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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA ) No. CR-09-0110 SI  
 )  
 v. ) UNITED STATES' OPPOSITION TO  
 ) DEFENDANT AU OPTRONICS  
 AU OPTRONICS CORPORATION; ) CORPORATION AMERICA'S  
 AU OPTRONICS CORPORATION AMERICA; ) MOTION FOR JUDGMENT OF  
 HSUAN BIN CHEN, aka H.B. CHEN; ) ACQUITTAL  
 HUI HSIUNG, aka KUMA; ) (FED. R. CRIM. PROC. 29(A))  
 LAI-JUH CHEN, aka L.J. CHEN; )  
 SHIU LUNG LEUNG, aka CHAO-LUNG )  
 LIANG and STEVEN LEUNG; ) Date: February 21, 2012  
 BORLONG BAI, aka RICHARD BAI; ) Time: 8:30 a.m.  
 TSANNRONG LEE, aka TSAN-JUNG LEE and ) Court: Hon. Susan Illston  
 HUBERT LEE; ) Place: Courtroom 10, 19th Floor  
 CHENG YUAN LIN, aka C.Y. LIN; )  
 WEN JUN CHENG, aka TONY CHENG; and )  
 DUK MO KOO, )  
 )  
 Defendants. )

## INTRODUCTION

Defendant AU Optronics Corporation America's motion for judgment of acquittal under Federal Rule of Criminal Procedure 29(a) should be denied because there is ample evidence establishing its participation in the charged conspiracy. AU Optronics Corporation America ("AUOA") is liable for the participation of its president, defendant Hui Hsiung, in the crystal meetings and collusive bilateral pricing communications regarding U.S. customer accounts served by AUOA. Moreover, AUOA employees in the United States received crystal meeting reports for reference in their negotiations with major U.S. customers, such as Dell, Inc. ("Dell"), Hewlett-Packard Company ("HP"), and Apple, Inc. ("Apple"), and they also were involved in pervasive and systematic pricing alignment and agreements with their competitors. On the basis of these facts, AUOA is not entitled to a judgment of acquittal.

## ARGUMENT

### **I. Under Rule 29(a), the Evidence Is to be Construed in Favor of the Government**

In deciding a Rule 29 motion, a district court must determine whether the evidence, if "viewed in the light most favorable to the government, [] would allow *any* rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010) (quoting *United States v. Stoddard*, 150 F.3d 1140, 1144 (9th Cir. 1998)) (emphasis added). "All reasonable inferences must be drawn in favor of the government, and circumstantial evidence is sufficient to sustain a conviction." *United States v. Fleischman*, 684 F.2d 1329, 1340 (9th Cir. 1982). "The test is not whether the evidence excludes every hypothesis but that of guilt but whether the trier of fact could reasonably arrive at the conclusion of guilt." *United States v. Whitten*, 706 F.2d 1000, 1006 (9th Cir. 1983).

### **II. The Government has Presented Evidence Sufficient to Establish That AUOA Has Violated 15 U.S.C. Section 1**

AUOA is charged with violating Section 1 of the Sherman Act by participating in a conspiracy to fix prices. Section 1 declares every contract, combination, and conspiracy in restraint of trade to be illegal. The elements of a Sherman Act conspiracy are:

- (1) that the conspiracy charged existed at or about the time stated in the indictment;

1 (2) that the defendants knowingly became members of the conspiracy; and

2 (3) that the conspiracy involved interstate or foreign commerce.

3 *See United States v. Alston*, 974 F.2d 1206, 1210 (9th Cir. 1992). The government has presented  
4 evidence that is far more than sufficient to meet each element of a Sherman Act violation by  
5 AUOA. Some, but by no means all, of the evidence is summarized below.

