

EXHIBIT A

1 **A.** From the system integrator? GPS would, I believe,
2 purchase the product from the system integrator, and then turn
3 around, and also instantly sell it to the H-P regional entity
4 that was going to take that product, and deliver it to a
5 customer.

6 **Q.** Where is the U.S. regional entity located?

7 **A.** So the U.S. entity is sort of divided into a commercial or
8 business-products segment, and a consumer or, like,
9 retail-products segment. And the retail people are primarily
10 located in Cupertino. And the business entity is primarily
11 located in Houston.

12 **Q.** Is the LCD panel price a component of the finished product
13 cost?

14 **A.** Yes.

15 **Q.** During 2002 to 2006, approximately what percentage of the
16 finished notebook cost was the LCD panel?

17 **A.** So, again, it varied, but I would say it was probably in
18 the range of 30 to maybe 40 percent of the product -- or the
19 notebook cost; something in that range.

20 **Q.** And I want to go to the third arrow here, which -- I
21 jumped ahead. You just explained the purchase of the notebook
22 panel and the sale to customers. How does that differ from
23 monitors?

24 **A.** Okay. So for monitors, there is a finished goods
25 warehouse. So on the -- on the LC -- on the notebooks I

1 described, there was an LCD warehouse.

2 On monitors, there's a finished goods warehouse between
3 the system integrator and the customer. And so the system
4 integrator will ship the finished monitor product into
5 different warehouses in the different regions that we sell
6 product. The system integrator will ship product into those
7 warehouses; hold that buffer stop there until a customer order
8 comes in. Then the product is pulled from the regional
9 warehouse, and shipped to the customer.

10 Q. Were there regional warehouses in the United States for
11 monitors?

12 A. Yes, for North America.

13 Q. During the 2002 to 2006 time period, approximately what
14 percentage of the finished monitor cost was the LCD panel?

15 A. So for monitors, the LCD is a much higher component of the
16 cost. So I would say it was probably in the 70 to -- 70 to
17 maybe even 80 percent range, at times.

18 Q. Explain how the finished notebook computer physically
19 moves to the consumer.

20 A. So the finished notebook computer -- most of the volume --
21 there's multiple ways that it gets to the -- to the customer,
22 but primarily, it's what we would refer to as "IDS," or
23 "international direct ship."

24 So before the system integrator actually built the
25 product, there would be a customer order for 20,000 or a

1 hundred thousand units.

2 System integrator would then build the notebook computers,
3 and ship them directly to the customer.

4 Q. Were some of these customers located in the United States?

5 A. Yes.

6 Q. How does that differ for monitors?

7 A. So again, for monitors, the product would -- there was no
8 order -- no customer order in place before the system
9 integrator built. So the system integrator would build the
10 monitors; ship them to a regional warehouse. And then the
11 product would sit there, and wait for a customer order.

12 Q. Have you heard of the term "price masking" before?

13 A. Yes.

14 Q. What is price masking?

15 A. So price masking is what we would use to keep the pricing
16 of our panels or different commodities confidential from the --
17 we would want to keep that confidential from the system
18 integrator, so that they did not know what H-P's actual
19 negotiated price was.

20 Q. Who would request price masking?

21 A. Generally, H-P. And the suppliers usually wanted price
22 masking, as well.

23 Q. Why?

24 A. Again, nobody wanted the system -- nobody wanted the price
25 to leak out to -- so, in H-P's case, we did not want the system

1 integrator nor our competitors to know what price we had
2 negotiated for a panel or any other commodity, because if we
3 thought we had a competitive price, we did not want our
4 competitor to easily get the same price, because, again, that
5 would enable them, in the finished goods product market, to be
6 more competitive against us.

7 **Q.** Because the price of the LCD panel is so significant to
8 the cost of the product?

9 **A.** Yes. And if we thought we had a good price, then we
10 wanted to protect that, and keep that for ourselves.

11 **Q.** Why did the suppliers want price masking?

12 **A.** The suppliers would want price masking, generally, again,
13 because if they gave a good price to us, then they would not
14 want the system integrator to know that price, because the
15 system integrator is also building products for our
16 competitors, and possibly, for some -- what we'd called
17 "white-box" competitors. So if the system integrator knew our
18 price, and our price happened to be better than what the system
19 integrator was getting, the system integrator would immediately
20 demand the same price from the supplier.

21 **Q.** Because the system integrators are customers of the
22 suppliers, as well?

23 **A.** Yes.

24 **Q.** Does price masking differ between a notebook product and a
25 monitor product?

1 **BY MR. HUSTON**

2 **Q.** And what was it that made you guilty?

3 **A.** The major guilt is the conspiracy to fix the certain
4 product of TFT-LCDs target price. That's the major guilty.

5 **Q.** And what did you do to become guilty?

6 **A.** In 2001, September, I, with my two high executive sales
7 manager. One is the H. T. Wang, the vice president. And the
8 other is the director of sales, Mr. Amigo Huang. We -- those
9 three guys -- to attend the Crystal Meeting. We met with our
10 competitors. In the meeting --

11 **MR. GETZ:** Your Honor, I'd like a question.

12 **BY MR. HUSTON**

13 **Q.** What did you do when you met with your competitors?

14 **A.** In the Crystal Meeting, we discuss the target price of
15 certain product. And we discussing. And why the -- the
16 number -- the price number in the whiteboard. And we --
17 finally, we got the agreement to take the target price. And I
18 authorized -- I -- we attend -- I attend several times. And
19 then --

20 **MR. GETZ:** Your Honor, I apologize for interrupting.
21 I'd like to avoid a narrative.

22 **THE COURT:** I think he's right. It will proceed more
23 smoothly.

24 **MR. HUSTON:** Right.

25 **Q.** Let me ask. Mr. Ho, I think you mentioned a word that I'm

1 not sure I understood, or the jury understood, and maybe the
2 court reporter. And I think it was "whiteboard," but I wanted
3 to make sure I understood that correctly. Did you say
4 "whiteboard"?

5 **A.** Yes. "Whiteboard," like a board.

6 And when discussing the certain product in the whiteboard,
7 everybody discussing the price -- target price number, and
8 write down on the whiteboard, and got agreement to these target
9 price.

10 And -- and then I authorized my -- my people -- my
11 salespeople, continue to attend the Crystal Meeting,
12 continuing.

13 **Q.** Okay. Now let me -- I'm going to come back to that, and
14 we'll spend a little more time with that; but for now, I'd like
15 to ask you a little bit more about your guilty plea.

16 And can I show you. If you could, look in your binder to
17 what's marked Tab 726.

18 **A.** Okay.

19 **Q.** Mr. Ho, can you tell me if you recognize this document?

20 **A.** Yes.

21 **Q.** What is it?

22 **A.** That is the Plea Agreement.

23 **Q.** Your Plea Agreement?

24 **A.** Plea Agreement. Yes.

25 **Q.** And is your signature on this Plea Agreement?

1 Witness and remove some binders?

2 **THE COURT:** You may.

3 **DIRECT EXAMINATION**

4 **BY MS. TEWKSBURY:**

5 **Q** Good afternoon, Mr. Wong.

6 **A** Good afternoon.

7 **Q** Mr. Wong, have you ever lived in the United States?

8 **A** Yes.

9 **Q** When did you live here?

10 **A** From -- not exactly, I remember. From 1988 to 2008,
11 approximately.

12 **Q** Where did you live when you lived in the United States?

13 **A** First I -- well, a few places I lived, but the last 13
14 years before I left, I was in San Francisco -- I mean, I was in
15 the south Bay area.

16 **Q** Why were you living in south Bay area?

17 **A** Job.

18 **Q** Did you go to school here?

19 **A** You mean here --

20 **Q** In the United States?

21 **A** Yes.

22 **Q** Where did you go to school?

23 **A** Went to University of South Carolina.

24 **Q** And you said that you worked here, as well?

25 **A** Yes.

1 Q Are you a U.S. citizen, Mr. Wong?

2 A Yes.

3 Q Since when?

4 A Probably by the end of 1999.

5 Q Where were you born?

6 A I was born in Burma. Nowadays it's called Myanmar.

7 Q When did you last live in the United States?

8 A March, 2008.

9 Q Where do you live now?

10 A In Taiwan, and Hong Kong.

11 Q Did you receive an undergraduate degree?

12 A Yes.

13 Q In what?

14 A China.

15 Q In what subject area?

16 A Biochemistry.

17 Q When did you receive this degree?

18 A 1982.

19 Q And you said you went to school here in the United States,
20 is that correct?

21 A Yes.

22 Q What degree did you receive at University of Southern
23 Carolina?

24 A It was graduate study, and it was Master of International
25 Business Studies.

1 Q When did you receive that degree?

2 A 1990.

3 Q Were you ever employed by a company called AUO America?

4 A Yes.

5 Q When were you employed by AUOA?

6 A Between 2001, up until 2008.

7 Q Where were you located?

8 A In the Bay area.

9 Q What kind of business is AUOA?

10 A Mainly promoting TFT-LCD products to American brand names
11 in the States.

12 Q So, you said TFT-LCD products?

13 A Yes.

14 Q What types of products, TFT-LCD products?

15 A It's the display that currently people are using.

16 Q What the court reporter's using (Indicating), the monitor
17 product there?

18 A Yeah, well, the monitors, or the laptops, or even the cell
19 phones that people nowadays use.

20 Q Was the company called "AUOA" when it hired you?

21 A Yes.

22 Q Was it previously called "ADT"?

23 A Yes.

24 Q Why did the name change from ADT to AUOA?

25 A Because, a merger of a company.

1 Q I'm sorry?

2 A Because of a merge.

3 Q A merger?

4 A Yes.

5 Q How long did you work for AUOA?

6 A From 2001 up to 2008.

7 Q About seven years?

8 A Approximately.

9 Q Are you familiar with a company called "AUO"?

10 A Yes.

11 Q How are you familiar with that company?

12 A AUO is a parent company of AUO America.

13 Q Did you work for AUO in Taiwan at any point?

14 A After 2008, March, I was transferred to the headquarter.

15 Q What position did you have when you were transferred over
16 to the headquarters in Taiwan?

17 A I was a sales director in general display business unit.

18 Q Do you still work for AUO today?

19 A No.

20 Q When did you leave?

21 A February, 2010.

22 Q Why did you leave?

23 A A job opportunity, and also family reason.

24 Q What's -- what was that job opportunity?

25 A The company -- my current employer is -- excuse me, my

1 current employer is in solar industry.

2 **Q** Solar panels?

3 **A** I wouldn't say just solar panel. Overall solar solution
4 providing.

5 **Q** Were you recruited to your current job by anyone?

6 **A** Yes.

7 **Q** By who?

8 **A** David Chu.

9 **Q** Was David Chu ever employed by AUO?

10 **A** Yes.

11 **Q** What position did he have there?

12 **A** At the time he left the company, I believe his title was
13 vice-president of notebook business unit.

14 **Q** Did you leave AUO on good terms?

15 **A** Yes.

16 **Q** Do you still have friends there?

17 **A** A lot.

18 **Q** Are you still on good terms with the Defendants here in
19 this courtroom (Indicating)?

20 **A** Yes.

21 **Q** Mr. Wong, I'm going to show you a document -- actually,
22 I'll have you turn in your binder to a document that's been
23 marked as Government Exhibit 774, for identification. I'm just
24 going to ask you some questions, and all they require is a
25 "yes" or "no."

1 Q And have you, in fact, cooperated with the United States?

2 A Yes.

3 Q Do you understand that in exchange for that cooperation,
4 the United States has agreed not to prosecute you for any
5 involvement you may have had in the TFT-LCD industry
6 price-fixing investigation?

7 A Yes.

8 Q Are there any other agreements that you have with United
9 States regarding your cooperation today, other than Exhibit
10 774?

11 A No.

12 MS. TEWKSBURY: Okay, we can go ahead and take that
13 down.

14 (Document taken down)

15 BY MS. TEWKSBURY:

16 Q Now, you said that when you joined AUO America, it was
17 called AUOA at that time?

18 A No, it was different name.

19 Q It was ADT, is that correct?

20 A Yes.

21 Q What does "ADT" stand for?

22 A Acer Display Technology.

23 Q Who was the president of Acer Display Technology in Taiwan
24 when you joined the company?

25 A Mr. Chen, H.B.

1 Q Who was the vice-president of ADT?

2 A Dr. Hui Hsiung.

3 Q Does Dr. Hsiung have a nickname?

4 A We call him "Kuma-San."

5 Q Why do you call him "Kuma-San"?

6 A Is Japanese for "Bear," and that's his Chinese last name.

7 (Reporter interruption)

8 THE WITNESS: B-E-A-R.

9 BY MS. TEWKSBURY:

10 Q When you joined ADT, was it at an office here in the
11 United States?

12 A Yes.

13 Q What customers were you responsible for?

14 A I had a couple, HP and Apple Computers.

15 Q What were your responsibilities for those customers?

16 A Mainly for business development, to promote our product to
17 be designed in either their notebook -- I mean, in their
18 notebook product or in their monitor product.

19 Q How long after you joined ADT here in the United States
20 was the merger announced?

21 A A couple weeks, the merge was announced.

22 Q And at what point, again, did you join ADT here in the
23 United States?

24 A Can you --

25 Q When were you -- when did you join ADT?

1 **A** I believe, sometimes in February, 2001.

2 **Q** Do you know about when the merger was finalized between
3 the companies that merged to form AUO?

4 **A** The completion, or say, the officiation was in September,
5 2001.

6 **Q** What company did ADT merge with to form AUO?

7 **A** ADT merged with Unipac.

8 **Q** What kind of business was Unipac?

9 **A** It was the same business. In TFT-LCDs.

10 **Q** When did the merged companies, ADT and Unipac, when did
11 they start using the AUO name?

12 **A** I don't remember exactly, but fairly soon after the
13 announcement of a merge, the name of "AUO" just surfaced, and
14 it was -- start to use that name, "AUO" instead of --

15 **Q** What was the primary business that AUO had when it came
16 into formation?

17 **A** It was in the TFT-LCD.

18 **Q** Who was the president of AUO after the merger?

19 **A** Dr. Tuan, Hsing-Chien.

20 **Q** You might need to spell that for --

21 **A** I don't know.

22 **Q** How about Tuan?

23 **A** Dr. Tuan -- well, Chinese have a different spellings; I
24 have no way to tell.

25 **Q** Can we just agree that it's T-U-A-N?

1 **A** If you say so.

2 **Q** Okay. We will go with that for now.

3 Dr. Tuan, what company did he come from, before the merger
4 between the two companies?

5 **A** He was from Unipac side.

6 **Q** How long was he president of AUO?

7 **A** Not too long.

8 **Q** Who replaced him?

9 **A** Mr. Chen, H.B.

10 **Q** When, about, was that, to your knowledge?

11 **A** I don't remember exactly, but Dr. Tuan wasn't there for
12 too long.

13 **Q** Do you know why he was replaced so quickly?

14 **MS. CASHMAN:** Objection; calls for speculation.

15 **THE COURT:** Well, it calls for a yes or no, actually.

16 "Do you know."

17 Do you know why?

18 **THE WITNESS:** No.

19 **BY MS. TEWKSBURY:**

20 **Q** Do you know what Kuma's first position was at AUO?

21 **A** When I was hired, he was the vice-president of sales
22 marketing, if my memory was correct.

23 **Q** At the time of the ADT and Unipac merger, what were the
24 market conditions at the time?

25 **A** Very bad.

1 Q What was happening in the market that made the conditions
2 so bad?

3 A It was an over-supply situation, which means the two firms
4 were barely trying to survive.

5 Q After the merger between Acer Display and Unipac, what was
6 AUO's position in the market at that point?

7 A They got a break. It was a merger of two companies, they
8 were able to -- to consolidate basically production capacities,
9 a lot of other things, to propel themselves into the first
10 tier, TFT-LCD manufacture.

11 Q Back to AUO America here in United the States, what
12 customers did AUOA sell to at that time?

13 A I wouldn't say "sell to." It was more we were promoting
14 the product to accounts such as HP, Compac, ViewSonic, Apple
15 Computer, et cetera.

16 Q What was the working relationship at that time between AUO
17 and AUO America?

18 A It was a wholly-owned subsidiary or a branch office by
19 AUO.

20 Q So it was AUO's -- AUOA was AUO's branch office here in
21 the United States, is that correct?

22 A Yes.

23 Q Based on your experience at AUOA, how much control did AUO
24 exercise over AUOA here in the U.S.?

25 A Well, AUOA is more of a liaison function, that we act as a

1 tentacle, or say, the extension of AUO -- I mean AUO, to reach
2 out to customers, to do business development and to promote our
3 product for, you know, for design in.

4 **Q** How much direction did AUO give AUOA in its sales
5 functions?

6 **A** A lot.

7 **Q** When you began working for ADT which then became AUOA, how
8 many U.S. based employees were there?

9 **A** I was the third one. AUOA hired me.

10 **Q** Who were the employees at the time?

11 **A** The branch manager back then was Simon Hsieh, and there's
12 now a colleague by the name of Walter Wu.

13 **Q** And then there was yourself?

14 **A** Yeah, then there was myself. Three of us.

15 **Q** Were you what's called a local hire?

16 **A** Yes, I -- I am the first local hire.

17 **Q** What does that mean, "a local hire"?

18 **A** The other two were sent from Taiwan, that -- I'm the local
19 guy.

20 **Q** And you mentioned that Simon Hsieh was the branch manager
21 of AUOA; is that right?

22 **A** Yes.

23 **Q** Was he still the branch manager when ADT changed its name
24 to AUOA?

25 **A** Yes.

1 Q Until when was he the branch manager?

2 A I remember it was March, 2003.

3 Q After AUOA formed, who did Simon Hsieh report to in
4 Taiwan?

5 A I believe it was Dr. Chu, David.

6 Q Was that the same David Chu that you mentioned earlier who
7 was responsible for notebooks when he left the company?

8 A Yes.

9 Q When you joined ADT, where was the U.S. office located?

10 A It was in San Jose.

11 Q Why was it in San Jose?

12 A We're just piggyback-riding BenQ's office.

13 Q Who's BenQ, or what is BenQ?

14 A BenQ, in one sense it was a system integrator. They
15 manufacture monitor, which is one of their business.

16 Q Was there any relationship between BenQ and AUO?

17 A You're talking about nowadays? Or are you talking about
18 back then?

19 Q Back then, back then.

20 A They have a large stake in AUO.

21 Q So, you said they are the system integrator of the
22 finished product, is that right?

23 A They're a part of their business, as a system integrator.

24 Q So you said they had office space here?

25 A Yes.

1 Q What did you mean, you were piggybacking on BenQ?

2 A Well, they basically, you know, sublet few cubicles for
3 us. And we use their accounting, you know, other
4 administrative functions or resources.

5 Q After Simon Hsieh left AUOA in -- I think you said March
6 or April of 2003, who replaced him?

7 A I was promoted as a branch manager.

8 Q You remained in that position until how long, until when?

9 A Until I left U.S.

10 Q In 2008?

11 A Um, the end of March, 2008. Yes.

12 Q During that period of time -- and I want to focus you
13 instead on when you came to ADT in 2001 until 2006 -- who were
14 AUO's major customers in the United States?

15 A They're Dell, HP, Compac, Apple. Up until 2006, right?

16 Q Correct.

17 A You should include Motorola as well. And, among others,
18 yes. These are the majors.

19 Q Approximately how many panels per month would these
20 companies procure from AUO?

21 A In aggregated total, I believe, at high time, it could be
22 -- sum up to more than a million.

23 Q Per month?

24 A Yes.

25 Q Did AUOA have offices outside of California during this

1 **MR. CLINE:** No objection.

2 **THE COURT:** Thank you. It will be received.

3 (Trial Exhibit 808 received in evidence)

4 **MS. TEWKSBURY:** Thank you, your Honor.

5 May I publish it to the jury, your Honor?

6 **THE COURT:** You may.

7 **MS. TEWKSBURY:** I'm will also going to put up the
8 poster board of it, if I can.

9 **BY MS. TEWKSBURY**

10 **Q.** All right. Can you refer to this (indicating), Mr. Wong?
11 Can you see it okay? Can you see that okay?

12 **A.** I see this okay, but you may want to adjust the focus
13 there.

14 **THE CLERK:** You might want to get close to that
15 microphone.

16 **THE WITNESS:** Okay.

17 **THE CLERK:** Thank you.

18 **BY MS. TEWKSBURY**

19 **Q.** Mr. Wong, who had responsibilities for the Dell account
20 while you were head of AUO America?

21 **A.** I took over from Simon Hsieh. At that time, I was
22 responsible for Dell notebook business, as well as monitor
23 business.

24 **Q.** And, if we look on the organizational chart, under Dell,
25 we see you as under the monitor business, along with

1 Simon Hsieh?

2 **A.** It was more of -- yes. It was more of a taking over from
3 him, when he left.

4 **Q.** Is that also when you took over as the head of AUO
5 America?

6 **A.** Yes.

7 **Q.** And you're listed at the top of the org. chart as a branch
8 manager. Is that right?

9 **A.** Yes.

10 **Q.** And for the Dell notebook business, who had
11 responsibility?

12 **A.** I initiate that. Afterwards, I was very occupied --
13 preoccupied with the Dell monitor business, and it so happened
14 Vincent Cheng was available. So we assigned him to take over
15 the responsibility of a Dell notebook business.

16 **Q.** How often did the negotiations with Dell take place?

17 **A.** Depends on -- it should be weekly event.

18 **Q.** And how often would you arrive at a price and volume with
19 Dell?

20 **A.** This was a monthly event.

21 **Q.** Who was your primary contact at Dell for the procurement
22 of LCD panels from AUO?

23 **A.** It depends on -- at which time that we're talking about.
24 There are a few people that I dealt with before.

25 **Q.** Can you name a few of those people?

1 **A.** It came to my mind, just to name a few, Shutuan Lillie,
2 Dennis Sellman, and Darren Wong.

3 And there's one other gentleman. I forgot his name.

4 **Q.** Where were the monthly negotiations primarily carried out?

5 **A.** Mostly it took place in Dell campus in Austin, Texas.

6 **Q.** So would you visit Dell's campus, and meet with some of
7 these procurement officials?

8 **A.** Yes.

9 **Q.** How often would you do that?

10 **A.** Are you referring just for pricing? Because there's a lot
11 of other things, besides pricing.

12 **Q.** Specifically for pricing.

13 **A.** Given this is a monthly event, the negotiation probably
14 would go back and forth, in-person meeting, few times a month,
15 at least.

16 **Q.** Did you also exchange e-mails with the Dell procurement
17 people?

18 **A.** Yes.

19 **Q.** Did you talk with them over the phone?

20 **A.** Yes.

21 **Q.** How often would you communicate with Dell by e-mail?

22 **A.** Probably a little bit more than that we meet the Dell
23 people in person.

24 **Q.** So more than once a week?

25 **A.** Probably.

1 Q. Were you responsive to Dell's e-mails?

2 A. In most situations.

3 Q. Did you generally try to be accurate in your responses?

4 A. Yes.

5 Q. How about when you reported information about the Dell
6 negotiations to headquarters? Were you responsive to e-mails
7 you received from headquarters -- AUO headquarters?

8 A. Yes.

9 Q. And did you try to be accurate in the information you
10 provided to AUO headquarters?

11 A. Yes.

12 Q. What products was Dell using AUO LCD panels in during the
13 time period that you were responsible?

14 A. You are referring to monitor, alone?

15 Q. Monitors, alone.

16 A. Mainly 15-inch, and 17-inch, and 19-inch monitors.

17 Q. And during this time period, you mentioned that
18 Vincent Cheng had responsibility for the notebook product. Is
19 that right?

20 A. Yes.

21 Q. What size panels was AUO selling to Dell for notebooks at
22 that time?

23 A. Okay. This part may be a little guesstimation, since I do
24 not get into that much of a detail. And also, time has elapsed
25 so long. I will try.

1 We have 15.4. 14.1. I'm going to just break these two
2 slices.

3 Q. Who did Vincent Cheng report to?

4 A. When he was in the States, he reported to me.

5 Q. Where did he work?

6 A. Last year, before he left for Singapore, he was stationed
7 in Austin, Texas.

8 Q. Who ultimately decided the price AUO would offer to Dell
9 for the monitor product?

10 A. It worked that way, like what you just mentioned; that the
11 U.S. operation -- it's a more of an extension of AUO
12 headquarter.

13 We work with whichever business unit that we work on the
14 product -- I mean, the business unit in Taiwan -- that we will
15 come up a price that with -- we would -- we will settle with
16 our customer.

17 Q. So you would work with, say, the Monitors Business Unit in
18 Taiwan to arrive at a price that you would offer to Dell?

19 A. Yes.

20 Q. And for the notebook product, would you work with a
21 Notebook Business Unit to arrive at that price?

22 A. That was true.

23 Q. Let's now turn to the H-P side of the org. chart. Who at
24 AUO America had responsibility for selling LCD panels to H-P
25 before you became branch manager?

1 **A.** As a matter of fact, I was one of them.

2 **Q.** For which product?

3 **A.** Notebook.

4 **Q.** After you moved your responsibilities over to Dell, who
5 took over for the notebook H-P product?

6 **A.** Simon Hsieh.

7 **Q.** And after Simon Hsieh left AUO America, who took over?

8 **A.** Dominic Chen.

9 **Q.** Where was Dominic Chen located?

10 **A.** He was located in Houston, Texas.

11 **Q.** Who did he report to?

12 **A.** He reported to me.

13 **Q.** And how about for the monitor -- monitors product? Who
14 had responsibility at AUOA?

15 **A.** It started with Simon Hsieh. Then it was Anderson Liao.
16 Then Jane Chan. Then Nero Hung. The last person is Roger Hu.

17 **Q.** So all of those people are listed in order as to when they
18 took over the account?

19 **A.** Yes.

20 **Q.** Where were those people located when they were responsible
21 for the H-P account?

22 **A.** Houston, Texas.

23 **Q.** Who did they all report to?

24 **A.** They all reported to the branch manager.

25 **Q.** And when you were the branch manager, did they report to

1 **A.** Yes.

2 **Q.** What is that knowledge based on?

3 **A.** Can you rephrase that, too? Otherwise, I really don't
4 know how to address your question.

5 **Q.** How do you know? How do you know that Roger Hu had
6 contacts with his competitors?

7 **A.** I told you that, most likely, that his predecessor, you
8 know, introduced him to the competitors.

9 **MR. CONROY:** Objection. Move to strike. Lack of
10 foundation.

11 **THE COURT:** Sustained.

12 **BY MS. TEWKSBURY**

13 **Q.** Do you know whether Nero Hung had any contacts with his
14 competitors?

15 **A.** Yes.

16 **Q.** How do you know that?

17 **A.** It's either through me, or through his predecessor.

18 **Q.** Do you recall whether you ever introduced Nero Hung to his
19 competitors?

20 **A.** I may, but I don't remember the details, because that --
21 you have to go back to his predecessor.

22 **Q.** Did you ever see e-mails from Roger Hu, indicating that he
23 had received information from his competitors?

24 **A.** Yes.

25 **Q.** Which competitor information?

1 **A.** Just to name one, LG Philips.

2 **Q.** Do you know who he received information from at LG
3 Philips?

4 **A.** You want like a specific name, right?

5 **Q.** Yes.

6 **A.** The other day that we're talking -- his name was "Jay."

7 **Q.** The individual from LG's name was "Jay," to your
8 knowledge?

9 **A.** I guess.

10 **Q.** Mr. Wong, did you communicate with any of your competitors
11 about pricing that would be offered to Dell?

12 **A.** Yes, among other issues.

13 **Q.** Which competitors did you discuss pricing with?

14 **A.** LG Philips, and AM LCD, or Samsung.

15 **Q.** Anyone else?

16 **A.** Oh, this Chi Mei guy. CMO.

17 **Q.** Anyone else?

18 **A.** Once -- just once, I believe -- you know, CPT was
19 involved.

20 **Q.** Who did you communicate with about pricing at LG Philips?

21 **A.** His name -- I'm going to try -- Stephen Yoon. Do I
22 pronounce this correctly?

23 **Q.** To my understanding you have, do you want to spell it for
24 the court reporter?

25 **A.** I'm not going to dare try that one.

1 Q. I'll give it a try. Y-o-o-n.

2 MS. CASHMAN: Objection. Is Counsel testifying?

3 THE COURT: Sustained.

4 BY MS. TEWKSBURY

5 Q. During what period of time did you subpoena with Mr. Yoon?

6 A. When I was handling Dell monitor business.

7 Q. Did you testify that was early 2003 -- is that correct? --
8 when you started handling Dell?

9 A. No. Second part of 2003.

10 Q. So second part of 2003. Until when did you speak with
11 Mr. Yoon about Dell?

12 A. Dell move or relocated its display or monitor business out
13 of Singapore, in early 2005. So from the second part of 2003
14 up to early -- well, up to, I think, March of 2005, I was in
15 contact with Mr. Stephen Yoon, from LG Philips.

16 Q. Do you know what Mr. Yoon's position was at LG Philips?

17 A. He was the Account Manager for Dell monitor business.

18 Q. Do you know whether he had any responsibility for pricing
19 negotiations with Dell?

20 A. I would believe or I would assume that he played a similar
21 role as I did.

22 MS. CASHMAN: Objection.

23 MR. CASHMAN: Objection. Speculation.

24 THE COURT: Sustained.

25

1 **BY MS. TEWKSBURY**

2 **Q.** How often would you and Mr. Yoon communicate?

3 **A.** Biweekly.

4 **Q.** How would you generally communicate?

5 **A.** Talking over the phone. If needed, we will meet in
6 person.

7 **Q.** Where would you meet in person?

8 **A.** You just find a coffee shop or restaurant.

9 **Q.** Did you specifically discuss the Dell negotiations with
10 Mr. Yoon?

11 **A.** Yes, among other issues.

12 **Q.** Were your meetings with Mr. Yoon at all tied to the
13 negotiations with Dell?

14 **MR. NEDEAU:** Objection. Vague.

15 **THE COURT:** Sustained.

16 **BY MS. TEWKSBURY**

17 **Q.** You said that you would meet with Mr. Yoon on a biweekly
18 basis. Is that correct?

19 **A.** I wouldn't say I talked to him biweekly basis, but I
20 probably will -- I probably met him once a month.

21 **Q.** Who would initiate the conversation or a meeting?

22 **A.** Depends on who needs -- who needed whom. If I needed him,
23 I would contact him. And if he needed me, then he will contact
24 me.

25 **Q.** Why would you need Mr. Yoon?

1 **A.** Just to check out, you know, my competitors' information.

2 **Q.** What did you do with the information that you received
3 from Mr. Yoon?

4 **A.** I will turn around and share the information with my
5 colleagues; mainly, my colleagues in Taiwan.

6 **Q.** How often would you share this information with your
7 colleagues in Taiwan?

8 **A.** Pretty much every time that I met or I talked to this
9 competitor of mine -- or ours.

10 **Q.** Why did you share Mr. Yoon's information with your
11 colleagues in Taiwan?

12 **A.** Well, we work as a team. And the information that I
13 gathered by talking to Mr. Yoon -- it's a piece of the, you
14 know, jigsaw puzzle that I ought to share with my colleagues in
15 Taiwan. I thought that was the way.

16 **Q.** Based on your experience and observations in your role as
17 head of AUO America, did you think it was part of AUO's
18 corporate culture to share information with your competitor
19 contacts?

20 **MR. NEDEAU:** Objection. Calls for speculation.

21 **MS. TEWKSBURY:** I'm asking what's in his mind,
22 your Honor.

23 **MR. NEDEAU:** Leading as well, your Honor.

24 **THE COURT:** Well, I don't -- I find it a little hard
25 to understand, so I'll sustain the "leading" objection, I

1 guess.

2 **MS. TEWKSBURY:** Okay.

3 **Q.** Mr. Wong, did you think it was expected of you to reach
4 out to your competitors?

5 **A.** Excuse me?

6 **Q.** Did you think it was expected of you, within AUO, to have
7 contacts with your competitors?

8 **MR. NEDEAU:** Objection. Calls for speculation. Lack
9 of foundation.

10 **MS. TEWKSBURY:** I'm asking whether he thought it was
11 an expectation of him at his job, as an AUO employee.

12 **THE COURT:** Objection's overruled.

13 You may answer that question.

14 **THE WITNESS:** Less of an expectation. I also
15 believed I would be very interested to talk to the competitor.

16 **BY MS. TEWKSBURY**

17 **Q.** Did you believe it was part of your job?

18 **A.** As a salesperson.

19 **Q.** Now, Mr. Wong, you mentioned that when you received
20 information from Stephen Yoon, you would report that
21 information to headquarters is that correct?

22 **MR. NEDEAU:** Objection. Asked and answered.

23 **MS. TEWKSBURY:** It's foundational. I'm getting into
24 a couple of documents, your Honor.

25 **THE COURT:** Overruled.

1 **MS. TEWKSBURY:** Is that correct, Mr. Wong?

2 **THE WITNESS:** Excuse me. Again?

3 **BY MS. TEWKSBURY**

4 **Q.** You just testified that when you received information from
5 Mr. Yoon, you would share that to your colleagues in Taiwan.
6 Is that correct?

7 **A.** Yes.

8 **Q.** I'd like to take a look at a couple of documents. I'll
9 have you turn, please, to Tab 83 in your binder. Please go
10 ahead and take a look at what has been previously marked as
11 Government's Exhibit 83. And let the jury know whether you
12 recognize this document.

13 Do you recognize Exhibit 83, Mr. Wong?

14 **A.** Yes.

15 **Q.** What is it?

16 **A.** It's an e-mail that I sent to Steven Leung, Roger Hu.

17 **Q.** What is the subject of the e-mail?

18 **A.** "Dell Update."

19 **MS. TEWKSBURY:** Your Honor, I'd like to admit
20 Exhibit 83 into evidence.

21 **MR. CLINE:** No objection.

22 **THE COURT:** Thank you. It will be received.

23 (Trial Exhibit 83 received in evidence)

24 **MS. TEWKSBURY:** May we please publish Exhibit 83,
25 your Honor?

1 **A** "Watchful."

2 **MS. TEWKSBURY:** Your Honor, the Government would like
3 to move Exhibit 172 into evidence.

4 **MR. NEDEAU:** Your Honor, we object under 403, for the
5 record.

6 **THE COURT:** All right, thank you. That's overruled.
7 It will be received.

8 **MR. CLINE:** Your Honor, and the other ground
9 previously --

10 **THE COURT:** Okay. It will come in.
11 (Trial Exhibit 172 received in evidence)

12 **MS. TEWKSBURY:** Thank Your Honor. May we publish
13 Exhibit 172?

14 **THE COURT:** You may.

15 **MS. TEWKSBURY:** Thank you.

16 (Document displayed)

17 **MS. TEWKSBURY:** That is not Exhibit 172. If we may
18 have one moment.

19 (Document displayed)

20 **MS. TEWKSBURY:** Alicia, can you blow up the top
21 portion of the document?

22 (Document displayed)

23 **BY MS. TEWKSBURY:**

24 **Q** Mr. Wong, who is Evan Huang?

25 **A** Evan Huang at that time works -- I, mean worked for me in

1 Cupertino, California, and he is -- among other account. And
2 he is account manager for Dell Mac business.

3 Q Do you mean Apple Mac business?

4 A Yes, Apple Computer Mac business.

5 Q Is there a practice within AUO to refer to Apple by a
6 different name?

7 A Um, well, evidently, here, Apple was referred to as
8 "New Yorker."

9 Q Who did Mr. Huang send this e-mail to?

10 A To all the people in notebook business unit.

11 Q Can you please name them off for us?

12 A Okay. Hubert Lee, Alice Ho, Jerry Chen, Joselyn Liu, Ben
13 Huang, myself, Richard Bai.

14 Q And you indicated these people are in the notebook
15 business unit?

16 A Yes.

17 Q Evan Huang writes (As read):

18 "Dear All, New Yorker is suspecting suppliers are exchanging
19 price information. This is illegal, especially in the states.
20 We need to be watchful!"

