

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No:

SUPERIOR COURT
(Class Action)

MÉLANIE CORMIER, person residing at 4079 20th street, City of Laval West, judicial district of Laval, Province of Quebec, Canada, H7R 2N7;

Petitioner

v.

INFINEON TECHNOLOGIES AG, legal person duly constituted, having its principal place of business at St.-Martin-Str. 53, 81669, Munich, Germany;

and

INFINEON TECHNOLOGIES NORTH AMERICA, legal person duly constituted, having its principal place of business at 340, Marc Road, Suite 301, Kanata, Ontario, K2K 2E2;

and

SAMSUNG ELECTRONICS CO., LTD., legal person duly constituted having its principal place of business at Samsung Main Building, 250, Taepyeongno 2-ga, Jung-gu, Seoul 100-742, South Korea;

and

SAMSUNG SEMICONDUCTOR, INC., legal person duly constituted having its principal place of business at 3655 North 1st Street, San Jose, CA 96134, U.S.A.;

and

SAMSUNG ELECTRONICS AMERICA, legal person duly constituted having its



principal place of business at 85 Challenger Rd, Ridgefield Park, NJ, 07660;

and

SAMSUNG ELECTRONICS CANADA INC, legal person duly constituted having its principal place of business at 2050 - Derry Road West, Mississauga, Ontario L5N0B9;

and

KONINKLIJKE PHILIPS N.V., legal person duly constituted having its principal place of business at High Tech Campus 5 Eindhoven, Noord-Brabant, 5656 AE The Netherlands;

and

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, legal person duly constituted having its principal place of business at 3000 Minuteman Rd Andover, MA, 01810 United States;

and

RENESAS ELECTRONICS CORPORATION, legal person duly constituted having its principal place of business at 2-6-2, Otemachi Chiyoda-Ku, Tokyo, 100-0004 Japan;

and

RENESAS ELECTRONICS AMERICA INC., legal person duly constituted having its principal place of business at 2801 Scott Blvd Santa Clara, CA, 95050 United States;

Respondents



**MOTION FOR THE AUTHORIZATION OF A CLASS ACTION
AND FOR OBTAINING THE STATUS OF REPRESENTATIVE
(Art. 1002 and following C.C.P.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. The Petitioner addresses the Court for the purpose of obtaining authorization to institute a class action for and on behalf of the members of the Group (as hereinafter defined) against the Respondents in relation to the illegal anti-competitive activities engaged in by the Respondents of fixing the prices of smart card chips;

II. DESCRIPTION OF THE GROUP

2. The Petitioner wishes to institute a class action against the Respondents for and on behalf of the physical persons, legal persons established for a private interest, partnerships and/or associations forming part of the following group :

"All physical persons and all legal persons, partnerships, and associations in Canada, excluding however any of same who are precluded from forming part of the group pursuant to applicable legislation in their jurisdiction, who purchased or otherwise obtained any products including, without limitation, SIM cards, bank cards, identity cards, passports and other electronic devices and equipment containing smart card chips manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly , at any time during the period commencing September 1st 2003 up to September 30th, 2005 (the "Class Period")"

or such other group which the Court may designate (the "Principal Group");

3. The Petitioner also wishes to institute a class action against the Respondents based on the provisions of the Consumer Protection Act (Quebec) (RLRQ, c. P-40.1) (the "Consumer Protection Act") as well the laws of any Canadian province or territory of similar application for and on behalf of the following sub-group:



"All physical persons in Canada, save for a merchant who has concluded a contract for the purpose of his commercial activity, who purchased or otherwise obtained from merchants any products including, without limitation, without limitation, SIM cards, bank cards, identity cards, passports and other electronic devices and equipment containing smart card chips manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly , at any time during the Class Period"

or such other sub-group which the Court may designate (the "Consumer Group");

4. The Principal Group and the Consumer Group are hereinafter sometimes collectively referred to as the "Group". It is, however, understood that the Consumer Group has been constituted for the purposes of applying the relevant provisions of the Consumer Protection Act as well as those of any other provincial or territorial law of similar application and that the members of the Consumer Group form an integral part of the Principal Group;
5. The Petitioner reserves the right, as the investigation evolves, to add additional entities as Respondents and to amend the descriptions of the Principal Group and Consumer Group, the Class Period as well as any other matter referred to in this motion;

