain OEM customers from on or about June 1, 2001, to on
7 or about June 15, 2002, (the “relevant period”), in violation of the Sherman Antitrust Act, 15
8 U.S.C. § 1. The conspiracy directly affected these OEMs in the United States: Dell Inc.,
9 Hewlett-Packard Company, Compaq Computer Corporation, International Business Machines
10 Corporation, Apple Computer Inc., and Gateway, Inc.

11 2. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant
12 agree that the recommended sentence in this case is a fine of \$250,000; a period of incarceration
13 of seven months; a special assessment of \$100; and no term of supervised release.

14 3. The United States will not seek restitution in this case in light of the many civil
15 cases filed against Defendant’s corporate employers. Those suits, including *In re DRAM*
16 *Antitrust Litigation*, No. M-02-1486-PJH, MDL No. 1486, consolidated in the United States
17 District Court, Northern District of California, potentially provide for a recovery of a multiple of
18 actual damages. Additionally, the United States agrees that, pursuant to U.S.S.G. § 5E1.1(b),
19 Defendant should not be ordered to pay restitution because: (1) the courts in the related civil
20 cases referred to above are best situated to determine which parties, if any, are entitled to recover
21 in this matter and are best situated to compensate those parties who may be aggrieved and would
22 otherwise receive restitution; (2) the victims are well-represented companies that have ample
23 ability to recover in the civil cases; and (3) any amount of restitution Defendant could
24 reasonably be ordered to pay would be negligible in comparison to the amount of potential
25 claims in these civil matters. Therefore, under the unique circumstances of this case,
26

1 determining restitution would complicate or prolong the sentencing process to a degree that the
2 need to provide restitution is outweighed by the burden on the sentencing process. U.S.S.G. §
3 5E1.1(b)(2)(B).

4 4. The United States will move for a downward departure under § 5K1.1 of the
5 Guidelines based on the Defendant's substantial assistance in the investigation. The
6 recommended terms of incarceration and fines are below the Guidelines ranges. The United
7 States' motion for a downward departure at the time of sentencing does not cancel or negate
8 Defendant's continuing obligation under the Plea Agreement to cooperate in the United States'
9 ongoing antitrust investigation of the DRAM industry.

10 5. The United States will not oppose Defendant's request that this Court make a
11 recommendation to the Bureau of Prisons that it designate that Defendant be assigned to a
12 Federal Minimum Security Camp to serve his sentence, and specifically recommend placement
13 to the Lompoc Prison Camp in Lompoc, California. Placement in that facility will permit
14 reasonable access by Defendant's counsel, families, and by the government in connection with
15 the ongoing obligation to cooperate in the government's investigation. In addition, FPC Lompoc
16 has experience in housing foreign nationals in the DRAM antitrust investigation and in similar
17 cases. The United States also will not oppose the Defendant's request that he be released on his
18 own personal recognizance under 18 U.S.C. § 3142(b) following imposition of sentence to allow
19 Defendant to self-surrender to the designated institution on April 2, 2007. The Department of
20 Homeland Security has stated that it is willing to authorize the Defendant's parole into this
21 country for purposes of entering his plea and serving his sentence, as set forth in the letter from
22 Julie L. Myers, Assistant Secretary for the U.S. Department of Homeland Security, Immigration
23 and Customs Enforcement attached to the plea agreement.

24 6. Subject to Defendant's continuing cooperation as set forth in the Plea Agreement,
25 and upon this Court's acceptance of his guilty plea and imposition of the agreed-upon sentence,
26

1 the United States agrees it will not seek to exclude, deport, or remove the Defendant from the
2 United States based upon his guilty pleas. The U.S. Department of Justice, Antitrust Division,
3 has requested U.S. Immigration and Customs Enforcement (ICE), on behalf of the Department of
4 Homeland Security to agree to the inclusion of a provision in the Plea Agreement (Paragraph 16)
5 that would relieve the Defendant of an adverse immigration consequence based on this
6 conviction. ICE has agreed to this request in the form of a letter from Julie L. Myers, Assistant
7 Secretary attached to the plea agreement.

8 7. If the Court does not accept the sentences provided for in the Plea Agreement,
9 Defendant will be free to withdraw his guilty plea, and the Plea Agreement will be rendered
10 void.

11 **UNITED STATES SENTENCING GUIDELINES CALCULATIONS**

12 Defendant and the United States agree that the Court should consider the United States
13 Sentencing Guidelines in effect at the time of the offense, June 15, 2002, rather than at the time
14 of sentencing, in accordance with U.S.S.G. § 1B1.11(b). The parties agree to the following
15 Guidelines calculations for the Defendant. Further, the parties agree that the recommended
16 sentence is reasonable. The volume of affected commerce is in excess of \$100 million, which
17 are the affected sales of DRAM sold by the Defendants' corporate employers, Samsung and
18 Samsung Semiconductor, to certain OEMs in the United States during the relevant period, June
19 1, 2001 to June 15, 2002.

21	(a) Base Offense Level (§ 2R1.1(a))	10
22	(b) Volume of Affected Commerce (§ 2R1.1(b)(2)(G)) (More than \$100 million)	+7
23	(c) Total Adjusted Offense Level	17
24	(d) Victim-Related Adjustments (§ 3A)	+0
25	(e) Role in the Offense Adjustments (§ 3B)	+0
26	(f) Obstruction Adjustments (§ 3C)	+0

1	(g) Acceptance of Responsibility (§ 3E1.1(a) and (b))	-3
2		
3	(h) Total Offense Level	14
4	(i) Criminal History Category (§ 4A1.1)	I

5 Therefore, the appropriate range of sentence under the Guidelines for Defendant is 15-21
6 months, no term of probation (§ 5B1.1), supervised release of one year (§§ 5D1.1, 5D1.2(a)(3)),
7 restitution (§ 5E1.1), a fine of 1% to 5% of the volume of commerce (§§ 2R1.1(c)(1), 5E1.2(b))
8 or the statutory maximum of \$350,000 pursuant to 15 U.S.C. §1, and a special assessment of
9 \$100 (§ 5E1.3). With a volume of affected commerce in excess of \$100 million the appropriate
10 fine range under the Guidelines is either at least \$1-5 million (1% to 5% of \$100 million)
11 pursuant to the alternative fine statute under 18 U.S.C. § 3571(b)(2), or the statutory maximum
12 fine of \$350,000 under 15 U.S.C. 1 (The Sherman Act). The United States will elect to proceed
13 under the maximum fine of \$350,000 pursuant to 15 U.S.C. § 1.

14 **MOTION FOR DOWNWARD DEPARTURE**

15 Based on the Defendant’s substantial assistance to the United States, and the requirement
16 of cooperation in the future under the Plea Agreement, the United States moves under § 5K1.1
17 of the Sentencing Guidelines for a downward departure from the minimum Guidelines
18 incarceration and fine ranges to an incarceration of seven months and a \$250,000 fine.
19 Defendant has already cooperated by submitting to a voluntary interview with the government
20 that has been accepted by the United States as truthful and candid. The United States has
21 determined that such cooperation constitutes substantial assistance in the investigation and
22 prosecution of another entity or person who has committed an offense, and is the basis for the
23 downward departure pursuant to U.S.S.G. § 5K1.1. Additionally, Defendant has agreed to
24 continue assisting the United States in its ongoing DRAM investigation, including making
25 himself available for additional interviews and testimony at the United States’ request. The
26