21 Q And Mr. Wong, the New Yorker here you just identified as
22 Apple, is that correct?

23 A Yes.

24 Q Did you discuss this e-mail with Mr. Huang?

25 A No.

1 Q Do you know if anyone else discussed this e-mail with
2 Mr. Huang?

3 A That is beyond my knowledge.

4 Q Thank you.

5 MS. TEWKSBURY: You can go ahead and that I can down.

6 (Document taken down)

7 MS. TEWKSBURY: Thank you.

8 BY MS. TEWKSBURY:

9 Q Mr. Wong, you can close your notebook.

10 (Request complied with by the Witness)

11 Q Mr. Wong, did you become aware at some point that the FBI
12 was searching AUO America's offices in Houston?

13 A Yes.

14 Q When?

15 A That particular day.

16 Q The day that they were searching?

17 A Yes.

18 Q Do you recall what time of year that was?

19 A It happened -- well, it came to my attention sometimes, a
20 little bit over the noontime.

21 Q Where were you when you found out the FBI was searching
22 AUO's offices?

23 A I was in the sandwich place.

24 Q Who were you with?

25 A Roger Hu.

1 Q Can you remind the jury of who -- what Roger Hu's
2 responsibilities were at AUO America during this time?

3 A Roger worked as an account manager for HP monitor
4 business.

5 Q Have we seen, this afternoon, e-mails with Roger Hu's name
6 on it?

7 A Yes.

8 Q Did those e-mails contain competitor information?

9 A Some of them, yes.

10 Q So, you said you were at a sandwich place when you found
11 out AUO was searching -- or rather, the FBI was searching AUO's
12 offices?

13 A Yes, ma'am.

14 Q Do you recall which sandwich place?

15 A Why don't you --

16 Q If you don't, that's fine.

17 A Okay. It's a sandwich place.

18 Q How did you find out that AUO's offices were being
19 searched?

20 A For whatever reason, my cell phone's battery died. And --
21 did you hear?

22 Q I actually didn't hear you.

23 A Okay. For whatever reason, the battery on my cell phone
24 died. And, they were getting ahold of Roger, telling us that
25 FBI is in our office.

1 **Q** Who called Roger to tell him the FBI was in your office?

2 **MR. NEDEAU:** Objection; calls for speculation, and
3 hearsay.

4 **THE COURT:** You can ask him if he knows who called
5 Roger.

6 **MS. TEWKSBURY:** Sure.

7 **BY MS. TEWKSBURY:**

8 **Q** Mr. Wong, do you know who called Roger?

9 **A** I remember --

10 **THE COURT:** But, don't tell us.

11 **THE WITNESS:** Oh, if I remember, just don't tell?

12 **THE COURT:** Huh-uh, don't answer any further.

13 But, you may ask another question.

14 **BY MS. TEWKSBURY:**

15 **Q** How do you know who called Roger Hu?

16 **A** Well, he's sitting next to me.

17 **Q** And how do you know who was on the other end of the line?

18 **A** If you -- I'm going to say I remember.

19 **Q** You remember.

20 **A** I mean, you know, this is -- this is, I remember somebody
21 talked to Roger.

22 **Q** Did you speak with the person who called Roger?

23 **A** Yes, I think so.

24 **Q** Did Roger tell you who was on the other line?

25 **A** No, she put me -- I mean, he put me through.

1 the time frame of the indictment brings it up to this point.

2 **THE COURT:** Uh-huh.

3 **MR. GETZ:** And now that there's been a search, and
4 there's -- this witness on the stand has been apprised of it, I
5 -- I have a *Bruton* problem with the inability to cross-examine
6 the witness if this -- this witness is about to quote.

7 So, I raise that issue in addition to the other
8 issues.

9 **MS. TEWKSBURY:** Not sure how what Mr. Yang tells
10 Mr. Wong raises a *Bruton* problem.

11 **THE COURT:** That's what I'm having trouble with. I
12 don't see that, either.

13 But, I think it's prudent at this time to sustain the
14 objection, and you can just get to your next set of questions.

15 (Off-the-Record discussion)

16 **MR. GETZ:** And, my more learned colleagues also
17 reminded me that I failed to raise the *Crawford* issue.

18 **THE COURT:** I think that's what you meant right
19 along. But still, I'm going to sustain the objection.

20 **BY MS. TEWKSBURY:**

21 **Q** When you were at Hsuan Yang's house, did you learn why the
22 FBI was searching AUO America's offices?

23 **MS. CASHMAN:** Objection; calls for hearsay.

24 **THE COURT:** Um --

25 **MS. TEWKSBURY:** I'm asking whether he learned why,

1 and its effect on listener. It's also an admission of a party
2 opponent, to the extent he tells us what the person says to
3 him, if he does.

4 **MR. CASHMAN:** Objection. Normally as to hearsay, the
5 answer is going to be pregnant with hearsay, even if he says
6 yes or no.

7 **THE COURT:** It's kind of the same question we've just
8 been talking about, seems to me.

9 **BY MS. TEWKSBURY:**

10 **Q** Mr. Wong, at some point, did you learn why the FBI was
11 searching AUO's offices?

12 **A** Yes.

13 **MR. NEDEAU:** Objection.

14 **BY MS. TEWKSBURY:**

15 **Q** When?

16 **MR. NEDEAU:** Objection; hearsay, Your Honor.

17 **THE COURT:** Overruled. She hasn't asked that
18 question yet. When?

19 **MR. NEDEAU:** Sorry, I'm jumping the gun.

20 **BY MS. TEWKSBURY:**

21 **Q** When?

22 **A** When she -- I mean, when they interviewed me.

23 **Q** What did you understand the investigation to be about?

24 **MR. NEDEAU:** Objection, hearsay.

25 **MR. CASHMAN:** Objection, hearsay.

1 **THE COURT:** Overruled. You may answer.

2 **THE WITNESS:** They were looking for evidence that we
3 are collaborating with our competitions.

4 **BY MS. TEWKSBURY:**

5 **Q** When you were at Hsuan Yang's house, did you know what the
6 investigation was about?

7 **A** At this stage, you know, a lot of things were the -- the
8 sequence might be all messed up. And so, I would say I guess,
9 or, you know, the most I would say, I would take, you know,
10 this is what I -- what I got. But, I don't remember all the
11 sequence right now.

12 **MR. CONROY:** Objection; move to strike as
13 speculation. He's guessing.

14 (Reporter interruption)

15 **MR. CONROY:** Move to strike. Speculation.

16 **THE COURT:** Well, he was explaining, really, why he
17 couldn't answer because he would have to speculate, which he
18 doesn't want to do because the Court has told him not to.

19 So I'm not going to strike that, but I do think we're
20 reaching the end of the road here.

21 **MS. TEWKSBURY:** Okay.

22 **BY MS. TEWKSBURY:**

23 **Q** Mr. Wong, when you were at Hsuan Yang's house, did you
24 tell Roger Hu to do anything?

25 **A** Yes.

1 Q What did you tell him to do?

2 A I believe I told him to erase the contact information of
3 those competitors.

4 Q Where did you tell him to erase that information from?

5 A From his cell phone.

6 Q From anything else?

7 A And from his laptop, of those e-mails.

8 Q Did you observe Mr. Hu deleting information from his cell
9 phone?

10 A To be honest with you, I was more self-absorbed at that
11 stage. Yes and no.

12 Q Well, okay. Did you observe Mr. Hu taking out his cell
13 phone?

14 A I think I told him it's futile, that FBI will get this
15 from the long-distance carrier.

16 Q Before we get into that, let's first try to search your
17 memory and see if you recall whether Mr. Hu took out his cell
18 phone after you told him to delete competitor contact
19 information.

20 A He probably did.

21 MS. CASHMAN: Objection, and ask it be stricken. The
22 words "He probably did" do not imply actual knowledge.

23 THE COURT: Sustained.

24 BY MS. TEWKSBURY:

25 Q Did Mr. Hu take out his laptop computer when you were at

1 Hsuan Yang's house?

2 **A** Either he took out, or I asked him.

3 **Q** But, did he then take it out?

4 **A** Yes.

5 **Q** Did you observe him doing anything on his laptop computer?

6 **A** He was sitting away from me, so I wasn't really seeing
7 anything.

8 **Q** Did he open his laptop computer?

9 **A** He probably did.

10 **MR. NEDEAU:** Objection; calls for speculation.

11 **THE COURT:** Sustained.

12 **BY MS. TEWKSBURY:**

13 **Q** After you instructed Mr. Hu to delete competitor
14 information from his phone and laptop computer, what happened
15 next?

16 **A** Well, I told him it's a stupid idea because this e-mail,
17 FBI's going to get from my laptop, from -- from some other
18 people's laptop.

19 **Q** You told him it was a stupid idea because these e-mails --

20 **A** Are --

21 **Q** -- could be gotten from your laptop? Can you please
22 explain that?

23 **A** Well, because I did not bring my laptop with me at that
24 moment, and my laptop is in office.

25 **Q** And, what e-mails would be on your laptop?

1 **A** Well, the e-mail that we went through this whole day, you
2 know, competitors' information, or talking to competitors.

3 **Q** What happened after you told him it would be futile to
4 delete the information?

5 **A** "Well, let's go back to the office, and face FBI."

6 **Q** So did you, in fact, go back to the office that day?

7 **A** Yes.

8 **Q** When?

9 **A** Just right after, you know, we were at Hsuan's place. Not
10 too long.

11 **Q** Not too long after you were at Hsuan's place?

12 **A** I mean, we didn't stay in Hsuan's place for too long.

13 **Q** Where is Hsuan Yang's apartment in relation to AUO's
14 offices in Houston?

15 **A** It was just a walking distance.

16 **Q** Did you later have a telephone conversation with Roger Hu
17 about that day?

18 **A** Yes.

19 **Q** When?

20 (Witness examines document)

21 **MS. CASHMAN:** For the Record, I would like the Record
22 to reflect the witness's reviewing something (Inaudible).

23 (Reporter interruption)

24 **MS. CASHMAN:** If the Record could reflect the witness
25 is reviewing a document in front of him, and if we could know

02:02:28 1 Calling for speculation. He said he no longer does panels.

02:02:31 2 **BY MR. HUSTON**

02:02:32 3 **Q.** During the time that you were involved in panel supply
02:02:37 4 procurement, 2002 to 2005.

02:02:39 5 **THE COURT:** So you're focusing on that time frame?

02:02:42 6 **MR. HUSTON:** Yes.

02:02:43 7 **THE COURT:** All right. You may answer that question.

02:02:45 8 **THE WITNESS:** Yes. Geopolitical risk and risk of
02:02:48 9 concentration was one consideration that we took into account
02:02:51 10 while developing our overall sourcing strategy.

02:02:55 11 **BY MR. HUSTON**

02:03:07 12 **Q.** Mr. Bhargava, approximately what percentage of Dell
02:03:10 13 monitors were sold in the United States between 2002 to 2005?

02:03:15 14 **MR. HEALY:** Let me object, as vague and ambiguous;
02:03:16 15 what he means by "sold in."

02:03:21 16 **THE COURT:** Overruled.

02:03:21 17 You can answer.

02:03:24 18 **THE WITNESS:** I would be estimating, but I would say
02:03:27 19 more than half.

02:03:28 20 **BY MR. HUSTON**

02:03:29 21 **Q.** And can you be any more specific than that?

02:03:33 22 **A.** Estimating again, maybe 60 to 70 percent.

02:03:36 23 **MR. HEALY:** Let me object. Move to strike,
02:03:38 24 your Honor. He's just speculating.

02:03:40 25 **THE COURT:** He said he was estimating.

02:03:42 1 **MR. HEALY:** He went from 50, 60, 70.

02:03:46 2 **MR. HUSTON:** He said 60 to 70, your Honor. That was
02:03:48 3 his estimation.

02:03:49 4 **THE COURT:** The objection's overruled.

02:03:51 5 **MR. HEALY:** Thank you, your Honor.

02:03:52 6 **THE COURT:** You're welcome.

02:03:52 7 **BY MR. HUSTON**

02:03:54 8 **Q.** And is that figure the same for monitors and notebooks?

02:04:08 9 **A.** That would be my estimate, as well.

02:04:22 10 **MR. HUSTON:** Your Honor, perhaps now would be time
02:04:23 11 for our afternoon break. I'm happy to go on, if you'd like.

02:04:27 12 **THE COURT:** Well, do you think you could be more
02:04:29 13 succinct and targeted if we take our break now?

02:04:32 14 **MR. HUSTON:** I do think that.

02:04:33 15 **THE COURT:** All right, then. We'll have our break.

02:04:36 16 If you'd be ready to come back, ladies and gentlemen,
02:04:38 17 in 20 minutes after 2:00, and then we'll go straight through to
02:04:41 18 the end of the day. Please don't speak with each other or
02:04:43 19 anyone else about this case. Don't make up your minds. You
02:04:45 20 have not heard all of the evidence yet.

02:02:28 21 (Jury out at 2:02 p.m.)

02:05:19 22 **THE COURT:** All right. We'll be in recess.

02:19:09 23 (Whereupon there was a recess in the proceedings
02:19:09 24 from 2:02 p.m. until 2:27 p.m.)

02:19:09 25 (Jury in at 2:27 p.m.)

02:28:31 1 is my recollection.

02:28:32 2 **Q.** And on the -- on the front end --

02:28:35 3 **MR. HEALY:** Excuse me, Mr. Huston. Object, as vague
02:28:37 4 and ambiguous. I didn't hear when it began, so it was an
02:28:40 5 incomplete response.

02:28:41 6 **BY MR. HUSTON**

02:28:42 7 **Q.** Can you tell me --

02:28:44 8 **A.** I would know the beginning of -- I just got involved in
02:28:48 9 managing the LCDs in 2002.

02:28:51 10 **BY MR. HUSTON**

02:28:53 11 **Q.** And when you started --

02:28:54 12 **MR. HEALY:** Your Honor, let me move to strike, as no
02:28:56 13 foundation. Calling for speculation. He doesn't have the
02:28:59 14 foundation to state an opinion.

02:29:02 15 **THE COURT:** Overruled.

02:29:04 16 **MR. HUSTON:** He just --

02:29:05 17 **THE COURT:** Did you have a question you wanted to
02:29:07 18 ask?

02:29:07 19 **MR. HUSTON:** Yeah. Let me follow up.

02:29:09 20 **Q.** At the time you started and you first became involved in
02:29:12 21 2002, were the panel prices being negotiated in Austin?

02:29:17 22 **MR. HEALY:** Same objection, your Honor.

02:29:18 23 **THE COURT:** Overruled.

02:29:19 24 You may answer.

02:29:24 25 **THE WITNESS:** That is correct. Yes.

11:30:53 1 Why couldn't the price be lower than the price that you
11:30:56 2 set at the crystal meetings?

11:31:36 3 **A** Well, because, what will be the meaning if once the bottom
11:31:44 4 price is set by every sitting together, in order to try to sell
11:31:51 5 at a better price? There will be no meaning if someone else go
11:31:58 6 lower.

11:31:58 7 **Q** Okay. Now, if you go down to Point 5.

11:32:02 8 **THE COURT:** Ms. Tewksbury, how much more on this
11:32:03 9 document?

11:32:04 10 **MS. TEWKSBURY:** Just finishing up with this last
11:32:05 11 point.

11:32:06 12 **THE COURT:** Okay. Because I had forgotten, we need
11:32:08 13 to rotate the interpreters.

11:32:09 14 **MS. TEWKSBURY:** Yes. Thank you, Your Honor.

15 **BY MS. TEWKSBURY:**

11:32:13 16 **Q** Point 5 says:
11:32:16 17 "Do not disclose this meeting to outsiders, not even to
11:32:18 18 colleagues; keep a low profile."

11:32:24 19 Do you recall discussion about this at this September 14,
11:32:26 20 2001 crystal meeting?

11:32:43 21 **A** Yes, I do.

11:32:43 22 **Q** And what do you recall being said about this?

11:33:11 23 **A** Because while we were facing such an important and
11:33:17 24 sensitive topic, the industry essentially was facing a
11:33:20 25 life-and-death situation. And all the highest-ranking

11:33:30 1 executives also attended the meeting. We wanted to make sure
11:33:35 2 that it works.

11:33:39 3 **Q** And, how did this help to make sure that it worked?

11:33:45 4 **A** Okay. I wasn't quite done yet.

11:33:47 5 **Q** Oh, I'm sorry.

11:34:14 6 **A** And in order to make the meeting successful, it has to be
11:34:17 7 confidential to the public, so that there won't be any
11:34:22 8 unfavorable factors to affect the success of the meeting.

11:34:30 9 **Q** What was the unfavorable factors that would affect the
11:34:32 10 success of the meeting?

11:34:56 11 **A** Well, to me, I think most importantly, it was our
11:35:02 12 customers' relationship. Once they found out that the makers
11:35:06 13 got together to set a higher price, they would definitely end
11:35:13 14 the relationship with us, and they wouldn't buy from us any
11:35:17 15 more.

11:35:19 16 **MS. TEWKSBURY:** Thank you, Mr. Liu.

11:35:20 17 I think we can take a break now, Your Honor.

11:35:21 18 **THE COURT:** All right. Ladies and gentlemen, we will
11:35:22 19 take a recess. If you would be ready to come back, please, at
11:35:25 20 ten minutes until 12:00.

11:35:27 21 I think what we will try to do then is go for another
11:35:30 22 hour, and take a lunch break after that, if that -- if that
11:35:33 23 will work all right. Okay? Okay.

11:35:37 24 (Jury excused)

11:36:06 25 (The following proceedings were held outside of the

11:36:06 1 presence of the Jury)

11:36:15 2 **THE COURT:** All right. We are in recess.

11:36:17 3 (Recess taken from 11:35 to 11:55 a.m.)

11:58:54 4 (The following proceedings were held outside of the

11:58:54 5 presence of the Jury)

11:58:55 6 **THE CLERK:** Come to order.

11:58:58 7 **THE COURT:** Are you ready?

11:58:59 8 **MS. TEWKSBURY:** Yes, Your Honor.

11:59:02 9 **THE COURT:** Okay.

11:59:02 10 (The following proceedings were held in open court, in

11:59:02 11 the presence of the Jury)

11:59:02 12 **THE COURT:** Welcome back, ladies and gentlemen. You

11:59:35 13 may all be seated.

11:59:38 14 Ms. Tewksbury, you may proceed.

11:59:43 15 And you are still under oath, sir, from this morning.

11:59:45 16 It's fine, just, it continues.

11:59:55 17 **THE WITNESS:** (In English) Oh, okay.

11:59:56 18 **THE COURT:** Thank you.

11:59:57 19 **MS. TEWKSBURY:** Thank you, Your Honor.

11:59:57 20 **BY MS. TEWKSBURY:**

11:59:58 21 **Q** Mr. Liu, were there discussions at the crystal meetings

12:00:00 22 about concealing the meetings?

12:00:16 23 **A** Yes.

12:00:17 24 **Q** What, if any, steps were taken to conceal the meetings?

12:00:34 25 **A** For example, no meetings in companies, but rather,

12:00:38 1 meetings are held in hotels. And changing location, changing
12:00:47 2 different hotels.

12:00:50 3 Shall I continue to talk about this?

12:00:52 4 **Q** Yes.

12:01:01 5 **A** And be discreet upon -- when entering and existing the
12:01:05 6 hotels. Not going in and out at the same time, together.

12:01:24 7 Usually at hotels there is a listing of events occurring
12:01:27 8 at the hotel. Our meetings were not listed. So -- yeah. So,
12:01:36 9 steps like those.

12:01:38 10 **Q** And, you said the meetings were not held at companies,
12:01:43 11 they were held at hotels. Why weren't the meetings held at
12:01:49 12 companies?

12:02:06 13 **A** Because there frequently are visitors from vendors or
12:02:11 14 customers. So it would be possible to run into them, if the
12:02:16 15 meeting participants, for example, if they went to the restroom
12:02:19 16 or something like that. They would come across -- they could
12:02:23 17 come across the other visitors.

12:02:35 18 And we also want it to be so confidential that even other
12:02:41 19 colleagues not involved in the meeting did not -- would not
12:02:44 20 know about these meetings. And so, if you were having these
12:02:47 21 meetings in the companies, then the other employees would know.

12:03:04 22 And if these other people, if they do not have a sense on
12:03:08 23 how important, confidential and sensitive these meetings are,
12:03:11 24 they could be talking about it. And the more people know about
12:03:14 25 this, the less confidential the meetings become.

12:03:22 1 Q And you said that it was so confidential that you did not
12:03:24 2 want your other colleagues within the company to know.

12:03:26 3 Why didn't you want your colleagues within CPT to know
12:03:30 4 about these meetings?

12:03:33 5 MS. CASHMAN: Objection, the answer from the last
12:03:34 6 question just answered that last question.

12:03:36 7 THE COURT: Sustained.

12:03:38 8 BY MS. TEWKSBURY:

12:03:39 9 Q And you also mentioned that you changed different hotels.
12:03:44 10 Why did you change hotels for the meetings?

12:03:59 11 A If -- if we stayed at the same hotel -- if the meetings
12:04:03 12 were held always at the same hotel, then there's higher
12:04:07 13 likelihood that it would -- they would be found out. But if
12:04:11 14 they were spread out among different hotels, then the odds
12:04:18 15 would be lower.

12:04:22 16 Q You also said that you would be discreet when entering and
12:04:25 17 exiting the hotels.

12:04:26 18 How would the participants be discreet when entering and
12:04:31 19 exiting the hotels?

12:04:50 20 A It's easier for entering. People could be arriving at
12:04:54 21 different times.

12:05:09 22 But, at the end of the meeting, pay attention not leave
12:05:17 23 the hotel all at the same time, as a -- as a group. So people
12:05:21 24 could stay down and stagger by engaging in one on one
12:05:26 25 conversations or going to the restroom or lingering a little

12:05:29 1 bit.

12:05:34 2 **Q** Did you discuss staggering your departure from the
12:05:38 3 meetings when you were at the group meetings? Was that
12:05:40 4 discussed?

12:05:48 5 **MR. ATTANASIO:** Objection, pardon me, vague. May we
12:05:52 6 have an identification of which meeting?

12:05:54 7 **MS. TEWKSBURY:** Any meeting.

12:05:56 8 **THE COURT:** Any meeting at a hotel.

12:05:58 9 **MS. TEWKSBURY:** At any meeting that he was at was, it
12:06:00 10 discussed that they would stagger their departures.

12:06:07 11 **THE COURT:** You may -- you may answer.

12:06:16 12 **THE WITNESS:** More or less, yes.

12:06:17 13 **BY MS. TEWKSBURY:**

12:06:19 14 **Q** What was discussed about staggering departures?

12:06:25 15 **A** Like I described earlier.

12:06:27 16 **Q** And you also said that the -- usually hotels list events,
12:06:31 17 but your event wasn't listed by the hotel? Is that correct?

12:06:56 18 **A** The subsequent meetings were not listed after the time was
12:07:00 19 set. So, people would just be notified by phone calls.

12:07:05 20 **Q** When would they be notified by phone calls?

12:07:19 21 **A** Before the next meeting. So whoever convenes the meeting
12:07:22 22 has the responsibility of notifying participants.

12:07:26 23 **Q** How would the participants know which room to go to at the
12:07:29 24 hotel?

12:04:18 25 **A.** Just notified on the phone which hotel room: 402.

12:04:38 1 Q. Okay. Thank you, Mr. Liu. I'd also like you to look,
12:04:41 2 please, back at Point 5 of the September 14th, 2001, Crystal
12:04:47 3 Meeting Report, where it says,

12:04:50 4 "To cultivate an atmosphere for raising
12:04:52 5 prices, if journalists interview may reveal
12:04:55 6 that production -- that the production
12:04:58 7 capacity is at full load."

12:04:59 8 Can you please explain that, Mr. Liu?

12:05:37 9 A. Media is a sensitive area for us, so it could both be
12:05:45 10 advantageous and disadvantage -- disadvantageous for us. So we
12:05:50 11 try to take advantage of media. So we needed to try our best
12:06:00 12 not to let media know that we were having such meetings; but
12:06:10 13 the media is very interested in these key industries, and where
12:06:14 14 are they -- and the intelligence in those industries, such as
12:06:20 15 prices.

12:06:37 16 Normally, if you, as an individual producer, to tell media
12:06:46 17 something, the may not be quite powerful; but if you -- if the
12:06:50 18 producers, as a group, already reached consensus or agreement,
12:06:56 19 then we can all tell the media, "Oh, we have reached capacity,"
12:06:59 20 and that would be a good thing.

12:07:20 21 So if the media spread this out, then the industry,
12:07:26 22 including the customers, would be prepared or would be under
12:07:30 23 the impression of -- of that trend already. So if certain
12:07:39 24 manufacturers raise their price, then it's no longer a
12:07:43 25 surprise.

12:22:25 1 it's better that it's discussed here and disclosed here
12:22:32 2 earlier.
12:22:33 3 **Q.** And when you say it's better that it's discussed here and
12:22:36 4 disclosed here earlier, are you meaning at the Crystal Meeting?
12:22:53 5 **A.** Around that time. Whether it was at that particular
12:22:55 6 meeting, I don't recall for sure.
12:22:58 7 **Q.** Thank you, Mr. Liu. You can close your Exhibit binder.
12:23:01 8 I want to ask you some general questions about the Crystal
12:23:04 9 Meetings. These meetings, you said, were held on a monthly
12:23:10 10 basis. What was your understanding as to why they were held on
12:23:13 11 a monthly basis?
12:23:42 12 **A.** Well, monthly is a good frequency. The prices every
12:23:48 13 month -- the price fluctuates every month, so why don't we have
12:23:51 14 the meeting monthly?
12:23:54 15 **Q.** And how exactly were these meetings organized?
12:24:11 16 **A.** At the very first meeting, the structure of the meeting
12:24:15 17 had been discussed very clearly; discussed among the leadership
12:24:21 18 of the participating manufacturers.
12:24:23 19 To -- to foster healthy operations, development of the
12:24:49 20 industry, the chief executives of the companies authorized
12:24:55 21 their sales executives to -- to push to -- to reach -- to
12:25:12 22 implement the meeting and to reach consensus. And every three
12:25:16 23 months, they would receive support from -- from the general
12:25:21 24 managers or the chief executives.
12:25:23 25 **Q.** Now, you said that the chief executives authorized the

12:25:28 1 sales executives to implement the meetings and reach consensus.

12:25:32 2 Was there a term for the meetings that those sales executives

12:25:35 3 attended? What were those meetings called?

12:26:08 4 **A.** Group meetings. Crystal Meetings. That's what I heard.

12:26:12 5 We didn't have other -- we didn't name them specifically.

12:26:17 6 **Q.** You said that CEOs would attend the meetings every three

12:26:23 7 months to provide their support. Is that correct?

12:26:33 8 **A.** Yes, in theory; but in practice, in reality, sometimes it

12:26:45 9 may be busy with something else, and they may miss the meeting.

12:26:50 10 **Q.** And were those meetings called "Top" or "CEO-level"

12:26:52 11 meetings?

12:26:59 12 **A.** Yes.

12:26:59 13 **Q.** And the meetings that the sales VPs attended -- were they

12:27:03 14 called "Commercial" or "Operational" meetings?

12:27:13 15 **A.** Yes.

12:27:15 16 **Q.** And how were the meetings organized, in terms of

12:27:17 17 scheduling? Who took responsibility for that?

12:27:39 18 **A.** Well, the first meeting -- the -- you know, in the first

12:27:45 19 meeting, the structure of the meetings were already laid out,

12:27:49 20 as I've mentioned earlier.

12:27:51 21 Now, I will describe how the operations of the meetings

12:27:59 22 were planned for. So the manufacturers would take turns in

12:28:19 23 organizing the meetings; and usually by alphabetical orders of

12:28:24 24 their names, or some other orders that we decide.

12:28:44 25 So -- and the day of the next meeting would be decided at

12:28:51 1 this meeting; but the venue of the next meeting -- the chairman
12:29:00 2 of the next meeting would be responsible for selection of the
12:29:05 3 venue, and notifying the participants.

12:29:24 4 And that chairman of the next meeting is also responsible
12:29:30 5 for reminding the participants of the agenda of the next
12:29:35 6 meeting, which usually would be topics that were -- that had
12:29:39 7 been agreed upon in this meeting.

12:29:42 8 **Q.** Okay. Thank you, Mr. Liu.

12:29:44 9 And what language was spoken at these meetings?

12:29:51 10 **A.** Because of presence of the Koreans, we used English.

12:29:55 11 **Q.** Did you understand the participants at the meetings?

12:30:03 12 **A.** Very much.

12:30:03 13 **Q.** What did you do if you could not understand what someone
12:30:06 14 said in English at the meeting?

12:30:09 15 **MS. CASHMAN:** Objection. Assumes facts not in
12:30:11 16 evidence.

12:30:12 17 **THE COURT:** Overruled.

12:30:12 18 You may answer.

12:30:25 19 **THE WITNESS:** Just as you normally would with any
12:30:27 20 other person that you don't understand, you would just ask
12:30:32 21 them,

12:30:33 22 "Excuse me. Can you -- can you state
12:30:34 23 it again? Can you explain?"

01:59:57 24 **BY MS. TEWKSBURY**

12:30:37 25 **Q.** Now, you said that the meetings were organized by

02:00:38 1 beneficial for you and your competitors?

02:00:50 2 **A** Of course. Significantly.

02:00:52 3 **Q** Why did you believe that, significantly?

02:01:11 4 **A** Because through these meetings, through our sincerity and
02:01:17 5 collaboration we did see increase in prices. Which, of course,
02:01:22 6 would be beneficial to us.

02:01:26 7 **Q** Mr. Liu, which executives from AUO attended the crystal
02:01:29 8 meetings, that you recall?

02:01:47 9 **MS. CASHMAN:** Your Honor, I'm going to object again.
02:01:50 10 It appears that the witness is just reading from notes. If
02:01:52 11 he's going to testify it should be (Inaudible).

02:01:57 12 **THE COURT:** Is your -- is your question what does he
02:02:00 13 remember as he sits here?

02:02:03 14 **MS. TEWKSBURY:** Yes, Your Honor.

02:02:03 15 **THE COURT:** All right would you ask him that, please.

02:02:05 16 **MS. TEWKSBURY:** Yes.

02:02:05 17 **BY MS. TEWKSBURY:**

02:02:06 18 **Q** Mr. Liu as you sit here today, without referring to the
02:02:11 19 document, who do you recall attended crystal meetings on behalf
02:02:27 20 of AUO?

02:02:29 21 **A** Duan, Mr. Duan. VP, Mr. Wong. H. P. Chen (sic),
02:02:39 22 Mr. Chen. Kuma. Vice-president Kuma. Ke Tai Chu, Mr. Chu,
02:02:53 23 Vice-president. Mr. Hsio (Phonetic), who might be a director.
02:02:58 24 Steven Leung, maybe another director. Tony Cheng.

02:03:07 25 And, a few others. Younger. And I couldn't -- I can't

02:03:19 1 match their names.

02:03:22 2 **Q** Mr. Liu, when you said "H. B. Chen," is that the Defendant
02:03:25 3 H. B. Chen in this case?

02:03:31 4 **A** Yes.

02:03:32 5 **Q** And, "Kuma," is that Dr. Hui Hsiung?

02:03:39 6 **A** Yes.

02:03:40 7 **Q** A Defendant in this case?

02:03:50 8 **A** I don't know how to respond, not knowing whether this
02:03:52 9 would be too harmful for them. Although, I need to tell the
02:03:57 10 truth.

02:04:03 11 **Q** Mr. Liu, you also mentioned Steven Leung.

02:04:06 12 **A** Yes.

02:04:07 13 **Q** And, do you know if Mr. Steven Leung is a Defendant in
02:04:09 14 this case?

02:04:16 15 **A** That's what I heard.

02:04:19 16 **Q** You previously described a process at the crystal meetings
02:04:22 17 by which a pricing consensus was reached. Did you ever observe
02:04:27 18 AUO representatives participate in that process?

02:04:43 19 **A** Yes. Everybody -- everybody has their turn.

02:04:51 20 **Q** What did the AUO executives say or do that caused you to
02:04:54 21 believe that they reached a consensus?

02:04:58 22 **MS. CASHMAN:** Objection, Your Honor, that's compound.
02:04:59 23 Just can't say "The AUO executives."

02:05:05 24 **THE COURT:** Sustained.

25

02:05:05 1 **BY MS. TEWKSBURY:**

02:05:08 2 **Q** Mr. Liu, did you observe H.B. Chen participate in this
02:05:12 3 process that you described that eventually resulted in the
02:05:14 4 consensus reached at the meetings?

02:05:29 5 **A** Yes.

02:05:29 6 **Q** Did you observe Dr. Hui Hsiung participate in this process
02:05:33 7 that resulted in the consensus reached at the crystal meetings?

02:05:45 8 **A** Yes.

02:05:46 9 **Q** Did you observe Mr. Steven Leung participate in this
02:05:49 10 process that resulted in the consensus reached at the crystal
02:05:52 11 meetings?

02:05:59 12 **A** Yes.

02:06:00 13 **Q** Mr. Liu, were the agreements at the crystal meetings for
02:06:05 14 specific or worldwide customers?

02:06:21 15 **A** Should be worldwide.

02:06:24 16 **Q** How did CPT internally decide which prices to charge?

02:06:45 17 **A** Our internal price is determined by the prices that was
02:06:53 18 set by each business unit. Every month. And those prices were
02:07:11 19 set according to market intelligence, a major component of
02:07:17 20 which is the prices agreed upon in those meetings.

02:07:39 21 The representatives of those business units, when they set
02:07:42 22 the prices, they may not know the agreed-upon price. But,
02:07:47 23 whether or not they propose the price, those prices need to be
02:07:50 24 approved, need to be submitted for approval -- need to be
02:08:02 25 submitted for approval, you know, one level after another.

02:08:19 1 In that approval process, if the supervisors notice that
02:08:22 2 the price is lower than the agreed-upon price, then that's not
02:08:28 3 supposed -- that shouldn't be approved. But if it's higher,
02:08:32 4 then it would be okay. So, eventually, the prices are approved
02:08:43 5 by the highest supervisor.

02:08:47 6 **Q** Mr. Liu, was this the process within CPT for determining
02:08:51 7 pricing throughout the time that you attended the crystal
02:08:53 8 meetings?

02:09:06 9 **A** Yes.

02:09:09 10 **Q** To what extent did CPT continue to take crystal-meeting
02:09:13 11 prices into account even after Brian Lee quit attending the
02:09:17 12 crystal meetings?

02:09:42 13 **A** The -- our companies' decisions and policy would not be
02:09:46 14 affected by a particular employee's change of position. Or --
02:09:54 15 or departure.

02:09:57 16 **Q** Were the crystal meeting prices a factor in CPT's
02:10:00 17 decision-making until you quit attending the crystal meetings
02:10:03 18 when you retired in July of 2005?

02:10:26 19 **A** That has always been the case.

02:10:33 20 **Q** Now, Mr. Liu, I would like you to look, if you would, in
02:10:35 21 your binder to Tab 304. Just going to have you briefly look at
02:10:49 22 a couple of crystal meeting reports.

02:10:53 23 **MS. TEWKSBURY:** Your Honor, Exhibit 304 is in
02:10:54 24 evidence. May we publish it to the jury?

02:10:56 25 **THE COURT:** You may.

09:45:38 1 They might have only gone to eight, and seven, and then six,
09:45:40 2 and some 10; but the next month, they get together again and
09:45:44 3 they don't say, "Let's meet that 10." They, rather, say, "Up
09:45:50 4 another 15."

09:45:51 5 And every month, for seven months in a row, I see
09:45:54 6 them saying, "Let's go higher. Let's go higher. Let's go
09:45:58 7 higher."

09:45:58 8 To me, that indicates there is success in that
09:46:02 9 sequential increase.

09:46:04 10 **Q.** Well, with that, Dr. Leffler, let's move away from the
09:46:07 11 scope of the Crystal Meetings, the first main topic we'll be
09:46:11 12 talking about this morning, and talk about the amount of U.S.
09:46:15 13 commerce; the second main category.

09:46:17 14 **A.** Yes.

09:46:18 15 **MR. JACOBS:** If we could, go to the next slide,
09:46:20 16 Justin.

09:46:24 17 **Q.** Are these the three main topics under the U.S. commerce
09:46:28 18 category that you investigated, Dr. Leffler?

09:46:31 19 **A.** Yes.

09:46:32 20 **Q.** Let talk about the first one, which reads, "23.5 Billion
09:46:38 21 in U.S. Commerce." And could you just explain, generally, what
09:46:43 22 that refers to?

09:46:45 23 **A.** That is my estimate of the value or revenue levels
09:46:54 24 achieved by the six Crystal Meeting participants from the sale
09:47:03 25 of LCD panels, during the period of the Crystal Meetings, that

09:47:08 1 came to the United States.

09:47:11 2 **Q.** Now, in doing your analysis, did you limit your analysis
09:47:15 3 to those panels that came into the United States as a panel, as
09:47:22 4 opposed to in a finished product?

