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Antitrust: Commission fines DRAM producers € 331 million for price cartel; reaches first settlement in a cartel case

The European Commission today adopted its first settlement decision in a cartel case involving 10 producers of memory chips or DRAMS used in computers and servers. The fine totalling € 331 273 800 million includes a reduction of 10% for the companies' acknowledgement of the facts. The addressees of the decision are: Micron, Samsung, Hynix, Infineon, NEC, Hitachi, Mitsubishi, Toshiba, Elpida and Nanya. Micron, however, was not fined because it revealed the existence of the cartel to the Commission. Cartel settlements allow the Commission to speed up investigations, free up resources to deal with other cases and generally improve the efficiency of its antitrust enforcement.

"*This first settlement decision is another milestone in the Commission's anti-cartel enforcement. By acknowledging their participation in a cartel the companies have allowed the Commission to bring this long-running investigation to a close and to free up resources to investigate other suspected cartels. As the procedure is applied to new cases it is expected to speed up investigations significantly,* said Commission Vice President and Competition Commissioner Joaquín Almunia.

The case

The Commission has adopted a decision settling a cartel investigation and imposing a fine totalling € 331 273 800 million on Samsung, Hynix, Infineon, NEC, Hitachi, Mitsubishi, Toshiba, Elpida and Nanya. The decision is also addressed to Micron, but because the company revealed the existence of the cartel to the Commission in 2002 it benefitted from full immunity from fines. All the companies are non-European except for one (Infineon, Germany), but they sell their products in the European Economic Area (EEA)[1] and, therefore, must also abide by EU law, in this case Art 101(1) of the EU Treaty , which bans practices restrictive of competition . The case was also investigated in the United States.

The fines take into account the sales of the companies involved in the EEA, the very serious nature of the infringement and its geographical scope. The individual fines are as follows:

[1] EU + Norway, Iceland and Liechtenstein

	Reduction under the Leniency Notice (%)	Reduction under the Settlement Notice	Fine (EUR)*
Micron	100%	N/A	0
Infineon	45%	10%	56 700 000
Hynix	27%	10%	51 471 000
Samsung	18%	10%	145 728 000
Jointly and severally Elpida, NEC Corporation, Hitachi Ltd.	18%	10%	8 496 000
Jointly and severally NEC Corporation, Hitachi Ltd. (for the JV period)		10%	2 124 000
NEC (pre-joint venture)	18%	10%	10 296 000
Hitachi (pre-joint venture)	-	10%	20 412 000
Toshiba	-	10%	17 641 800
Mitsubishi	-	10%	16 605 000
Nanya	-	10%	1 800 000

(*) Legal entities within the undertaking may be held jointly and severally liable for the payment of the fine

Micron received full immunity because it was the first to inform the Commission. Between December 2003 and February 2006, Infineon, Hynix, Samsung, Elpida and NEC also applied for leniency under the EU's Leniency Notice[2]. The Commission took account of their cooperation in the investigation and granted a reduction of respectively 45% (Infineon), 27% (Hynix) and 18% (Samsung, Elpida, NEC). Due to mitigating circumstances, the fine of Hynix was further reduced by 5% for Hynix and by 10% for Toshiba and Mitsubishi. Finally, all companies benefitted of a reduction of 10% for settling the case with the Commission.

The overall cartel was in operation between 1 July 1998 and 15 June 2002. It involved a network of contacts and sharing of secret information, mostly on a bilateral basis, through which they coordinated the price levels and quotations for DRAMs (Dynamic Random Access Memory), sold to major PC or server original equipment manufacturers (OEMs) in the EEA. DRAMs is a common model for "dynamic" semiconductor memories for personal computers (PCs), servers and workstations.

[2] For information on EU leniency programme in cartel cases see: http://ec.europa.eu/competition/cartels/legislation/leniency_legislation.html

The settlement procedure

The settlement procedure allows the Commission to settle cases through a simplified procedure. It was created in 2008[3]. The objective is to reduce the length of administrative proceedings. This is good for consumers and for taxpayers as it reduces investigative costs; good for antitrust enforcement as it frees up resources to tackle other suspected cases and; good for the companies themselves that benefit from quicker decisions and a 10% reduction in fines. With experience and as the procedure applies to new cases, the Commission will deal with investigations more expediently.

The settlement discussions in the DRAMS cartel took place during 2009 after the companies indicated that they were prepared to engage in discussions with a view to a settlement. Subsequently, they all introduced formal settlement submissions in which they clearly and unequivocally acknowledged their respective liability for an infringement. A Statement of Objections reflecting the parties' submissions was notified to them in February this year and they all confirmed that its content reflected their submissions and they remained interested in the settlement procedure.

Background

The **settlement** procedure is based on Articles 7 and 23 of Regulation 1/2003 (the antitrust modernisation Regulation). It is different from **commitment** decisions, which are based on Article 9 of the same 2003 Regulation, and are destined to bring anti-competitive behaviour to an end by making commitments offered by the company(ies) legally binding.

Companies that are first to reveal cartels to the Commission enjoy immunity from fines under the Commission's 2002 Leniency Notice. Companies that cooperate in the investigation can receive significant reductions.

The calculation of fines is based on the Fines Guidelines, which were last updated in 2006.

A non-confidential version of the DRAMS settlement decision will be published at the following web address as soon as it becomes available:

http://ec.europa.eu/competition/cartels/cases/cases.html

[3] (see IP/08/1056 and MEMO/08/458).