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in the not too distant future.

DRAM Price Fixing Conspiracy: Computer Chipmaker to Pay

Prices for dynamic random access memory (“DRAM”) chips, used in personal computers, mobile phones, digital cameras, and a host of other consumer electronic products⁵⁷ jumped from around \$1.00 for a 128-megabit chip in March of 2001, to around \$4.40 by the end of 2001.⁵⁸ To some, the spike appeared to signal a turnaround for an industry that had recently fallen on hard times.

A Dow Jones news release on January 7, 2002, however, quoted an unnamed executive of a Taiwanese chipmaker who suggested a more dubious reason for the surge in prices: “There’s an understanding among chipmakers to keep prices at reasonable levels.”⁵⁹ Six months later, DRAM manufacturers Micron Technology Inc., Samsung Electronics Co., Infineon Technologies AG, and Nayna Technology, Inc., had all been hit with subpoenas from the Department of Justice.

Then, in September of this year, Infineon, the world’s fourth largest DRAM manufacturer, pleaded guilty to conspiring to fix DRAM prices and agreed to pay a \$160 million penalty, the third largest criminal antitrust penalty ever assessed.⁶⁰ Additionally, Infineon has also set aside \$224 million pending settlement discussions with its customers, computer manufacturers such as Hewlett-Packard Co., Dell Inc., International Business Machines Corp., and Apple Computer, Inc.⁶¹

Of course, Infineon did not conspire alone, and as part of its settlement with the Department of Justice, the company has agreed to cooperate with the Department’s on-going investigation of DRAM

⁵⁷ Don Clark & John R. Wilke, *Infineon Agrees To Guilty Plea For Price Fixing*, WALL ST. J., Sept. 16, 2004, at B4.

⁵⁸ Dan Nystedt, *Taiwan Nanya Says Received Subpoena From U.S. Justice Dept.*, DOW JONES INT’L NEWS, June 20, 2002.

⁵⁹ Dermot Doherty, *Asia DRAM Report: Spot Prices Surge On Supply Controls*, DOW JONES INT’L NEWS, Jan. 7, 2002.

⁶⁰ Clark & Wilke, *supra* note 57.

⁶¹ Yun-Hee Kim, *Antitrust Probe Weighs on Samsung and Hynix*, ASIAN WALL ST. J., Sept. 22, 2004, at M4.

manufacturers.⁶² Although it has not been officially announced, it is widely believed that Micron has already negotiated immunity in exchange for its cooperation with the government.⁶³ The status of the investigations of the two largest DRAM manufacturers, Samsung and Hynix, remain open questions.

Judgments against Samsung and Hynix could lead to a massive high-stakes legal battle between chipmakers and computer manufacturers. Most individual consumers, however, are unlikely to recover anything for the higher prices paid for personal computers. Under *Illinois Brick Co. v. Illinois*, only overcharged direct purchasers, with some exceptions, are entitled to damages under the federal antitrust law.⁶⁴ While some states have antitrust laws that provide a private right of action for indirect purchasers,⁶⁵ the prospect of recovery for most individual consumers appears bleak. Still, to the extent that government and private actions under federal antitrust law deter companies from conspiring to fix prices in the future, individual consumers can claim victory.

Health Care Costs Continue Steady, Steep Climb

Health insurance premiums increased more than eleven percent this year, the fourth consecutive year in which consumers have seen their premiums increase by double digits.⁶⁶ The average cost to insure a family of four is now nearly \$10,000 a year, up sixty percent from 2001.⁶⁷

Industry analysts suggest that advances in medical technology and prescription drugs are driving the increase, and that by addressing unhealthy lifestyles costs can be controlled.⁶⁸ Others

⁶² *Id.*

⁶³ Clark, *supra* note 57.

⁶⁴ *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

⁶⁵ WILLIAM MEADE FLETCHER, *FLETCHER ENCYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS* § 5062.35 (2004).

⁶⁶ Rob Kaiser, *Health Premiums Soar*, CHI. TRIB., Sept. 10, 2004, at A1.

⁶⁷ *Id.* (quoting Drew Altman, president of the Kaiser Family Foundation, "I see no scenario other than health-care costs continuing to outdistance wage increases and inflation by a very wide margin").

⁶⁸ *Id.*