09:47:29 5 **A.** The estimate that you see there -- I looked at panels that
09:47:33 6 came into the United States as -- I'll call it a "raw panel,"
09:47:37 7 if you will, not incorporated into anything; but the number
09:47:41 8 we're looking at there -- the 23.5 billion -- is from data
09:47:45 9 about the shipment of finished products, if you will; things
09:47:51 10 that have panels in them; fundamentally, televisions, computer
09:47:55 11 monitors, and notebook computers.

09:47:59 12 **Q.** Now, you said you looked at the value of products that
09:48:04 13 came into the U.S. as a raw panel. If you could, Dr. Leffler,
09:48:08 14 turn to Exhibit 775 in your binder in front of you.

09:48:21 15 **A.** Yes.

09:48:22 16 **Q.** Do you recognize what that is?

09:48:23 17 **A.** I do.

09:48:24 18 **Q.** What is it?

09:48:27 19 **A.** It's a table I had prepared that summarizes the actual
09:48:36 20 shipments of panels, themselves, as opposed to the products
09:48:43 21 containing panels, into the United States; that is, the
09:48:47 22 databases I had would have in them a ship-to location. And so
09:48:51 23 I simply had programs written that extracted from those
09:48:55 24 databases all of the instances where they had a
09:48:58 25 ship-to-the-United States occurrence for what were most of the

09:49:05 1 panels -- all but the specialty panels -- within 12-to-30-inch
09:49:11 2 range.

09:49:11 3 **Q.** And how many of the SIX Crystal Meeting companies have
09:49:16 4 data reflected on GX or Exhibit 775?

09:49:20 5 **A.** Well, only five of the six. The CMO data did not have a
09:49:24 6 ship-to location in it, so it was not included.

09:49:28 7 **Q.** Does that chart accurately summarize, from the data
09:49:32 8 provided from those five companies, the value of the imports of
09:49:35 9 the panels shown?

09:49:40 10 **A.** I'm hesitating only -- if, by "import," you mean shipments
09:49:44 11 to -- of a finished panel not incorporated in the product into
09:49:48 12 the United States, yes.

09:49:50 13 **MR. JACOBS:** Your Honor, I would move Exhibit 775
09:49:53 14 into evidence.

09:49:56 15 **MR. HEALY:** No objection, your Honor.

09:49:57 16 **THE COURT:** Thank you. It will be received.

09:49:58 17 (Trial Exhibit 775 received in evidence)

09:50:00 18 **BY MR. JACOBS**

09:50:00 19 **Q.** Now, Dr. Leffler, you explained before that you did not
09:50:03 20 limit your analysis of U.S. commerce to the importation of raw
09:50:09 21 panels, but something else. Why didn't you limit your U.S.
09:50:14 22 commerce calculation to raw panel makers?

09:50:20 23 **A.** Most panels are assembled into products outside the
09:50:24 24 United States. There are very few, if any, assembly plants in
09:50:30 25 the U.S., so that the impact on people in the U.S. comes from

09:50:37 1 the impact on the prices of the products we buy that contain
09:50:42 2 the panels. So I looked to the amount of products that came
09:50:47 3 into the U.S. that contained the panels.

09:50:50 4 **Q.** And did you prepare a demonstrative, illustrating the
09:50:54 5 steps you took to calculate that \$23.5 billion number?

09:50:59 6 **A.** Yes.

09:51:02 7 **MR. JACOBS:** Your Honor, may I display that
09:51:03 8 demonstrative?

09:51:04 9 **THE COURT:** Yes.

09:51:04 10 (Document displayed)

09:51:05 11 **BY MR. JACOBS**

09:51:07 12 **Q.** The first slide here states, "\$71.8 billion." Can you
09:51:13 13 explain what that represents?

09:51:16 14 **A.** Yes, and probably slightly a bit to understand why I had
09:51:21 15 to do this.

09:51:24 16 There is not good data available on the exact flow of
09:51:31 17 how panels go from the plants of the Crystal Meeting
09:51:39 18 participants into a product, to a -- what are called an
09:51:43 19 "OEM" -- the computer maker -- and get to the United States.

09:51:47 20 For example, Dell may have someone else put together
09:51:51 21 the monitor. And then, if it goes to Dell, the data I have
09:51:56 22 would give me the name of the person that Dell had it put
09:52:00 23 together, because -- the system integrator. You've heard the
09:52:03 24 word many times.

09:52:04 25 So that, to find out how much of these panels came to

09:52:10 1 the U.S., I have to go about it in a somewhat indirect manner.

09:52:13 2 So the first step that I did in that analysis was to say,

09:52:19 3 "Well, let's start at the worldwide

09:52:22 4 level. Let's just see the value of all of

09:52:25 5 the panels produced by the six Crystal

09:52:28 6 Meeting participants over the period of the

09:52:32 7 Crystal Meetings."

09:52:35 8 -- by which I mean October 2001 through

09:52:38 9 January 2006.

09:52:39 10 And that is 78.8 [sic].

09:52:46 11 **THE COURT:** What was the number, sir?

09:52:48 12 **THE WITNESS:** 71.8 billion. I think I transposed.

09:52:50 13 **THE COURT:** Thank you.

09:52:53 14 **BY MR. JACOBS**

09:52:53 15 **Q.** From that number, Dr. Leffler, how did you come to your

09:52:57 16 \$23.5 billion calculation?

09:52:59 17 **A.** So then the question becomes -- all right. Of all of

09:53:03 18 these panels that were made and sold to assemblers in various

09:53:08 19 places in China and in Singapore and in Taiwan and in Japan and

09:53:14 20 in Mexico, how many of those panels then came to the

09:53:18 21 United States?

09:53:19 22 Well, from other work I've done over the years, I was

09:53:23 23 aware of very good, detailed information related to computers.

09:53:29 24 From the information from the panel producers, themselves, I

09:53:35 25 learned that we're mainly talking about computers here. About

09:53:39 1 90 percent of the panels made during this period were were made
09:53:45 2 either for monitors or for laptops; and only about 10 percent
09:53:49 3 for anything else. So most of everything is a computer.

09:53:53 4 And I have very good data on what percent of all computers
09:53:59 5 worldwide -- they have panels in them -- then come to the
09:54:03 6 United States.

09:54:03 7 **Q.** Where did you get that very good data from?

09:54:06 8 **A.** Well, the company is named "Gartner Dataquest." And, as I
09:54:10 9 say, they are somewhat like DisplaySearch is in the panel
09:54:16 10 industry: an outside data-collection agency who follows the
09:54:21 11 computer industry in detail, and then provides this very
09:54:24 12 detailed information, and on lots of things, including
09:54:29 13 worldwide shipments and U.S. shipments.

09:54:34 14 So I have data that tells me the percent of notebook
09:54:39 15 computers and monitors that come into the United States. And I
09:54:44 16 have that by time period, so I can match it up with the time
09:54:47 17 periods of the underlying data that --

09:54:51 18 In other words, the 71.8 billion -- I have it by year; by
09:54:55 19 quarter. So sitting behind this is a more complex calculation
09:54:59 20 that I'm just summarizing here.

09:55:02 21 **Q.** So you did match up these data -- both the
09:55:04 22 Worldwide Sales, and the percentage of computer shipments --
09:55:08 23 with specific time periods?

09:55:12 24 **A.** Yes.

09:55:13 25 **Q.** Okay. Across the entire time period, however, what

09:55:16 1 percentage of PC shipments did you find coming to the
09:55:19 2 United States?

09:55:20 3 **A.** Now, the data would vary from a little over 33 percent,
09:55:24 4 early in the period, to right around 30 percent by the end of
09:55:28 5 the period. As I recall, the average was 32.7.

09:55:31 6 **MR. JACOBS:** Let's see the next slide.

09:55:33 7 (Document displayed)

09:55:33 8 **BY MR. JACOBS**

09:55:33 9 **Q.** And that is correct. 32.7 percent, you say, is U.S. share
09:55:39 10 of worldwide PC shipments. Is that what that number reflects,
09:55:42 11 Dr. Leffler?

09:55:44 12 **A.** That's really what, as an economist, I call a "weighted
09:55:47 13 average." So it's kind of the average, taking account of the
09:55:50 14 fact that there were way more shipments by 205 [sic] than there
09:55:55 15 were in 202 [sic], so you don't just add them up to take the
09:55:59 16 average; you weight for the amount of things you're going to
09:56:02 17 apply it to. So that's the weighted average that you can
09:56:04 18 apply, in a simple sense, to get the answer.

09:56:07 19 **Q.** Why were there more shipments later in the time period,
09:56:10 20 than earlier?

09:56:12 21 **MR. HEALY:** Object, as lack of foundation. Calling
09:56:13 22 for speculation.

09:56:15 23 **THE COURT:** Overruled.

09:56:16 24 **THE WITNESS:** The worldwide shipments of computers.
09:56:22 25 Use of computers was growing tremendously; certainly, reflected

09:56:26 1 in the large growth in the LCD industry that was occurring at
09:56:30 2 this time. That's what was driving it: more people were
09:56:34 3 buying computers.

09:56:35 4 **MR. JACOBS:** If we could see the next slide, please.

09:56:37 5 (Document displayed)

09:56:37 6 **BY MR. JACOBS**

09:56:37 7 **Q.** Then this \$23.5 billion number -- how did you calculate
09:56:42 8 that, from these other two figures?

09:56:44 9 **A.** Well, I multiplied the 32.7. I really did it by year; but
09:56:48 10 in effect, I multiplied the 32.7 percent, which is the U.S.
09:56:52 11 share, by the total amount of sales of 71.8 during the Crystal
09:56:58 12 Meeting period.

09:56:59 13 And the answer is: 23.5 billion is my conservative
09:57:05 14 estimate of the value of panels -- and when I say "value," I
09:57:10 15 mean from the revenue sense of the Crystal Meeting
09:57:13 16 participants -- that came into the U.S. during the Crystal
09:57:15 17 Meeting period.

09:57:18 18 **Q.** Dr. Leffler, why do you think that is a conservative
09:57:21 19 estimate?

09:57:22 20 **A.** Really, two reasons.

09:57:23 21 The first reason is that -- well, both reasons flow from
09:57:28 22 the same thing; that is, the 32.7 number up there -- that's a
09:57:33 23 number that's based on counts of panels; so units.

09:57:39 24 And there are different-size units. There are small
09:57:43 25 panels that are much less expensive than big panels.

09:57:47 1 So what I'm really interested in here is share of revenue,
09:57:50 2 but there isn't any data on that. So I'm using a unit-share
09:57:54 3 number to estimate a revenue number.

09:57:56 4 The U.S. is -- certainly was, at this time, among the
09:58:02 5 richest countries in the world. We tend to have bigger
09:58:06 6 monitors. We tend to have bigger notebooks. So we tend to be
09:58:09 7 using the more-expensive panels. So our percent of revenues
09:58:13 8 would be a little higher than our percent of units. That's the
09:58:15 9 first reason it's conservative.

09:58:18 10 The second reason is, as I said, that's a number that
09:58:21 11 applies to PCs -- the notebooks and monitors -- but I'm missing
09:58:27 12 the 10 percent. I mean, the 10 percent is in the 71.8. That's
09:58:31 13 all panels. Those are the things, mainly, going to LCD TVs.

09:58:36 14 LCD TVs are new things being adopted at very different
09:58:41 15 rates across the world. The U.S. is going to be the -- a much
09:58:46 16 more dominant consumer of LCD TVs than it is of notebook
09:58:52 17 computers and monitors during this time.

09:58:55 18 So again, the U.S. share of PCs is going to be a
09:58:59 19 conservative estimate of the U.S. share of LCDs. So again,
09:59:04 20 that makes it conservative.

09:59:06 21 **MR. JACOBS:** Your Honor, at this point, we're moving
09:59:08 22 to a new subject. If you'd like to take the morning break, we
09:59:11 23 can, or we can continue.

09:59:12 24 **THE COURT:** All right. All right. Ladies and
09:59:13 25 gentlemen, we'll take a 15-minute recess at this time. If

10:33:08 1 You could ask it again.

10:33:10 2 **BY MR. JACOBS:**

10:33:11 3 **Q** What I'm asking, Dr. Leffler, is: Based on your empirical
10:33:14 4 work in this case, have you developed an estimate of the
10:33:17 5 percentage overcharge from the Crystal Meetings?

10:33:19 6 **A** No. I've certainly reached the opinion that it's well
10:33:25 7 over 2.1 percent.

10:33:33 8 **Q** So, given your review of the literature and your empirical
10:33:38 9 work, do you have an opinion as to whether the actual
10:33:40 10 overcharge in this case was greater than 2.1 percent?

10:33:43 11 **A** Well, I -- from the analysis we've talked about so far, I
10:33:47 12 have the opinion that it is certainly reasonable and likely
10:33:52 13 that it's over 500 million or 2.1 percent. And then I will
10:33:56 14 later talk about additional analysis.

10:34:00 15 **MR. JACOBS:** Let's move to the next slide, Justin.

10:34:01 16 **BY MR. JACOBS:**

10:34:01 17 **Q** Which reads:
10:34:03 18 "500 million would be a \$4.30 per-panel overcharge."

10:34:10 19 What does that refer to?

10:34:12 20 **A** That's simply, again, to give a perspective of -- of what
10:34:16 21 does it take to get an overcharge in this industry, with this
10:34:20 22 very substantial amount of U.S. commerce, and overcharges over
10:34:28 23 \$500 million. And I thought it was much more intuitive or
10:34:33 24 meaningful to put it in a per-panel number rather than simply a
10:34:37 25 percentage number.

10:34:37 1 So, over the period of the Crystal Meetings, the average
10:34:43 2 panel price was about \$205. A 2.1 percent overcharge means an
10:34:53 3 overcharge of about \$4.30. So that when you see target prices
10:34:58 4 and target price increases, that gives a perspective on what it
10:35:01 5 would take to get 500 million.

10:35:04 6 So if -- if a -- on average or a one-time increase that
10:35:09 7 was sustained of \$4.30 cents or more was accomplished, that
10:35:14 8 would result in \$500 million overall in overcharges.

10:35:18 9 **Q** And, based on your review of the evidence in this case,
10:35:20 10 and your empirical work in this matter, have you made an
10:35:23 11 estimate of the per-panel overcharge in this case?

10:35:27 12 **MR. HEALY:** Let me object to lack of foundation, Your
10:35:29 13 Honor.

10:35:30 14 **THE COURT:** Overruled.

10:35:33 15 **THE WITNESS:** Yes. Again, that it's substantially
10:35:35 16 over \$4.30.

10:35:37 17 **BY MR. JACOBS:**

10:35:37 18 **Q** Which means the overcharge would be substantially over
10:35:42 19 500 million?

10:35:42 20 **A** Yes.

10:35:43 21 **Q** With that, Dr. Leffler, let's turn to your economic
10:35:46 22 empirical analyses, the last category we will be talking about
10:35:50 23 this morning.

10:35:52 24 (Document displayed)

10:35:53 25 **Q** It shows on the slide here, three different types of

10:35:56 1 analyses that you conducted. Let's talk about your price
10:36:00 2 analyses first.

10:36:04 3 **MR. JACOBS:** If we could go to the next slide, and
10:36:05 4 highlight the first item under Price Analyses.

10:36:07 5 **BY MR. JACOBS:**

10:36:07 6 **Q** Which reads:

10:36:10 7 "Participants charged similar prices."

10:36:12 8 What does that mean?

10:36:16 9 **A** Well, it -- it means that the prices that were charged for
10:36:25 10 the important panels sold by each of the six were quite similar
10:36:30 11 to one another.

10:36:31 12 **Q** Why were you looking at this?

10:36:37 13 **A** Really, two reasons. One was to see -- I was planning, if
10:36:42 14 you will, putting myself back in time in this analysis, I was
10:36:48 15 planning on doing analysis for the group. Group analysis.

10:36:51 16 But, of course, if members of the group are acting quite
10:36:56 17 differently from each other, that would be somewhat misleading
10:36:59 18 to talk about the group. So one of my interests was to see
10:37:03 19 whether -- or to justify continuing with group analysis.

10:37:08 20 A second reason was to examine the possibility that one or
10:37:13 21 more of Crystal Meeting participants were not really
10:37:17 22 participating in setting target prices. So, it's both of
10:37:20 23 those.

10:37:20 24 **Q** And what, in general, did you find?

10:37:22 25 **A** I found in general that in fact, they charged quite

11:14:58 1 **MR. HEALY:** Thank you, Your Honor.

11:15:00 2 **THE WITNESS:** It -- it -- of course, if you are going
11:15:03 3 to successfully price-fix, you have to successfully price-fix
11:15:07 4 to large buyers, or you haven't successfully price-fixed. It
11:15:11 5 is common. The reason I say that is, of course it's common.
11:15:15 6 Successful price fixing happens to big buyers. There's -- I
11:15:19 7 mean the examples, there's many, many examples.

11:15:22 8 The -- these very buyers, Dell, Apple and HP, have
11:15:26 9 been subject to price-fixing situations involving DRAM,
11:15:31 10 involving optical drives. General Motors has been subject to
11:15:36 11 price fixing in a number of situations. Very large company.
11:15:40 12 So, it is extremely common.

11:15:43 13 **Q** Dr. Leffler, if we could turn to your --

11:15:47 14 **MR. JACOBS:** If we could show the next slide, Justin.

11:15:50 15 (Document displayed)

11:15:51 16 **BY MR. JACOBS:**

11:15:51 17 **Q** I think we are ready to discuss the next type of empirical
11:15:54 18 analysis you did in this case, which is margin analyses. And
11:15:57 19 there are three sub-points listed there.

11:15:59 20 Before we talk about those, could you describe or define
11:16:02 21 for us what a margin is?

11:16:07 22 **A** Yes. I know that the word has been mentioned in here, I
11:16:09 23 know Mr. Lao (Phonetic) briefly talked about it.

11:16:13 24 **Q** Sorry, Mister who?

11:16:14 25 **A** "Lio"? Am I saying it correctly?

(Reporter interruption)

THE WITNESS: L-I-U. The gentleman who finished testifying late yesterday. But he didn't really define it much.

But a margin is simply a -- a concept that compares the price that someone charges to, if you will, the cost of making the product. The -- what economists call the variable cost of production, to use a term of art in economics.

So it says, let's look at what the price was, and let's net off the cost of the inputs. The glass they had to buy, the crystal they had to buy, and things like that.

Q And, are the three sub-topics here, do those accurately state the three different types of ways you would examine margins in this industry?

A Yes.

Q If we could look at the first one, it states:
"Margins were \$53 higher per panel, 2001 to 2006."

What does that refer to?

A Well, it's a little cryptic, I guess. What I did is I measured the margins earned, the difference between the price that they received, and their, if you will, out-of-pocket expense of making the panels for the six crystal companies, all I could get data for, over a period for which I had data, which was a period from October of '01 through generally 2009. And so, what the "higher" refers to is the Crystal Meeting period,

11:17:50 1 compared to after the Crystal Meetings.

11:17:53 2 So during the Crystal Meeting period, the margins were
11:17:56 3 \$53 higher than they were afterwards.

11:18:00 4 **Q** And, did you prepare some demonstrative slides
11:18:05 5 illustrating that analysis?

11:18:07 6 **A** I did.

11:18:09 7 **MR. JACOBS:** May I display those, Your Honor?

11:18:10 8 **THE COURT:** You may.

11:18:11 9 (Document displayed)

11:18:11 10 **BY MR. JACOBS:**

11:18:12 11 **Q** This graph has the same title we had just been looking at.

11:18:16 12 If you could explain this to us, Dr. Leffler, perhaps
11:18:19 13 starting with the two time periods that are on this graph.

11:18:24 14 **A** Yes. The time period to the left labeled, up top, Crystal
11:18:29 15 Meeting periods. That, again, is October 2001 through January,
11:18:35 16 2006.

11:18:35 17 The post-Crystal Meeting periods, just everything else.
11:18:39 18 That is, it's February, 2006, through 2009.

11:18:46 19 **Q** Now, what is that green line?

11:18:49 20 **A** The green line is the margin earned on a per-panel basis.

11:18:57 21 Now, of course, a 30-inch panel is very different than a
11:19:02 22 12-inch panel. So to make sense out of it in a simple way, to
11:19:07 23 make it very easy to understand, what I did is I standardized
11:19:12 24 in terms of the most popular panel, a 17-inch equivalent.

11:19:16 25 So we can think of this as this is the margin earned.

11:19:20 1 Now, the margins are measured on a company-wide basis, not on a
11:19:24 2 panel basis. But, these are the margins earned on the
11:19:27 3 equivalent of a 17-inch panel, over time.

11:19:30 4 So it's the difference between the average price received
11:19:33 5 and the out-of-pocket expense of making the panel, done a month
11:19:39 6 at a time over the entire period. You know, it's going up and
11:19:43 7 down, and doing things.

11:19:45 8 That's what the green line is.

11:19:47 9 **Q** And, is that the reference in the lower left-hand corner
11:19:50 10 to "Weighted average margin per unit in 17-inch equivalents"?

11:19:54 11 **A** Yes. It is a fairly technical calculation, but the
11:19:57 12 easiest way to conceptualize it is it just is kind of telling
11:20:01 13 me, given the overall prices and cost earned on all the panels,
11:20:04 14 in terms of 17-inch panel, it's (Inaudible)

11:20:09 15 (Reporter interruption)

11:20:10 16 **THE WITNESS:** In terms of the 17-inch panel, what's
11:20:10 17 -- what is it.

11:20:13 18 **BY MR. JACOBS:**

11:20:14 19 **Q** How many of the six Crystal Meeting companies are measured
11:20:17 20 here, or represented here?

11:20:20 21 **A** As I recall, this is all the Crystal Meeting companies.

11:20:23 22 **Q** Where does --

11:20:24 23 **A** Well, it's the -- I have prices for all the Crystal
11:20:29 24 Meeting companies, as we've talked about. I don't have cost
11:20:32 25 for all the Crystal Meeting companies. So I should be a little

11:20:35 1 more precise in my -- my words.

11:20:38 2 **Q** Now, where did you get the \$53-per-panel number from?

11:20:46 3 **A** That's a -- what I'm doing is, is comparing the Crystal

11:20:50 4 Meeting period to the after-the-Crystal Meeting period. So

11:20:55 5 that chart doesn't tell me that, but --

11:20:59 6 **Q** We can go to the next chart, which may help us.

11:21:03 7 (Document displayed)

11:21:04 8 **Q** Can you explain where you got the \$53 number from, using

11:21:07 9 this chart?

11:21:08 10 **A** Yes. What I've done here is simply taken the average. I

11:21:13 11 probably should mention that what I did is I went and got --

11:21:16 12 since I said I don't have cost data for everybody, I used an

11:21:19 13 industry average cost from a publication called *DisplaySearch*,

11:21:24 14 which I know has been described here in the courtroom.

11:21:27 15 So, putting that aside, having calculated now an industry

11:21:30 16 average margin using prices from everybody, industry price from

11:21:35 17 *DisplaySearch*, I then took the margins earned on average,

11:21:40 18 during the Crystal Meeting period, that equals \$79.30, as shown

11:21:46 19 by that vertical line that's just below 80, the red line.

11:21:51 20 Then I --

11:21:52 21 **THE COURT:** That would be vertical? Or horizontal?

11:21:54 22 **THE WITNESS:** That would be horizontal, Your Honor.

11:21:57 23 I'm not testing whether people are paying attention, either.

11:22:02 24 So, yes, the horizontal line just below \$80, \$79.30

11:22:06 25 is the average margin. It's a weighted average margin, because

1 a lot more panels were sold in '06 than were sold in '01 or
2 '02.

3 And then, after the Crystal Meetings ended, the
4 average margin is \$25.68, as shown by the horizontal line
5 somewhat above \$20. The \$53 is the difference, rounded to
6 whole dollars.

7 **BY MR. JACOBS:**

8 **Q** So, is it accurate to say the \$79.30 is the average of the
9 green line during the Crystal Meetings period?

10 **A** Yes.

11 **Q** And, the \$25.68 is the average of the green line during
12 the post-crystal Meetings period.

13 **A** It is accurate.

14 **Q** Now, from this analysis alone, can you conclude that the
15 overcharge was greater than 500 million?

16 **A** This -- recall that an overcharge greater than 500 million
17 requires a price increase or a but-for price that's \$4.30, on
18 average, below the actual prices.

19 A -- a margin increase, now -- and I've controlled cost
20 here. I mean, cost has been controlled for. So, what this is
21 telling me is that on average, compared to cost, prices are up
22 \$79.

23 **Q** You mean 53?

24 **A** I mean 53. \$79 compared to \$25, related to cost. So
25 price is up, compared to cost, by \$53 during the period of the

11:23:46 1 Crystal Meetings, compared to the post-Crystal Meeting period.

11:23:50 2 That's probably sufficient for me to be pretty confident
11:23:54 3 that no matter what complications might exist in the data, that
11:23:58 4 we're about \$4.30. But I wouldn't stop here, because other
11:24:03 5 things can happen other than cost changing.

11:24:06 6 **Q** Other than cost, what other variables might have affected
11:24:10 7 these margins?

11:24:13 8 **A** Well, prices are determined by, obviously, cost. Very,
11:24:19 9 very important factor. Perhaps the most single important
11:24:22 10 factor.

11:24:23 11 Prices can be influenced by competitive conditions. The
11:24:27 12 Crystal Meetings. But, prices can also be affected by other
11:24:33 13 supply-and-demand variables. And a margin analysis has not
11:24:36 14 controlled for supply-and-demand factors in any complete way at
11:24:40 15 all. That is, it's -- looking at long periods of time, that
11:24:45 16 time, itself, controls for things. Recessions can occur. You
11:24:49 17 look long enough, and it all averages out.

11:24:51 18 But nonetheless, I wouldn't want to stop here, because I
11:24:54 19 would want to look into other supply-and-demand factors to make
11:24:58 20 sure that something -- I am unaware of anything, but to make
11:25:01 21 sure that something very different or unusual wasn't happening.

11:25:06 22 **Q** This analysis shows a seven-year time period. We start in
11:25:10 23 2002 to 2009. Did you look at margins over shorter time
11:25:14 24 periods than this?

11:25:17 25 **A** I did, yes.

11:25:19 1 **Q** Why did you do that?

11:25:20 2 **A** Over longer periods, supply and demand can change more. I
11:25:25 3 mean, an illustration would be --

11:25:29 4 **THE WITNESS:** Justin, if you could highlight the
11:25:30 5 period right at the end of '08? '08-'09?

11:25:35 6 (Request complied with by Justin)

11:25:37 7 **THE WITNESS:** There was a -- well, there was a
11:25:41 8 worldwide recession that certainly is talked about in any
11:25:45 9 publication you would look at. *Newsweek*, *Time*, in addition,
11:25:48 10 the *Wall Street Journal*.

11:25:50 11 At the end of '08, there was a problem in the economy
11:25:53 12 that was faced not just by automobile manufacturers and
11:25:57 13 homeowners, but by LCD producers. So I see unusually low
11:26:03 14 margins at that time. Negative.

11:26:05 15 You can't survive in a business if your prices are
11:26:08 16 less than your out-of-pocket costs. So there's factor, for
11:26:11 17 example, that leads me to say, ah, \$25.68 in that post-period,
11:26:19 18 I'd better look more carefully at that, and make sure that
11:26:22 19 that's not too low compared to what I expect, absent Crystal
11:26:25 20 Meetings.

11:26:26 21 So by shortening up the period, by making the period
11:26:28 22 much shorter that I look at, I can then do detailed analysis of
11:26:34 23 supply and demand to see if impacts are occurring. That's an
11:26:36 24 obvious impact that -- that any economist would be aware.

11:26:40 25 But there are going to be more subtle things that

11:26:44 1 will go on that one would want to take account. Making it
11:26:48 2 short periods of time, you can examine it. You can see what
11:26:50 3 happened.

11:26:51 4 **Q** What short period of time or what short periods of time
11:26:53 5 did you examine?

11:26:55 6 **A** There are two ideal time periods to look at here.
11:26:57 7 Because, we have a date at which we first expect -- if there's
11:27:03 8 an effect, we first expect effects of Crystal Meetings. And
11:27:06 9 that's October, 2001. That's the first month for which there
11:27:11 10 were target prices. So, it's kind of like an off/on switch for
11:27:15 11 analysis.

11:27:16 12 Then we have a second date. The second date is January,
11:27:19 13 '06. The last time at which there were any target prices set
11:27:24 14 was January, '06. That's like an off switch.

11:27:28 15 So by looking at that initial period of the Crystal
11:27:30 16 Meetings, by looking at that period of the end of the Crystal
11:27:33 17 Meetings, of the target prices at Crystal Meetings, so -- just
11:27:37 18 an ideal time to see what happened to margins.

11:27:41 19 **MR. JACOBS:** If we could go to the next slide,
11:27:43 20 Justin.

11:27:44 21 (Document displayed)

11:27:44 22 **BY MR. JACOBS:**

11:27:46 23 **Q** This second sub-point under "Margin Analysis" states
11:27:48 24 (As read):

11:27:49 25 "Margins increased \$28 to \$46 per panel when meetings began."

11:45:09 1 **Q** Is there something in regression analysis called the
11:45:11 2 "dependent variable"?

11:45:13 3 **A** Yes. That's the variable you're trying to explain. In my
11:45:17 4 example, it was weight -- trying to explain weight.

11:45:21 5 **Q** So, in your regression that you did in this matter, what
11:45:24 6 was your dependent variable?

11:45:26 7 **A** I'm trying to explain price. I'm trying to explain the
11:45:28 8 prices charged by the Crystal Meeting participants, and I'm
11:45:33 9 trying to see what the impact of the Crystal Meetings was on
11:45:35 10 price.

11:45:37 11 **Q** And, is there something in regression analysis called
11:45:39 12 "independent variables"?

11:45:41 13 **A** Yes. Those are the other variables we want to take
11:45:44 14 account of. In the height-weight example, that was the wrist
11:45:49 15 size, the waist size, the age, et cetera.

11:45:51 16 **Q** And in the regression you did here?

11:45:53 17 **A** Supply and demand. The variables I talked about earlier,
11:45:55 18 PC shipments, television shipments. Prices of -- excuse me,
11:46:01 19 prices of CRTs, prices of plasmas, capacity, et cetera.
11:46:06 20 Supply-and-demand variables.

11:46:09 21 **Q** In conducts your regression in this matter, did you follow
11:46:12 22 conventional statistical techniques?

11:46:14 23 **A** I did, yes.

11:46:15 24 **Q** Did you test for the validity of your model?

11:46:17 25 **A** Yes. There's a number of standard tests that can be done

11:46:20 1 of regressions.

11:46:22 2 **Q** What were your results?

11:46:24 3 **A** My results were --

11:46:26 4 **MR. HEALY:** Objection. Lack of foundation, Your
11:46:27 5 Honor. Insufficient (Inaudible).

11:46:28 6 **THE COURT:** Overruled. You may answer.

11:46:30 7 **THE WITNESS:** My results were to find that the
11:46:33 8 Crystal Meetings impacted the price. And that as a result of
11:46:38 9 the Crystal Meetings, the overcharges were -- I confirmed, if
11:46:43 10 you will, that the overcharges, looking at the whole period,
11:46:46 11 were substantially over \$500 million.

11:46:49 12 **BY MR. JACOBS:**

11:46:50 13 **Q** And in general, can you quantify a range that you found
11:46:53 14 from your regression analysis?

11:46:56 15 **A** The overcharges are certainly in excess of \$2 billion

11:47:03 16 **MR. JACOBS:** If we could go to the next slide,
11:47:04 17 Justin.

11:47:06 18 (Document displayed)

11:47:07 19 **BY MR. JACOBS:**

11:47:08 20 **Q** This is what you were just testifying about.

11:47:13 21 "Confirms overcharge substantially greater than 500 million."

11:47:19 22 Why did you use the word "Confirms" here?

11:47:23 23 **A** Well, the -- the margin analysis, I had answered the
11:47:26 24 question. That is, I was able to isolate supply and demand,
11:47:30 25 looking at shorter periods. And I had answered the question,

11:47:33 1 or the task I had been given.

11:47:37 2 Then I confirmed it by doing subsequent analysis that
11:47:41 3 looked at the entire period.

11:47:43 4 **MR. JACOBS:** If we could go to the next slide,
11:47:44 5 Justin.

11:47:46 6 (Document displayed)

11:47:47 7 **BY MR. JACOBS:**

11:47:47 8 **Q** Just to conclude your testimony this morning, Dr. Leffler,
11:47:49 9 if -- if you can go through each of these three areas very
11:47:53 10 quickly, and just summarize your findings from the scope of the
11:47:58 11 Crystal Meetings, and then the other two areas.

11:48:00 12 **A** Yes. I'm not going to go through each of the seven
11:48:03 13 points; we talked about those at some length.

11:48:07 14 So, I looked at the scope of the meetings. And from the
11:48:09 15 scope of the meetings, I concluded that it was reasonable that
11:48:13 16 there would be \$500 million in overcharges, from the nature of
11:48:17 17 those meetings.

11:48:19 18 **MR. HEALY:** Your Honor, let me interpose an
11:48:21 19 objection. It is cumulative. This is what we went over at the
11:48:24 20 beginning.

11:48:24 21 **THE COURT:** All right, thank you. Overruled.

11:48:27 22 **MR. JACOBS:** And very quickly the next slide?

11:48:32 23 (Document displayed)

11:48:32 24 **MR. JACOBS:** The next one, please.

11:48:33 25 (Document displayed)

11:48:35 1 **THE WITNESS:** Yes. Then I looked at the amount of
11:48:36 2 commerce. And as we discussed, the amount of commerce was in
11:48:38 3 excess of \$23 billion. It would require what I consider to be
11:48:42 4 very, very low overcharge on either a per-panel basis or on a
11:48:48 5 percentage basis.

11:48:50 6 And from that, I concluded that -- again, that it was
11:48:53 7 not only likely that the there could be significant
11:48:55 8 overcharges; that it was likely those overcharges would be
11:48:58 9 greater than \$500 million. They would be substantial.

11:49:00 10 (Document displayed)

11:49:00 11 **BY MR. JACOBS:**

11:49:01 12 **Q** And then finally, from your empirical analysis.

11:49:04 13 **A** From my empirical analysis, I confirmed what I had -- had
11:49:08 14 been expecting from the previous analysis. That in fact, the
11:49:12 15 overcharge is greater than \$500 million.

11:49:15 16 (Document displayed)

11:49:19 17 **A** Substantially greater than \$500 million.

11:49:22 18 **MR. JACOBS:** Thank Your Honor. At this time, I have
11:49:24 19 no further questions for Dr. Leffler.

11:49:26 20 **THE COURT:** All right, thank you.

11:49:26 21 At this point, ladies and gentlemen, we will take our
11:49:28 22 lunch break. If you would be ready to come back, please, at
11:49:31 23 12:30.

11:49:33 24 In the meantime, don't speak with each other or
11:49:36 25 anyone else about this case, don't make up your minds; you have

1 (Augmented Trial Exhibit 835 received in evidence)

2 **MS. MAHER:** Your Honor, there were a couple of
3 clean-up issues. There were -- there was one other instruction
4 we wanted to move back around to. And that's the elements
5 instruction on page 10.

6 We noticed after Friday's hearing that language about
7 targeting had been inserted back into that instruction. This
8 was something we addressed very briefly in our filing over the
9 weekend. So your Honor had indicated at the hearing that you
10 were not going to include the proposed language to be added,

11 -- "targeted by the participants to be"

12 -- in Section A of the elements; the third element.

13 **THE COURT:** Right. And then I thought I left that
14 open, because I remember discussing it with myself after you
15 all left Friday night. And they then I thought I put it in,
16 based on the language from the case that was cited.

17 **MS. MAHER:** Okay. We were not aware that your Honor
18 was still considering including that language.

19 **THE COURT:** Until Friday night, when I put it back in
20 the instruction. Right?

21 **MS. MAHER:** Okay. Can I address it for a moment --

22 **THE COURT:** Sure.

23 **MS. MAHER:** -- here?

24 So the Government again opposes the inclusion of this
25 language in this instruction. The FTAIA commerce exception

1 requires that the conduct involve interstate import trade or
2 import commerce. There's no targeting requirement in the
3 statute. And the use of the term in this jury instruction
4 concerns us, because it may wrongly suggest that the
5 import-commerce exception applies only if the conspirators
6 somehow specifically or primarily focused on U.S. imports, or
7 singled out U.S. imports for anticompetitive conduct, or
8 somehow subjectively intended to restrain U.S. imports.