6 **A. Existence of a Conspiracy**

7 The existence of a conspiracy was confirmed by the testimony of J.Y. Ho, Brian Lee,  
8 Stanley Park, and C.C. Liu, who all admitted that pricing agreements were reached at crystal  
9 meetings in Taiwan during the period charged in the indictment. *See, e.g.*, J.Y. Ho testimony  
10 (Tr. Vol. 3 at 668, 675-76); Brian Lee testimony (Tr. Vol. 7 at 1288-89, 1330, 1373; Tr. Vol. 8 at  
11 1450, 1471, 1475-76, and 1481); Stanley Park testimony (Tr. Vol. 15 at 2506-07); C.C. Liu  
12 testimony (Tr. Vol. 17 at 2990-92, 3024-28). Additionally, numerous reports of crystal meetings  
13 and bilateral pricing communications in evidence expressly describe pricing agreements or  
14 consensus reached during crystal meetings and bilateral discussions. *See, e.g.*, Trial Exhibits 16,  
15 18, 19, 21, 23, 25, 27, 302, 304, 306, 307, 309, 310, 331, 404, 421, 435, and 515.

16 **B. AUOA's Membership in the Conspiracy**

17 AUOA was a "branch office" of AUO in the United States and, as such, was a "tentacle"  
18 or "extension of AUO." Tr. Vol. 4 at 834-35. AUOA acted on behalf of AUO in the United  
19 States to develop AUO business with U.S. customers, promote AUO products, and sell AUO  
20 products. *Id.* AUO substantially directed AUOA's sales activities, and pricing authority for  
21 AUOA's sales in the United States resided with AUO in Taiwan. Tr. Vol. 4 at 835, 867, 873-74.  
22 AUOA would report to AUO what it learned from competitor pricing contacts in the United  
23 States and then get AUO's authorization on the pricing to quote to U.S. accounts. Tr. Vol. 6 at  
24 1228.

25 Defendant Hsiung was the president of AUOA. Trial Exhibit 768. As such, he had  
26 overall responsibility and oversight for AUOA, and Michael Wong, AUOA's U.S. branch  
27 manager, reported to and took direction from defendant Hsiung. Tr. Vol. 4 at 870-71. It is well  
28 settled that corporations are subject to antitrust liability for acts of their officers and employees

1 within the scope of their employment. *United States v. Portac, Inc.*, 869 F.2d 1288, 1293 (9th  
2 Cir. 1989); *United States v. Hilton Hotels Corp.*, 467 F.2d 1000, 1007 (9th Cir. 1972); *United*  
3 *States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 204-05 (3d Cir. 1970),  
4 *cert. denied*, 401 U.S. 948 (1971). There is ample evidence that defendant Hsiung, Wong, and  
5 other AUOA employees participated in the charged conspiracy. In particular, pricing discussions  
6 between AUO and its competitors were implemented through AUOA in the United States.

7 There is voluminous evidence of defendant Hsiung's knowledge of, attendance at, and  
8 participation in the collusive crystal meetings. J.Y. Ho, Brian Lee, and C.C. Liu all testified  
9 regarding defendant Hsiung's attendance and participation in crystal meetings. *See, e.g.*, Tr. Vol.  
10 3 at 666-67 (J.Y. Ho); Tr. Vol. 8 at 1446, 1481 (Brian Lee); Tr. Vol. 17 at 3037 (C.C. Liu).  
11 Moreover, defendant Hsiung received internal reports from others at AUO regarding crystal  
12 meetings he did not attend, including reports about pricing consensus reached at those meetings.  
13 *See, e.g.*, Trial Exhibits 14, 16, 19, 21, 23, 25, 27, 40. Finally, there is evidence of defendant  
14 Hsiung's knowledge of, and participation in, collusive bilateral pricing communications and  
15 agreements with competitors. *See, e.g.*, Trial Exhibits 515; Tr. Vol. 14 at 2319, 2326 (Stanley  
16 Park). Many of those bilateral pricing communications and agreements related directly to U.S.  
17 customer accounts being serviced on behalf of AUO by AUOA. *See, e.g.*, Trial Exhibits 80, 83,  
18 84, 85, 86, 88, and 89.

