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6 DRAM Makers Settle Price-Fixing Claims For \$173M

By **Ryan Davis**

Law360, New York (June 24, 2010) -- Six makers of dynamic random access memory chips, including Micron Technology Inc. and NEC Electronics America Inc., have reached a \$173 million settlement with indirect purchaser plaintiffs, including 33 state attorneys general, to resolve price-fixing claims.

Several attorneys general and attorneys for the private plaintiffs issued statements Thursday announcing the deal, which settles not only eight-year-long multidistrict litigation pending in the U.S. District Court for the Northern District of California, but also numerous state court actions around the country.

The defendants involved in the settlement are U.S.-based Micron and NEC, Germany's Infineon Technologies AG, South Korea's Hynix Semiconductor Inc., Japan's Elpida Memory Inc. and Taiwan's Mosel Vitelec Inc.

The indirect purchaser plaintiffs had previously reached settlements totaling \$90 million with memory chip makers Samsung and Winbond Electronics Corp.

Taiwan's Nanya Technology Corp. is the only remaining defendant in the case.

NEC, now known as Renesas Electronics America after a merger in April, said in a statement that it "continues to dispute any liability or responsibility for the alleged antitrust acts," and decided to settle the case to end the lengthy and costly litigation and focus on future business.

A representative of Micron said the company had no comment on the settlement. Representatives for the other defendants could not be reached for comment.

The settlement is to be paid over two years plus interest and the amount each state will

receive is still being determined, the attorneys general said.

Of the total, \$115 million will go to consumers and businesses, \$14 million to state and local governments and the rest will cover litigation costs, according to the attorneys general. No settlement documents have yet been filed with the Northern District of California.

"The settlement money is welcome, but the illegal overcharging never should have happened in the first place," California Attorney General Jerry Brown said in a statement. "Especially when times are tight, schools and government agencies can't afford to be ripped off by companies that violate our antitrust laws to keep profits high."

"Obviously we're all pleased that this occurred and that we can move on with the disposition of the case," said Josef Cooper of Cooper & Kirkham PC, lead counsel for the indirect purchaser plaintiffs.

The attorneys general alleged that consumers in their states, along with state agencies, universities and local governments, were forced to pay inflated prices for products containing DRAM chips.

The attorneys general said in their statements that funds will be set up so that consumers and state entities could received settlement funds in amounts to be determined by a special master.

Suspicion about a price-fixing conspiracy among DRAM manufacturers arose in June 2002, when the U.S. Department of Justice launched a criminal investigation into what officials have called "one of the largest cartels ever discovered."

A flood of antitrust lawsuits against the manufacturers were consolidated in the Northern District of California that year. Direct purchaser plaintiffs have settled with the various DRAM manufacturers for more than \$300 million.

In May, the European Commission fined nine DRAM makers, including several of the parties to the settlement, a total of \$408 million for the price-fixing scheme.

The indirect purchaser plaintiffs are represented in the case by Zelle Hofmann Voelbel Mason & Gette LLP, Gustafson Gluek PLLC, Straus & Boies LLP, Cooper & Kirkham PC, The Mogin Law Firm PC and Gross Belsky Alonso LLP.

Micron is represented by Gibson Dunn & Crutcher LLP, among others.

NEC is represented by Winston & Strawn LLP, among others.

Infineon is represented by Kaye Scholer LLP, among others.

Hynix is represented by O'Melveny & Myers LLP, among others.

Elpida is represented by Simpson Thacher & Bartlett LLP, among others.

Mosel Vitelic is represented by Orrick Herrington & Sutcliffe LLP, among others.

Nanya is represented by Orrick Herrington & Sutcliffe LLP, among others.

The multidistrict litigation is In re: Dynamic Random Access Memory Antitrust Litigation, case number 02-cv-01486, in the U.S. District Court for the Northern District of California.

There are also numerous related cases filed in state courts around the country.

-- Additional reporting by Abigail Rubenstein

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