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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL No. 1827

JURY INSTRUCTIONS
(DRAFT - POST CONFERENCE)

This Relates To:
Best Buy Co., Inc. v. AU Optronics Corp., et al.,
Case No. 10-CV-4572 SI
Best Buy Co., Inc. v. Toshiba Corp., et al.,
Case No. 12-CV-4114 SI

[Excerpt: Conspiracy Instructions]

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CONTRACT, COMBINATION OR CONSPIRACY

The plaintiffs allege that the defendants and others participated in a conspiracy to restrain trade by fixing the prices of TFT-LCD panels. A conspiracy is an agreement by two or more persons to accomplish some unlawful purpose or to accomplish a lawful purpose by unlawful means.

The plaintiffs must prove both of the following elements by a preponderance of the evidence:

First, that the alleged conspiracy existed; and

Second, that the defendants knowingly became a member of that conspiracy; knowingly means voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

A conspiracy is a kind of “partnership” in which each person found to be a member of the conspiracy is liable for all acts and statements of the other members made during the existence of and in furtherance of the conspiracy. To create such a relationship, two or more persons must enter into an agreement that they will act together for some unlawful purpose or to achieve a lawful purpose by unlawful means.

1 To establish the existence of a conspiracy, the evidence need not show that its members entered
2 into any formal or written agreement; that they met together; or that they directly stated what their object
3 or purpose was, or the details of it, or the means by which they would accomplish their purpose. The
4 agreement itself may have been entirely unspoken. What the evidence must show to prove that a
5 conspiracy existed is that the alleged members of the conspiracy in some way came to an agreement to
6 accomplish a common purpose. It is the agreement to act together that constitutes the conspiracy.
7 Whether the agreement succeeds or fails does not matter.

8 A conspiracy may vary in its membership from time to time. It may be formed without all
9 parties coming to an agreement at the same time, such as where competitors, without previous
10 agreement, separately accept invitations to participate in a plan to restrain trade. The agreement may
11 be shown if the proof establishes that the parties knowingly worked together to accomplish a common
12 purpose. It is not essential that all persons acted exactly alike, nor is it necessary that they all possessed
13 the same motive for entering the agreement.

14 Direct proof of an agreement may not be available. A conspiracy may be disclosed by the
15 circumstances or by the acts of the members. Therefore, you may infer the existence of an agreement
16 from what you find the alleged members actually did, as well as from the words they used. Mere
17 similarity of conduct among various persons, however, or the fact that they may have associated with
18 one another and may have met or assembled together and discussed common aims and interests, does
19 not establish the existence of a conspiracy unless the evidence tends to exclude the possibility that the
20 persons were acting independently. If they acted similarly but independently of one another, without
21 any agreement among them, then there would not be a conspiracy.
22

23 It is not necessary that the evidence show that all of the means or methods claimed by the
24 plaintiffs were agreed upon to carry out the alleged conspiracy; nor that all of the means or methods that
25 were agreed upon were actually used or put into operation; nor that all the persons alleged to be
26 members of the conspiracy actually were members. What the evidence must show is that the alleged
27 conspiracy of two or more persons existed, that one or more of the means or methods alleged was used
28 to carry out its purpose, and that a defendant knowingly became a member of the conspiracy.

1 In determining whether an agreement has been proved, you must view the evidence as a whole
2 and not piecemeal. In considering the evidence, you first should determine whether or not the alleged
3 conspiracy existed. If you conclude that the conspiracy did exist, you should next determine whether
4 the defendants knowingly became members of that conspiracy with the intent to further its purposes.

5 6 **PARTICIPATION AND INTENT**

7
8 Before you can find that a defendant was a member of the conspiracy alleged by plaintiffs, the
9 evidence must show that the defendant knowingly joined in the unlawful plan at its inception or at some
10 later time with the intent to advance or further some object or purpose of the conspiracy.

11 To act knowingly means to act voluntarily and intentionally, and not because of mistake or
12 accident or other innocent reason. A person may become a member of a conspiracy without full
13 knowledge of all the details of the conspiracy, the identity of all its members, or the parts they played.
14 Knowledge of the essential nature of the plan is enough. On the other hand, a person who has no
15 knowledge of a conspiracy, but happens to act in a way that furthers some object or purpose of the
16 conspiracy, does not thereby become a conspirator.

17 A person who knowingly joins an existing conspiracy, or who participates only in part of a
18 conspiracy with knowledge of the overall conspiracy, is just as responsible as if he had been one of those
19 who formed or began the conspiracy and participated in every part of it.

20 The membership of a defendant in a conspiracy must be based only on evidence of its own
21 statements or conduct. In determining whether the defendants were members of the alleged conspiracy,
22 you should consider only the evidence of the defendant's statements and conduct, including any
23 evidence of the defendant's knowledge or lack of knowledge, status, and participation in the events
24 involved, and any other evidence of participation in the conspiracy alleged.

25
26 If you find that the alleged conspiracy existed, then the acts and statements of the conspirators
27 are binding on all of those whom you find were members of the conspiracy. But actions or statements
28 of any conspirator that were not done or made in furtherance of the conspiracy, or that were done or

1 made before its existence or after its termination, may be considered as evidence only against the person
2 who made them.

3 Once a person is found by you to be a member of a conspiracy, he or she is presumed to remain
4 a member and is responsible for all actions taken by all conspirators during and in furtherance of the
5 conspiracy until it is shown that the conspiracy has been completed or abandoned or that the person has
6 withdrawn from the conspiracy.

7 Although a defendant who was a member of a conspiracy may withdraw from and abandon the
8 conspiracy, that defendant is still liable with all other co-conspirators for the illegal acts, if any,
9 committed by that defendant or by any co-conspirator while the defendant was a member of the
10 conspiracy up until the time of the defendant's withdrawal.

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13 **GOOD INTENT NOT A DEFENSE**

14 If you find that a defendant engaged in a price-fixing conspiracy, it is not a defense for that
15 defendant that it acted with good motives or thought its conduct was legal, or that the conduct may have
16 had some good results.

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