9 And *Animal Science*, the case that's cited by the
10 defendants, does not require proof of a subjective intent to
11 direct or target U.S. -- price-fixing agreements in the U.S. --
12 in the United States.

13 They were using that term to distinguish between two
14 different types of conspiracies: Those that include
15 price-fixing of U.S. imports, on the one hand, from
16 conspiracies that fixed only the price of wholly foreign
17 transactions, on the other hand; but no Court has suggested
18 there's some kind of subjective-intent requirement. And the
19 concern is that, by adding this language here, it may convey
20 that impression to the jury.

21 **THE COURT:** You know, both of you have said, a lot,
22 "No Court has ever."

23 Well, we are in what appears to me to be pretty
24 uncharted waters here. So I'm doing my very best to figure out
25 how the FTAIA applies to this case, and how we ought to tell

1 the jury about it.

2 You know, if you think back to *voir dire*, some of
3 those potential jurors were saying,

4 "Why is the United States even here?

5 Why are we doing this, if this was some
6 kind of a foreign cartel among foreign
7 manufacturers?"

8 And there are good answers to that.

9 I'm trying to make sure that we anchor this
10 prosecution to the answers to that question, which is that the
11 United States of America was a big part of what they did. I
12 think this targeting helps to do that.

13 I don't think it's a very big hurdle for you to
14 address in the facts of this case; but I do think that it
15 anchors the alleged crimes to the -- to this country in a way
16 that is probably the right thing to do.

17 So I disagree with you. And I'm going to leave that
18 in.

19 **MS. MAHER:** And then the last two remaining issues
20 is --

21 **MR. RIORDAN:** -- something we agree on here.

22 **MS. MAHER:** Right. We will end on a good note here.
23 We realized that, just recently, I think your Honor's
24 practice is not to send the indictment back to the jury.

25 **THE COURT:** That has been my practice. I leave it

1 employees of other companies manufacturing TFT-LCDs alleged to
2 be coconspirators. The Government claims that such exchanges
3 are part of the evidence establishing that the defendants
4 entered into an agreement or mutual understanding to fix
5 prices, as alleged in the Indictment. It is not unlawful for a
6 person to obtain information about a competitor's prices or
7 even to exchange information about prices, unless done pursuant
8 to an agreement or mutual understanding between two or more
9 persons to fix prices, as charged in the Indictment.

10 Nevertheless, you may consider such facts and circumstance,
11 along with other evidence, in determining whether there was an
12 agreement or mutual understanding between two or more persons
13 to fix prices, as alleged in the Indictment.

14 It is not necessary for the Government to prove that
15 the defendants knew that an agreement or conspiracy to fix
16 prices, as charged in the Indictment, is a violation of the
17 law. Thus, if you find beyond a reasonable doubt from the
18 evidence in the case that a defendant knowingly joined a
19 conspiracy to fix prices, as charged, then the fact that the
20 defendant believed, in good faith, that what he was -- that
21 what was being done was not unlawful, is not a defense.

22 Before you can find a defendant guilty of committing
23 a crime charged in the Indictment, you must find by a
24 preponderance of the evidence that between September 14th,
25 2001, and December 1st, 2006, the conspiratorial agreement, or

1 some fact in furtherance of the conspiracy, occurred in the
2 Northern District of California. This District includes
3 San Francisco -- this District includes the counties of
4 San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa,
5 Marin, Sonoma, Napa, Del Norte, Humboldt. Lake, Mendocino,
6 Monterey, Santa Cruz, and San Benito.

7 To prove something by a preponderance of the evidence
8 is to prove it is more likely true than not true. This is a
9 lesser standard than beyond a reasonable doubt.

10 For reasons that do not concern you, the case against
11 several alleged coconspirators of the defendants is not before
12 you. Do not speculate why. That fact should not influence
13 your verdicts with respect to the defendants, and you must base
14 your verdict solely on the evidence against the defendants.

15 The Sherman Act applies to conspiracies that occur,
16 at least in part, within the United States. The Sherman Act
17 also applies to conspiracies that occur entirely outside the
18 United States, if they have a substantial and intended effect
19 in the United States. Thus, to convict the defendants, you
20 must find beyond a reasonable doubt one or both of the
21 following: A, that at least one member of the conspiracy took
22 at least one action in furtherance of the conspiracy within the
23 United States, or, B, that the conspiracy had a substantial and
24 intended effect in the United States.

25 In order to establish the offense of conspiracy to

1 fix prices in the Indictment -- alleged -- charged in the
2 Indictment, the Government must prove each of the following
3 elements beyond a reasonable doubt:

4 First, that the conspiracy existed at or about the
5 time stated in the Indictment.

6 Second, that the defendants knowingly -- that is,
7 voluntarily and intentionally -- became members of the
8 conspiracy charged in the Indictment, knowing of its goal, and
9 intending to help accomplish it.

10 And, third, that the members of the conspiracy
11 engaged in one or both of the following activities:

12 A, fixing the price of TFT-LCD panels targeted by the
13 participants to be sold in the United States, or for delivery
14 to the United States, or, B, fixing the price of TFT-LCD panels
15 that were incorporated into finished products, such as notebook
16 computers, desktop computer monitors, and televisions; and that
17 this conduct had a direct substantial and reasonably
18 foreseeable effect on trade or commerce in those finished
19 products sold in the United States, or for delivery to the
20 United States.

21 In determining whether the conspiracy had such an
22 effect, you may consider the total amount of trade or commerce
23 in those finished products sold in the United States or for
24 delivery to the United States. However, the Government's proof
25 need not quantify or value that effect.

1 If you find, from your consideration of all the
2 evidence, that each of these elements has been proved beyond a
3 reasonable doubt, then you should find the defendant guilty.

4 If, on the other hand, you find from your
5 consideration of all the evidence that any of those elements
6 has not been proved beyond a reasonable doubt, then you should
7 find the defendant not guilty.

8 The type of relationship contended by the Sherman Act
9 as a conspiracy is often described as a partnership in crime,
10 in which each person found to be a member of the conspiracy is
11 liable for all acts and statements of the other members made
12 during the existence of and in furtherance of the conspiracy.

13 To create such a relationship, two or more persons
14 must enter into an agreement or mutual understanding that they
15 will act together for some unlawful purpose, or to achieve a
16 lawful purpose by unlawful means.

17 In order to establish the existence of a conspiracy,
18 the evidence need not show that the members of the conspiracy
19 entered into any express, formal, or written agreement; that
20 they met together; or that they directly stated what their
21 object or purpose was, or the details of it, or the means by
22 which the object was to be accomplished. The agreement,
23 itself, may have been entirely unspoken.

24 What the evidence must show in order to prove that a
25 conspiracy existed is that the alleged members of the

EXHIBIT B

1 END OF THE DAY? OKAY.

2 THE DEFENDANTS IN COURT THIS MORNING, AU OPTRONICS
3 CORPORATION, WHICH I'LL SOMETIMES CALLED AUO; AU OPTRONICS
4 AMERICA, WHICH I'LL SOMETIMES CALL AUOA; MR. HSUAN B. CHEN, WHO
5 I'LL SOMETIMES CALL H.B. CHEN, IF THAT'S ALL RIGHT; AND MR. HUI
6 HSUING, WHO SOMETIMES IS CALLED KUMA, AND IF THAT'S OKAY, I
7 SOMETIMES WILL CALL HIM KUMA ALSO BECAUSE I CAN PRONOUNCE THAT
8 A LITTLE BETTER, THESE FOUR DEFENDANTS HAVE BEEN CONVICTED OF
9 ONE COUNT OF 15 USC SECTION 1, WHICH IS PRICE FIXING. THEY
10 WERE CONVICTED ON MARCH 13TH OF THIS BASED ON A JURY VERDICT.

11 I HAVE RECEIVED AND REVIEWED THE FOLLOWING:

12 FOR EACH DEFENDANT I'VE RECEIVED AND REVIEWED A
13 PRESENTENCE REPORT AND SENTENCING RECOMMENDATION AND ADDENDUM.

14 FROM THE PLAINTIFF, THE GOVERNMENT, I HAVE RECEIVED A
15 SENTENCING MEMO WITH MANY ATTACHMENTS, INCLUDING DECLARATIONS,
16 AND A REPLY SENTENCING MEMO. AND I HAVE RECEIVED THE
17 GOVERNMENT'S OPPOSITION TO THE DEFENDANT'S MOTION TO STAY
18 SENTENCES PENDING APPEAL.

19 FROM AUO, I HAVE RECEIVED THE AUO SENTENCING MEMO
20 PART ONE; THE AUO SENTENCING MEMO PART TWO; THE AUO SENTENCING
21 MEMO PART TWO, JENKINS DECLARATION; THE AU SENTENCING MEMO PART
22 THREE; AUO'S RESPONSE TO THE GOVERNMENT'S SENTENCING MEMO
23 CONCERNING THE APPLICATION OF THE GUIDELINES AND CONDITIONAL
24 REQUEST FOR EVIDENTIARY HEARING; AND THE AUO RESPONSE TO THE
25 GOVERNMENT'S SENTENCING MEMO CONCERNING 3553 AND 3572; AND THE

1 AUO MOTION FOR A STAY PENDING APPEAL AND PAYMENT IN
2 INSTALLMENTS.

3 FROM AUOA, I'VE RECEIVED THE AUOA SENTENCING MEMO AND
4 THE AUOA MOTION FOR STAY PENDING APPEAL AND PAYMENT IN
5 INSTALLMENTS.

6 FROM MR. H.B. CHEN I'VE RECEIVED HIS, MR. H.B. CHEN'S
7 SENTENCING MEMO AND MOTION FOR DEPARTURE; MR. CHEN'S OPPOSITION
8 TO THE GOVERNMENT'S SENTENCING MEMO; AND MR. CHEN'S MOTION FOR
9 BAIL PENDING APPEAL.

10 FROM KUMA, I RECEIVED THE SENTENCING MEMO, MR. KUMA'S
11 SENTENCING MEMO, AND KUMA'S REPLY SENTENCING MEMO, AND HIS
12 MOTION FOR BAIL PENDING APPEAL.

13 IS THAT EVERYTHING? YES? ALL RIGHT.

14 SO, MR. HA, YOU'RE SPEAKING HERE AS A REPRESENTATIVE
15 BOTH OF AUO AND AUOA; IS THAT RIGHT, SIR?

16 **MR. HA:** YES.

17 **THE COURT:** DID YOU HAVE AN OPPORTUNITY TO REVIEW THE
18 PRESENTENCE REPORT THAT WAS PREPARED ABOUT AUO AND AUOA?

19 **MR. HA:** YES, I DID, YOUR HONOR.

20 **THE COURT:** MR. CHEN, DID YOU HAVE A CHANCE TO REVIEW
21 THE REPORT THAT WAS PREPARED ABOUT YOU?

22 **DEFENDANT CHEN:** YES.

23 **THE COURT:** AND MR. KUMA, DID YOU HAVE A CHANCE TO
24 REVIEW THE REPORT THAT WAS PREPARED ABOUT YOU?

25 **DEFENDANT HSIUNG:** YES.

1 **THE COURT:** ALL RIGHT. THANK YOU.

2 I NOTE, FROM HAVING REVIEWED THE PRESENTENCE REPORTS,
3 THAT THERE WERE CERTAIN UNRESOLVED OBJECTIONS, AND I'M GOING TO
4 GIVE YOU MY VIEW ON THOSE AT THIS TIME AND ON EVERYTHING ELSE.
5 AS I SAY, AT THE END, YOU MAY COMMENT.

6 I AM PREPARED AT THIS TIME TO OVERRULE ALL OF THE
7 OBJECTIONS THAT WERE LISTED. THAT WAS OBJECTIONS ONE THROUGH
8 SEVEN FOR AUO. THAT WAS OBJECTIONS ONE THROUGH SIX FOR AUOA.
9 THAT WAS ONE THROUGH ELEVEN FOR H.B. CHEN, AND OBJECTIONS ONE
10 THROUGH EIGHT FOR KUMA. THOSE ARE THE OBJECTIONS THAT WERE
11 LISTED AND ARTICULATED IN THE PSR'S THEMSELVES.

12 I AM PREPARED TO FIND THAT THE VOLUME OF COMMERCE
13 ATTRIBUTABLE TO THE DEFENDANTS MUST BE ESTABLISHED BY A
14 PREPONDERANCE OF THE EVIDENCE AS A SENTENCING FACTOR.

15 THE COURT HAS HAD THE OPPORTUNITY TO HEAR
16 MR. LEFFLER'S TESTIMONY AT TRIAL, AND I'VE REVIEWED THE LEFFLER
17 DECLARATION AND ANALYSIS THAT WAS INCLUDED IN THE SENTENCING
18 MEMORANDUM. I'VE ALSO HAD A CHANCE TO REVIEW DR. HALL'S
19 ANALYSIS, AND I FURTHER DID HEAR FROM MR. DEAL AT TRIAL.

20 I HAVE RECEIVED CONSIDERABLE BRIEFING ON THE
21 SENTENCING, HUNDREDS OF PAGES, AND IN EVALUATING ALL OF THIS
22 AND -- WELL, THE BRIEFING HAS EVALUATED IT, AND THE BRIEFING
23 HAS ARTICULATED AT SOME LENGTH AND IN CONSIDERABLE DETAIL
24 DEFENDANTS' VARIOUS POSITIONS ON ALL THESE ISSUES.

25 I AM PREPARED TO FIND THAT THE RECORD IS ADEQUATE TO

1 SUPPORT THE VOLUME OF COMMERCE AFFECTED TO BE \$2,340,000,000,
2 AND I AM PREPARED TO OVERRULE THE REQUEST FOR AN EVIDENTIARY
3 HEARING ON THIS MATTER. I THINK THE RECORD SUFFICIENTLY
4 SUPPORTS THAT FINDING.

5 THE COURT DISAGREES THE DEFENDANTS' CHALLENGES TO AND
6 ARGUMENTS ABOUT 18 USC 3571, WHICH IS THE ALTERNATIVE FINE
7 STATUTE, AND I AGREE WITH THE GOVERNMENT THAT THE MAXIMUM FINE
8 IN THIS CASE IS ONE BILLION DOLLARS.

9 THE COURT DISAGREES WITH THE CHALLENGES TO THE
10 PRESENTENCE REPORTS AND THE CHALLENGES TO THE GOVERNMENT'S
11 CALCULATIONS CONCERNING AFFECTED COMMERCE. AND I DISAGREE WITH
12 THE CHALLENGE TO THE 20 PERCENT PROXY ANALYSIS AND THE
13 GUIDELINES.

14 I AM PREPARED TO FIND THAT THE GUIDELINE ANALYSIS FOR
15 THE INDIVIDUALS THAT'S SET OUT IN THE PSR'S IS CORRECT. I
16 BELIEVE THE FOUR-LEVEL UPWARD ADJUSTMENT FOR ROLE IN THE
17 OFFENSE UNDER 3(B)(1.1)(A) IS APPROPRIATE. THESE INDIVIDUALS
18 WERE ORGANIZERS OR LEADERS OF A CRIMINAL ACTIVITY THAT INVOLVED
19 FIVE OR MORE PARTICIPANTS AND WAS OTHERWISE EXTENSIVE.

20 AND I ALSO AGREE THERE SHOULD BE NO DOWNWARD
21 ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY.

22 THE CALCULATION ON THE GUIDELINE ANALYSIS THAT'S SET
23 OUT IN THE PSR'S AND WHICH THE COURT IS PREPARED TO ACCEPT IS
24 AS FOLLOWS:

25 FOR AUO, THE PSR SUGGESTS THAT THE GUIDELINE RANGE IS

1 A FINE BETWEEN \$936 MILLION AND \$1.872 BILLION COMPUTED ON THE
2 GUIDELINE AS FOLLOWS:

3 TWELVE IS THE BASE OFFENSE LEVEL UNDER 2(R)(1.1)(A).
4 ADD 16 OFFENSE LEVELS FOR THE SPECIFIC OFFENSE IN THAT OVER
5 \$1.5 BILLION IN COMMERCE WAS ATTRIBUTABLE TO THE DEFENDANTS,
6 GIVEN THE ESTIMATE OF 2.34 BILLION PANEL SALES THAT AFFECTED
7 U.S. COMMERCE. THAT GIVES YOU TOTAL OFFENSE LEVEL OF 28.

8 THE BASE FINE IN THE GUIDELINES IS 20 PERCENT OF
9 AFFECTED COMMERCE UNDER 2(R)(1.1)(D)(1). THAT IS \$486 MILLION.

10 THEN THE CULPABILITY SCORE CALCULATED UNDER 8(C)(2.5)
11 IS FIVE FOR THE BASE CULPABILITY SCORE, UP FIVE MORE FOR
12 INVOLVEMENT IN OR TOLERANCE OF CRIMINAL ACTIVITIES WITH OVER
13 5,000 EMPLOYEES, AND AT LEAST ONE INDIVIDUAL WITH A HIGH
14 LEVEL -- WITH ONE INDIVIDUAL WITHIN HIGH LEVEL PERSONNEL
15 PARTICIPATED IN AND CONDONED THE OFFENSE. THAT'S UNDER
16 8(C)(2.5)(B)(1)(A)(1).

17 THAT GIVES YOU A TOTAL CULPABILITY SCORE OF TEN.
18 THIS GIVES YOU MULTIPLIERS BETWEEN 2.0 AND 4.0 BY APPLYING
19 8(C)(2.6) TO THE CULPABILITY SCORE OF TEN. THIS GIVES YOU A
20 FINE RANGE OF BETWEEN \$936 MILLION AND \$1.872 BILLION UNDER
21 8(C)(2.7). THE GUIDELINES PROVIDE FOR PROBATION BETWEEN ONE
22 AND FIVE YEARS AND A MANDATORY SPECIAL ASSESSMENT OF \$400.

23 WITH RESPECT TO AUOA, THE ANALYSIS IS SIMILAR
24 ALTHOUGH SLIGHTLY DIFFERENT. THE FINE THERE IS BETWEEN \$842.4
25 MILLION AND \$1.684 BILLION COMPUTED AS FOLLOWS:

1 THERE'S THE BASE OFFENSE LEVEL OF 12, 16-LEVEL
2 INCREASE FOR THE SPECIFIC OFFENSE, GIVEN THE ESTIMATE OF
3 2.34 BILLION IN PANEL SALES THAT AFFECTED U.S. COMMERCE. THAT
4 GIVES YOU 28 AS A TOTAL OFFENSE LEVEL. TWENTY PERCENT OF
5 AFFECTED COMMERCE WOULD AGAIN BE 468 MILLION. HOWEVER, THE
6 CULPABILITY SCORE DIFFERS A LITTLE BIT. THERE WOULD BE FIVE AS
7 A BASE CULPABILITY SCORE, UP ONE FOR INVOLVEMENT IN OR
8 TOLERANCE OF CRIMINAL ACTIVITIES.

9 AUOA IS A SMALLER COMPANY, OVER TEN EMPLOYEES, AND AT
10 LEAST ONE INDIVIDUAL WITH SUBSTANTIAL AUTHORITY PARTICIPATED IN
11 AND CONDONED THE OFFENSE. THAT'S UNDER 8(C)(2.5). THAT'S JUST
12 UP ONE. UP THREE -- AND THIS IS SLIGHTLY DIFFERENT FROM AUO AS
13 WELL.

14 UP THREE FOR OBSTRUCTION OF JUSTICE, IN THAT THERE
15 WAS THE INSTRUCTION TO DESTROY DOCUMENTS. THAT'S UNDER
16 8(C)(2.5)(E), AND THAT GIVES YOU A TOTAL CULPABILITY SCORE OF
17 NINE. THEREFORE, THE MULTIPLIERS ARE BETWEEN 1.8 AND 3.6, AND
18 THE FINE RANGE IS BETWEEN 842.4 MILLION AND 1.684 BILLION, WITH
19 A MANDATORY SPECIAL ASSESSMENT OF \$400 AND A PROBATION
20 GUIDELINE OF ONE TO FIVE YEARS.

21 WITH RESPECT TO MR. CHEN, THE SENTENCING RANGE WOULD
22 BE 121 TO 151 MONTHS, BUT BECAUSE 120 MONTHS IS THE MAXIMUM
23 PERMISSIBLE SENTENCE, THAT IS THE GUIDELINE RANGE, 120 MONTHS.
24 YOU GET THERE AS FOLLOWS:

25 TWELVE IS THE BASE OFFENSE LEVEL UNDER 2(R)(1.1)(A).

1 MORE THAN BAD CHOICES IN THIS CASE, YOU COMMITTED FELONIES, AND
2 LET'S GET ON WITH IT. IN THIS CASE, THOUGH, I THINK THAT THOSE
3 EXPLANATIONS ACTUALLY ARE QUITE APT.

4 THERE WAS ENORMOUSLY BAD JUDGMENT EXERCISED BY THIS
5 CORPORATION, THESE DEFENDANTS, AND THE OTHER CORPORATIONS
6 ENGAGED IN THIS CONDUCT, AND THEY MADE POOR CHOICES, AND
7 THEY'RE BEING -- BECAUSE THOSE INVOLVED CRIMINAL CHOICES, THEY
8 ARE BEING PUNISHED FOR THOSE CRIMES. THAT'S REALLY WHAT WAS
9 HAPPENING IN THIS INSTANCE, AND SO I THINK THESE PUNISHMENTS
10 ARE APPROPRIATE FOR THAT.

11 AS TO MR. CHEN, HE WAS THE PRESIDENT AND THE CHIEF
12 OPERATING OFFICER OF AUO. HE'S 60 YEARS OLD. HE HAS NO
13 CRIMINAL RECORD. HE'S A WELL-RESPECTED CITIZEN OF TAIWAN.
14 HE'S INTELLIGENT. HE HAS A STRONG WORK ETHIC. HE'S AN
15 INDUSTRY LEADER. HE HAS STRONG FAMILY RELATIONSHIPS. HE'S
16 WEALTHY. HE IS GENEROUS WITH HIS PERSONAL WEALTH.

17 THE GUIDELINES REQUIRE AND THE 3553(A) FACTORS
18 REQUIRES THAT THEIR SENTENCE BE SUFFICIENT BUT NOT GREATER THAN
19 NECESSARY TO PUNISH THIS CRIME AND TO FULFILL THE OBJECT OF THE
20 SENTENCING STATUTES.

21 IT WAS A SERIOUS CRIME, BUT THE BUSINESS LOGIC OF
22 ASSISTING A FLEDGLING INDUSTRY IN ANOTHER COUNTRY AND IN
23 ANOTHER CULTURE AND ACTING IN AND FOR THE BENEFIT OF HIS
24 COMPANY AND OTHERS IN THE INDUSTRY ARE OFFSETTING FEATURES OF
25 THIS CRIME. THEY DON'T MAKE IT NOT A CRIME. THEY DON'T EXCUSE

1 IT, BUT THEY GO A LONG WAY TO EXPLAIN IT.

2 THE CAREFUL NOTES IN THE AGENDAS THAT WERE PREPARED
3 IN THIS CASE NOT ONLY MADE THE EVIDENCE IN THE CASE
4 OVERWHELMING, BUT THEY ALSO CONVINCED ME THAT FOR A
5 CONSIDERABLE PERIOD OF TIME THE DEFENDANTS THOUGHT THEY WERE
6 DOING THE RIGHT THING VIS-A-VIS THEIR INDUSTRY AND THEIR
7 COMPANIES. THEY WEREN'T, BUT THAT'S WHAT THEY THOUGHT AT THE
8 TIME.

9 I DON'T MEAN TO SUGGEST THEY DIDN'T KNOW IT WAS
10 ILLEGAL. I THINK THEY DID KNOW IT WAS ILLEGAL. BUT THERE WERE
11 A LOT OF BUSINESS PRESSURES THAT THEY WERE RESPONDING TO, AND
12 THAT'S WHAT THEY DID.

13 THESE WERE POOR CHOICES. IT WAS BAD JUDGMENT. BUT
14 THERE WAS NO -- THERE WAS RELATIVELY LITTLE PERSONAL
15 MOTIVATION.

16 I CONTRAST THE CASE BEFORE ME WITH, FOR EXAMPLE, SOME
17 OF THE MAIL FRAUD AND WIRE FRAUD AND OTHER KINDS OF FRAUD CASES
18 WHICH WE SEE THAT INVOLVE PERHAPS SMALLER DOLLAR AMOUNTS BUT
19 ACTORS WHO TOOK MONEY SO THEY COULD KEEP IT AND SPEND IT. THAT
20 WASN'T REALLY WHAT HAPPENED HERE. THERE CERTAINLY WERE
21 BENEFITS FLOWING TO THESE DEFENDANTS FROM WHAT THEY DID, BUT IT
22 WAS A DIFFERENT KIND OF CRIME FROM THOSE PERSONAL FRAUD CRIMES.

23 THE OTHER DEFENDANTS IN THIS CASE WERE SENTENCED TO
24 PRISON FOR PERIODS OF BETWEEN SIX MONTHS AND FOURTEEN MONTHS.
25 THOSE INDIVIDUALS WERE IN VERY DIFFERENT CIRCUMSTANCES,

1 HOWEVER, FROM MR. CHEN.

2 BASED ON ALL OF THESE CIRCUMSTANCE, I FIND IT IS
3 APPROPRIATE TO IMPOSE A SENTENCE OF 36 MONTHS IN PRISON ON
4 MR. CHEN.

5 AS TO A FINE, MY PRELIMINARY VIEW IS \$200,000 IS AN
6 APPROPRIATE FINE FOR MR. CHEN.

7 AS TO MR. KUMA, HE WAS THE EXECUTIVE VICE PRESIDENT
8 OF SALES OF AUO. HE'S 58 YEARS OLD. HE HAS NO CRIMINAL
9 RECORD. HE IS A WELL-RESPECTED CITIZEN OF TAIWAN. HE'S
10 INTELLIGENT, HAS A STRONG WORK ETHIC. HE'S AN INDUSTRY LEADER.
11 STRONG FAMILY RELATIONSHIPS. HIS PARENTS FLED CHINA FOR TAIWAN
12 DURING CIVIL UNREST IN CHINA. HIS FAMILY IS SUPPORTIVE,
13 ESPECIALLY HIS MOTHER, WHO HAS TAKEN THE LABORING OAR IN
14 BRINGING HIM UP. AGAIN, HIS SENTENCE MUST BE SUFFICIENT, BUT
15 NOT GREATER THAN NECESSARY.

16 THIS IS A SERIOUS CRIME, BUT THE THINGS I SUGGESTED
17 ABOUT MR. CHEN APPLY ALSO TO MR. KUMA, BUT THE CIRCUMSTANCES OF
18 THIS CASE WERE DIFFERENT FROM MANY OF THE CRIME -- THE FRAUD
19 TYPE CRIMES THAT WE SEE IN THIS COURT.

20 SO, AGAIN, I FIND THAT THERE WERE REASONS FOR
21 COMMITTING THESE ACTS. I THINK THE DEFENDANT KNEW THEY WERE
22 WRONG AND KNEW THEY WERE ILLEGAL, BUT THERE WERE REASONS THAT
23 THEY -- THAT THEY HAD THAT MAKES THIS A DIFFERENT CIRCUMSTANCE
24 FROM MANY OTHERS THAT I FACE.

25 SO, AGAIN, I FIND THAT A SENTENCE OF 36 MONTHS IS THE

1 APPROPRIATE SENTENCE HERE.

2 SO THOSE ARE MY PRELIMINARY VIEWS, AND I'LL BE HAPPY
3 TO HEAR FROM COUNSEL.

4 **MR. RIORDAN:** YOUR HONOR, COULD WE HAVE A MOMENT WITH
5 COUNSEL?

6 **THE COURT:** YES, YOU MAY.

7 (PAUSE IN PROCEEDINGS.)

8 **MR. RIORDAN:** YOUR HONOR, IN TERMS OF THE SENTENCE
9 THE COURT HAS ANNOUNCED, WE WILL STAND ON OUR BRIEFING. WE
10 WOULD RESERVE THE RIGHT TO MAKE A RESPONSE IF THE GOVERNMENT
11 ADDRESSES THE COURT. AND OTHER THAN THAT, WE'D WAIT UNTIL THE
12 ISSUE OF -- TO DISCUSS THE STAY ISSUE AND SO FORTH IN TERMS OF
13 PAYMENT.

14 THANK YOU, YOUR HONOR.

15 **MR. HUSTON:** BEFORE MS. TEWKSBURY SPEAKS, YOU DIDN'T,
16 I DON'T THINK, MENTION A FINE WITH RESPECT TO KUMA. I DON'T
17 KNOW IF IT WAS AN OVERSIGHT.

18 **THE COURT:** IT WAS AN OVERSIGHT. THANK YOU. IT WAS.
19 THAT WOULD BE \$200,000. THANK YOU, MR. HOUSTON.

20 **MS. TEWKSBURY:** YOUR HONOR, IF I MAY ADDRESS THE
21 COURT'S DETERMINATION THAT A BILLION DOLLARS IS SUBSTANTIALLY
22 EXCESSIVE TO THE NEEDS OF THIS MATTER?

23 THE UNITED STATES CONTINUES TO RECOMMEND THE COURT
24 IMPOSE THE MAXIMUM FINE AVAILABLE TO IT UNDER SECTION 3571(D)
25 AND THE SENTENCING GUIDELINES. MAXIMUM SENTENCES SHOULD BE

1 RESERVED FOR THE WORST OFFENDERS, AND THESE DEFENDANTS MEET
2 THAT DESCRIPTION BASED ON A COMBINATION OF FACTORS NEVER BEFORE
3 SEEN IN A SINGLE CASE IN FRONT OF THE ANTITRUST DIVISION.

4 FIRST, THESE DEFENDANTS PLAYED PIVOTAL ROLES IN A
5 GLOBAL CONSPIRACY THAT HAD AN UNPRECEDENTED IMPACT ON THE
6 POCKETBOOKS OF COUNTLESS AMERICAN CONSUMERS. NEVER BEFORE HAS
7 THE ANTITRUST DIVISION SEEN A CONSPIRACY SO PERVASIVE AND
8 AFFECTING A PRODUCT IN DEMAND WITHIN SO MANY U.S. HOMES AND
9 BUSINESSES.

10 SECOND, DEFENDANTS H.B. CHEN AND DR. HSUING WERE
11 AUO'S MOST SENIOR EXECUTIVES, AND AUO BEGAN PARTICIPATING IN
12 THIS CONSPIRACY FROM ITS VERY INCEPTION UNTIL THE DAY THE FBI
13 RAIDED ITS OFFICES.

14 RARELY DOES THE ANTITRUST DIVISION SEE A CONSPIRACY
15 REACH SO HIGH WITHIN AN ORGANIZATION, THAT EVEN THE COMPANY'S
16 PRESIDENT AND EXECUTIVE VICE PRESIDENT ARE LEADING ITS CHARGE.

17 WHILE IT'S TRUE THAT THESE TWO FACTORS, THE MASSIVE
18 HARM CAUSED TO U.S. CONSUMERS BY THIS CONSPIRACY AND THE
19 PARTICIPATION OF TOP EXECUTIVES DESCRIBE ALL THE COMPANIES
20 INVOLVED IN IT, THESE PARTICULAR DEFENDANTS AUO, AUO AMERICA,
21 H.B. CHEN AND DR. HSUING, ARE SET APART FOR SENTENCING PURPOSES
22 BY THEIR UTTER LACK OF ACCEPTANCE OF RESPONSIBILITY.

23 THEY REFUSED TO ACCEPT RESPONSIBILITY AND INSTEAD
24 TOOK A GAMBLE, WHICH WAS TOTALLY WITHIN THEIR RIGHTS TO DO, BUT
25 THEY LOST, REALLY LEAVING THIS COURT AND THE GOVERNMENT WITH NO

1 JUSTIFIABLE BASIS TO DEPART.

2 WHILE IT'S ALSO TRUE THAT COURTS AROUND THE COUNTRY
3 HAVE SENTENCED MEMBERS OF INTERNATIONAL CARTELS THAT CAUSE
4 MASSIVE HARM AND EVEN EXECUTIVES THAT ARE IN HIGH-LEVEL
5 POSITIONS, THERE IS NO PRECEDENT FOR THE COMBINATION OF THESE
6 FACTORS THAT MATCH THIS CARTEL OR THESE DEFENDANTS.

7 PERHAPS THE CLOSEST CASE THAT WE'VE SEEN IS ADM AND
8 ITS TOP EXECUTIVES IN THE MID '90'S. ADM, HOWEVER, PLED GUILTY
9 TO FIXING PRICES OF LYSINE AND CITRIC ACID. AT THE TIME THESE
10 CARTELS WERE CONSIDERED THE MOST SERIOUS THE DIVISION HAD EVER
11 PROSECUTED. AND THE SENTENCING COURT UNDER 3571(D) AND
12 PURSUANT TO A PLEA AGREEMENT SENTENCED ADM TO A HUNDRED
13 MILLION, TEN TIMES THE THEN STATUTORY MAX OF TEN MILLION. THIS
14 WAS WITHOUT THE BENEFIT OF A DETERMINATION OF OVERCHARGE BY A
15 JURY, AND THIS IS THE ONLY CASE WHERE SUCH A VERDICT HAS EVER
16 BEEN REQUESTED.

17 NOW, A HUNDRED MILLION AT THE TIME WAS RECORD
18 SETTING, AND IN THE YEARS THAT FOLLOWED, THE ANTITRUST DIVISION
19 SECURED FINES THAT WERE UP TO FIVE TIMES THE ADM FINE,
20 INCLUDING A FINE AGAINST VITAMINS PRODUCER HOFFMAN-LA ROCHE,
21 WHICH WAS FINED \$500 MILLION 13 YEARS AGO, AND THAT WAS AFTER
22 IT ACCEPTED RESPONSIBILITY, PLEAD GUILTY, AND AS SECOND IN
23 COOPERATOR SUBSTANTIALLY ASSISTED THE GOVERNMENT IN ITS
24 PROSECUTION OF NUMEROUS COMPANIES AND INDIVIDUALS.

25 THESE RECORD FINES DID RECEIVE WIDESPREAD PUBLICITY

1 **THE COURT:** SO VOLUNTARILY SURRENDER BY
2 NOVEMBER 30TH, 2012.

3 IN THE EVENT THERE'S BEEN NO DESIGNATION, OR IF
4 THERE'S A HANGUP ON DESIGNATION, PLEASE LET THE COURT KNOW AND
5 WE CAN TALK ABOUT WHETHER WE NEED TO ADJUST THAT DATE.

6 **MR. OSTERHOUDT:** THANK YOU.

7 **THE COURT:** OKAY.

8 OKAY. THE LAST MATTER ON MY AGENDA IS THE DEFENDANTS
9 HAVE ALL REQUESTED A STAY AND/OR BAIL PENDING APPEAL, AND I'M
10 INCLINED TO DENY ALL OF THOSE REQUESTS.

11 WITH RESPECT TO AUO, TO STAY THE FINE ON APPEAL IT
12 MUST SHOW THE LIKELIHOOD OF SUCCESS ON APPEAL, IRREPARABLE
13 INJURY ABSENT A STAY; THAT THE STAY WOULD NOT INJURE OTHER
14 PARTIES IN THE PROCEEDING, AND THE PUBLIC INTEREST SUPPORTS THE
15 STAY. AND I DON'T FIND EITHER LIKELY SUCCESS ON THE MERITS OR
16 IRREPARABLE INJURY OR PUBLIC INTEREST. I THINK THE FACTOR
17 THREE IS NEUTRAL.

18 WITH RESPECT TO MR. CHEN AND KUMA, THEIR REQUESTS TO
19 STAY THE SENTENCE REQUIRE THAT THEY SHOW BY CLEAR AND
20 CONVINCING EVIDENCE THAT THE DEFENDANT IS NOT A FLIGHT RISK,
21 SHOW THAT THE APPEAL IS NOT FOR DELAY, SHOW THERE'S A
22 SUBSTANTIAL QUESTION OF LAW OR FACT, AND SHOW IF THE
23 SUBSTANTIAL QUESTION IS ANSWERED IN THEIR FAVOR, THEY WOULD BE
24 ACQUITTED OR ENTITLED TO A NEW TRIAL. I DON'T FIND ANY OF
25 THOSE THINGS TO BE TRUE EITHER.