III. DESCRIPTION OF THE PARTIES

A) THE PETITIONER

6. The Petitioner, Mélanie Cormier, brings this motion for the authorization of a class action on her own behalf and on behalf of the Group;
7. The Petitioner is a member of the Group on behalf of which she wishes to exercise a class action in light of the fact that during the Class Period, she purchased a cell phone, which contained a SIM card with a smart card chip and has suffered damages as a result of the Respondents' anti-competitive and unlawful activities;

B) THE RESPONDENTS

Infineon

8. Respondent Infineon Technologies AG is a German corporation with its principal place of business at St.-Martin-Str. 53, 81669, Munich, Germany;



9. During the Class Period, Infineon Technologies AG manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
10. Respondent Infineon Technologies North America, a wholly owned subsidiary of Infineon Technologies AG, is a Ontario corporation with its principal place of business at 340, Marc Road, Suite 301, Kanata, Ontario, K2K 2E2 and which during the Class Period sold and distributed smart card chips to customers throughout Quebec and elsewhere in Canada;
11. Respondents Infineon Technologies AG and Infineon Technologies North America are collectively referred to as "Infineon";

Samsung

12. Respondent Samsung Electronics Co., Ltd. is a South Korean corporation with its principal place of business at Samsung Main Building, 250, Taepyeongno 2-ga, Jung-gu, Seoul 100-742, South Korea;
13. During the Class Period, Samsung Electronics Co., Ltd. manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
14. Respondent Samsung Semiconductor Inc. is a California corporation with its principal place of business at 3655 North 1st Street, San Jose, CA, 96134;
15. During the Class Period, Samsung Semiconductor Inc. manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
16. Respondent Samsung Electronics America is a New Jersey corporation with its principal place of business at 85 Challenger Rd, Ridgefield Park, NJ, 07660;
17. During the Class Period, Samsung Electronics America manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
18. Respondent Samsung Electronics Canada is an Ontario corporation with its principal place of business at 2050 Derry Road West, Mississauga, Ontario L5N 0B9;
19. During the Class Period, Samsung Electronics America manufactured, sold and distributed smart card chips either directly or through its subsidiaries,



agents or affiliates to customers throughout Quebec and elsewhere in Canada;

20. Respondents Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, and Samsung Electronics Canada are collectively referred to as "Samsung";

Philips

21. Respondent Koninklijke Philips N.V., is a Netherland corporation with its principal place of business at High Tech Campus 5 Eindhoven, Noord-Brabant, 5656 AE, The Netherlands, and which during the Class Period manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
22. Respondent Philips Electronics North America Corporation, is a Massachusetts corporation with its principal place of business at 3000 Minuteman Rd, Andover, Massachusetts, 01810, United States, and which during the Class Period manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
23. Respondents Koninklijke Philips N.V. and Philips Electronics North America Corporation are collectively referred to as "Philips";

Renesas

24. Respondent Renesas Electronics Corporation, is a Japanese corporation with its principal place of business at 2-6-2, Otemachi Chiyoda-Ky, Tokyo, 100-00004, Japan, and which during the Class Period manufactured, sold and distributed smart card chips either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
25. Respondent Renesas Electronics America Inc, a California Corporation, is a wholly owned subsidiary of Renesas Electronics Corporation with its principal place of business at 2801 Scott Blvd, Santa Clara, CA, 95050, United States, and which during the Class Period sold and distributed smart card chips to customers throughout Quebec and elsewhere in Canada;
26. Respondents Renesas Electronics Corporation and Renesas Electronics America Inc. are hereinafter sometimes collectively referred to as "Renesas";
27. At the time, the Respondents Renesas were part of a joint venture with Hitachi and Mitshubishi;

C) THE PRODUCT



28. The Product or smart card chips are used in mobile telephone SIM cards, bank cards, identity cards and passports, pay TV cards, and various other applications;
29. In other words, the Product, though not seen, is omnipresent and is essential to the functioning of these electronic devices;