19 Likewise, Wong testified at length about the bilateral pricing communications in which  
20 he and other AUOA employees engaged throughout the period of the conspiracy. Tr. Vol. 5 at  
21 879-89. Wong reported the information from such communications to AUO. *See, e.g.*, Tr. Vol.  
22 5 at 889. Wong also testified about bilateral pricing communications regarding U.S. customer  
23 accounts reflected in numerous trial exhibits, including Trial Exhibits 83, 84, 85, 86, 88, 89, and  
24 95. Contrary to AUOA's assertion, those trial exhibits and other evidence do demonstrate that,  
25 as part of the overall conspiracy, AUOA was involved in reaching and implementing agreements  
26 with competitors regarding the prices that would be offered to key U.S. accounts. While many  
27 of the collusive contacts about which Wong testified related to Dell, AUOA's collusive conduct  
28 also extended to other U.S. accounts, such as HP and Apple. *See, e.g.*, Trial Exhibits 108

1 (Regarding HP: “But do align with other TFT vendors to ensure we are not quoting too low or  
2 much too high.”); 112 (providing information from CMO regarding Apple pricing). Wong  
3 specifically testified that AUOA was engaged in a strategy of pricing alignment with its  
4 competitors in the United States, which resulted in AUOA negotiating better prices (and  
5 receiving higher profits) than otherwise would have been the case. Tr. Vol. 6 at 1213-14. Wong  
6 also received crystal meeting reports for use in his work at AUOA. *See, e.g.*, Trial Exhibit 19,  
7 23, 25, 28, 62, 123, and 133. Wong testified that crystal meeting reports contained “very good”  
8 information that was not available in the United States. Tr. Vol. 5 at 956. Finally, Wong  
9 testified about his instruction to a subordinate to destroy evidence upon learning that the FBI was  
10 searching AUOA’s offices in Houston, reflecting a consciousness of guilt regarding the  
11 competitor contacts engaged in by AUOA employees. Tr. Vol. 5 at 1041-44.

### 12 C. Interstate Commerce

13 AUOA’s function was to act as an extension of AUO and to develop business and sales  
14 with major U.S. customers. Tr. Vol. 4 at 834-35. In particular, Wong described that AUOA’s  
15 strategy was to “follow our customers, for these big brand names, and we pitch tent next to them.  
16 So wherever their office is, or say, their headquarters is, and we go after them.” Tr. Vol. at 838.  
17 He identified those customers as being Dell, HP, Apple, and Motorola. Tr. Vol. at 837. Wong’s  
18 primary customer account was Dell, and he conceded that the monthly TFT-LCD negotiations  
19 took place primarily in Austin, Texas. (Tr. Vol. 5 at 858). Likewise, AUOA’s negotiations with  
20 HP occurred in Houston, and AUOA’s negotiations with Apple took place in Cupertino,  
21 California. Tr. Vol. 5 at 861-62 (HP), 864 (Apple). As noted above, AUOA officers and  
22 employees, including defendant Hsiung, Wong, and others, frequently engaged in collusive  
23 pricing communications with competitors in the United States and abroad regarding these U.S.  
24 accounts.<sup>1</sup>

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25  
26 <sup>1</sup> AUOA’s argument based on *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S.  
27 752 (1984) is an obfuscation that requires little comment. Suffice it to say that AUO and AUOA  
28 have not been charged with conspiring with each other; they have been charged with conspiring  
with LG, CMO, CPT, HannStar Display Corporation, and Samsung Electronics Corporation and  
the many individual coconspirators from those companies who participated in the charged  
conspiracy. As a result, the *Copperweld* doctrine is not implicated.

**CONCLUSION**

For the foregoing reasons, the government requests that the Court deny AUOA's motion for judgment of acquittal under Rule 29(a).

Dated: February 20, 2012

Respectfully submitted,

/s/ Peter K. Huston  
Peter K. Huston  
Heather S. Tewksbury  
Antitrust Division  
U.S. Department of Justice

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