1 WE'VE DISCUSSED, I THINK AT LENGTH, THE ISSUE OF
2 EXTRADITION FROM TAIWAN.

3 I WILL SAY I FIND BOTH DEFENDANTS HAVE BEEN
4 COOPERATIVE WITH THE COURT AND RESPONSIBLE WITH THE COURT AND
5 HAVE COME TO COURT WHEN THEY WERE ORDERED TO COME TO COURT AND
6 HAVE SHOWN RELATIVELY LITTLE INCLINATION TO BE A FLIGHT RISK.
7 SO IT'S NOT THAT THEY AS PERSONS ARE IRRESPONSIBLE.

8 THE FACT REMAINS, HOWEVER, GIVEN THE FACT THAT THERE
9 IS NO EXTRADITION TREATY TO TAIWAN, THAT THERE IS AN ISSUE OF
10 ATTENDANCE THAT IS MUCH MORE COMPLICATED HERE THAN IN SOME
11 OTHER CASES.

12 AND I DON'T FIND ANY OF THE OTHER FACTORS THAT WOULD
13 WARRANT IMPOSITION OF A STAY, SO THAT'S MY VIEW. I'LL BE HAPPY
14 TO HEAR FROM YOU.

15 **MR. ATTANSIO:** WITHOUT BELABORING THE POINT, YOUR
16 HONOR, BUT I HAVE TO COME BACK TO THE POST-CONVICTION TRIP THAT
17 MR. CHEN TOOK, AND I HATE TO BE IN A POSITION TO ARGUE FROM IT
18 AS THOUGH IT'S SOMETHING WE ARE TAKING ADVANTAGE OF, BUT IT'S A
19 FACT.

20 AFTER THE CONVICTION, AFTER WE ALL KNEW THAT THE
21 GOVERNMENT MIGHT ASK FOR AN EXTREMELY LONG SENTENCE AND THAT,
22 FRANKLY, THAT THE GUIDELINES MIGHT COME OUT WITH AN EXTREMELY
23 LONG SENTENCE, MR. CHEN WAS PERMITTED TO GO HOME, PERMITTED TO
24 HAVE HIS PASSPORT.

25 SO IF THE COURT'S RULING IS THAT THERE REMAINS A RISK

EXHIBIT C

From: Steven Leung 梁兆龍
Sent: Friday, May 31, 2002 12:48:21 PM
To: Hubert Lee 李燦榮; Hui Hsiung 熊暉; David Chu 朱克泰; Tyler Shiao 蕭台源
CC: HB Chen 陳炫彬; Joe Tsui 崔至剛; Vincent Cheng 鄭水金; Steven Leung 梁兆龍; Michelle Chao 趙宜君
Subject: Important -- 5/8 1:30pm^{Meeting Agenda} (Confidential)
Attachments: TFT Meeting June 5 2002.ppt; Industry Meeting Price Trend June 2002.xls; TFT Meeting June 5 2002.ppt

**** Confidential -- Do NOT Distribute. ****

Dear All,

1. Meeting Information

Time/Date: 1:30pm Wednesday June 5th

Location: Taipei (Same as last month.)*

Reservation for conference facilities booked for 1:30pm-5pm.

* Location not specified here for confidentiality reasons.

I will confirm to you as well as ALL OTHER attendees by phone on Monday AM.

2. Please note added attachment file for June 5th meeting discussion agenda.

Thanks.

Best Regards,
Steven
0930-168999



TFT Meeting
June 5
2002.ppt
(259 kB)

_objattph__

-----Original Message-----

From: Hubert Lee 李燦榮
Sent: Friday, May 31, 2002 6:05 PM
To: Hui Hsiung 熊暉; David Chu 朱克泰
Cc: HB Chen 陳炫彬; Steven Leung 梁兆龍; Joe Tsui 崔至剛; Vincent Cheng 鄭水金
Subject: Industry Meeting price trend data- May(confidential)

Dear David & Kuma

The attached are Industry Meeting price trend data and recorded from May operation meeting for reference, Tks.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CR-09-0110 SI

Government Exhibit #: **6T**
Date Admitted: _____
By: _____ (Deputy Clerk)



Industry Meeting

Price Trend

June

2002.xls (29
kB)

Hubert



Discussion Agenda

- **General Market Status Update**
- **Q3 Supply-Demand Outlook**
- **June Pricing Review**
- **July Pricing Plan**
- **CEO Meeting Arrangement**
- **Open Discussions**

June 5th 2002

| Price Trend of all size LCD for Notebook Application | | | | | | | | |
|--|---------|---------|----------|---------|---------|-----------|-----------|---------|
| size | vendor | DEC~01 | Jan~02 | Feb~02 | Mar~02 | Apr~02 | May~02 | Jun~02 |
| 12.1" XGA | HSD | 170 | 175 | 175~180 | | 190 | 200 | 205 |
| | SEC | 170 | 175 | 175 | | 192~198 | 200 | 205 |
| | LGP | 170 | 170 | 175 | | 195 | 205~210 | 205~210 |
| | Torisan | 165 | 165 | | | | | |
| 13.3" | AUO | 175 | 175* | 185~190 | 220 | 220 | | |
| | LGP | 175 | 175 | 180 | | 220 | | |
| 14.1" | CPT | 185 | 195~200 | 200 | 225 | 240 | 255 | 260 |
| | AUO | 185 | 185~190* | 200 | 220~230 | 240 | 250~255 | 255~260 |
| | CMO | 185 | 190~192* | 200 | 225 | 240 | 255 | 260 |
| | HSD | 185/190 | 195 | 200 | 215 | 240 | 255 | 263 |
| | SEC | 185 | 195~200 | 205 | 220 | 245~250 | 255~260 | 263~265 |
| | LGP | 185 | 192~195 | 205 | 220/223 | 245 | 255~260 | 260~265 |
| 15"XGA | SEC | 250/TWN | 260 | 255 | | 290~295 | 306~310 | 315 |
| | LGP | 235/US | 240 | 245 | 265 | 290 | 300 | 305~310 |
| | AUO | | 210/240 | 245 | 265 | 285 | 300 | 310 |
| | IBM | | | | | | | |
| | HSD | | 240 | 245 | 270 | 285 | 300~305 | 315 |
| 15" SXGA | SEC | 280 | 285 | 285 | | 320~325 | 336~340 | 340~345 |
| | LGP | 260 | 265 | 275 | 295 | 320 | 330 | 340 |
| | IBM | 230 | 260 | 275 | 295 | 315?(29X) | 330?(310) | 330 |
| | AUO | | 260/270 | 275 | 295 | 310 | 325 | 330~335 |
| | HSD | | | 275 | 295 | 315 | 330~335 | 340~345 |
| | CPT | | | | 295 | 315 | 330 | 335 |

NB price termd

| Vendor | breakdown | May 02' | Jun 02' | Jul 02' | Aug 02' | Sep 02' | Oct 02' | Nov 02' | Dec 02' |
|--------|-------------|---------|---------|---------|---------|---------|---------|---------|---------|
| AUO | total(Kpcs) | 685 | 690 | | | | | | |
| | NB total | 335 | 335 | | | | | | |
| | 14" XGA | 300 | 300 | | | | | | |
| | 15" XGA | 10 | 10 | | | | | | |
| | 15" SXGA+ | 25 | 25 | | | | | | |
| | others | | | | | | | | |
| | MT total | 350 | 355 | | | | | | |
| | 15" | 200 | 200 | | | | | | |
| | 17" | 150 | 155 | | | | | | |
| | 18" | | | | | | | | |
| | others | | | | | | | | |
| CMO | total | 455 | 480 | | | | | | |
| | NB total | 115 | 120 | | | | | | |
| | 14" XGA | 115 | 120 | | | | | | |
| | 15" XGA | | | | | | | | |
| | 15" SXGA+ | | | | | | | | |
| | others | | | | | | | | |
| | MT total | 340 | 360 | | | | | | |
| | 15" | 170 | 190 | | | | | | |
| | 17" | 75 | 75 | | | | | | |
| | 18" | 30 | 30 | | | | | | |
| | others | 65 | 65 | | | | | | |
| CPT | total | 430 | 430 | | | | | | |
| | NB total | 50 | 50 | | | | | | |
| | 14" XGA | 40 | 40 | | | | | | |
| | 15" XGA | | | | | | | | |
| | 15" SXGA+ | 10 | 10 | | | | | | |
| | others | | | | | | | | |
| | MT total | 380 | 380 | | | | | | |
| | 15" | 380 | 380 | | | | | | |
| | 17" | | | | | | | | |
| | 18" | | | | | | | | |
| | others | | | | | | | | |
| HSD | total | 360 | 360 | | | | | | |
| | NB total | 140 | 170 | | | | | | |
| | 14" XGA | 15 | 15 | | | | | | |
| | 15" XGA | 120 | 150 | | | | | | |
| | 15" SXGA+ | 5 | 5 | | | | | | |
| | others | | | | | | | | |
| | MT total | 220 | 190 | | | | | | |
| | 15" | 220 | 190 | | | | | | |
| | 17" | | | | | | | | |

Capacity

| | | | | | | | | | |
|-----|-----------|------|------|--|--|--|--|--|--|
| | 18" | | | | | | | | |
| | others | | | | | | | | |
| LGP | total | 780 | 810 | | | | | | |
| | NB total | 350 | 360 | | | | | | |
| | 14" XGA | 160 | 160 | | | | | | |
| | 15" XGA | | | | | | | | |
| | 15" SXGA+ | 190 | 200 | | | | | | |
| | others | | | | | | | | |
| | MT total | 430 | 450 | | | | | | |
| | 15" | 350 | 360 | | | | | | |
| | 17" | | | | | | | | |
| | 18" | 80 | 90 | | | | | | |
| | others | | | | | | | | |
| SEC | total | 1010 | 1010 | | | | | | |
| | NB total | 570 | 570 | | | | | | |
| | 14" XGA | 400 | 400 | | | | | | |
| | 15" XGA | 90 | 90 | | | | | | |
| | 15" SXGA+ | 10 | 10 | | | | | | |
| | others | 70 | 70 | | | | | | |
| | MT total | 440 | 440 | | | | | | |
| | 15" | 150 | 150 | | | | | | |
| | 17" | 250 | 250 | | | | | | |
| | 18"+19 | 40 | 40 | | | | | | |
| | others | | | | | | | | |

Capacity

| Price Trend of all size LCD for Monitor Application | | | | | | | | |
|---|--------|---------|---------|--------|---------|---------|---------|---------|
| size | vendor | Dec~01 | Jan~02 | Feb~02 | Mar~02 | Apr~02 | May~02 | Jun~02 |
| 15" XGA | CPT | 225 | 235~240 | 245 | 250 | 255 | 260 | 265 |
| | AUO | 225 | 235 | 245 | 250 | 255 | 260 | 265 |
| | CMO | 225 | 230~235 | 245 | 250 | 255 | 260~263 | 265 |
| | HSD | 225~230 | 235~240 | 245 | 255 | 260 | 265 | 270 |
| | SEC | 225 | 235 | 245 | 250 | 255 | 260 | 260 |
| | LGP | 225 | 235 | 245 | 250 | 260 | 265 | 270 |
| 17" SXGA | AUO/TN | 340 | 350~355 | 355 | 365~370 | 380 | 380~385 | 385~390 |
| | CMO/TN | 340 | 350 | 355 | 370 | 380 | 385 | 390 |
| | SEC/TN | 345 | 345 | 355 | 370 | 375~380 | 380~385 | 380~385 |
| 18" SXGA/MVA | CMO | 430/450 | 450~460 | 460 | 450~480 | 460~470 | 465~470 | 465~470 |
| | LGP | 450 | 450 | 450 | 440~450 | 445~450 | 450 | 450 |

MT Price trend



Discussion Agenda

- **General Market Status Update**
- **Q3 Supply-Demand Outlook**
- **June Pricing Review**
- **July Pricing Plan**
- **CEO Meeting Arrangement**
- **Open Discussions**

June 5th 2002

From: Hui Hsiung 黃輝
Sent: Thursday, April 10, 2003 2:15:30 PM
To: Steven Leung -À'-' ; KT David Chu Žē Ž'x; Michelle Chao æâXœN; Mavis Chien ŠĖ i"@; Hubert Lee ->ŽWžĀ; JC Wang %œŽu<; James CP Chen 'Āœš•k; Joe Tsui ›ĀŽŠ „; Richard Bai "" -'; Anita Chen 'Āă»'ë; PH Lin -Ń" O; David Su 'h•ô ³
CC: HB Chen 'ĀûR•j; Phoebe Chang 'Ė-l-i
Subject: RE: Important Reminder -- Crystal Operation Meeting 4/11 9am

Steven,
Thanks for taking care of the meeting coordination over the past two years. Since this is an across-the-BU event, I would like to assign JC as the AUO coordinator. Please pass to him your experience and the contact list of other TFT-LCD makers. In particular, please make sure that JC knows that he needs to take notes and keep the meeting highly confidential.

Regards,
Kuma 4/10/03

-----Original Message-----

From: Steven Leung 梁兆龍
Sent: Thursday, April 10, 2003 11:19 AM
To: Steven Leung 梁兆龍; Hui Hsiung 熊暉; KT David Chu 朱克泰; Michelle Chao 趙宜君; Mavis Chien 簡淑如; Hubert Lee 李燦榮; JC Wang 王志強; James CP Chen 陳建斌; Joe Tsui 崔至剛; Richard Bai 白柏龍; Anita Chen 陳莉庭; PH Lin 林培弘; David Su 蘇峰正
Cc: HB Chen 陳炫彬; Phoebe Chang 張偉麗
Subject: Important Reminder -- Crystal Operation Meeting 4/11 9am

Dear ALL,

Please be reminded of the upcoming Crystal Operation Meeting as follows.

- Participation by Kuma/JC/KT will be dependent on personal time availability.
- LJ is requested to attend in order to meet our competitors for the 1st time if time availability allows.
- MDBU is requested to send representative.
- TVBU will be notified of ongoing meetings and participation dependent on need and/or availability.

Thanks in advance.

Meeting Host: CPT

Participants: AUO, Samsung, LG-Philips, CMO, CPT, Hannstar

Date/Time: APR 11th 9AM

Location: Rebar Hotel /Crowne Plaza (Section 5, Nanjing East Road) Zhen Zhu [Pearl] Room

Major Topics: Market Information & Pricing Trend & Capacity Utilization

Best Regards,
Steven
0953-168668

**** Extremely Confidential - Must NOT Distribute. ****

Dear ALL,

Please note following summarized highlights of:
Crystal Operation Meeting -- March 20, 2003 9am
(Hosted by AUO)

- 1. Attached summary XLS file of vendor based MAR-APR pricing and capacity utilization.**
- 2. General information sharing below.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CR-09-0110 SI

Government Exhibit #: 15T
Date Admitted: _____
By: _____ (Deputy Clerk)

**Next Crystal Operation Industry Meeting will be hosted by CPT:
4/11 Friday 9am Location TBD.**

Arrangements will be confirmed by me later.

Thanks & Best Regards,
Steven

- **Total (AUO+Samsung+LGP+CMO+CPT+Hannstar) Capacity Growth (NB+MNT):**
2003 -- FEB 4228K Panels, MAR 4693K Panels, APR 4930K Panels
- **Total (AUO+Samsung+LGP+CMO+CPT+Hannstar) 17" MNT Panel Capacity Growth:**
2003 -- FEB 852K 17" Panels, MAR 1153K 17" Panels, APR 1220K 17" Panels
- **18" Panel Pricing Almost Same as 17" Panel (CMO + LGP):**
\$280 MAR Increase to \$280~290 in APR
- **Note aggressive LGP MNT panel volumes of 550K 15" and 150K 17" by APR:**
LGP proposed support plan to customers: 2 15" for 1 17" Package (15"/17" MNT Leverage).
Pose dangerous threat to AU's 1st tier MNT brand/ODM customer base.

Samsung:

- **FEB 2003 G5 Substrate Input 25K (Reported ~75% Yield)**
- **MAR 2003 G5 Substrate Input 30K (+5K)**
- **~200K 17" Panels Output Currently on G5**
- **G5 Stage 2 MP Start in Q4 2003 (Target Ramp to 70K Substrates)**
- **G7 2100x800 2004/E MP Target**
- 17" MNT Panel Capacity Growth -- FEB 350K, MAR 480K, APR 480K
- 15" MNT Panel Capacity Growth -- FEB 60K, MAR 130K, APR 130K
- Maintain optimistic prediction of supply shortage into Q3 2003.
- Samsung Volume Allocation Guideline for Customers:
 1. Use only 80% of planned total output volume for allocation commitments.
 2. Allow 20% volume buffer for supporting upsize volume requests at higher price.
- Aggressive Claim: Allocation de-commit if MNT pricing below -- 15" \$185 and 17" \$280 (APR)

LGP:

- **G5 (Current Stage 1) -- 60K/M Substrates (18" Focus)**
- **G5 Stage 2 Planned MP Ramp-Up from APR 2003 (17" Focus)**
- **Total 120K/M G5 Substrates Capacity by 2003/E**
- 17" MNT Panel Capacity Growth -- FEB None, MAR 50K, APR 150K
- 15" MNT Panel Capacity Growth -- FEB 350K, MAR 400K, APR 550K

CMO:

- 17" MNT Panel Capacity Growth -- FEB 200K, MAR 220K, APR 170K
- 15" MNT Panel Capacity Growth -- FEB 240K, MAR 230K, APR 290K
- 19" Panel Reduction Plan -- MAR 60K, APR 30K
- 20" Panel Increase Plan -- MAR 20K, APR 40K
- 17" MAR Pricing \$260~270 (Planned \$2~3 Increase for APR)

CPT:

- **G4.5 MP in May (Focus on 17" volume ramp-up.)**
- **Stage 1 MP Start in MAY 2003 (Ramp-Up to 45K/M Substrates)**
- **Stage 2 MP Start in JUL 2003 (Ramp-Up to 30K/M Substrates)**
- **Reports Aggressive BP Target to Reach 75K/M G4.5 Substrates Within Q3**
- 15" MNT Panel Output Plan -- 380K MAR, 365K APR
- 17" MNT Panel Output Plan -- 3K MAR, 10K APR

Hannstar:

- 15" MNT Panel Output 260~270K MAR-APR
- 15" MNT-SIP Highest Planned Pricing at \$185~188 MAR (Except Samsung \$190 for Apple)

Reported News on QDI:

- **MP Volume Output Start in APR**
- ~50% 17" Panel Output for Quanta MNT Production Use
- Balance ~50% 17" Panel Output for Outside Customers (Amtran, Philips, etc.)

From: Michael WK Wong ¶À×Ã±j
Sent: Saturday, July 31, 2004 4:23:59 AM
To: Hui Hsiung °µ·u; LJ Chen ³¬·Ó§U
CC: Steven Leung ±ç¥üÄs; Roger Hu J¥ÃÄP; James CP Chen ³¬«ØÛy
Subject: Dell Update

Kuma and LJ:

I finally get hold of that LPL guy, here is what I found out:

With its \$180/15" and \$240/17" prices, its vol. in August is such,

15" down to 40K from 70K (BP) and 17" down to 30K from 150K (BP) while it still enjoys monopoly on 20" with 45K - 47K shipment at \$510 in July.

Because of the nature of joint-venture, LPL has no flexibility to work out a price reduction package to help Dell to clear up its pipe-line inventory.

Besides this, here is what I hear from BenQ:

| | | |
|-----|------|------|
| 15" | Jul. | Aug. |
| LPL | 0 | 20K |
| CPT | 20K | 15K |

| | | | |
|------------|------|------|-------|
| 17" | Jul. | Aug. | Sept. |
| LPL | 0 | 9K | 45K |
| AMLCD 41K* | 0 | 10K | |
| CMO** | - | - | 25K |

* Transferred from LiteOn

** New model E173FP

Hope this piece of information is of helpful.

Regards,

Michael

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CR-09-0110 SI

Government Exhibit #: 6

Date Admitted:

By: (Deputy Clerk)

AU-MDL-03570224

From: Steven Leung ±çŸüÀs <StevenLeung@auo.com>
Sent: Wednesday, August 25, 2004 2:35 PM (GMT)
To: Hui Hsiung °µ·u <huihsiung@auo.com>; Michael WK Wong ¶ÀŸÃ±j <michaelwkwong@auo.com>; LJ Chen ³¬Ö§U <ljchen@auo.com>
Cc: Roger Hu JŸÃÄP <rogerhu@auo.com>; Rebecca Liu ¼B¬üå <rebeccaliu@auo.com>; Nero Hung ¬xªh·½ <herohung@auo.com>; James CP Chen ³¬«ØÛy <jamescpchen@auo.com>; Anderson Liao ¹ùÂí°ê <andersonliao@auo.com>; Steven Leung ±çŸüÀs <stevenleung@auo.com>; Gilbert Hua ºá°ûÁn <gilberthua@auo.com>; Hubert Lee §ðÀéª <hubertlee@auo.com>
Subject: SEP Pricing Scenario (CPT/CMO/HSD/LPL vs. DELL/HP)

Dear Kuma & LJ,

Possible Reason for "High Price" information from SI (e.g. BenQ/Liteon) as compared to information from Smith or direct from competitor -- As demonstrated in July negotiations for August pricing, integrators are not informed by DELL of final LCD pricing or volume allocation applicable to each LCD vendor until the pricing/volume negotiations are closed at DELL. For example: BenQ may now have information about possible AMLCD/LPL SEP pricing but in reality the figures are still in negotiation with DELL/HP. For DELL case, DELL will inform BenQ of the finalized pricing and allocation for each LCD vendor before month-end. The actual finalized pricing in some cases will be lower than whatever pricing figures that BenQ acknowledges now.

For information below, do not freely distribute -- Confidential information from protected sources.

I. CPT Pricing Overview (Source: CPT)

| | (DELL) | AUG | SEP | (HP) | AUG | SEP |
|-----|--------|-------|-------|------|-------|------|
| 15" | | \$170 | \$165 | | \$180 | Open |
| 17" | | \$220 | \$205 | | \$230 | Open |

Notes:

1. CPT has not yet confirmed SEP pricing to HP.
2. In August, HP has confirmed 30K~40K allocation for 15"/17" respectively to CPT. Yet final integrator demand faced significant reductions (TPV 15"/17" No Production, Liteon 15"/17" Each ~10K).
3. Original CPT August pricing to HP was US\$190/240 (15"/17"). CPT has later met HP demand for \$10 reduction for both 15"/17". But still no REAL Demand increase.
4. AUO August pricing to HP is still at the original quoted US\$190/240 (15"/17") level.

II. CMO Pricing Overview (Source: CMO)

| | (DELL) | AUG | SEP | (HP) | AUG | SEP |
|-----|--------|-------|-------|------|-------|-----|
| 17" | | \$225 | \$210 | | \$230 | 209 |
| 19" | | \$325 | \$310 | | \$330 | 309 |

III. HSD Pricing Overview (Source: HSD)

| | (DELL) | AUG | SEP | (HP) | AUG | SEP |
|-----|--------|-------|-----------|------|-------|------|
| 15" | | \$175 | \$160~170 | | \$180 | Open |

Notes:

1. HSD has initially quoted US\$170 as SEP 15" pricing to DELL but was rejected. DELL has requested for HSD to re-quote at under US\$165. The 15" pricing range at \$165 or under will be very difficult in terms of economical feasibility for HSD's G3 FAB.
2. HSD currently supports ~100K/M 15" to DELL thru TPV and Foxconn. Original TPV:Foxconn volume ratio for "HSD panels for DELL" has been approximately 7:3 but now has shifted to be 3:7 due to build-up of inventory at TPV.
3. Foxconn reported having committed to DELL to deliver full set price US\$10 under the lowest competitor full-set price (in order to secure DELL volume). Foxconn reported to target becoming Top-3 TFT-LCD monitor integrator by Q2 2005 and to be Top-1 by 2005/E.

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 NORTHERN DISTRICT OF CALIFORNIA
 CR-09-0110 SI
 Government Exhibit #: 8
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 By: _____ (Deputy Clerk)

IV. LPL Pricing Overview (Source: LPL USA via Michael)
(DELL) AUG SEP
19" TN \$330 \$305~310

Best Regards,
Steven

-----Original Message-----

From: Hui Hsiung 熊暉

Sent: 2004/8/23 [星期一] 上午 11:03

To: Michael WK Wong 黃永強; LJ Chen 陳來助

Cc: Steven Leung 梁兆龍; Roger Hu 胡永鵬; Rebecca Liu 劉美文; Nero Hung 洪沼源; James CP Chen 陳建斌

Subject: RE: Price for Sept. vs. Dell Target

Dear All,

I heard from BenQ much higher prices from SEC and LPL for Dell – very different from Smith's info. Who is right?
Kuma 8.23.2004

-----Original Message-----

From: Michael WK Wong 黃永強

Sent: Monday, August 23, 2004 3:13 AM

To: LJ Chen 陳來助

Cc: Steven Leung 梁兆龍; Roger Hu 胡永鵬; Rebecca Liu 劉美文; Nero Hung 洪沼源; Hui Hsiung 熊暉; James CP Chen 陳建斌

Subject: Price for Sept. vs. Dell Target

LJ, I believe AM LCD has done its quote and it's believed to be rather competitive. Shutuan is reluctant to indicate where our 19" VA needs to be by saying this breaks "the confidentiality for those products with only one other supplier supplying in the space" But I suspect it falls in the range of \$310 of which I also draw inferences from Smith's information last week.

Michael

-----Original Message-----

From: LJ Chen 陳來助

Sent: Sunday, August 22, 2004 4:55 AM

To: Michael WK Wong 黃永強; Steven Leung 梁兆龍

Cc: Hui Hsiung 熊暉; Roger Hu 胡永鵬; James CP Chen 陳建斌; Rebecca Liu 劉美文; Nero Hung 洪沼源

Subject: RE: Price for Sept. vs. Dell Target

Michael:

Thanks,

It's close deal with Dell ?

How's SEC ?

LJ

-----Original Message-----

From: Michael WK Wong 黃永強

Sent: 2004/8/22 [星期日] 下午 01:25

To: LJ Chen 陳來助; Steven Leung 梁兆龍

Cc: Hui Hsiung 熊暉; Roger Hu 胡永鵬; James CP Chen 陳建斌; Rebecca Liu 劉美文; Nero Hung 洪沼源

Subject: Price for Sept. vs. Dell Target

LJ:

Here is what I have with Dell from last week according to Shutuan,

15" TN \$165
17" TN \$210
19" VA \$310
19" TN \$300 (my deducing from that of 19" VA)

The above is what Dell gets so far and below is Dell's target published two weeks ago.

| Panel | PN | Supplier | Sept / Oct Cost Target |
|--------|----|----------|------------------------|
| 15" TN | | AUO \$ | 160 |
| 17" TN | | AUO \$ | 210 |
| 17" VA | | AUO \$ | 210 |
| 19" TN | | AUO \$ | 265 |
| 19" VA | | AUO \$ | 305 |
| 20" W | | AUO \$ | 390 |

With Steven and Roger away on vacation, I thought to keep you posted while I will follow this up further next week when we may need to close these prices for Sept. by then.

Regards,

Michael

From: Michael WK Wong 黃永強
Sent: Tuesday, November 23, 2004 8:40:49 PM
To: Hui Hsiung 熊暉; LJ Chen 陳來助
Subject: Dell Updates (CONFIDENTIAL)

Kuma and LJ:

Shutuan indicates that AM LCD drops 17" down to \$155 in order to gain increased share of TAM. However we've checked with Dell GSM in Shanghai that AM LCD won't get it since it has quality/delivery combined issue in Oct./Nov.

Yes, the file will be erased after this.

Michael

-----Original Message-----

From: Hui Hsiung 熊暉
Sent: Tuesday, November 23, 2004 3:49 AM
To: Michael WK Wong 黃永強; LJ Chen 陳來助
Subject: RE: Dell Updates (CONFIDENTIAL)

(Please erase this mail after reading it.)

Michael and LJ,
 LPL's CS Chung called me and asked about our prices to Dell. I disclosed \$140/\$160/\$250/\$270 to him and he said that they will offer the same prices to Dell. He said that he is under Dell's pressure to lower the prices quoting lower offers from some Taiwanese company (not from Samsung). He thought that Hannstar has the low offer (\$155 for 17"?). I told him that we should ignore other Taiwanese offers.

Regards,
 Kuma 11.23.2004

-----Original Message-----

From: Michael WK Wong 黃永強
Sent: Tuesday, November 23, 2004 11:27 AM
To: Steven Leung 梁兆龍; WJ Cheng 鄭文俊; Roger Hu 胡永鵬
Cc: LJ Chen 陳來助; James CP Chen 陳建斌; Joselyn Liu 劉慧君; CM Wung 翁崇銘; Nero Hung 洪沼源; Tony Hsu 許晉綸; Vincent Cheng 鄭水金; Anderson Liao 廖鎮國; Hui Hsiung 熊暉; Renee Wang 王慧芳; SI Jeong 鄭盛日
Subject: Dell Updates

Steven, Tony, Roger and the team:

I've verbally updated Shutuan about 15" price revision to \$140 and we'll keep 17" to \$160 as it is.

Here are what I gathered from her and LPL contact in Ausitn (AM LCD won't release any meaningful information):

15" - Dell confirms there are offers below \$140 but doesn't sound like they're from Koreans. It sounds like Shutuan will use our price to corner LPL and AMLCD(possibly)
 17" - Dell clearly indicates AM LCD drop to \$155 to get increased TAM (Roger, you may want to check with Jessica in Shanghai to find out any clue as to whether this will be materialized in its allocation update)
 19"TN - I am told the new quote is down to \$240 now as we speak
 19"VA - We are OK at \$270 for Dec. but AM LCD is moving down to \$250 in Jan. or it's Dell's target price (We will worry about this later)
 20.1"Wide - The volume remains small between 5K/Oct. and 10K - 15K/Nov. monitor shipment according to LGE. Price will go down as low as \$300 in Feb. according to Shutuan
 20UXGA - Dell decides to bring AM LCD in to join LPL on current model since the TAM would not allow

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 NORTHERN DISTRICT OF CALIFORNIA
 CR-09-0110 SI
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third supplier yet. Dell's initial assessment resulting to this decision includes possible impact of 20.1" Wide's eroding demand on this model. AM LCD beats us by having a model readily available now

Overall, I feel that Dell has not settled the price issue with all suppliers yet. We might as well wait after until Thanksgiving 11/29 (next Monday) to close it. (Roger, again please verify through Dell Shanghai if the TAM would wait until next Monday or it's closed before Thanksgiving)

Thanks,

Michael

[Handwritten:] → Tony/ Lee

Chunghwa Picture Tubes Sales Division Optoelectronic Product Department *SAL01010902*

Report (Confidential)

[Handwritten:] Submitted for approval

Topic: Market Situation Exchange Among Taiwanese LCD Makers

Makers: AU Hsing Chien Tuan, Shou Jen Wang;

CMO Jau Yang Ho, Hsin Tsung Wang, Wen Hung Huang;

HS Lu Pao Hsu, Ding Hui Joe (titles omitted)

Time and location: September 14, 2001 09:00~11:30

CPT: President Lin, Vice President Liu, Hsueh Lung Lee (note taker)

【Preface】

1. Through this exchange session, all makers are hoping that an orderly pricing can be maintained for the short term, and production capacity and demand balance can be achieved for the mid and long term, thus prices can be stabilized in order to ensure profitability in the *TFT* industry.
2. The expectations and suggestions that the makers have for this meeting

CMO: (1) Keep confidential from the public (news media) and from internal colleagues. (2) In term of *ABS*, joined Samsung, *LG*, interacting informally with Japanese makers. This has kept the high prices and profitability in *ABS* for more than ten years.

AU: (1) Must act together with the Korean makers in order to reap success. (2) Investment in China's *TFT-LCD* must be in control; otherwise it will only be another replica of the Taiwanese *TFT*. (3) Establish a mechanism similar to the "yellow flag" in car racing; all the makers would, through discussions and consultation come to a consensus and practice (such as raising the yellow flag) and obey this rule to maintain order.

HS: (1) Could use the name of "*TFT-LCD* Research and Development Alliance" of the Ministry of Economic Affairs, Executive Yuan, to conduct informal exchanges. (2) Establish a best utilization rate (*loading rate*). The utilization rate doesn't have to be at 100%.

CPT: (1) Suggest Korean makers postpone their investment in fifth generation production line, or it could cause the Taiwanese makers to follow suit thus start something similar to an arms race. (2) In May, Samsung of Korea came to discuss holding the ground on prices. Unfortunately, other makers in the industry could not hold fast, except for CPT, who maintained prices in June, July, and August,

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Brackets [] indicate translator's notes.

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but eventually, it had no alternative but to lower its prices due to pressure from customers and purchase orders. (3) In September, Mr. Lee, the Director of Samsung came to visit again and revealed that *SEC* and *LG.PHS*'s orders were full, could maintain orderly pricing. (4) Consumers already are able to fully accept the LCD monitors prices, lowering the prices would not affect demand; therefore, prices should not be lowered.

【Status Summary of Each Maker】

1. *HS*: Production capacity is about 200K~250K pieces per month. Order taking capacity is full. 15" takes up 60% and 14.1"/12.1" (mainly for *Compaq*) takes up 40%. The price for 14.1" is about \$180, the price for 15" is about \$200~190. It said that the price differential between *A rank* and *B rank* is \$10.
2. *CMO*: Product sales are primarily focused on 14.1" at 120 *K/M* (80% for export) with 17" as second. 15" is mainly for Fujitsu's OEM, with more demand than supply. Factory 2 is beginning its mass production in September, the phase one production capacity is 50*K/M input* with 75*K/M* as the maximum capacity. For Factory 1, the production capacity is 50*K/M input*. The price for 15" is stated to be \$195 and the price for 14" at \$165~\$175.
3. *AU*: Four production lines, the *Unipac* production line is used mainly for *NBPC*, while *Acer* is mainly for *FPM* use. The current utilization rate of the production capacity is 90%. The purchase order is at 500*K*, and the production shipment volume is at 400*K*. For the 3 older lines, total input is about 125*K/M* of the capacity; the production capacity of the new 680x880 line can reach 115*K/M*. Currently, the plan is to only input 35*K/M*. The price for 14.1" is stated to be \$180~\$160 with the exception of *Compal*, which is even lower, with 15" price range between \$196~\$200, and 17" price range between \$325~\$340.

【Discussion and Consultation】

1. After discussion, it was decided to first maintain prices in October (except for those already promised, which would not be subject to this limit), and in November,

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Chunghwa Picture Tubes Sales Division Optoelectronic Product Department *SAL01010902*

Report (Confidential)

try to raise the prices. Lowest prices are resolved as follows:

| | 15"XGA | 14"XGA | 17"SXGA | 18"SXGA |
|----------|--------|--------|---------|-----------|
| October | \$195 | \$165 | \$330 | undecided |
| November | \$200 | \$170 | \$335 | |

PS: CMO 18" price plan for October is \$480, and for November is \$460. The price for *CPT 18"* will be discussed later.

2. Pricing Principle: The listed prices are net sales prices (*net price*). Each maker may adjust according to respective situation, but cannot sell for less than these prices. Internal sales price shall not be discounted more than 3%, and will use after-sale *Rebate*, in order to avoid disturbing the order of market prices.
3. Principle for meetings: Each quarter, each maker shall take turns coordinating. The order is *HS, CPT, CMO, AU*. *Commercial meeting* shall be set under this meeting and be attended by sales vice presidents each month to discuss practical methods to stabilize prices and exchange necessary supply and demand information (tentatively set for next week: each shall be prepared to discuss total production capacity and demand).
4. The next meeting for *Top management*

Time: 9:00 *a.m.* on October 19th at the Howard Hotel. (*CPT* will reserve a conference room)

Agenda: (1) Discussion of price, supply and demand for next year, (2) How to deal with *B rank*, (3) Discuss whether to invite Korean makers and Quanta Display Inc. to join the meeting.
5. Others: Do not disclose this meeting to outsiders, not even to colleagues; keep a low profile. To cultivate an atmosphere for raising prices, if journalists interview, may reveal that the production capacity is at full load. The US 911 incident has very limited impact on demand; hence there will be no need to lower prices.

~ End of Report ~

[Signature] 9/14'01

[Initial] 9/18

[Initial] 9/19

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CPT0004010(T)

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[Handwritten:]
→ Tony Yeh
→ Lee

Chunghwa Picture Tubes Sales Division Optoelectronic Product Department SAL01010903

Report (Confidential)

Topic: LCD Maker Gathering – *Commercial Meeting*
Makers: AU Shou Jen Wang, Tai Yuan Hsiao;
CMO Hsin Tsung Wang, Chien Erh Wang, Hsiao Han Huang;
HS Ding Hui Joe, Ching Hsien Wu;
SET Hong Sik Cho;
LGP Stanley Park (titles omitted)
Time and location: September 21, 2001 13:30~16:30, Howard Hotel, Room 401
CPT: Vice President Liu, Hsueh Lung Lee (note taker)

[Handwritten:] Submitted for
approval

【Agenda】

1. Supply-demand discussion and exploration: Q4/'01 and Q1/'02 (including October 2001).
2. Price discussion and consultation.