IV. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

30. The Petitioner is a member of the Group as a result of her purchase in the province of Quebec during the Class Period of a cell phone containing a SIM card with a smart card chip;
31. Due to the Respondents' anticompetitive illegal activities, Petitioner was deprived of the benefit of a competitive market and therefore paid a higher price for her cell phone;
32. The Petitioner has suffered damages equal to the difference between the artificially inflated price that she paid and the price that she should have paid in a competitive market system;
33. The conduct of the Respondents was kept a secret and was not known to the Petitioner at the time that she purchased the cell phone nor could it have been known, even through the exercise of reasonable diligence;
34. The Respondents are large international corporations that have global manufacturing and distribution operations;
35. The Petitioner has since discovered that this situation is being assessed by different justice departments worldwide and a fine was imposed by the European Commission for €138 048 000, the whole as more fully set out in the documents produced herewith en liasse as Exhibit P-1;
36. The fines were set on the basis of the Commission's 2006 Guidelines on fines taking into account the serious nature of the infringement, its geographic scope (i.e. the entire EEA) and the duration of each company's participation in the infringement.
37. Under the Commission's 2006 Leniency Notice, Renesas (and its joint venture parent companies Hitachi and Mitsubishi) received full immunity, as it was the first to reveal the existence of the cartel to the Commission, avoiding a fine of more than € 51 million for its participation in the infringement.
38. Samsung received a reduction of 30% of its fine for cooperating with the investigation.



39. Philips has divested its smart card chips business after the infringement, but remains liable for what happened during the period of the infringement.

40. The fines imposed are as follows:

	Reduction under the Leniency Notice	Fine (€)
Infineon (DE)	0	82 784 000
Philips (NL)	0	20 148 000
Samsung (South Korea)	30%	35 116 000
Renesas (Hitachi and Mitsubishi) (Japan)	100 %	0
TOTAL		138 048 000

1 Legal entities within the undertaking may be held jointly and severally liable for the whole or part of the fine imposed.

41. The Petitioner's damages are a direct result of the Respondents' anticompetitive and illegal price-fixing activities and with respect to which Petitioner is justified in claiming damages;

V. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

42. Each member of the Group has purchased an electronic device containing smart card chips in Canada at one point during the Class Period;

43. Each member of the Group has paid an artificially inflated price for an item containing a smart card chip as a result of the anticompetitive, collusive activities engaged in by the Respondents;

44. Each member of the Group has suffered damages equivalent to the difference between the artificially inflated price paid for the item containing a smart card chip and the price that should have been paid in a competitive market system;

45. The damages suffered by the members of the Group are directly attributable to the Respondents' anti-competitive and illegal price-fixing activities and with respect to which each member of the Group is justified in claiming damages;

VI. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) THE QUESTIONS OF LAW OR FACT THAT ARE IDENTICAL, SIMILAR OR RELATED, AND WHICH ARE APPLICABLE TO THE MEMBERS OF THE



PRINCIPAL GROUP AND, AS THE CASE MAY BE, THE CONSUMER GROUP AND WHICH THE PETITIONER INTENDS TO HAVE THE COURT DETERMINE ARE THE FOLLOWING:

46. Did the Respondents conspire, agree or arrange to fix, maintain, increase or stabilize the price for the Product in Canada at any point during the Class Period, whether directly or indirectly, through any affiliates or any other entity in Canada whose policies are directed or influenced by any of the Respondents?
47. During the Class Period, did they discuss and exchange sensitive commercial information on pricing, customers, contract negotiations, production capacity or capacity utilisation and their future market conduct?
48. Did the Respondents commit one or more faults which entails their responsibility?
49. Did the illegal activities attributed to the Respondents cause damages to the members of the Group?
50. Are the Respondents responsible for the damages suffered by the members of the Group and such other additional amount that this Court may allow not exceeding the full cost of any investigation in connection with this matter and of proceedings instituted pursuant to Section 36 of the Competition Act, R.S.C., 1985, c. C-34 (the "Competition Act") for an offence under Section 45 thereof ?
51. Are the Respondents responsible for damages suffered by the members of the Group pursuant to the provisions of the Civil Code of Quebec including, without limitation, Articles 6 and 1457 thereof;
52. Did the Respondents intentionally violate the rights of the members of the Group protected by Article 6 of the Quebec Charter of Human Rights and Freedoms?
53. Are the Respondents liable for punitive or exemplary damages and, if so, what is the amount of these damages?
54. Are the Respondents liable on a solidarity basis to the members of the Group for the damages suffered by them;
55. The questions of law or fact that are identical, similar or related for the members of the Consumer Group are:
 - Are the Respondents liable to the members of the Consumer Group for the damages suffered by them pursuant to Section 272 of the



Consumer Protection Act by virtue of the illegal business practices engaged in by them?

- Are the Respondents similarly liable to members of the Consumer Group in the provinces or territories of Canada other than the Province of Quebec pursuant to the applicable consumer protection legislation of such province or territory?

B) THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT

56. The facts alleged in this motion establish the existence of a fault, namely the existence of anticompetitive price-fixing activities engaged in by the Respondents either directly or indirectly in Canada through their affiliates or other entities whose policies are directed or influenced by the Respondents;
57. The facts alleged are sufficient to establish the liability of the Respondents towards the members of the Group;
58. The members of the Group have suffered a prejudice as a result of the illegal, anticompetitive price-fixing activities engaged by the Respondents;
59. The conclusions which are sought seek to hold the Respondents liable for the damages suffered by the members of the Group which moreover are causally connected to the illegal activities of the Respondents;

C) THE COMPOSITION OF THE GROUP MAKES THE APPLICATION OF ARTICLE 59 OR 67 C.C.P. DIFFICULT OR IMPRACTICABLE

60. Products containing smart card chips that are manufactured, sold, distributed or otherwise made available by the Respondents are widespread in Quebec and elsewhere in Canada;
61. The Petitioner is unaware of the specific number, names and addresses of the persons who purchased products containing smart card chips, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
62. The potential number of members of the Group is quite significant and it is extremely difficult to identify and locate the persons who may be affected by the illegal activities engaged in by the Respondents for the purpose of obtaining mandates to act for them or for joinder of actions;
63. In these circumstances, a class action is the only appropriate procedure for all of the members of the Group to effectively pursue their respective rights and have access to justice;



64. The facts set out in paragraphs 83 to 86 render the application of Article 59 or 67 C.C.P. difficult or impracticable;

D) THE MEMBER REQUESTING THE STATUS OF REPRESENTATIVE IS IN A POSITION TO ADEQUATELY REPRESENT THE MEMBERS

65. The Petitioner is a member of the Group;

66. The Petitioner is ready and available to manage and direct the present class action in the interest of the members of the Group and is determined to lead the present matter until final resolution, and to collaborate with her attorneys, the whole for the benefit of the Group;

67. The Petitioner has the capacity and interest to fairly and adequately protect and represent the interests of the members of the Group;

68. The Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present motion and intends to keep himself informed of all developments;

69. The Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this motion and to collaborate with other members of the Group and to keep them informed;

70. The Petitioner is in good faith and has filed this motion with the sole objective of having her rights, as well as the rights of other members of the Group, recognized and protected so that she and they may be compensated for the damages suffered as a consequence of the Respondents' conduct;

71. The Petitioner understands the nature of the class action;

72. The Petitioner's interests are not in conflict with those of the other members of the Group;

VII. NATIONAL CLASS

73. Petitioner submits that for the following reasons this Court should authorize this class action on a Canada-wide basis:

- A significant number of members of the Group reside in the Province of Quebec;
- Faults were committed in Quebec and a significant portion of the damages attributable to the illegal activities engaged in by the Respondents were suffered by members of the Group in the Province of Quebec;



- The damages suffered by the members of the Group are attributable to the same basic fault which is based on a federal statute, similar consumer protection legislation applied throughout Canada and the general principles of civil liability and tort law;

VIII. NATURE OF THE RECOURSE AND CONCLUSIONS SOUGHT

A) NATURE OF THE RECOURSE

74. The Petitioner wishes to exercise for and on behalf of the members of the Group a claim in damages, exemplary and punitive damages;

B) CONCLUSIONS SOUGHT

75. The conclusions sought are the following:

- **GRANT** the present motion;
- **AUTHORIZE** the class action on behalf of all members of the Group;
- **CONDEMN** the Respondents to pay, on a solidary basis, to each member of the Group including the Petitioner, the amount of \$1.00, subject to adjustment, as damages for the overpayment made by the members of the Group, together with interest at the legal rate and the additional indemnity as of the date of the payment of these amounts and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to each member of the Group including the Petitioner, the amount of \$50.00 as damages for trouble and inconvenience, together with interest at the legal rate and the additional indemnity as of the date of the filing of the motion and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to each member of the Group including the Petitioner, the amount of \$100.00 as punitive damages together with interest at the legal rate and the additional indemnity as of the date of the judgment to be pronounced and **ORDER** the collective recovery of same;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to the members of the Group including the Petitioner, the full costs of any investigation in connection with the matter and of the proceedings under Section 36 of the Competition Act;



- **THE WHOLE** with costs, including all experts costs and the costs of publication of notices to members;
- This motion is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO :

GRANT the present motion;

AUTHORIZE the institution of a class action in the form of an action in damages, exemplary and punitive damages;

ASCRIBE to the Petitioner the status of representative for the members of the Group described as follows:

