

OCTOBER 14, 2005

By Arik Hesseldahl

http://www.businessweek.com/technology/content/oct2005/tc20051014_511190.htm

Samsung's Day of Reckoning

The Korean chipmaker's agreement to pay \$300 million to settle a U.S. Justice Dept. price-fixing probe could further Rambus' legal case against it

The U.S. Justice Dept. just scored another victory in its longstanding probe into price-fixing in the computer-chip industry. In what has turned out to be the second-largest fine imposed in an antitrust investigation, Justice said on Oct. 13 that South Korean chipmaker Samsung will pay \$300 million for its role in a global scheme to fix computer memory-chip prices.

Samsung has agreed to plead guilty to charges that it conspired with other companies to fix prices between April, 1999, and June, 2002, to the detriment of computer manufacturers including Dell (DELL), Hewlett-Packard (HPQ), Apple Computer (AAPL), IBM (IBM), and Gateway (GTW). Under terms of the deal, Samsung will pay the fine and cooperate with the government in its ongoing investigation.

Samsung is the third company to be charged in an investigation that began in 2002, not long after Dell founder Michael Dell used a speech to accuse computer memory-chip vendors of "cartel-like behavior." Infineon (IFX) and Hynix were the first two companies charged. Samsung said in December that it had set aside \$100 million to cover potential fines.

NOT QUITE OVER? To date, Justice has levied \$646 million in fines, and five individuals -- four from Infineon and one from Micron Technology (MU) -- have seen jail time as a result of the probe. Hynix pleaded guilty and agreed to pay \$185 million.

Samsung said in a brief statement that the guilty plea and fine means the issue between Samsung and the federal government is "fully resolved." Thomas Barnett, the government's acting head of antitrust investigations, says seven as yet unidentified Samsung employees aren't covered by the guilty plea, which could indicate they may face criminal charges of their own in the future.

That was the case for German chipmaker Infineon, which in September, 2004, pleaded guilty to antitrust charges in the investigation. Less than three months later, four Infineon executives agreed to prison terms of up to six months and individual fines of up to \$250,000 each for their role in the conspiracy.

DRAM KING. Those sentences followed a guilty plea from Alfred Censullo, a Micron sales manager in upstate New York who pleaded guilty to obstructing the investigation of a federal grand jury after admitting he concealed and altered documents relevant to the price-fixing case.

The investigation centers on prices for so-called dynamic random access memory, or DRAM, chips. Samsung is the world's largest maker of DRAM chips, controlling about 30% of the market as of the second quarter of 2005, according to researcher iSuppli. That puts it ahead of Hynix, also based in South Korea, Idaho-based Micron, Germany's Infineon, and Elpida, a Japanese chipmaker (see BW, 9/20/04, "How Hynix Got Out of Its Fix"). iSuppli estimates the DRAM business accounted for more than \$26 billion in sales last year.

Most of the details surrounding the investigation have remained under wraps, with government investigators rarely addressing the matter in public until after securing a guilty plea, while the companies involved have clammed up.

The only major DRAM maker not charged is Micron, which has said that it's cooperating with the government and does not expect any prosecution or fines.

JOINT ACTION. If the settlement has a silver lining, it may be for Rambus (RMBS), the Los Altos (Calif.)-based designer of chip-connection technologies that has lawsuits pending against Hynix, Micron, and Samsung. In March, Rambus settled a bitter dispute with Infineon.

Rambus has often sought to use the taint of Justice's price-fixing charges to fuel its own arguments that DRAM makers colluded to lock Rambus out of the market. The chipmakers have repeatedly denied the allegations and say there's no connection between the Justice investigation and the legal matters concerning Rambus.

Still, it's clear that chipmakers were communicating and taking joint action concerning prices at a time when they also would have been regarding Rambus and its patent portfolio as a threat. John Danforth, Rambus' senior vice-president and general counsel, says the period of time during which Justice accuses Samsung and the other memory-chip makers of fixing prices lines up with the time during which they were also fighting with Rambus.

"That's the period of time when our product was competing with their product," Danforth says. "We have contended that this price-fixing was done in order to put us out of business."

TIMELINES. In Samsung's case, at least, that might be difficult to prove. During the period in which it has admitted fixing prices, Samsung was one of a handful of memory-chip companies that had agreed to license Rambus' designs. Samsung didn't immediately respond to calls seeking a response to Danforth's comment. Shares of Rambus gained more than 5% after the settlement was announced.

Bob Merritt, analyst with Semico Research in San Jose, Calif., disagrees with Danforth's assessment. "The price-fixing on memory chips and whether it had anything to do with Rambus are two separate topics," he says. "I don't see how Rambus could be unfairly targeted by a raising of prices on memory." At the time in question, chips based on Rambus technology were priced higher than others on the market.

Still, information and testimony gathered by the Justice Dept. could prove interesting to Rambus and its lawyers as it continues to pursue lawsuits with chipmakers. And with a half dozen employees still possibly facing legal action, the price-fixing cloud hanging over Samsung has yet to fully lift.

Hesseldahl is a writer for BusinessWeek Online in New York
Copyright 2000-2004, by The McGraw-Hill Companies Inc. All rights reserved.