【Supply Demand Discussion and Exploration for Q4/'01 to Q1/'02】

1. This time CPT led the discussion and exploration on the supply and demand situation of Q4/'01 and Q1/'02 (including October 2001); hoping that through the analysis of this information, a decision can be made on how the TFT industry should respond. If supply cannot meet demand (*shortage*), then all makers shall immediately adjust the TFT price upward in October. On the other hand, if supply exceeds demand (*oversupply*), then reduce production to decrease output, so as to reach the common goal of a balanced market supply and demand and the stability of prices.
2. TFT Capacity: The production capacity from October 2001 to Q1/'02 is shown below, which is according to the production capacity plan that each maker provided (the information on Japanese makers' production capacity plans will be primarily based on the estimation provided by CPT because the Japanese makers are no longer invited):

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| <i>Unit: K pcs/M</i> | <i>Makers</i> | <i>Oct.</i> | <i>Q4/01' (Oct.~Dec.)</i> | <i>Q1/02'</i> | <i>Total (Q4~Q1)</i> |
|----------------------|----------------|-------------|-------------------------------|---------------|--------------------------|
| <i>Korea</i> | <i>SEC</i> | 850 | 870 | 920 | 1,790 (1) |
| | <i>LGP</i> | 700 | 700 | 750 | 1,450 (2) |
| | <i>Hynix</i> | 167.5 | 167.5 | 167.5 | 335 |
| <i>Taiwan</i> | <i>AU</i> | 530 | 530 | 500 | 830 (3) |
| | <i>CMO</i> | 240 | 250 | 300 | 550 (8) |
| | <i>HS</i> | 250 | 280 | 300 | 580 (7) |
| | <i>CPT</i> | 300 | 375 | 340 | 715 (6) |
| <i>Japan</i> | <i>DTI</i> | 1494.5 | 265.7 | 251 | 516.7 (9) |
| | <i>Sharp</i> | | 390.7 | 415.5 | 806.2 (4) |
| | <i>HTC</i> | | 388.5 | 403.5 | 792 (5) |
| | <i>Torisan</i> | | 126 | 118 | 244 |
| | <i>Others</i> | | 323.6 | 307.6 | 631.2 |
| <i>Total Capa./M</i> | | 4,532 | 4,667 | 4,773.1 | 9,440.1 |
| <i>Total Capa./Q</i> | | | 14,001 | 14,319 | 28,320 |

Note: Listed by production capacity volume in descending order (Q4/'01~Q1/'02): Samsung, LGP, AU, Sharp, Hitachi, CPT (ranked 6th), Hannstar, CMO, DTI. However, since CMO and DTI merged, the production capacity of the two will jump up to the 3rd largest maker, and CPT will become number 7.

3. TFT Demand: Attendees acknowledged CPT's estimated demand on current and future respective application products,

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thus adopted.

| <i>Unit: Million</i> | <i>Q4/01'</i> | <i>Q1/02'</i> |
|----------------------|---------------|---------------|
| <i>NBPC</i> | 7.6 | 7.5 |
| <i>LCD Monitor</i> | 5.3 | 5.0 |
| <i>LCD TV</i> | 0.1 | 0.2 |
| <i>Total</i> | 13 | 12.7 |

4. Summary: Supply and demand situation for the overall market (*Q4/01' to Q1/02'*)

| | <i>Supply</i> | <i>Demand</i> | <i>Remark</i> |
|---------------|----------------|----------------|-------------------|
| <i>Q4/01'</i> | 14 <i>M.</i> | 13 <i>M.</i> | <i>Oversupply</i> |
| <i>Q1/02'</i> | 14.3 <i>M.</i> | 12.7 <i>M.</i> | <i>Oversupply</i> |

【Further Discussion and Exploration on the Supply and Demand of October】

- Aside from the fact that the production capacities of the Korean makers present at the meeting were not filled at 100%, the feedback from all the Taiwanese makers is that their production capacity in October cannot satisfy customer demands by about 30%. This means the Taiwanese makers cannot deliver enough products. Although by using the quarterly supply and demand totals there appeared to be oversupply (*Oversupply*), all the makers expressed that their capacities are already full and the demand is exceeding supply. Therefore, there should be further discussion on the October estimate for the supply and demand situation.
- Simulated supply and demand: (Hypothetical *Q4 Total Demand = 13M.*)

| Hypothetical conditions | <i>Oct</i> | <i>Nov</i> | <i>Dec</i> | <i>Total</i> |
|-------------------------|------------|------------|------------|--------------|
| <i>Case 1 (%)</i> | 40 | 35 | 25 | 100% |
| <i>Case 2 (%)</i> | 35 | 40 | 25 | 100% |
| <i>Case 1 (M.)</i> | 5.2 | 4.55 | 3.25 | 13 <i>M</i> |
| <i>Case 2 (M.)</i> | 4.55 | 5.2 | 3.25 | 13 <i>M</i> |

- Result of simulation: Regardless of the hypothetical demand ratio of either *Case 1* or *Case 2*, possible demand volume in October is between approximately 4.55*M*~5.2*M*. Comparing the total production capacity estimate from respective makers which is at 4,532*K*, after assessment, it was determined that supply will not satisfy demand (*shortage*) in October. ($D=4.55$ or $5.2M > S=4,532K$)

Italics denote English words found in the original text.

Brackets [] indicate translator's notes.

【Price Discussion and Consultation】

1. Comments of each maker toward the prices for Oct/Nov as follows:

| | <i>Month</i> | 14.1" XGA(NB) | 15" XGA(LCD Monitor) |
|-----------------|--------------|---------------|----------------------|
| <i>CMO</i> | <i>Oct</i> | \$165+(5~10) | \$200~205 |
| | <i>Nov</i> | \$(170~175)+5 | \$205+10 |
| <i>Hannstar</i> | <i>Oct</i> | \$175 | \$195+(0~10) |
| | <i>Nov</i> | \$175+5 | \$205~210 |
| <i>AU</i> | <i>Oct</i> | \$165+(5~10) | \$195+10 |

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| | | | |
|------------|------------|---|------------|
| | <i>Nov</i> | $\$(170\sim175)+5$ | $\$205+10$ |
| <i>CPT</i> | <i>Oct</i> | $\$165+(5\sim10)$ | $\$195+10$ |
| | <i>Nov</i> | $\$(170\sim175)+5$ | $\$205+10$ |
| <i>SET</i> | <i>Oct</i> | 12.1"=\$165; 14.1"=\$178; 15"=\$195~200 | |

2. Price Conclusion: The attended makers agreed that those Oct/Nov prices are close to one another, so it was resolved to adjust the price upward to:

| <i>size</i> | <i>Oct</i> | <i>Nov</i> |
|-----------------|------------|------------|
| 15"XGA(Monitor) | + \$10 | + \$10 |
| 14.1"XGA(NBPC) | + \$5~10 | + \$10 |

3. There may not be enough time for prep work before increasing prices for October or some customers may have already been given quotes, therefore, the new price plan application will be as follows: *Oct/1~15* the old price can still be used, and then from *Oct/16~31*, the new price will be used.
4. After private discussion and consultation with *AU*, it was decided that we will simultaneously adjust the price upwards for *Compal/HP* to \$160 in *Oct*.

【Next Meeting】

- Morning of October 5th at the *Howard Hotel*.
- Organizer: *CMO*
- Agenda: ① Exchange results of implementation of new prices for October and discussion and consultation on challenges.
② Pre-meeting prior to the *Top Meeting* on October 19th.

~ End of Report ~

[Initial] 9/24

[Submitted by] ^{Employee} Hsueh Lung Lee 2001/9/21

[Initial] 9/24



Sang Woo Park, Taiwan Corp. Sr. Mgr. (7-0839)
 Receipt Date & Time:
 2004-11-05 11:59 am
 Date & Time First Read
 2006-06-27 06:46 p.m.

To: Duk Mo Koo, W-W Sales EVP
 Cc: Hyung Seok Choi, Taiwan Corp. G. Mgr.;
 Bock Kwon, VP Notebook Sales
 Subject: SM 041104

1. 2004.11.4. *Holiday Inn Rebar Crowne Plaza*
2. *HSD* did not attend for the reason of sales *WS*
3. Atmosphere:
 Because of *Seasonality*, showed growth on the whole.
 Because there are rampant *Rumor* in the market regarding *LPL pricing*, the atmosphere was one that attributing the responsibility for the price drop even in high-demand season to *LPL*.
 They formed a consensus to defend the 17" related sales price at \$170 or higher to the last.
4. Summary
 - Compared to September, *AUO* showed 12%, *CMO* 10%, and *CPT* 7% of growth. For *AUO*, growth in *MNT* focused on 19" was conspicuous. Although *CMO*'s 15" *NB* was increased 80% compared to September, it was a recovery to the August level (120K). *CPT*'s *NB* also grew. Since the first half of this year, *NB* has been in steadily growing trend. Both *AUO* and *CMO* achieved TV 200K/M. In case of *AUO*, increase in 20" was the key cause and for *CMO*, 27" grew.
5. By Each Company
 - *AUO*:
MNT Demand is increasing. TV Biz has been good, but as the *Christmas* seasonal demand will end in November, decline is expected.
 For *NB*, 15.4W demands are steadily increasing. Although the supply for 14" is *Tight*, the demand itself is not regarded as large.
 Product *Inventory* is 5~7 days. (The 56days in *IR Conference* announcement data was the volume including *Material* and *WIP*.)
G5 Max capa is 1850K and the current *Loading* rate is at 85% level.
G6 equipment Install have been completed and they are in *Process Test*. *MP* in Q2. (32">19">17")
 For 19", *TN/VA* are all planned for production.
 - *CMO*:
Loading Rate is about 85% level. 17" increased sharply. 19" declined due to *Production* issues. *MNT Captive (CMV)* sales are 150K for 17" and 50K for 15" levels.
TV Demand is expected to grow 5% in November as well.
G.5 was 70K/Oct. and is scheduled to expand to 85K by the year end. (Max 120 @ 2Q '05)
G.5.5 is in the process of *Move-in*. Scheduled for mass production in late 1Q~ early 2Q (30K/phase 1).
 32">27" input first. No *MNT* plan for the initial period.
Fujitsu 19" Foundry has sharply decreased.
 Holds 1 month worth of inventory. TV is being operated on advance production and immediate *Delivery* response system basis.
 - *CPT*:
 Sales have increased due to recovery in *Demand*. While there was no reason to lower the price, the market price crumbled because of *LPL*'s low price offensive. Said that almost all *Account* demand to meet the price saying that *LPL* was making \$170 or below quote for 17" during October. (AOC \$170 and BenQ \$170 or below)
 They asked whether November price of \$160/17" was *Quote* to *Dell*, and we answered it has not been determined yet. They said that they used to sell at \$185 level to *Dell* or Taiwanese customers, but as *LPL* was *Quote* \$170, *Dell*'s price was adjusted to \$170, and other customers destined prices were also formed at \$170~175 line. This kind of situation was said to be similar for *AUO/CMO*. 15" was said to be \$150~155.
 With respect to the industry reorganization related report, it was a reporter's planned article, and not just *CH Lin* was *Interview*, all the *CEO* in the industry were requested for information. It was a typical *Move* to create materials for article.

GRN000111(T)

English words found in the original text are italicized.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 CR-09-0110 SI
 Government Exhibit #: 435T
 Date Admitted: _____
 By: _____ (Deputy Clerk)

They know of no movements from the government related to industry reorganization. If there are any, it would be conducted in secret.

-SS:

Expects strong trends in November following October. *MNT Inventory* of *Major* companies like *Dell*, etc. have been reduced. *SS VD* also is easy to command new price strategies because it is nimble in its organization. *HP* is thought to have still a large *Inventory* and thus their strategy deployment is slow. Taking this opportunity, companies like *Acer*, etc. are conducting strong *Promotion*. → Accordingly, companies like *Dell*, etc. are also lowering prices.

From the perspective of *Cost*, \$170 or below for 17" does not make sense. Hope that *Lose-Lose Game* is avoided and everyone endeavors to block at \$170. To *Dell's* demand of \$165 for 17", they are responding with *No* for anything below \$170. → Hope others to participate.

-End-

GRN000112(T)

| Breakdown | | Jun | July | Aug | Sep | Oct (P) | Oct | Ach. Rate | MoM | Nov(P) |
|-----------|-----------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|------------|
| AUO | Total (Kpcs) | 1500 | 1530 | 1270 | 1510 | 1680 | 1690 | 101% | 12% | 174 |
| | NB Total | 390 | 400 | 390 | 410 | 430 | 440 | 102% | 7% | 48 |
| | 14" XGA | 100 | 100 | 100 | 120 | 140 | 130 | 93% | 8% | 15 |
| | 15" XGA | 165 | 160 | 170 | 180 | 180 | 180 | 100% | | 18 |
| | 15" SXGA+ | 50 | 25 | 20 | 20 | 20 | 20 | 100% | | 2 |
| | 15.4" WXGA | 15 | 35 | 50 | 20 | 40 | 50 | 125% | 150% | 6 |
| | Others (8"/10.4"/12"/15.2") | 60 | 80 | 50 | 70 | 50 | 60 | 120% | -14% | 7 |
| | MNT Total | 1015 | 1015 | 795 | 950 | 1080 | 1050 | 97% | 11% | 108 |
| | 15" | 240 | 280 | 190 | 190 | 220 | 150 | 68% | -21% | 15 |
| | 17" | 560 | 575 | 490 | 580 | 650 | 660 | 102% | 14% | 69 |
| | 19" | 210 | 155 | 110 | 170 | 190 | 210 | 111% | 24% | 23 |
| | Others | 5 | 5 | 5 | 10 | 20 | 30 | 150% | 200% | 1 |
| | TV Total | 95 | 115 | 85 | 150 | 170 | 200 | 118% | 33% | 18 |
| | TV 20" | 35 | 30 | 30 | 55 | 70 | 80 | 114% | 45% | 7 |
| | TV 14"/15"/17" | 40 | 65 | 45 | 75 | 80 | 90 | 113% | 20% | 8 |
| | TV 26" | 7 | 10 | 5 | 15 | 15 | 20 | 133% | 33% | 2 |
| | TV 30" | 13 | 10 | 5 | 5 | 5 | 10 | 200% | 100% | 1 |
| CMO | Total | 1195 | 1061 | 1131 | 1155 | 1270 | 1270 | 100% | 10% | 127 |
| | NB Total | 375 | 288 | 170 | 154 | 245 | 195 | 80% | 27% | 24 |
| | 14" XGA | 120 | 54 | 46 | 82 | 100 | 68 | 68% | -17% | 10 |
| | 15" XGA | 110 | 101 | 124 | 54 | 120 | 97 | 81% | 80% | 12 |
| | 15" SXGA+ | | | | | | | | | |
| | 15.4" Wide | 15 | 3 | | 18 | 25 | 30 | 120% | 67% | 2 |
| | MNT Total | 666 | 623 | 618 | 696 | 695 | 726 | 104% | 4% | 69 |
| | 15" | 165 | 106 | 155 | 106 | 105 | 108 | 103% | 2% | 10 |
| | 17" | 360 | 411 | 396 | 480 | 480 | 568 | 118% | 18% | 48 |
| | 18" | | | | | | | | | |
| | 19" | 125 | 86 | 67 | 110 | 110 | 50 | 45% | -55% | 11 |
| | 20" | 16 | 20 | | | | | | | |
| | IDT | 130 | 130 | 153 | 140 | 145 | 148 | 102% | 6% | 14 |
| | TV Total | 154 | 150 | 190 | 165 | 185 | 201 | 109% | 22% | 18 |
| | TV 15" or less | 25 | 25 | 82 | 45 | 55 | 53 | 96% | 18% | 5 |
| | TV 20" | 76 | 76 | 53 | 55 | 65 | 65 | 100% | 18% | 6 |
| | TV 27" | 31 | 28 | 23 | 30 | 30 | 43 | 143% | 43% | 3 |
| | TV 30" | 22 | 21 | 32 | 35 | 35 | 40 | 114% | 14% | 3 |
| CPT | Total | 916 | 782 | 816 | 858 | 882 | 920 | 104% | 7% | 95 |
| | NB Total | 87 | 100 | 125 | 175 | 205 | 201 | 98% | 15% | 20 |
| | 14" XGA | | | 9 | 20 | 20 | 6 | 30% | -70% | |
| | 15" XGA | 47 | 54 | 50 | 55 | 75 | 70 | 93% | 27% | 7 |
| | 15" SXGA+ | 3 | 6 | 6 | 10 | 10 | 5 | 50% | -50% | |
| | 15.4" | 37 | 40 | 60 | 90 | 100 | 120 | 120% | 33% | 12 |
| | MNT Total | 819 | 674 | 683 | 673 | 660 | 705 | 107% | 5% | 73 |
| | 15" | 407 | 341 | 350 | 300 | 280 | 320 | 114% | 7% | 34 |
| | 17" | 412 | 333 | 333 | 370 | 370 | 380 | 103% | 3% | 39 |
| | 19" | | | | 3 | 10 | 5 | 50% | 67% | |
| | TV Total | 10 | 7.5 | 8 | 10 | 17 | 14 | 82% | 40% | 1 |
| | 13" | 9 | 6.5 | 4 | 5 | 10 | 8 | 80% | 60% | |
| | 20"/30" | 1 | 1 | 4 | 5 | 7 | 6 | 86% | 20% | |
| | Others | | | | | | | | | |

GRN000113(T)

| | | | | | | | | | | |
|-----|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|------------|
| HSD | Total | 545 | 530 | 470 | 480 | 510 | | | | |
| | NB Total | 10 | 14 | 20 | 40 | 70 | | | | |
| | 14" XGA | | | | | | | | | |
| | 15" XGA | 8 | 11 | 20 | 30 | 40 | | | | |
| | 15" SXGA+ | 2 | 3 | | | | | | | |
| | Others | | | | 10 | 30 | | | | |
| | MNT Total | 534 | 515 | 450 | 440 | 440 | | | | |
| | 15" | 453 | 388 | 370 | 360 | 330 | | | | |
| | 17" | 81 | 127 | 80 | 80 | 100 | | | | |
| | 19" | | | | | 10 | | | | |
| | TV Total | 1 | 1 | | | | | | | |
| | 23" | 1 | 1 | | | | | | | |
| | 26" | | | | | | | | | |
| | Others | | | | | | | | | |
| LPL | Total | 2053 | 2019 | 2129 | 2161 | 2510 | 2600 | 104% | 20% | 270 |
| | NB Total | 643 | 669 | 750 | 765 | 820 | 925 | 113% | 21% | 95 |
| | 14" XGA | 54 | 70 | 100 | 50 | | 60 | | 20% | 95 |
| | 15" XGA | 360 | 360 | 350 | 380 | | 510 | | 34% | |
| | 15" SXGA+ | 40 | 45 | 50 | 45 | | 50 | | 11% | |
| | 15.4" WXGA/WSXGA | 113 | 116 | 130 | 135 | | 145 | | 7% | |
| | Others(12.1"/13.3"/17"W) | 76 | 78 | 120 | 155 | | 160 | | 3% | |
| | MNT Total | 1228 | 1178 | 1205 | 1217 | 1450 | 1455 | 100% | 20% | 150 |
| | 15" | 313 | 426 | 395 | 375 | | 320 | | -15% | 150 |
| | 17" (include 17" Wide) | 647 | 542 | 550 | 520 | | 670 | | 29% | |
| | 18" | 59 | 36 | | | | | | | |
| | 19" | 113 | 67 | 145 | 190 | | 280 | | 47% | |
| | Other (20"/23") | 96 | 107 | 115 | 132 | | 195 | | 48% | |
| | TV Total | 182 | 172 | 174 | 179 | 240 | 220 | 92% | 23% | 25 |
| | 15" or (less) | 30 | 21 | 20 | 19 | | 15 | | -21% | 25 |
| | 17" wide | 83 | 65 | 35 | 43 | | 40 | | -7% | |
| | 20"/23"/26" | 56 | 71 | 85 | 82 | | 130 | | 59% | |
| | 30" up | 13 | 15 | 34 | 35 | | 35 | | | |
| SEC | Total | 2517 | 2342 | 2378 | 2518 | 2598 | 2728 | 105% | 8% | 281 |
| | NB Total | 810 | 960 | 940 | 1030 | 1050 | 1060 | 101% | 3% | 117 |
| | 14" XGA | 400 | 300 | 300 | 330 | 350 | 450 | 129% | 36% | 48 |
| | 15" XGA/SX+ | 220 | 300 | 280 | 300 | 350 | 260 | 74% | -13% | 32 |
| | 15.4" | 150 | 300 | 300 | 340 | 300 | 300 | 100% | -12% | 32 |
| | Others (12"/12"W) | 40 | 60 | 60 | 60 | 50 | 50 | 100% | -17% | 5 |
| | MNT Total | 1590 | 1290 | 1320 | 1370 | 1440 | 1490 | 103% | 9% | 152 |
| | 15" | 350 | 400 | 450 | 450 | 400 | 300 | 75% | -33% | 30 |
| | 17" | 950 | 700 | 680 | 720 | 850 | 920 | 108% | 28% | 95 |
| | 19" | 280 | 180 | 170 | 180 | 170 | 250 | 147% | 39% | 25 |
| | Others | 10 | 10 | 20 | 20 | 20 | 20 | 100% | | 2 |
| | TV Total | 117 | 92 | 118 | 118 | 108 | 178 | 165% | 51% | 12 |
| | 17" | 50 | 40 | 40 | 30 | 30 | 40 | 133% | 33% | 2 |
| | 20" | 20 | 20 | 20 | 20 | 20 | 80 | 400% | 300% | 5 |
| | 22~26" | 40 | 20 | 40 | 45 | 40 | 40 | 100% | -11% | 4 |
| | 32" | 5 | 10 | 15 | 20 | 15 | 15 | 100% | -25% | 1 |
| | 40" | 2 | 2 | 3 | 3 | 3 | 3 | 100% | | |

GRN000114(T)

Thank you
Best regards,

Stanley Park

Vice President
Sales & Marketing

LG.Phillips LCD Taiwan Co., Ltd.
E-mail: stanleypark@lgphilips-lcd.com
Tel: (886-2) 2326-9135

GRN000115(T)

From: Sang Woo Park/=stanleypark/LGPHILIPS.

Sent: 7/3/2005 9:34 PM

| | |
|----------|--|
| To: [-] | Duk Mo Koo/=duke/LGPHILIPS@LGPHILIPS. |
| Cc: [-] | Bon Joon Ku/=kbj/LGPHILIPS@LGPHILIPS; Bock Kwon/=bkwon@lgphilips-lcd.com; Chan Sik Shin/=shinchamp/LGPHILIPS@LGPHILIPS; Chang Seok Chung/=cschung/LGPHILIPS@LGPHILIPS; Dong Sun Lee/=davislee/LGPHILIPS@LGPHILIPS; Gap Soo Kyoung/=kyounggs/LGPHILIPS@LGPHILIPS; Hyun Hwoe Ha/=hhha/LGPHILIPS@LGPHILIPS; Se Hyuk An/=shahn/LGPHILIPS@LGPHILIPS; Dong Won Choi/=davidchoi/LGPHILIPS@LGPHILIPS; Young Deuk Lee/=dukelee/LGPHILIPS@LGPHILIPS; Jin Seo Roh/=jsroh/LGPHILIPS@LGPHILIPS. |
| Bcc: [-] | Young Ha Jeong/=yhjeong/LGPHILIPS@LGPHILIPS; Jang Sik Kim/=jameskim/LGPHILIPS@LGPHILIPS; Byuk Ha Ryu/=bhryu/LGPHILIPS@LGPHILIPS. |
| Subject: | AUO minutes |

Dear Division Leader,

Per instruction, Last week's AUO Meeting minutes as revised and are hereby submitted. Please refer to it for your reference.

1. Date & Time/place: 05.06.27 08:00-9:30 Westin Hotel 15Fl.
2. Attendees: Mr. H. B. Chen, Dr. Hui Hsiung
Division Leader, Head of Taiwan Branch Office, Sr. Mgr.

3. Content:

[Summary]

- There's confidence about market conditions for the second half of the year. In particular, based on the *NB Shortage*, a sharp price increase is being planned.
- However, as for '05 Q4 and '06, *Over-supply* due to excessive *Capa* increase is a concern.
- There is an interest in taking over *QDI*, but *Merge* is not anticipated.
- As for issues of *G6 Canon*, it is a trivial matter regarding to *CF*, therefore expected to be resolved soon.
- In the long term, the pursuit by China is threatening, but in the second half of '05, large size *TV Biz* is expected to have no *Impact* (5 Taiwanese companies and 5 Chinese companies)
- So far, *Fab* and *Product Alignment* with *LPL* have been going smoothly. Continuous support is desired.
- As for the request of TV price stabilization, *AUO* has a relatively weak customer structure hence cannot easily agree.

[Content]

(1) Market condition

GRNE0177291(T)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CR-09-01110 SI

Government Exhibit #: 515T

Date Admitted:

By: (Deputy Clerk)

English words found in the original text are italicized.

- The 3Q demand is anticipated to be very active. Based on NB demand increase and *Panel Shortage*, seeking improved profitability through price increase is being planned.

- However, in 4Q and next year, there is a concern of *Over-supply* by *Capa Ramp-up* acceleration and new *Fab* operation due to *Canon* equipment problem being resolved. -> there was a suggestion by the (Division Leader). That there should be collaborative efforts to expand the large size TV market.

(2) *Industry*

- *G6 Fab* will be constructed for the first time in Chengdu, China by technology of Taiwan and Japan and investment from a petrochemical company in Chengdu. (Note: it was confused with *Hong Da* in Dongying, north of Shandong.)

- Longteng in Kunshan is a company that *CMO* has *Under table Back-up*. (Note: *CMO* is flatly denying this.)

- The possibility for government leading the *M&A* directly is low. It doesn't have the actual power. Also, as for new *Line* investment, even if the government exerts pressure on the Taiwanese banks, overseas *Funding* will be possible. (*CPT*'s current *GDR* issue is the example.)

- Therefore, *Merge* with *QDI* will not happen. (However, there is an interest.)

- As for *Innolux*, due to various types of problems, *Yield* is low in general, and *Ramp up* is *Slow*.

- *Toppoly* is currently at 70K *Glass Input*, of which mid and small size types are a little over 50% range. For the rest, large sizes including 17" are being produced.

(3) *Cannon* Equipment Issues and Next Generation *FAB*

- *AUO G6 line's Canon* issue is a *CF* problem, which is trivial unlike *SS, CMO*. Currently, 4 machines have been installed. The problem is almost resolved, and *Full* operation is anticipated.

- June input is 25K. Henceforth, increase by 10K per month is planned. At the end of the year, 6~70K *Input* is anticipated.

- *G6* is making fifty-fifty input for *MNT/TV*. The focus is 19" *MNT* and 32" *TV*.

- *G7* is for producing 42"/47". 46" is being produced in *G5 F* mu as 2 sheets. It is not the primary *Model*.

- Whether this will develop to over *G8*, how far *LPL* will continue investment? Inquiries were made. (*Mr. Chen*)

-> In order to make the 50" class as the primary *Size* of *LCD TV*, the *Fab size* of over *G8* will be necessary. *LPL* will be determined accordingly based on the situations, replied by the (Division Leader).

(4) *Funding*

- The general shareholders meeting passed the *Funding* proposal for *G7*, which is under review by *USA SEC*. The anticipation is that it will be approved at the earliest 1 week to at the latest three weeks.

- Anyhow, as for the European *Fund*, since the summer vacation season has started, it was determined within the company that this is not good *Timing* for *ADR*.

GRNE0177292(T)

(5) Price

- LPL's view of the *Ceiling price* for 17" M is \$185. AUO thinks it's about \$180.
- If LPL keeps \$600 for 32" TV price, over \$570 will be kept. CMO says it is currently \$550. (Note: According to the Taiwan Branch's assessment, CMO 32" is in the range of \$570. \$550 appears to be A-mix products.)
- LPL 37" TV price is notified as U\$850. (Division Leader)
- The appropriate price gap between 32" and 37" is considered to be \$200. (Dr. Hsiung) -> Notwithstanding the fact AUO 37" is 1080i full HD, based on [said] price Gap, that will make [things] cheaper than LPL's WXGA by \$100, it was pointed out (Choi, Head of Branch Office); it was modified to keep an appropriate price by considering LPL's price - a range of U\$800. (Dr. Hsiung)
- As for NB Panel, it was agreed to increase by \$10 in July and August, respectively.

(6) Mid/Small size Biz.

- The proportion of mid/small size is 13~15% (*revenue base*). The *panel* for DSC use had 30% *Margin*, but due to fierce competition it lowered to a range of 20%. Due to strong nature of *Custom Product* and big changes in the market, there exists danger of loss in *Inventory*, etc. (*Hidden Cost* of about 10%)

(7) Collaboration between two companies

- Since G4, both companies have been collaborating closely in *Fab Standard* as well as assortment of products. It has been well *Align*. Let us continue to so develop such a relationship.
- Mutual collaboration on price is necessary during the period of rapid market change.

[Action Item]

- So far, as for NB, MNT, there have been active information exchange and collaboration. Also, for TV side, *Communication Channel* should be opened to collaborate in various fields. -> *Meeting* with persons charge with TV Sales need to be arranged.

Thank you.
End.

GRNE0177293(T)

*Thank you.
Best regard.*

Stanley Park

*Vice President
Sales & Marketing*

*LG.Philips LCD Taiwan Co., Ltd.
E-mail: stanely park@lgphilips-lcd.com
Tel.: (886-2)2326-9135*

GRNE0177294(T)

LCD Panel Imports Into the United States - AUO, CPT, HS, Samsung, LPL

| Panel Size | 2001 Oct-Dec | | 2002 | | 2003 | | 2004 | | 2005 | | 2006 Jan-Jun | | Total | |
|--------------|----------------|---------------------|----------------|----------------------|----------------|---------------------|----------------|----------------------|----------------|----------------------|----------------|----------------------|------------------|----------------------|
| | Units | Revenue | Units | Revenue | Units | Revenue | Units | Revenue | Units | Revenue | Units | Revenue | Units | Revenue |
| 12.1" | 13,229 | \$3,750,009 | 36,718 | \$8,406,340 | 45,630 | \$8,953,329 | 41,723 | \$7,387,467 | 57,980 | \$8,267,480 | 36,792 | \$5,166,041 | 232,072 | \$41,930,666 |
| 13" | 0 | \$0 | 0 | \$0 | 2,823 | \$483,415 | 1,502 | \$255,330 | 0 | \$0 | 0 | \$0 | 4,325 | \$738,745 |
| 13.3" | 2,367 | \$540,721 | 20,928 | \$3,571,077 | 13,021 | \$2,639,119 | 2,836 | \$546,340 | 65 | \$8,892 | 74 | \$10,184 | 39,291 | \$7,316,323 |
| 14" | 10 | \$2,800 | 0 | \$0 | 0 | \$0 | 1 | \$206 | 110 | \$15,049 | 0 | \$0 | 121 | \$18,069 |
| 14.1" | 90,208 | \$13,976,088 | 166,392 | \$38,963,720 | 65,654 | \$12,262,573 | 52,706 | \$10,711,906 | 49,968 | \$9,080,206 | 23,145 | \$3,587,833 | 448,073 | \$88,582,326 |
| 15" | 26,233 | \$5,162,166 | 244,444 | \$63,511,238 | 89,468 | \$20,608,737 | 143,976 | \$35,359,044 | 112,926 | \$29,120,268 | 132,360 | \$23,959,869 | 749,407 | \$177,721,323 |
| 15.2" | 1,240 | \$291,804 | 6,279 | \$1,588,974 | 4,005 | \$1,076,785 | 14,187 | \$4,365,551 | 14,212 | \$2,407,396 | 1,930 | \$328,750 | 41,853 | \$10,059,259 |
| 15.4" | 538 | \$279,720 | 80 | \$19,720 | 2,494 | \$630,090 | 4,091 | \$1,003,110 | 11,826 | \$2,388,541 | 9,944 | \$1,947,417 | 28,973 | \$6,268,599 |
| 17" | 167 | \$71,540 | 7,311 | \$2,761,112 | 100,710 | \$27,752,549 | 204,746 | \$58,997,638 | 148,274 | \$25,572,842 | 44,245 | \$7,904,718 | 505,453 | \$123,060,400 |
| 18" | 0 | \$0 | 0 | \$0 | 0 | \$0 | 0 | \$0 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| 19" | 0 | \$0 | 305 | \$363,550 | 844 | \$756,280 | 11,953 | \$5,064,570 | 128,270 | \$29,290,708 | 93,479 | \$18,223,416 | 234,851 | \$53,698,523 |
| 20" | 0 | \$0 | 0 | \$0 | 0 | \$0 | 24,220 | \$9,283,424 | 23,700 | \$6,521,423 | 1,040 | \$301,850 | 48,960 | \$16,106,697 |
| 26" | 0 | \$0 | 0 | \$0 | 1 | \$1,800 | 22,839 | \$14,186,396 | 128,188 | \$51,999,342 | 126,400 | \$43,608,455 | 277,428 | \$109,795,994 |
| 30" | 0 | \$0 | 77 | \$137,100 | 2,174 | \$2,613,695 | 103 | \$128,880 | 190 | \$191,301 | 44 | \$49,804 | 2,588 | \$3,120,789 |
| Total | 133,992 | \$24,074,848 | 482,534 | \$119,322,831 | 326,824 | \$77,778,372 | 524,883 | \$147,289,862 | 675,709 | \$164,863,448 | 469,453 | \$105,088,338 | 2,613,395 | \$638,417,698 |

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CR-09-0110 SI
Government Exhibit #: **775**
Date Admitted: _____
By: _____ (Deputy Clerk)

From: Michael WK Wong 黃永強
Sent: Tuesday, November 23, 2004 6:07:51 AM
To: Shutuan_Lillie@Dell.com
CC: Piyush_Bhargava@Dell.com; Roger Hu 胡永鵬; Steven Leung 梁兆龍; WJ Cheng 鄭文俊; LJ Chen 陳來助; James CP Chen 陳建斌; Vincent Cheng 鄭水金; Hui Hsiung 熊暉
Subject: Dec. Price Quote Update

| Size/Type | Dec. | Jan. | Feb. |
|----------------|--------|--------|--------|
| 15" | \$ 140 | \$ 140 | \$ 140 |
| 17" TN Entry | \$ 160 | \$ 160 | \$ 160 |
| 17" TN Premium | \$ 160 | \$ 160 | \$ 160 |
| 19" TN | \$ 250 | \$ 250 | \$ 250 |
| 19" VA | \$ 270 | \$ 270 | \$ 270 |

Shutuan, please find the requote for Dec. and onward.

Thanks and have a Happy Thanksgiving,

Michael

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CR-09-0110 SI
Government Exhibit #: 823
Date Admitted: _____
By: _____ (Deputy Clerk)

EXHIBIT D

United States District Court

Northern District of California

UNITED STATES OF AMERICA

v.

HUI HSIUNG,
a/k/a "Kuma"

JUDGMENT IN A CRIMINAL CASE

USDC Case Number: CR-09-00110-008 SI

BOP Case Number: DCAN309CR000110-008

USM Number: Pending

Defendant's Attorney: Brian Berson (Retained)

THE DEFENDANT:

- ☐ pleaded guilty to count(s): ____.
- ☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.
- ☒ was found guilty on count One of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|--------------------------|----------------------|--------------|
| 15 U.S.C. § 1 | Price Fixing | December 1, 2006 | One |

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) ____.
- ☐ Count(s) ____ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

September 20, 2012

Date of Imposition of Judgment

Signature of Judicial Officer

Honorable Susan Illston, U.S. District Judge

Name & Title of Judicial Officer

Date

DEFENDANT: HUI HSIUNG
CASE NUMBER: CR-09-00110-008 SI

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Thirty-Six (36) months with no supervision to follow.

☒ The Court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be incarcerated at Taft CI to facilitate visitation with his family.

☐ The defendant is remanded to the custody of the United States Marshal. The appearance bond is hereby exonerated.

☐ The defendant shall surrender to the United States Marshal for this district.

☐ at ____ ☐ am ☐ pm on ____.

