

**SUPERIOR COURT**  
(Class Action)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000251-047

DATE: June 27, 2012

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**THE HONOURABLE PIERRE-C. GAGNON, J.S.C.**

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**OPTION CONSOMMATEURS**

Petitioner

and

**CLAUDETTE CLOUTIER**

Designated Person

v.

**INFINEON TECHNOLOGIES AG**

and

**INFINEON TECNONLOGIES NORTH AMERICA CORP.**

and

**MICRON TECHNOLOGIES, INC.**

and

**HYNIX SEMICONDUCTOR INC.**

and

**SAMSUNG ELECTRONICS CO., LTD.**

and

**SAMSUNG SEMICONDUCTOR INC.**

and

**ELPIDA MEMORY, INC.**

Respondents

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JUDGMENT APPROVING THE ELPIDA TRANSACTION  
REGARDING THE QUEBEC SETTLEMENT CLASS

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- [1] **WHEREAS** the Parties are involved in class action proceedings.
- [2] **CONSIDERING** the judgment rendered in the present case on March 27, 2012 by which the Court:
- Authorized the exercise of a class action against the Respondent Elpida Memory, Inc. for settlement purposes only;
  - Identified the principal questions to be treated collectively;
  - Approved the content and ordered the publication of a notice of hearing;
- [3] **CONSIDERING** that the proper notices were published in timely fashion, in French and in English;
- [4] **CONSIDERING** the Motion before the Court;
- [5] **CONSIDERING** the exhibits in the file, notably the agreement entered into on November 15, 2011 between, notably, the Petitioner, the Respondent Elpida Memory, Inc. (the “Elpida Respondent”) and Elpida Memory (USA) Inc. (“Elpida USA”), filed in the present proceedings as Exhibit R-1 (the “Elpida Transaction”);
- [6] **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides during the hearing of June 22 2012;
- [7] **CONSIDERING** that there is no objection by anyone to the motion;
- [8] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;
- [9] **CONSIDERING** that the motion meets to criteria meet the criteria recognized by the Ontario precedent in *Dabbs*<sup>1</sup>, as recently adapted in the Quebec case of *Conseil québécois sur le tabac et la santé*<sup>2</sup>;
- [10] **CONSIDERING** in particular the provision of the Elpida transaction whereby the Elpida Defendants undertake to cooperate with the plaintiffs;
- [11] **CONSIDERING** that the Elpida transaction conforms to the laws of Quebec regarding the waiver of the benefit of solidarity, as stated in the *Bayers* (2008) judgment<sup>3</sup> and the *Cadbury Adams Canada* judgment<sup>4</sup>;

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<sup>1</sup> *Dabbs v. Sun Life Assurance Compagny of Canada*, [1998] O.J. N° 1598.

<sup>2</sup> *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2011 QCCS 4981.

<sup>3</sup> *Johnson v. Bayers inc.*, 2008 QCCS 4957.

<sup>4</sup> *Roy v. Cadbury Adams Canada inc.*, 2012 QCCS 1606.

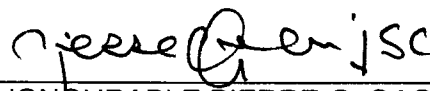
[12] **CONSIDERING THAT**, after review, it is appropriate to grant the Motion of the Petitioner in respect of the Elpida Respondent and the Elpida Transaction;

**FOR THESE REASONS, THE COURT:**

- [13] **GRANTS** the Petitioner's Motion for Approval of the Elpida Transaction;
- [14] **DECLARES** that the definitions set forth in the Elpida Transaction apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the parties to the Elpida Transaction, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of this Judgment;
- [15] **DECLARES** that, subject to all of the other provisions of the present Judgment, the Elpida Transaction is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all parties and all members described thereto;
- [16] **APPROVES** the Elpida Transaction in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of this Judgment;
- [17] **DECLARES** that, subject to the other provisions of this Judgment, the Elpida Transaction, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule "A" and shall form an integral part of this Judgment and shall be binding on all Parties;
- [18] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Elpida Transaction, the terms of the present Judgment shall prevail;
- [19] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
- [20] **DECLARES** that any Quebec Settlement Class Member who makes a claim under the Elpida Transaction shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
- [21] **ORDERS AND DECLARES** that this Judgment, including the Elpida Transaction, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;

- [22] **DECLARES** that, by the Elpida Transaction, the Petitioner, the Designated Person, and the Quebec Settlement Class Members expressly waive the benefit of solidarity against the Respondents that do not participate in the Elpida Transaction, with respect to the actions of the Elpida Respondent and the other Releasees;
- [23] **DECLARES** that the Petitioner, the Designated Person, and the Quebec Settlement Class Members shall from now on limit their claim towards the Respondents that are Non-Settling Defendants to the damages that were caused by them or attributable to their sales and/or conduct, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that may be attributable to their sales and and/or conduct, and, for greater certainty, cannot claim from them any damages, either compensatory, punitive, recursive or of any other kind attributable to the sales and/or conduct of the Elpida Respondent or any of the Releasees, in any way whatsoever;
- [24] **DECLARES** that any and all claims in warranty or other third party claims to obtain contribution or indemnity from the Elpida Respondent or any of the Releasees, or relating to the Released Claims, is inadmissible and void in the context of the present class action;
- [25] **DECLARES** that the rights of the Respondents that are Non-Settling Defendants to examine the Elpida Respondent and/or any of the Releasees shall be governed by the rules of the *Code of Civil Procedure*, and the Elpida Respondent and/or the Releasees shall retain and reserve all of their respective rights to oppose such discovery under the *Code of Civil Procedure*;
- [26] **DECLARES** that the Respondents that are Non-Settling Defendants may validly serve the proceedings referred to in the preceding paragraph relating to the Elpida Respondent by serving such proceeding on the Elpida Respondent's *ad litem* counsel, as identified in this Judgment;
- [27] **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment, and **PRAYS ACT** that the Elpida Respondent as well as Elpida USA shall acknowledge the jurisdiction of this Court solely for the purposes of implementing, administrating and enforcing the Elpida Transaction, and subject to the terms and conditions set forth in the Elpida Transaction;
- [28] **DECLARES** that the present proceedings are hereby settled with respect to the Elpida Respondent, without costs;
- [29] **DECLARES** that Elpida Respondent shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;

- [30] **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and that this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [31] **INSTRUCTS** the Elpida Defendants, in accordance with subparagraph 15.15(2) of the Elpida Transaction, to deliver to Option Consommateurs within 30 days after the date of this Judgment, an unofficial French translation of the Judgment.
- [32] **INSTRUCTS** Option Consommateurs and its lawyers to post on their appropriate websites both the English official version and the French official translation (as soon as received) of this Judgment and to cause that both versions be properly referenced on the websites of the lawyers acting for B.C. Plaintiffs and for plaintiffs in the Ontario Proceeding;
- [33] **DECLARES** that the parties have yet to proceed before the Court to seek approval of the Distribution Protocol and for Quebec Class Counsel to seek approval of their fees;
- [34] **THE WHOLE** without costs and without reservations.



THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

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Date of hearing: June 22, 2012