"All physical persons and all legal persons, partnerships, and associations in Canada, excluding however any of same who are precluded from forming part of the group pursuant to applicable legislation in their jurisdiction, who purchased or otherwise obtained any products including, without limitation, SIM cards, bank cards, identity cards, passports and other electronic devices and equipment containing smart card chips manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly , at any time during the period commencing September 1st 2003 up to September 30th, 2005 (the "Class Period")"

or such other group which the Court may designate (the "Principal Group");

AND

"All physical persons in Canada, save for a merchant who has concluded a contract for the purpose of his commercial activity, who purchased or otherwise obtained from merchants any products including, without limitation, without limitation, SIM cards, bank cards, identity cards, passports and other electronic devices and equipment containing smart card chips manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly , at any time during the Class Period"

or such other sub-group which the Court may designate (the "Consumer Group");



IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents conspire, agree or arrange to fix, maintain, increase or stabilize the price for the Product in Canada at any point during the Class Period, whether directly or indirectly, through any affiliates or any other entity in Canada whose policies are directed or influenced by any of the Respondents?
- b) During the Class Period, did they discuss and exchange sensitive commercial information on pricing, customers, contract negotiations, production capacity or capacity utilisation and their future market conduct?
- c) Did the Respondents commit one or more faults which entails their responsibility?
- d) Did the illegal activities attributed to the Respondents cause damages to the members of the Group?
- e) Are the Respondents responsible for the damages suffered by the members of the Group and such other additional amount that this Court may allow not exceeding the full cost of any investigation in connection with this matter and of proceedings instituted pursuant to Section 36 of the Competition Act, R.S.C., 1985, c. C-34 (the "Competition Act") for an offence under Section 45 thereof ?
- f) Are the Respondents responsible for damages suffered by the members of the Group pursuant to the provisions of the Civil Code of Quebec including, without limitation, Articles 6 and 1457 thereof;
- g) Did the Respondents intentionally violate the rights of the members of the Group protected by Article 6 of the Quebec Charter of Human Rights and Freedoms?
- h) Are the Respondents liable for punitive or exemplary damages and, if so, what is the amount of these damages?
- i) Are the Respondents liable on a solidarity basis to the members of the Group for the damages suffered by them;
- j) The questions of law or fact that are identical, similar or related for the members of the Consumer Group are:
 - Are the Respondents liable to the members of the Consumer Group for the damages suffered by them pursuant to Section 272 of the Consumer Protection Act by virtue of the illegal business practices engaged in by them?



- Are the Respondents similarly liable to members of the Consumer Group in the provinces or territories of Canada other than the Province of Quebec pursuant to the applicable consumer protection legislation of such province or territory?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

- **GRANT** the present motion;
- **AUTHORIZE** the class action on behalf of all members of the Group;
- **CONDEMN** the Respondents to pay, on a solidary basis, to each member of the Group including the Petitioner, the amount of \$1.00, subject to adjustment, as damages for the overpayment made by the members of the Group, together with interest at the legal rate and the additional indemnity as of the date of the payment of these amounts and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to each member of the Group including the Petitioner, the amount of \$50.00 as damages for trouble and inconvenience, together with interest at the legal rate and the additional indemnity as of the date of the filing of the motion and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to each member of the Group including the Petitioner, the amount of \$100.00 as punitive damages together with interest at the legal rate and the additional indemnity as of the date of the judgment to be pronounced and **ORDER** the collective recovery of same;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to the members of the Group including the Petitioner, the full costs of any investigation in connection with the matter and of the proceedings under Section 36 of the Competition Act;
- **DECLARE** that save for any member requesting exclusion, the members of the Group are bound by any final judgment to follow, the whole in the manner provided for by law;
- **FIX** the delay for requesting exclusion to thirty (30) days following the Notice to members, following which the members of the Group who have not requested exclusion will be bound by any final judgment to follow;
- **ORDER** the publication no later than thirty (30) days following the date of a judgment to follow, of Notices in appropriate newspapers and with sufficient detail;



- **ORDER** such other matters as this Court may find just and reasonable;
- **ALLOW** the motion to be introduced by an international courier service with proof of reception by the recipient;
- **THE WHOLE** with costs, including all experts' costs and the costs of Notices to members of the Group;

This motion is well-founded in fact and in law.

MONTREAL, September 3rd 2014

(S) PAQUETTE GADLER INC.

PAQUETTE GADLER INC.

Counsel for the Petitioner

TRUE COPY

PAQUETTE GADLER INC.