☐ as notified by the United States Marshal.

The appearance bond shall be deemed exonerated upon the surrender of the defendant.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2:00 pm on November 30, 2012.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

The appearance bond shall be deemed exonerated upon the surrender of the defendant.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

Deputy United States Marshal

DEFENDANT: HUI HSIUNG
CASE NUMBER: CR-09-00110-008 SI

Judgment - Page 3 of 5

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| <u>Restitution</u> | <u>Assessment</u> | <u>Fine</u> |
|--------------------|-------------------|---------------|
| Totals: | \$ 100.00 | \$ 200,000.00 |

☐ The determination of restitution is deferred until __. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below. The defendant shall make all payments directly to the U.S. District Court Clerk's Office who will disburse payments to the payee.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
| <u>Totals:</u> | \$ _ | \$ _ | |

☐ Restitution amount ordered pursuant to plea agreement \$ _

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6, may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HUI HSIUNG
CASE NUMBER: CR-09-00110-008 SI

Judgment - Page 4 of 5

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$200,100 due immediately, balance due
☒ not later than 120 days after sentencing, or
☒ in accordance with () C, () D, () E, () F (x) G or () H below; or
- B ☐ Payment to begin immediately (may be combined with () C, () D, or () F below); or
- C ☐ Payment in equal (e.g. weekly, monthly, quarterly) installments of \$ _ over a period of _ (e.g., months or years), to commence _ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal monthly installments of \$ 1,000 over a period of three years, to commence 60 days after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

- G. ☒ In Custody special instructions:

Payment of criminal monetary penalties is due during imprisonment at the rate of not less than \$25.00 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102

- H. ☐ Out of Custody special instructions:

It is further ordered that the defendant shall pay to the United States a special assessment of \$ and a fine of \$ which shall be due immediately. If incarcerated, payment of criminal monetary payment is due during imprisonment and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

| Defendant and co-defendant Names | Case Numbers (including defendant number) | Total Amount | Joint and Several Amount | Corresponding Payee (if appropriate) |
|----------------------------------|---|--------------|--------------------------|--------------------------------------|
| | | | | |

AO 245B (Rev. 12/03) - Judgment in a Criminal Case - sheet 6 - Schedule of Payments

DEFENDANT: HUI HSIUNG

Judgment - Page 5 of 5

CASE NUMBER: CR-09-00110-008 SI

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect this defendant's responsibility for the full amount of the restitution ordered.**

EXHIBIT E

United States District Court

Northern District of California

UNITED STATES OF AMERICA

v.

HSUAN BIN CHEN,
a/k/a H.B. Chen

JUDGMENT IN A CRIMINAL CASE

USDC Case Number: CR-09-00110-009 SI
BOP Case Number: DCAN309CR000110-009
USM Number: Pending
Defendant's Attorney: Michael Attanasio (Retained)

THE DEFENDANT:

- ☐ pleaded guilty to count(s): ____.
- ☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.
- ☒ was found guilty on count One of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|--------------------------|----------------------|--------------|
| 15 U.S.C. § 1 | Price Fixing | December 1, 2006 | One |

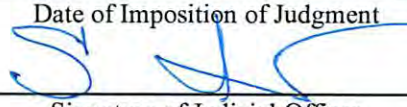
The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) ____.
- ☐ Count(s) ____ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

September 20, 2012

Date of Imposition of Judgment


Signature of Judicial Officer

Honorable Susan Illston, U.S. District Judge

Name & Title of Judicial Officer

10/1/12

 Date

DEFENDANT: HSUAN BIN CHEN
CASE NUMBER: CR-09-00110-009 SI

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Thirty-Six (36) months with no supervision to follow.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends the defendant be incarcerated at Taft CI or FCI Lompoc to facilitate visitation with family members.
- ☐ The defendant is remanded to the custody of the United States Marshal. The appearance bond is hereby exonerated.
- ☐ The defendant shall surrender to the United States Marshal for this district.
- ☐ at ____ ☐ am ☐ pm on ____.
- ☐ as notified by the United States Marshal.

The appearance bond shall be deemed exonerated upon the surrender of the defendant.

- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☒ before 2:00 pm on November 30, 2012.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

The appearance bond shall be deemed exonerated upon the surrender of the defendant.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy United States Marshal

DEFENDANT: HSUAN BIN CHEN
CASE NUMBER: CR-09-00110-009 SI

Judgment - Page 3 of 5

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|---------|-------------------|-------------|--------------------|
| Totals: | \$ 100 | \$ 200,000 | \$ 0 |

☐ The determination of restitution is deferred until __. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below. The defendant shall make all payments directly to the U.S. District Court Clerk's Office who will disburse payments to the payee.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
| <u>Totals:</u> | \$ _ | \$ _ | |

☐ Restitution amount ordered pursuant to plea agreement \$ _

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6, may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HSUAN BIN CHEN
CASE NUMBER: CR-09-00110-009 SI

Judgment - Page 4 of 5

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$200,100 due immediately, balance due
- ☒ not later than 120 days after sentencing, or
- ☐ in accordance with () C, () D, () E, () F () G or () H below; or
- B ☐ Payment to begin immediately (may be combined with () C, () D, or () F below); or
- C ☐ Payment in equal (e.g. weekly, monthly, quarterly) installments of \$ _ over a period of _ (e.g., months or years), to commence _ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal (e.g. weekly, monthly, quarterly) installments of \$ _ over a period of _ (e.g., months or years), to commence _ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within (e.g, 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

- G. ☐ In Custody special instructions:

Payment of criminal monetary penalties is due during imprisonment at the rate of not less than \$25.00 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102

- H. ☐ Out of Custody special instructions:

It is further ordered that the defendant shall pay to the United States a special assessment of \$ and a fine of which shall be due immediately. If incarcerated, payment of criminal monetary payment is due during imprisonment and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

| Defendant and co-defendant Names | Case Numbers (including defendant number) | Total Amount | Joint and Several Amount | Corresponding Payee (if appropriate) |
|----------------------------------|---|--------------|--------------------------|--------------------------------------|
|----------------------------------|---|--------------|--------------------------|--------------------------------------|

AO 245B (Rev. 12/03) - Judgment in a Criminal Case - sheet 6 - Schedule of Payments

DEFENDANT: HSUAN BIN CHEN

Judgment - Page 5 of 5

CASE NUMBER: CR-09-00110-009 SI

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect this defendant's responsibility for the full amount of the restitution ordered.**

EXHIBIT F

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

This Order Relates To:

No. CR 09-0110 SI

UNITED STATES OF AMERICA,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS THE
INDICTMENT**

On April 8, 2011, the Court held a hearing on defendants' motion to dismiss the indictment. For the reasons set forth below, the motion is DENIED.

BACKGROUND

The superseding indictment filed on June 10, 2010 charges AU Optronics Corporation ("AU Optronics"), AU Optronics Corporation America ("AU Optronics America"), and nine Taiwanese individuals with entering into and engaging in a price-fixing conspiracy in violation of Section 1 of the Sherman Act. Six of the individuals charged were, during the period covered by the indictment, employees of AU Optronics. Those defendants are Hsuan Bin Chen (President), Hui Hsuing (Executive Vice President), Lai-Juh Chen (Director of Desktop (Monitor) Display Business Group), Shui Lung Leung (Senior Manager of Desktop (Monitor) Display Business Group), Borlong Bai (Senior Manager of Notebook Display Business Group and Director of the Notebook Display Business Group), and Tsannrong Lee (Senior Manager of IT Display, Senior Manager of Desktop Display, Director of

1 Desktop Display, and Director of Notebook Display Business Groups) (collectively the “AUO
2 defendants”).

3 The superseding indictment alleges that “[f]rom on or about September 14, 2001, until on or
4 about December 1, 2006 (‘the period covered by this Indictment’), . . . the defendants and other
5 coconspirators entered into and engaged in a combination and conspiracy to suppress and eliminate
6 competition by fixing the prices of thin-film transistor liquid crystal display panels (‘TFT-LCD’) in the
7 United States and elsewhere.” (Superseding Indictment ¶ 2.) According to the superseding indictment,
8 “[t]he charged combination and conspiracy consisted of a continuing agreement, understanding and
9 concert of action among the defendants and other coconspirators, the substantial terms of which were
10 to agree to fix the prices of TFT-LCDs for use in notebook computers, desktop computer monitors, and
11 televisions in the United States and elsewhere.” (*Id.* ¶ 3.)

12 The superseding indictment alleges that on or about September 14, 2001, representatives from
13 four Taiwan TFT-LCD manufacturers, including AU Optronics, “secretly met in a hotel room in Taipei,
14 Taiwan and entered into and engaged in a conspiracy to fix the price of TFT-LCD.” (*Id.* ¶ 17(a).) The
15 superseding indictment alleges that the conspirators agreed to meet approximately once a month for the
16 purpose of fixing the price of TFT-LCD panels, and that these meetings were commonly referred to by
17 some of the conspirators as “Crystal Meetings.” (*Id.*) According to the superseding indictment, at the
18 September 14, 2001 meeting, a representative from AU Optronics stated that the participants at future
19 “Crystal Meetings” should include the two major Korean TFT-LCD manufacturers to ensure the success
20 of the conspiracy. (*Id.*) The superseding indictment alleges that employees from AU Optronics
21 attended Crystal Meetings on a regular basis between on or about September 14, 2001 until on or about
22 December 1, 2006 with employees of other participating TFT-LCD manufacturers. (*Id.* ¶ 17(c).) The
23 superseding indictment alleges that all of the individual AUO defendants except Lai-Juh Chen attended
24 and participated in one or more of the Crystal Meetings, and that all of the AUO defendants at times
25 authorized, ordered or consented to the attendance and participation of their subordinate employees at
26 Crystal Meetings. (*Id.* ¶ 17(d).)

27 The superseding indictment alleges that “[t]he participants in the conspiracy issued price
28 quotations in accordance with the price agreements and accepted payment for the supply of TFT-LCDs

1 sold at collusive, noncompetitive prices to customers in the United States and elsewhere.” (*Id.* ¶ 17(f).)
 2 According to the superseding indictment, employees of AU Optronics had one-on-one discussions in
 3 person or by telephone with representatives of coconspirator TFT-LCD manufacturers during which
 4 they reached agreements on the pricing of TFT-LCD products sold to certain customers, including
 5 customers located in the United States. (*Id.* ¶ 17(j).) The superseding indictment alleges that the AUO
 6 defendants participated in these one-on-one discussions. (*Id.*) The indictment also alleges that

7 During the period covered by this Indictment, senior level employees of AU
 8 Optronics CORPORATION regularly instructed employees of AU Optronics
 9 CORPORATION AMERICA located in the United States to contact employees of other
 10 TFT-LCD manufacturers located in the United States to discuss pricing to major United
 11 States TFT-LCD customers. In response to these instructions, employees of AU
 12 Optronics CORPORATION AMERICA located in the United States had regular
 13 contact through in-person meetings and phone calls with employees of other TFT-LCD
 14 manufacturers in the United States to discuss and confirm pricing, and at times agree on
 15 pricing, to certain TFT-LCD customers located in the United States. These AU
 16 Optronics Corporation America employees regularly reported the pricing information
 17 they received from their competitor contacts in the United States to senior-level
 18 executives at AU Optronics Corporation in Taiwan. By at least early 2003,
 19 representatives of defendant AU Optronics Corporation also began sending reports of
 20 the discussions and price agreements reached at Crystal Meetings to certain employees
 21 at AU Optronics Corporation America. These reports were used by certain employees
 22 of AU Optronics Corporation America in their price negotiations with certain TFT-LCD
 23 customers located in the United States.

24 (*Id.* ¶ 17(k).)

25 Defendants Au Optronics and Au Optronics America, joined by individual defendants Hsuan
 26 Bin Chen, Hui Hsiung, Lai-Juh Chen, Shiu Lung Leung and Tsannrong Lee (the “Moving Defendants”),
 27 move to dismiss the indictment on the following grounds: (1) the indictment fails to allege that
 28 defendants’ conduct was undertaken with the intent to produce a substantial effect in the United States,
 and (2) the indictment fails to allege the necessary nexus to United States commerce within the meaning
 of the Foreign Trade Antitrust Improvement Act.

LEGAL STANDARDS

Federal Rule of Criminal Procedure 7(c) states that an indictment “must be a plain, concise, and
 definite written statement of the essential facts constituting the offense charged.” “An indictment is
 sufficient if it (1) ‘contains the elements of the offense charged and fairly informs a defendant of the
 charge against which he must defend’ and (2) ‘enables him to plead an acquittal or conviction in bar of

1 future prosecutions for the same offense.” *United States v. Lazarenko*, 564 F.3d 1026, 1033 (9th Cir.
2 2009), *quoting Hamling v. United States*, 418 U.S. 87, 117 (1974). “[A]n indictment ‘should be read
3 in its entirety, construed according to common sense, and interpreted to include facts which are
4 necessarily implied.’” *United States v. Berger*, 473 F.3d 1080, 1103 (9th Cir. 2007). “An indictment
5 which tracks the words of the statute charging the offense is sufficient so long as the words
6 unambiguously set forth all elements necessary to constitute the offense.” *United States v. Fitzgerald*,
7 882 F.2d 397, 399 (9th Cir. 1989), *quoting United States v. Givens*, 767 F.2d 574, 584 (9th Cir. 1985).

8 9 DISCUSSION

10 I. NIPPON

11 The Moving Defendants move to dismiss the indictment on the ground that it fails to allege an
12 adequate jurisdictional basis under *United States v. Nippon Paper Industries Company*, 109 F.3d 1 (1st
13 Cir. 1997). *Nippon* involved an alleged conspiracy in which the defendants held meetings in Japan to
14 fix the price of thermal fax paper sold in North America and, pursuant to those meetings, sold paper to
15 third-party trading houses in Japan. *Nippon*, 109 F.3d at 2. Although the third-party trading houses
16 imported and sold the paper in the United States, all of the defendants’ alleged conduct took place in
17 Japan. *Id.* The district court ruled that a criminal antitrust prosecution could not be based on wholly
18 extraterritorial conduct and dismissed the indictment. *Id.* On appeal, the First Circuit reversed the trial
19 court’s order and held that “Section One of the Sherman Act applies to wholly foreign conduct which
20 has an intended and substantial effect in the United States.” *Id.* at 9.

21 According to the Moving Defendants, this Court adopted *Nippon* as controlling in its January
22 29, 2011 order and — because this case involves foreign conduct — the indictment must allege as a
23 “jurisdictional element” that there was an “intended and substantial effect in the United States.”
24 (Motion at 9-10.) Unlike *Nippon*, however, the conspiracy alleged in the indictment is not based on
25 “wholly foreign conduct.” Among other things, the indictment alleges that defendant AU Optronics
26 regularly instructed employees of its American subsidiary and alleged co-conspirator, AU Optronics
27 America, to contact other TFT-LCD manufacturers to discuss and agree upon pricing for United States
28 customers. (Superseding Indictment ¶ 17(k).) The government also alleges that AU Optronics used

1 information gained through the Crystal Meetings in Taiwan to further AU Optronics America's
2 domestic price fixing of TFT-LCD panels sold to United States customers. (*Id.*) In other words, the
3 indictment alleges a conspiracy that involved overt acts by various co-conspirators both inside and
4 outside the United States. Accordingly, the concerns raised in *Nippon* regarding criminal Sherman Act
5 violations based on "wholly foreign conduct" simply do not apply.

6 Even if *Nippon* applies to this case, the superseding indictment contains sufficient allegations
7 to establish an "intended and substantial effect in the United States." The superseding indictment
8 specifically alleges that the purported conspiracy "substantially affected, interstate and foreign trade and
9 commerce," and thus alleges a substantial effect in the United States. (Superseding Indictment
10 ¶ 20.) Moreover, the superseding indictment alleges a conspiracy that "consisted of a continuing
11 agreement, understanding, and concert of action among the defendants and other coconspirators, the
12 substantial terms of which were to agree to fix the prices of TFT-LCDs for use in notebook computers,
13 desktop computer monitors, and televisions in the United States and elsewhere." (*Id.* ¶ 3.) As the
14 Supreme Court has long recognized, "intent to accomplish an object cannot be alleged more clearly than
15 by stating that parties conspired to accomplish it." *Frohwerk v. United States*, 249 U.S. 204, 209
16 (1919); *see also United States v. Purvis*, 580 F.2d 853, 859 (5th Cir. 1978) (reversing the dismissal of
17 an indictment and holding that "'conspiracy' incorporates willfulness and specific intent"); *United*
18 *States v. Cinemette Corp. of Am.*, 687 F. Supp. 976, 983 (W.D. Pa. 1988) (holding that an indictment
19 sufficiently alleged intent to violate the Sherman Act where it alleged that "the defendants entered into
20 a conspiracy to eliminate competition for film licenses being offered by distributors for theatres in the
21 Altoona area"). The factual allegations in the superseding indictment are sufficient to establish both an
22 intended and substantial effect on commerce in the United States.

23 The superseding indictment also adequately pleads each of the elements of a criminal violation
24 of the Sherman Act. Section 1 of the Sherman Act prohibits "[e]very contract, combination in the form
25 of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with
26 foreign nations." 15 U.S.C. § 1. In order to establish a criminal violation of Section 1, the government
27 must plead and prove three elements: "First, that the conspiracy charged existed at or about the time
28 stated in the indictment; second, that the defendant knowingly — that is, voluntarily and intentionally

— became a member of the conspiracy charged in the indictment, knowing of its goal and intending to help accomplish it; third, that interstate commerce was involved.” *United States v. Alston*, 974 F.2d 1206, 1210 (9th Cir. 1992). To plead the interstate commerce element, the indictment must allege either that “the offending activities took place in the flow of interstate commerce” or that “the defendants’ general business activities had or were likely to have a substantial effect on interstate commerce.” *United States v. Giordano*, 261 F.3d 1134, 1138 (11th Cir. 2001); *see also United States v. ORS, Inc.*, 997 F.2d 628, 630 (9th Cir. 1993).

As above, the superseding indictment alleges a conspiracy that “consisted of a continuing agreement, understanding, and concert of action among the defendants and other coconspirators, the substantial terms of which were to agree to fix the prices of TFT-LCDs for use in notebook computers, desktop computer monitors, and televisions in the United States and elsewhere.” (Superseding Indictment ¶ 3.) The superseding indictment alleges that the conspiracy existed from September 14, 2001 until December 1, 2006 and that each of the AUO defendants either attended or sent subordinate employees to attend conspiratorial meetings to set the price of TFT-LCD panels. (*Id.* ¶¶ 17(a)-(h).) With regard to the interstate commerce element, the superseding indictment alleges that “the defendants and their coconspirators sold and distributed substantial quantities of TFT-LCDs in a continuous and uninterrupted flow of interstate and foreign trade and commerce to customers located in states or countries other than the states or countries in which the defendants and their coconspirators produced TFT-LCDs.” (*Id.* ¶ 19.) The indictment also alleges that “payments for TFT-LCDs traveled in interstate and foreign trade and commerce.” (*Id.*) Finally, the superseding indictment alleges that defendants accepted payment for TFT-LCD products “at collusive, noncompetitive prices to customers in the United States and elsewhere.” (*Id.* at ¶ 17(f).) These factual allegations are sufficient to establish each of the elements of a criminal violation of Section 1 of the Sherman Act. Accordingly, the Moving Defendants’ motion to dismiss the indictment based on *Nippon* is DENIED.

II. Foreign Trade Antitrust Improvement Act

The Moving Defendants also argue that the superseding indictment fails to allege facts sufficient to meet the requirements of the Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a (“FTAIA”),

1 which amends the Sherman Act and “excludes from [its] reach much anti-competitive conduct that
2 causes only foreign injury.” *F. Hoffman-LaRoche, Ltd. v. Empagran S.A. (Empagran I)*, 542 U.S. 155,
3 158 (2004). The Moving Defendants argue that the indictment includes conduct that occurred outside
4 the United States, and that the indictment is therefore required to plead facts sufficient to establish an
5 exception to the FTAIA’s general exclusionary rule. The government responds that, although the
6 conspiracy involved some foreign anticompetitive conduct, the indictment “alleges that Defendants
7 entered into a conspiracy that violated U.S. law on U.S. soil.” (Opposition at 4.)

8 The FTAIA establishes a general rule that the Sherman Act “shall not apply to conduct
9 involving trade or commerce (other than import trade or import commerce) with foreign nations.” 15
10 U.S.C. § 6a. “The [FTAIA] does not define the term ‘import,’ but the term generally denotes a product
11 (or perhaps a service) has been brought into the United States from abroad.” *Turicentro, S.A. v.*
12 *American Airlines Inc.*, 303 F.3d 293, 303 (3d Cir. 2002). “The dispositive inquiry is whether the
13 conduct of the defendants, not plaintiffs, involves ‘import trade or commerce.’” *Id.*

14 The parties present the court with no authority regarding the application of the FTAIA to a
15 criminal Sherman Act case. Nonetheless, applying the general principles above, the Court concludes
16 that the FTAIA does not require dismissal of the superseding indictment. The superseding indictment
17 alleges that defendant AU Optronics was a Taiwan corporation with its principal place of business in
18 Taiwan. (Superseding Indictment ¶ 4.) The superseding indictment alleges that defendant AU
19 Optronics, its American subsidiary AU Optronics America and the individual defendants were engaged
20 in the business of manufacturing TFT-LCD products that were sold both inside the United States and
21 abroad. (*Id.* ¶¶ 3, 4-14, 17(f), 17(j), 17(k), 19.) The superseding indictment further alleges that prices
22 of defendants’ TFT-LCDs were set pursuant to a broad conspiracy carried out both in Taiwan and in the
23 United States. (*Id.* ¶¶ 17(a)-(k).) Thus, it appears that the criminal charges alleged in the indictment
24 are based at least in part on conduct involving “import trade or import commerce” (specifically, the
25 importation of TFT-LCD products into the United States). By its express terms, the FTAIA’s
26 exclusionary rule is inapplicable to such import activity conducted by defendants.

27 More generally, the Court simply cannot conclude that the FTAIA was intended to bar criminal
28 prosecution where, as here, the alleged conspiracy involves conduct in furtherance of the conspiracy

both inside and outside of the United States. As discussed above, the superseding indictment alleges that co-conspirator AU Optronics America was “regularly instructed” by employees of AU Optronics “to contact employees of other TFT-LCD manufacturers in the United States to discuss pricing to major United States TFT-LCD customers.” (Superseding Indictment ¶ 17(k).) The superseding indictment also alleges that AU Optronics sent information regarding discussions and price agreements reached at the Crystal Meetings to employees at AU Optronics America for use in domestic price-fixing discussions. (*Id.*) Acts by coconspirators (such as AU Optronics America) may be considered against all other members of the conspiracy, even if such acts were done without the knowledge of other co-conspirators. ABA Section of Antitrust Law, *Model Jury Instructions in Criminal Antitrust Cases*, p. 107 (2009). Moreover, as the government points out, conspiratorial acts that occur outside the United States are generally considered to be within United States jurisdiction if an overt act in furtherance of the conspiracy occurs inside this country. *United States v. Endicott*, 803 F.2d 506, 514 (9th Cir. 1986); *United States v. Angotti*, 105 F.3d 539, 545 (9th Cir. 1997) (“[A] conspiracy charge is appropriate in any district where an overt act committed in the course of the conspiracy occurred. It is not necessary that [the defendant] himself have entered or otherwise committed an overt act within the district, as long as one of his coconspirators did.”). Because the superseding indictment clearly alleges a series of overt acts by AU Optronics America within the United States and in furtherance of the conspiracy, the Court finds that the superseding indictment adequately alleges a domestic conspiracy that is not barred by the FTAIA.¹

///

¹ As defendants note, courts have held in the civil context that compensation for foreign injury may be barred to the extent that the plaintiff cannot establish an exception to the FTAIA. (Motion at 11.) This proposition, though potentially relevant to whether the government may seek restitution for injury caused abroad, has no bearing on whether an indictment alleging a combination of domestic and foreign conduct that caused injury to domestic purchasers adequately states a criminal violation of the Sherman Act. Defendants are, of course, not foreclosed from raising such concerns if and when the Court addresses restitution in this matter.

CONCLUSION

For the foregoing reasons, the Court DENIES the Moving Defendant's motion to dismiss. (No. C 09-110 SI, Docket No. 258.)

IT IS SO ORDERED.

Dated: April 18, 2011



SUSAN ILLSTON
United States District Judge

EXHIBIT G

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

UNITED STATES OF AMERICA,

No. CR 09-110 SI

Plaintiff,

**ORDER DENYING DEFENDANTS'
MOTIONS TO DISMISS THE
INDICTMENT AND FOR A BILL OF
PARTICULARS**

v.

HSUAN BIN CHEN, *et al.*,

Defendants.

On December 9, 2010, the Court held a hearing on defendants' motions to dismiss the indictment and for a bill of particulars. For the reasons set forth below, the Court DENIES both motions.

BACKGROUND

The superseding indictment filed on June 10, 2010 charges AU Optronics Corporation, AU Optronics Corporation America, and nine Taiwanese individuals with entering into and engaging in a price-fixing conspiracy in violation of Section 1 of the Sherman Act. Six of the individuals charged were, during the period covered by the indictment, employees of AU Optronics Corporation. Those defendants are Hsuan Bin Chen (President), Hui Hsuing (Executive Vice President), Lai-Juh Chen (Director of Desktop (Monitor) Display Business Group), Shui Lung Leung (Senior Manager of Desktop (Monitor) Display Business Group), Borlong Bai (Senior Manager of Notebook Display Business Group and Director of the Notebook Display Business Group), and Tsannrong Lee (Senior Manager of IT Display, Senior Manager of Desktop Display, Director of Desktop Display, and Director of Notebook Display Business Groups).

The superseding indictment alleges that "[f]rom on or about September 14, 2001, until on or

1 about December 1, 2006 (‘the period covered by this Indictment’), . . . the defendants and other
2 coconspirators entered into and engaged in a combination and conspiracy to suppress and eliminate
3 competition by fixing the prices of thin-film transistor liquid crystal display panels (‘TFT-LCD’) in the
4 United States and elsewhere.” Superseding Indictment ¶ 2. According to the indictment, “[t]he charged
5 combination and conspiracy consisted of a continuing agreement, understanding and concert of action
6 among the defendants and other coconspirators, the substantial terms of which were to agree to fix the
7 prices of TFT-LCDs for use in notebook computers, desktop computer monitors, and televisions in the
8 United States and elsewhere.” *Id.* ¶ 3.

9 The indictment alleges, *inter alia*, that on or about September 14, 2001, representatives from four
10 Taiwan TFT-LCD manufacturers, including AU Optronics Corporation, “secretly met in a hotel room
11 in Taipei, Taiwan and entered into and engaged in a conspiracy to fix the price of TFT-LCD.” *Id.* ¶
12 17(a). The indictment alleges that the conspirators agreed to meet approximately once a month for the
13 purpose of fixing the price of TFT-LCD panels, and that these meetings were commonly referred to by
14 some of the conspirators as “Crystal Meetings.” *Id.* According to the indictment, at the September 14,
15 2001 meeting, a representative from AU Optronics Corporation stated that the participants at future
16 “Crystal Meetings” should include the two major Korean TFT-LCD manufacturers to ensure the success
17 of the conspiracy. *Id.* The indictment alleges that employees from AU Optronics Corporation attended
18 Crystal Meetings on a regular basis between on or about September 14, 2001 until on or about
19 December 1, 2006 with employees of other participating TFT-LCD manufacturers. *Id.* ¶ 17(c). The
20 indictment alleges that all of the individual AUO defendants except Lai-Juh Chen attended and
21 participated in one or more of the Crystal Meetings, and that all of the individual AUO defendants at
22 times authorized, ordered or consented to the attendance and participation of their subordinate
23 employees at Crystal Meetings. *Id.* ¶ 17(d).

24 The indictment alleges, *inter alia*, that “[t]he participants in the conspiracy issued price
25 quotations in accordance with the price agreements and accepted payment for the supply of TFT-LCDs
26 sold at collusive, noncompetitive prices to customers in the United States and elsewhere.” *Id.* ¶ 17(f).
27 The indictment also alleges that “[i]n or about the spring [of] 2006, the participants in the Crystal
28 Meetings became further concerned about being detected after receiving news reports of an ongoing

1 price-fixing investigation by the United States Department of Justice into the dynamic random access
2 memory ('DRAM') industry and after receiving other information about a possible investigation into
3 the TFT-LCD industry. To further avoid detection and keep the meetings secret, the conspiracy
4 members, including representatives of defendant AU Optronics Corporation, agreed to no longer meet
5 as a group, but instead have back-to-back, one-on-one meetings with each other on a certain date each
6 month at restaurants and cafes in Taipei, Taiwan." *Id.* ¶ 17(I). Through these meetings, participants
7 continued to exchange shipment, production, and pricing information in furtherance of the alleged
8 conspiracy. *Id.*

9 According to the indictment, employees of AU Optronics Corporation also had one-on-one
10 discussions in person or by telephone with representatives of coconspirator TFT-LCD manufacturers
11 during which they reached agreements on pricing of TFT-LCD sold to certain customers, including
12 customers located in the United States. *Id.* ¶ 17(j). The indictment alleges that the six individual AUO
13 defendants participated in these one-on-one discussions. *Id.* The indictment also alleges that "senior-
14 level employees of AU Optronics Corporation regularly instructed employees of AU Optronics
15 Corporation America located in the United States to contact employees of other TFT-LCD
16 manufacturers located in the United States to discuss pricing to major United States TFT-LCD
17 customers. . . . These AU Optronics Corporation America employees regularly reported the pricing
18 information they received from their competitor contacts in the United States to senior-level executives
19 at AU Optronics Corporation in Taiwan. By at least early 2003, representatives of defendant AU
20 Optronics Corporation also began sending reports of the discussions and price agreements reached at
21 Crystal Meetings to certain employees at AU Optronics Corporation America. These reports were used
22 by certain employees of AU Optronics Corporation America in their price negotiations with certain
23 TFT-LCD customers located in the United States." *Id.* ¶ 17(k).

24 Defendant Hsuan Bin Chen, joined by the corporate AUO defendants and four of the individual
25 AUO defendants, has moved to dismiss the indictment on the ground that the indictment "fails to allege
26 that Mr. Chen acted with the knowledge that his conduct, all of which occurred overseas, would likely
27 cause anticompetitive effects in the United States." Defendants AUO and AUOA, joined by four of the
28 individual AUO defendants, have moved for a bill of particulars, arguing that the indictment is so

conclusory and vague that it is impossible for defendants to prepare an adequate defense.

DISCUSSION

I. Motion to dismiss

Relying on *Metro Industries Inc. v. Sammi Corporation*, 82 F.3d 839 (9th Cir. 1996), defendants contend that Sherman Act violations based entirely on foreign conduct are subject to a rule of reason analysis. Then, relying on the holding in *United States v. U.S. Gypsum Company*, 438 U.S. 422 (1978), regarding the intent requirement in criminal antitrust rule of reason cases, defendants argue that in a criminal antitrust case based entirely on foreign conduct, the government must allege and prove that the defendant acted with the knowledge that his conduct would likely cause anticompetitive effects in the United States.

In *Metro Industries*, an importer sued a foreign export company and two of its domestic subsidiaries alleging, *inter alia*, that a Korean design registration system which gave Korean producers an exclusive right to export a registered product design for three years constituted market division that was a *per se* violation of the Sherman Act. The Ninth Circuit held that *per se* treatment was inappropriate under the facts of that case:

The Korean registration system is not a classic horizontal market division agreement in which competitors at the same level agree to divide up the market for a given product. Metro does not point to, and we have not found, a single instance in which an arrangement similar to the Korean manufacturer-exporter design registration system has undergone judicial scrutiny in the Sherman Act context. The novelty of this arrangement “strongly supports application of rule-of-reason analysis.”

Id. at 844 (internal citation omitted). The court also noted that there was no evidence in the record, which included a bench trial, that the registration system had the purpose or effect of restraining trade, which also militated against extension of the *per se* rule. *Id.* The Ninth Circuit further held, “Even if Metro could prove that the registration system constituted a ‘market division’ that would require application of the *per se* rule if the division occurred in a domestic context, application of the *per se* rule is not appropriate where the conduct in question occurred in another country.” *Id.* at 844-45. Defendants’ motion to dismiss the indictment is based on this statement in *Metro Industries*. Defendants contend that *Metro Industries* holds that all Sherman Act cases based on foreign conduct are rule of

1 reason cases.

2 Defendants then argue that *Metro Industries*, in combination with the United States Supreme
3 Court's holding in *United States v. U.S. Gypsum Company*, 438 U.S. 422 (1978), means that in a
4 criminal antitrust case based entirely on foreign conduct, the government must allege and prove that the
5 defendant acted with the knowledge that his conduct would likely cause anticompetitive effects in the
6 United States. In *Gypsum*, the Supreme Court held that in a criminal prosecution under the Sherman
7 Act that was subject to rule of reason analysis, "action undertaken with knowledge of its probable
8 consequences and having the requisite anticompetitive effects can be a sufficient predicate for a finding
9 of criminal liability under the antitrust laws." *Gypsum*, 438 U.S. at 444.

10 Price fixing is generally considered a *per se* violation of the antitrust laws. *United States v.*
11 *Trenton Potteries*, 273 U.S. 392 (1927); *Freeman v. San Diego Ass'n of Realtors*, 322 F.3d 1133, 1144
12 (9th Cir. 2003). In *United States v. Brown*, 936 F.2d 1042 (9th Cir. 1991), the Ninth Circuit held that
13 the intent requirement of *Gypsum* does not apply to charges of *per se* violations of the antitrust laws:

14 "Where *per se* conduct is found, a finding of intent to conspire to commit the offense is
15 sufficient; a requirement that intent go further and envision actual anti-competitive
16 results would reopen the very questions of reasonableness which the *per se* rule is
17 designed to avoid."

18 *Id.* at 1046 (quoting *United States v. Koppers Co.*, 652 F.2d 290, 296 n.6 (2d Cir. 1981)). Thus, in a *per*
19 *se* case the government need not prove a defendant's intent to produce anticompetitive effects. *Id.*

20 The government argues that the indictment is sufficient as pleaded, and that defendants' reliance
21 on *Metro Industries* is misplaced. The Court agrees. As the government argues, *Metro Industries* arose
22 in a very different context. The alleged restraint in *Metro Industries* involved a "previously unexamined
23 business practice," and the court found that the "novelty of this arrangement" required the rule of reason
24 analysis. *Metro Industries*, 82 F.3d at 844. *Metro Industries* did not address the question presented
25 here, namely the *mens rea* standard in a criminal antitrust price fixing prosecution involving foreign
26 conduct.

27 The Court finds instructive *United States v. Nippon Paper Industries Company*, 109 F.3d 1 (1st
28 Cir. 1997). In *Nippon Paper*, the United States brought a criminal action against a Japanese corporation,
alleging that it had conspired to fix the prices of facsimile paper sold in the United States. The district

1 court dismissed the indictment on the ground that Section One of the Sherman Act does not cover
 2 wholly extraterritorial conduct in the criminal context. The First Circuit reversed, and held “Section
 3 One of the Sherman Act applies to wholly foreign conduct which has an intended and substantial effect
 4 in the United States.” *Id.* at 9. Defendants emphasize the “intended and substantial effect” language
 5 in *Nippon* to argue that *Nippon* supports their contention that the *Gypsum mens rea* standard applies in
 6 a criminal prosecution based on foreign conduct. However, the *Nippon* court used the “intended and
 7 substantial effect” language in the context of holding that the district court had jurisdiction over a
 8 criminal prosecution based on wholly foreign price-fixing. *Nippon* did not hold that in such a criminal
 9 prosecution, the *Gypsum mens rea* standard applies.

10 In fact, the *Nippon* court stated exactly the opposite. In *Nippon*, the defendant argued that the
 11 presumption against extraterritoriality operated with greater force in the criminal arena than in civil
 12 litigation. *Id.* at 6. The First Circuit rejected that argument:

13 Nor does *United States v. United States Gypsum Co.*, 438 U.S. 422, 98 S.Ct.
 14 2864, 57 L.Ed.2d 854 (1978), offer aid and succor to NPI. Recognizing that “the
 15 behavior proscribed by the [Sherman] Act is often difficult to distinguish from the gray
 16 zone of socially acceptable and economically justifiable business conduct,” *id.* at 440-41,
 17 98 S.Ct. at 2875, the *Gypsum* Court held that criminal intent generally is required to
 18 convict under the Act. *See id.* at 443, 98 S.Ct. at 2876-77. Although this distinguishes
 19 some civil antitrust cases (in which intent need not be proven) from their criminal
 20 counterparts, the *Gypsum* Court made it plain that intent need not be shown to prosecute
 21 criminally “conduct regarded as *per se* illegal because of its unquestionably
 22 anticompetitive effects.” *Id.* at 440, 98 S.Ct. at 2875. This means, of course, that
 23 defendants can be convicted of participation in price-fixing conspiracies without any
 24 demonstration of a specific criminal intent to violate the antitrust laws. *See, e.g., United*
 25 *States v. Brown*, 936 F.2d 1042, 1046 (9th Cir. 1991); *United States v. Society of Indep.*
 26 *Gas. Marketers*, 624 F.2d 461, 465 (4th Cir. 1979), *cert. denied*, 449 U.S. 1078, 101
 27 S.Ct. 859, 66 L.Ed.2d 801 (1981); *United States v. Gillen*, 599 F.2d 541, 544-45 (3d
 28 Cir.), *cert. denied*, 444 U.S. 866, 100 S.Ct. 137, 62 L.Ed.2d 89 (1979). Because the
 instant case falls within that rubric, *Gypsum* does not help NPI.

Id. at 6-7. Thus, the *Nippon* court rejected the argument that a criminal prosecution for wholly foreign
 price-fixing conduct falls within the rubric of *Gypsum*.

Accordingly, for the foregoing reasons, the Court DENIES defendants’ motion to dismiss the
 indictment.

II. Motion for bill of particulars

Defendants contend that a bill of particulars is necessary because the indictment is “so

1 conclusory and vague as to make it impossible for defendants to prepare an adequate defense.” AUO
2 Motion at 1:13-14. Defendants emphasize that the government has made five discovery productions
3 totaling approximately 42 million pages of material, and they argue that defendants should not and
4 cannot be required to dig through this discovery to discover the “missing details” of the government’s
5 allegations. Defendants argue that the indictment is deficient because it does not include, except for a
6 few examples, allegations specific to each of the defendants. Defendants contend that the indictment
7 does not provide any guidance as to what each of the defendants allegedly did in furtherance of the
8 conspiracy.

9 Defendants seek a bill of particulars requiring the government to provide the following¹: (1) the
10 identities of coconspirators and meeting participants, (2) the specific locations where the conspiracy
11 functioned, where conspiratorial meetings took place, and what conspiratorial acts and statements were
12 made, (3) information about the meetings attended and the statements the defendants made at those
13 meetings, (4) the “overt acts” engaged in by the participants of the conspiracy, (5) information about
14 customers, including names, specific LCD products purchased and the countries to which the products
15 were sold, (6) information about the “price quotations” mentioned in the indictment, such as what the
16 prices were, when the quotations were issued, which products did the price quotations cover, what other
17 terms were offered in addition to price, which of the price quotations were the defendants aware of,
18 when and how did the defendants become aware of such quotations, and when and how did the
19 defendants become aware that such quotations were part of the conspiracy, and (7) the basis for the
20 gross gains derived from the conspiracy and the identities of persons who suffered gross losses.

21 The government responds that the indictment is detailed and provides defendants with adequate
22 notice of the charges against them. The government also states that before the indictment was returned,
23 the government explained the charges against defendants in separate meetings with each of their
24 counsel. Tewksbury Decl. ¶ 2. During these meetings, the government shared certain evidence, and
25 counsel had the opportunity to ask questions. *Id.* In addition, the government states that in the course
26 of its investigation, lawyers from the Antitrust Division have interviewed many witnesses, and in each

27
28 ¹ This is a summary of the particulars requested by all defendants. The moving defendants have
requested numerous distinct, and sometimes overlapping, particulars.

1 case, paralegals prepared interview reports or memoranda:

2 The interview reports typically provide detailed information on the following topics:
3 employment history; pricing procedures; the witness' contacts with TFT-LCD
4 competitors; a description of the witness' communications with competitors, including
5 discussions on market pricing and pricing to customers; the time and place of meetings
6 with competitors; the witness' knowledge of competitor contacts by others; their
7 knowledge of the antitrust laws and state of mind while they were engaged in the in the
8 conspiratorial conduct; and the DOJ investigation.

9 *Id.* ¶ 3. An example of one of the interview reports is filed under seal as Exhibit 1 to the Tewksbury
10 Declaration; the report is 44 pages and contains substantial detail, including identifying by Bates number
11 every document shown to the witness during the interview. The government states that it has provided
12 approximately 87 reports of witness interviews, including interviews of co-conspirators who have pled
13 guilty and other employees of companies who have pled guilty. *Id.* ¶ 4.

14 In addition, the discovery produced to defendants has included (1) grand jury transcripts with
15 exhibits, (2) the application and supporting FBI affidavit for the warrant to search AUOA's offices in
16 Houston, Texas, (3) transcripts of merits witness depositions taken in the class action litigation (the
17 government provided an index of the CD containing these deposition transcripts including the name of
18 the witness, the witness' title and organization, the type of document, and the date the deposition was
19 taken), (4) FBI 302s, (5) immunity letters, compulsion orders and cooperation agreements, (6) plea
20 agreements for all of the companies and individuals that have pled guilty, and (7) the agreement between
21 the government and the company that was granted leniency. The government asserts that while it is
22 true that the government has turned over voluminous discovery, the vast majority of documents are in
23 electronic form and were produced in word searchable tiff/text or native format. *Id.* Thus, according
24 to the government, defendants can type in their names or email addresses, or the name of any witness,
25 and the database will identify documents with that name in it.² For the documents produced in hard
26 copy, the government provided an index containing the names of witnesses, their titles, type of
27 document, and corresponding bates pages. *Id.*

28 ² The government also states that AUO's counsel recently raised an issue about the electronic
searchability of foreign language characters in a subset of the produced electronic documents.
According to Ms. Tewksbury, the government has met and conferred with AUO and AUO's counsel
in an attempt to understand the issue, and the government is in the process of reproducing a subset of
the electronic production which should resolve the issue. Tewksbury Decl. ¶ 4.

1 Rule 7(f) of the Federal Rules of Criminal Procedure provides that the Court may in its discretion
2 require a bill of particulars where necessary to inform the defendant of the charges against him, to
3 minimize the danger of surprise at trial, to prepare for the defense, and to protect against double
4 jeopardy. *See United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1984). The Ninth Circuit has held
5 that, in deciding whether to order a bill of particulars, a court “should consider whether the defendant
6 has been advised adequately of the charges through the indictment and all other disclosures made by
7 the government.” *Id.* In addition, “[a] defendant is not entitled to know all the evidence the government
8 intends to produce, but only the theory of the government’s case.” *United States v. Giese*, 597 F.2d
9 1170, 1181 (9th Cir. 1979). A bill of particulars is designed to “minimize the danger of surprise at trial
10 and to provide sufficient information on the nature of the charges to allow preparation of a defense.”
11 *United States v. Mitchell*, 744 F.2d 701, 705 (9th Cir. 1984). There is no need for a bill where “the
12 indictment itself provides sufficient details of the charges and if the Government provides full discovery
13 to the defense.” *Id.* The district court is vested with “very broad discretion in ruling upon requests for
14 such bills.” *Will v. United States*, 389 U.S. 90, 99 (1967).

15 The Court concludes that defendants are not entitled to a bill of particulars. The indictment
16 adequately advises defendants of the charges against them, and defendants seek extremely detailed
17 evidence to which they are not entitled through a bill of particulars. As one court has noted, “[a] bill
18 of particulars, unlike discovery, is not intended to provide the defendant with the fruits of the
19 government’s investigation. Rather, it is intended to give the defendant only that minimum amount of
20 information necessary to permit the defendant to conduct his *own* investigation.” *United States v. Smith*,
21 776 F.2d 1104, 1111 (3d Cir. 1985) (internal citations omitted, emphasis in original).

22 Here, the indictment sets forth the dates of the conspiracy and the specific time periods each of
23 the defendants are alleged to have participated in it, a description of the type of antitrust conspiracy
24 charged and the specific types of TFT-LCD covered by the indictment, a description of the goals of the
25 conspiracy, as well as a detailed description of the means and methods by which those goals were to be
26 accomplished. The indictment is far more detailed than other indictments that prior Ninth Circuit cases
27 have found to be sufficient. *See, e.g., United States v. Miller*, 771 F.2d 1219, 1226-27 (9th Cir. 1985)
28 (upholding an indictment that charged “a continuing conspiracy existed for a period of about five years,

1 '[b]eginning at least as early as January 1978, and continuing until at least October 1982.' [and that
2 listed] the actions which the co-conspirators took to form and carry out the conspiracy (i.e., discussions
3 by telephone or at meetings at defendants' business premises, bars, restaurants, and gasoline stations
4 which they owned, operated or at which they controlled the retail prices of gasoline), and charges that
5 the defendants attempted to enforce adherence to their price-fixing scheme by informing other
6 competitors of the conspirators' agreements, personally and by telephone.'").

7 The Court agrees with the government that the indictment need not specify the overt acts
8 committed in furtherance of the charged conspiracies, and that it is unreasonable to require the
9 government to "state the circumstances under which, and the words or conduct by means of which"
10 defendants and every alleged co-conspirator entered into the alleged conspiracies. *See United States*
11 *v. DiCesare*, 765 F.2d 890, 897 (9th Cir. 1985) (defendants not entitled to bill of particulars in order to
12 obtain names of unknown co-conspirators, exact date on which alleged conspiracy began, or statement
13 of all overt acts), *amended on other grounds*, 777 F.2d 543 (1985); *see also Miller*, 771 F.2d at 1226
14 ("An indictment charging a violation of section one of the Sherman Act is not required to allege any
15 overt act. . . . Because the Sherman Act punishes the mere act of conspiring, overt acts in furtherance
16 of the conspiracy need not be alleged.'").

17 The Court also finds that the discovery provided to defendants obviates the need for a bill of
18 particulars. While the discovery is voluminous, the government has provided it in a fashion designed
19 to help defendants prepare their defense. The government began production of discovery as soon as the
20 defendants and the Court signed a protective order. The government conducted separate meetings with
21 defense counsel explaining the charges against each defendant. Importantly, the discovery produced
22 thus far has included approximately 87 highly detailed interview reports. In addition, the government
23 has indexed both hard copy and electronic documents, and produced electronic discovery in a searchable
24 format.³

25
26 ³ The Court notes that defendant Tsannrong Lee, who joined in AUO's motion and seeks
27 supplemental particulars aside from those specified in AUO's motion, recently filed a motion to modify
28 the conditions of his pretrial release. Docket No. 210. In that motion, defendant Lee states, *inter alia*,
that defendant undertaken an initial review of the evidence against him, and the motion discusses that
evidence in great detail. *Id.* at 7-15.

Moreover, as the government notes, the individual defendants have stated to the Court that they are familiar with the allegations against them. In pleadings and at hearings in connection with proceedings related to pretrial release, defendants have stated that they have known about the charges and core evidence against them for years due to the related criminal cases and the parallel civil cases. *See* Tewksbury Decl. ¶ 5 (quoting statements of defense counsel at these hearings and statements from defendants' pleadings). Indeed, in those proceedings some defendants represented that they had already formulated their defenses, statements that are incompatible with their current position.

Accordingly, defendants' motions for a bill of particular are DENIED.

CONCLUSION

For the foregoing reasons, the Court DENIES defendants' motions to dismiss and for a bill of particulars. (Docket Nos. 169, 172, 174, 176-182, & 185)

IT IS SO ORDERED.

Dated: January 28, 2011



SUSAN ILLSTON
United States District Judge

EXHIBIT H

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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

AU OPTRONICS CORPORATION;
AU OPTRONICS CORPORATION AMERICA;
HSUAN BIN CHEN, aka H.B. CHEN;
HUI HSIUNG, aka KUMA;
LAI-JUH CHEN, aka L.J. CHEN;
SHIU LUNG LEUNG, aka CHAO-LUNG
LIANG and STEVEN LEUNG;
BORLONG BAI, aka RICHARD BAI;
TSANNRONG LEE, aka TSAN-JUNG LEE
and HUBERT LEE;
CHENG YUAN LIN, aka C.Y. LIN;
WEN JUN CHENG, aka TONY CHENG; and
DUK MO KOO,

Defendants.

No. CR-09-0110 SI

STIPULATED AND PARTY-
PROPOSED JURY INSTRUCTIONS

Court: Hon. Susan Illston
Place: Courtroom 10, 19th Floor

1 The United States and defendants hereby submit the attached set of stipulated and party-
2 proposed jury instructions to be given at the close of the case. The stipulated jury instructions
3 have been agreed upon by the parties and are jointly proposed. The remaining instructions are
4 the government's proposed jury instructions, as to which defendants have either (a) objected in
5 whole or in part, (b) proposed additional language, or (c) in a few instances, proposed an
6 alternative instruction. For the convenience of the Court, the defense objections and proposals
7 are paired with and/or follow the government instruction at which they are directed.

8
9 Dated: February 24, 2012

Respectfully submitted,

10
11 /s/ Peter K. Huston
12 Peter K. Huston
13 Antitrust Division
14 U.S. Department of Justice

15 Dated: February 24, 2012

16
17 /s/ Dennis P. Riordan
18 [Counsel]
19 Designated Attorney Representative on
20 Behalf of All Defendants
21
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28

STIPULATED INSTRUCTION NO. 15

PRICE FIXING

The indictment charges the defendants with conspiring to fix prices. A conspiracy to fix prices is an agreement or mutual understanding between two or more competitors to fix, control, raise, lower, maintain, or stabilize the prices charged, or to be charged, for products or services.

The aim and result of every price-fixing agreement, if successful, is the elimination of one form of competition.

A price-fixing conspiracy is commonly thought of as an agreement to establish the same price; however, prices may be fixed in other ways. Prices are fixed if a target, goal, range or level of prices is agreed upon by the conspirators. They are fixed because they are agreed upon. Thus, any agreement to raise or lower a price, to set a maximum price, to stabilize prices, to set a price or price range, to set target prices, or to maintain a price is illegal.

If you should find that the defendants entered into an agreement to fix prices, the fact that the defendants or their coconspirators did not abide by it, or that one or more of them may not have lived up to some aspect of the agreement, or that they may not have been successful in achieving their objectives, is no defense. The agreement is the crime, even if it is never carried out.

Evidence that the defendants and alleged coconspirators actually competed with each other has been admitted to assist you in deciding whether they actually entered into an agreement to fix prices. If the conspiracy charged in the indictment is proved, it is no defense that the conspirators actually competed with each other in some manner or that they did not conspire to eliminate all competition. Nor is it a defense that the conspirators did not attempt to collude with all of their competitors. Similarly, the conspiracy is unlawful even if it did not extend to all products sold by the conspirators or did not affect all of their customers.

Evidence of the prices actually charged by the defendants has been admitted to assist you in deciding whether they entered into an agreement to fix prices. Such evidence may lead you to conclude that the defendants never entered into the agreement charged in the indictment or that they did enter into the agreement. Or such evidence may show that they made an agreement but

1 failed to live up to it, or started undercutting one another right away, or offered prices lower than
2 those agreed upon to customers they did not want to lose, or it may show that they became
3 convinced that the whole scheme was unwise and should be abandoned. Regardless of this type
4 of evidence, if the conspiracy as charged existed, for any period of time, it was unlawful.

5 Evidence of similarity of business practices of the defendants and alleged coconspirators,
6 or the fact that they may have charged identical prices for the same goods, does not alone
7 establish an agreement to fix prices, since such activities may be consistent with ordinary and
8 proper competitive behavior in a free and open market.

9 The defendants and alleged coconspirators may charge the same prices, may copy each
10 other's price lists or may follow and conform exactly to each other's price policies and price
11 changes and such conduct would not violate the Sherman Act, unless you find it was done
12 pursuant to an agreement between two or more conspirators, as alleged in the indictment.

13 Nevertheless, you may consider such facts and circumstances along with all other
14 evidence in determining whether the evidence of competition, prices actually charged, similarity
15 of business practices, or similarity of prices resulted from the independent acts or business
16 judgment of the defendants and alleged coconspirators freely competing in the open market, or
17 whether it resulted from an agreement among or between two or more of them.

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27 AUTHORITY: ABA Section of Antitrust Law, *Model Jury Instructions in Criminal Antitrust*
28 *Cases 57-58* (2009); *United States v. Alston*, 974 F.2d 1206, 1210 (9th Cir. 1992); *United States*
v. Andreas, 216 F.3d 645, 676-77 (7th Cir. 2000), Tr. 5585:25-5586:9.

GOVT PROPOSED INSTRUCTION NO. 4

APPLICATION OF THE SHERMAN ACT

The Sherman Act applies to conspiracies that occur, at least in part, within the United States. The Sherman Act also applies to conspiracies that occur entirely outside the United States if they have a substantial and intended effect in the United States. Thus, to convict the defendants you must find beyond a reasonable doubt one or both of the following:

(A) that at least one member of the conspiracy took at least one action in furtherance of the conspiracy within the United States, or

(B) that the conspiracy had a substantial and intended effect in the United States.

AUTHORITY: *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 704 (1962); *United States v. Endicott*, 803 F.2d 506, 514 (9th Cir. 1986); *Hartford Fire v. California*, 509 U.S. 764, 796 (1993); *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1, 2-4 (1st Cir. 1997).

DEFENSE OBJECTION: Paragraph (B) is a correct statement of the *Hartford Fire* requirements for establishing extraterritorial jurisdiction over foreign anticompetitive conduct, and should be given. There is no alternative to Hartford Fire as stated in Paragraph (A). Furthermore, (A) would render Hartford Fire entirely nugatory, as, having proven the most minimal act in furtherance of a charged agreement, the government would never have to prove an intended and substantial effect on US commerce. The giving of paragraph (A) would constitute reversible error.

GOVT PROPOSED INSTRUCTION NO. 5

ELEMENTS OF THE OFFENSE

In order to establish the offense of conspiracy to fix prices charged in the indictment, the government must prove each of the following elements beyond a reasonable doubt:

First, that the conspiracy existed at or about the time stated in the indictment;

Second, that the defendants knowingly - that is, voluntarily and intentionally - became members of the conspiracy charged in the indictment, knowing of its goal and intending to help accomplish it; and

Third, that the members of the conspiracy engaged in one or both of the following activities:

(A) fixing the price of TFT-LCD panels sold in the United States or for delivery to the United States; or

(B) fixing the price of TFT-LCD panels that were incorporated into finished products such as notebook computers, desktop computer monitors, and televisions, and that this conduct had a direct, substantial, and reasonably foreseeable effect on trade or commerce in those finished products sold in the United States or for delivery to the United States. In determining whether the conspiracy had such an effect, you may consider the total amount of trade or commerce in those finished products sold in the United States or for delivery to the United States; however, the government's proof need not quantify or value that effect.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

AUTHORITY: ABA Section of Antitrust Law, *Model Jury Instructions in Criminal Antitrust Cases* 47 (2009); *United States v. Alston*, 974 F.2d 1206, 1210 (9th Cir. 1992); 15 U.S.C. ' 6a; *Animal Science Prods. Inc. v China Minmetals Corp.*, 654 F.3d 462, 466, 471 n.11 (3d Cir. 2011); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-1827, 2011 WL 4634031, *9 (N.D. Cal. Oct. 5, 2011).

1 **DEFENSE OBJECTIONS:** The FTAIA requires that a foreign anticompetitive conduct
2 “target” the United States in order to be subject to the Sherman Act. *See Animal Science,*
3 *supra.* Paragraph (A) should state that the defendants “entered into an agreement fixing
4 the price of TFT-LCD panels targeted by the participants to be sold in, or delivered to, the
5 United States.’

6 Paragraph (B) contains a theory of liability under the FTAIA—“that this conduct
7 had a direct, substantial, and reasonably foreseeable effect on trade or commerce in those
8 finished products sold in the United States or for delivery to the United States”—that was
9 not alleged in the indictment. An instruction on that theory would constructively amend the
10 indictment, and should not be given.

EXHIBIT I

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

UNITED STATES OF AMERICA,

Case No. 09-cr-0110 SI

Plaintiff,

**ORDER DENYING MOTIONS FOR
JUDGMENT OF ACQUITTAL AND FOR
A NEW TRIAL**

v.

AU OPTRONICS CORPORATION, et al.,

Defendants.

On May 25, 2012, the Court heard argument on Defendants' motions for acquittal or, in the alternative, a new trial. Dkt. Nos. 878 and 879.¹ Having considered the arguments of counsel and the papers submitted, the Court hereby DENIES Defendants' motions.

BACKGROUND

In June 2010, the Antitrust Division of the Department of Justice indicted AU Optronics Corporation ("AUO"), its wholly-owned subsidiary, AU Optronics Corporation of America ("AUO America"), and nine individuals on charges of price-fixing in violation of the Sherman Act, 15 U.S.C. § 1. AUO is a major manufacturer of thin-film transistor liquid crystal display ("TAFT-LCD") panels, electronic components that are used in computer monitors, televisions, and other consumer electronics. Superseding Indictment, ¶¶ 3-4. The Superseding Indictment charged that AUO, in concert with other TAFT-LCD manufacturers, conspired to fix worldwide prices of TAFT-LCD panels.

¹ AUO and AUOA filed a joint motion (Dkt. No. 879); Hui Hsiung filed a separate motion (Dkt. No. 878), which raises issues substantially similar to those raised in the joint motion. Hsuan Bin Chen and Shiu Lung Leung joined the Hsiung Motion. *See* Dkt. Nos. 881 and 904. The Court considers these motions together.

On March 13, 2012, following an eight-week trial, a jury returned a verdict convicting Defendants AUO, AUO, Hsuan Bin Chen, and H.I. Hsiung (collectively, “Defendants”) for their roles in the charged conspiracy. *See* Special Verdict Form, Dkt. No. 851. The jury further found that the conspirators derived gains of at least \$500 million from the conspiracy. *Id.*

LEGAL STANDARD

1. Rule 29

Rule 29 of the Federal Rules of Criminal Procedure requires the Court, on a defendant’s motion, to “enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” Fed. R. Crim. P. 29(a). “A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.” *Id.* at 29(c)(3). “If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.” *Id.* at 29(d)(1).

The Court’s review of the constitutional sufficiency of evidence to support a criminal conviction is governed by *Jackson v. Virginia*, 443 U.S. 307 (1979), which requires a court to determine whether “after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* at 319 (emphasis original); *see also* *McDaniel v. Brown*, --- U.S. ----, 130 S. Ct. 665, 673 (2010) (reaffirming this standard). *Accord* *United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc). This rule establishes a two-step inquiry:

First, a . . . court must consider the evidence presented at trial in the light most favorable to the prosecution. . . . [And s]econd, after viewing the evidence in the light most favorable to the prosecution, the . . . court must determine whether this evidence, so viewed, is adequate to allow “any rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt.”

Nevils, 598 F.3d at 1164 (quoting *Jackson*, 443 U.S. at 319) (emphasis in *Jackson*, final alteration in *Nevils*).

2. Rule 33

“Upon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a). The Ninth Circuit described the standard for granting a new trial in *United States v. A. Lanoy Alston, D.M.D., P.C.*, 974 F.2d 1206 (9th Cir. 1992), which it reaffirmed in *United States v. Kellington*, 217 F.3d 1084 (9th Cir. 2000):

[A] district court’s power to grant a motion for a new trial is much broader than its power to grant a motion for judgment of acquittal. The court is not obliged to view the evidence in the light most favorable to the verdict, and it is free to weigh the evidence and evaluate for itself the credibility of the witnesses. . . . If the court concludes that, despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury.

Kellington, 217 F.3d at 1097 (internal quotation marks and citations omitted).

DISCUSSION

Defendants give five general reasons why the Court should grant their motions for acquittal, or in the alternative, for a new trial: (1) the government failed to establish venue in the Northern District of California; (2) the government failed to prove both of the required exceptions under the Foreign Trade Antitrust Improvements Act of 1982; (3) the evidence did not support the “gross gains” of \$500 million alleged in the Indictment; (5) on statutory and constitutional grounds, the government was required to allege and present its case under the rule of reason rather than as a *per se* violation of the Sherman Act; and (5) the evidence at trial was insufficient to sustain AUO’s conviction.

The Court addresses each issue in turn.

1. Venue

Defendants contend that the government failed to establish venue in the Northern District of California.

“Venue, which may be waived, is not an essential fact constituting the offense charged.” *United States v. Powell*, 498 F.2d 890, 891 (9th Cir. 1974) (citing *Carbo v. United States*, 314 F.2d 718, 733 (9th Cir. 1963)). Further, the government bears the burden of establishing venue by a preponderance

of evidence. *United States v. Pace*, 314 F.3d 344, 349 (9th Cir. 2002) (internal citation omitted). “[D]irect proof of venue is not necessary where circumstantial evidence in the record as a whole supports the inference that the crime was committed in the district where venue was laid.” *Id.* (citing *United States v. Childs*, 5 F.3d 1328, 1332 (9th Cir. 1993)); *see also Powell*, 498 F.2d at 891 (concluding that “[a] consideration of the circumstantial evidence . . . supports the conclusion of the trial court that venue was established.”).

In conspiracy cases, venue is appropriate in any district where an overt act in furtherance of the conspiracy occurred. *See Hyde v. United States*, 225 U.S. 347, 367 (1912); *United States v. Myers*, 847 F.2d 1408, 1411 (9th Cir. 1988); *United States v. Schoor*, 587 F.2d 1303, 1308 (9th Cir. 1979); *see also* 18 U.S.C. § 3237(a) (permitting prosecution “in any district in which such offense was begun, continued, or completed”). Each defendant need not have entered or otherwise committed an overt act within the district. *Myers*, 847 F.2d at 1411. Rather, since “a conspiracy is a partnership in crime . . . [an] overt act of one partner may be the act of all without any new agreement specifically directed to that act.” *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 253-54 (1940) (citation omitted).

Guided by the parties’ stipulated jury instructions regarding venue,² the jury concluded that the conspiracy, while born abroad, extended into this district. The government presented evidence from which this finding could be made, including the fact that employees of Defendants were located in this District throughout the relevant time period, and that Hewlett-Packard maintained a procurement office

² The jury was instructed in advance of closing argument: “[b]efore you can find a defendant guilty of committing the crime charged in the indictment, you must find by a preponderance of evidence that, between September 14, 2001, and December 1, 2006, the conspiratorial agreement or some act in furtherance of the conspiracy occurred in the Northern District of California” and that “[t]o prove something by a preponderance is to prove it is more likely true than not true.” Final Jury Instructions at 8-9, Dkt. No. 829; Stipulated and Party-Proposed Jury Instructions, Stipulated Instruction at 18, Dkt. No. 807.

Having stipulated to the jury instructions regarding venue, Defendants waived the remainder of their post-conviction arguments. *See United States v. Williams*, 455 F.2d 361, 365 (9th Cir. 1972) (objections to the form of jury instructions waived where no objections made to the instruction as given and no additional instructions requested); *see also Powell*, 498 F.2d at 892 (“A new trial on venue grounds raised after the jury has convicted gives the [defendant] a second bite at the apple to which he is not entitled”); Fed. R. Crim. P. 30 (“A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate.”). Accordingly, Defendants’ argument that the government must prove an act establishing venue within the five-year limitations period must fail; so, too, must Defendants’ constructive-amendment and fatal-variance arguments.

1 in this District from 2001 until mid-2002. The Court finds that the evidence considered by the jury was
2 sufficient to support the jury's conclusion. Further, the Court finds no threat of a serious miscarriage
3 of justice based on the venue finding.

4
5 **2. Foreign Trade Antitrust Improvements Act**

6 Section 1 of the Sherman Act outlaws conspiracies "in restraint of trade or commerce among the
7 several States, or with foreign nations." 15 U.S.C. § 1. Section 7 of the Sherman Act, added by the
8 Foreign Trade Antitrust Improvements Act of 1982 ("FTAIA"), provides that Section 1 "shall not apply
9 to conduct involving trade or commerce (other than import trade or commerce) with foreign nations
10 unless such conduct has a direct, substantial, and reasonably foreseeable effect" on commerce within
11 the United States, United States import commerce, or export trade of a United States exporter. *See* 15
12 U.S.C. § 6a.

13 The jury was instructed accordingly:

14 In order to establish the offense of conspiracy to fix prices charged in the indictment, the
15 government must prove each of the following elements beyond a reasonable doubt:

16 * * *

17 Third, that the members of the conspiracy engaged in one or both of the following
activities:

- 18 (A) fixing the price of TAFT-LCD panels targeted by the participants to be sold in
19 the United States or for delivery to the United States; or
20 (B) fixing the price of TAFT-LCD panels that were incorporated into finished
21 products such as notebook computers, desktop computer monitors, and
22 televisions, and that this conduct had a direct, substantial, and reasonably
foreseeable effect on trade or commerce in those finished products sold in the
United States or for delivery in the United States . . .

23 Final Jury Instructions at 10, Dkt. No. 829.

24 Defendants argue that acquittal or a new trial is appropriate because "the evidence at trial was
25 insufficient to prove either exclusion." *See* Joint Motion at 18. Specifically, Defendants claim that the
26 government failed to prove that AUO or the individual defendants fixed the price of TAFT-LCD panels
27 "targeted" for sale or delivery to the United States, or that Defendants' conduct had a "direct, substantial
28 and reasonably foreseeable" effect on United States import commerce. *See id.* at 18-23. But the jury

1 was instructed on both of the FTAIA exceptions and found it beyond a reasonable doubt that the
2 government's evidence sufficed.³

3 The Court does not find that the jury erred in its finding. To the contrary, the Court finds that,
4 based on the evidence presented at trial, a reasonable jury could have found that the price-fixing
5 conspiracy involved import commerce and that the conspiracy, which extended to the United States, had
6 a "direct, substantial, and reasonably foreseeable effect" on that import commerce.

8 **3. \$500 Million Gross-Gain Finding**

9 The jury was also instructed to determine whether Defendants or other participants derived
10 monetary or economic gain from the conspiracy:

11 In determining the gross gain from the conspiracy, you should total the gross gains to the
12 defendants and other participants in the conspiracy from affected sales of (1) TAFT-LCD panels
13 that were manufactured abroad and sold in the United States or for delivery to the United States;
14 or (2) TAFT-LCD panels incorporated into finished products such as notebook computers and
desktop computer monitors that were sold in the United States or for delivery to the United
States.

15 Final Jury Instructions at 15, Dkt. No. 829.

16 Based on these instructions and the testimony of the government's expert witness, Dr. Leffler,
17 the jury found that the gross gain from the conspiracy was "\$500 million or more." *See* Verdict at 3,
18 Dkt. 851. Defendants argue that the jury's finding of gain from the conspiracy is unsupported by the
19 evidence. Defendants challenge the analysis of Dr. Leffler, who testified that the gross gain from the
20 conspiracy was "substantially greater than \$500 million." According to Defendants, Dr. Leffler's
21 analysis is flawed because he incorrectly assumed that every TAFT-LCD panel made by the crystal-
22 meeting defendants from 2001 to 2006 was affected by the conspiracy. Defendants claim that, because
23 he failed to distinguish between affected and unaffected panels, Dr. Leffler's analysis does not meet the
24 requirement in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that any fact increasing the penalty beyond

25 ³ Defendants also contend that the evidence was insufficient to meet the FTAIA exceptions as
26 a matter of law. Defendants' interpretation of the FTAIA, however, is inconsistent with the case law
27 upon which the jury instructions were based. Moreover, Defendants stipulated to part of those jury
28 instructions and cannot be heard to complain about them now. *See* Stipulated and Party-Proposed Jury
Instructions at 28, Dkt. No. 807 (parties agreeing that part B of the instructions "is a correct statement
of the *Hartford Fire* requirements for establishing extraterritorial jurisdiction over foreign
anticompetitive conduct, and should be given.").

1 the \$100 million maximum prescribed by the Sherman Act must be proven beyond a reasonable doubt.

2 Defendants are incorrect. To begin with, Dr. Leffler's multiple regression analysis estimated
3 total overcharges in excess of \$2 billion, far more than \$500 million. Defendants make no compelling
4 argument as to why the jury's reliance on Dr. Leffler's analysis was unreasonable. Nor did they offer
5 at trial any alternative assessment of gross gains earned by all six crystal-meeting companies. Further,
6 Defendants' *Apprendi* argument is misguided because the jury was charged with finding the total gain
7 from the conspiracy, not the proportion of the panels affected by it. As the government rightly observes,
8 it is the former that increases the maximum fine; the jury found beyond a reasonable doubt that the gain
9 was at least \$500 million.

10 Neither acquittal nor a new trial is appropriate here, where there was sufficient evidence for a
11 reasonable jury to determine a gross gain amount of \$500 million.

12 13 **4. Rule of Reason**

14 Defendants revive an argument that the Court has already fully considered and rejected, *see*
15 Order Denying Defendants' Motion to Dismiss the Indictment and For a Bill of Particulars, Dkt. No.
16 250; *United States v. Chen*, 2011 WL 332713 (N.D. Cal. 2011): that, pursuant to *Metro Industries Inc.*
17 *v. Sammi Corporation*, 82 F.3d 839 (9th Cir. 1996), Sherman Act violations based on foreign conduct
18 are subject to a rule-of-reason analysis, and do not constitute a *per se* violation of antitrust laws as
19 alleged in the Indictment. The Court found then that the *Metro Industries* case was factually and legally
20 distinguishable from this case, and reiterates that finding now.⁴

21 Defendants further contend they were not afforded fair notice under the due process clause that
22 their conduct was forbidden. Defendants argue that *Metro Industries* is controlling Ninth Circuit law,
23 and, as such, they only had fair warning that their conduct may be subject to a rule-of-reason analysis
24 to determine whether there is a Sherman Act violation, not a *per se* analysis.

25
26 ⁴ The Court also finds that Defendants waived their *Metro Industries* argument by voluntarily
27 abandoning their proposed rule-of-reason jury instructions and stipulating to the price-fixing instructions
28 given to the jury. *See* Stipulated and Party Proposed Jury Instructions at 15, Dkt. 807; *see also United States v. Laurenti*, 611 F.3d 530, 543-44 (9th Cir. 2010) ("waiver occurs when the defendant was aware of the omitted element and yet relinquished his right to have it submitted to the jury") (internal citations and quotation omitted).

The Court is unpersuaded. “The due process clause . . . guarantees individuals the right to fair notice whether their conduct is prohibited by law.” *United States v. AMC Entm’t, Inc.*, 549 F.3d 760, 770 (9th Cir. 2008). There is ample evidence in the trial record that Defendants knew they were committing a wrongful act. “Indeed, since ‘the punishment imposed is only for an act knowingly done with the purpose of doing that which [the Sherman Act] prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of the law.’” *United States v. Tannenbaum*, 934 F.2d 8, 12 (2d Cir. 1991) (quoting *Screws v. United States*, 325 U.S. 91, 102 (1945)).

5. AUO’s Separate Claims

Defendants also argue that the Court should grant their motions in favor of AUO because the government failed to prove that “any agent of AUO knowingly and intentionally participated in the price-fixing agreement.” Joint Motion at 55.

The Court disagrees. Viewed in a light most favorable to the government, the Court finds that there is considerable evidence in the record from which a jury could reasonably find beyond a reasonable doubt that H.I. Hsiung (AUO), Michael Wong (AUO), and other AUO employees participated in the conspiracy on behalf of AUO and reached illegal pricing agreements.

CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby DENIES Defendants’ motions for acquittal and DENIES Defendants’ alternate motions for a new trial. Dkt. Nos. 878 and 879. **IT IS SO ORDERED.**

Dated: June 5, 2012


SUSAN ILLSTON
United States District Judge

EXHIBIT J

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

AU OPTRONICS CORPORATION, et al.,
Defendants.

) Case No. CR-09-0110 (SI)
)
) **DEFENDANTS' PROPOSED**
) **PRELIMINARY JURY**
) **INSTRUCTIONS ON THE**
) **ELEMENTS OF THE OFFENSE, AND**
) **MEMORANDUM IN SUPPORT OF**
) **PROPOSED INSTRUCTIONS**
)
) Date: Tuesday, December 13, 2011
) Time: 3:30 p.m.
) Courtroom: Hon. Susan Illston

TABLE OF CONTENTS

| | | |
|------|---|---|
| I. | INTRODUCTION..... | 1 |
| II. | MEMORANDUM IN SUPPORT OF PROPOSED INSTRUCTIONS..... | 2 |
| A. | Procedural Background. | 2 |
| B. | The FTAIA Element, and the Rulings in <i>Animal Science</i> and <i>Minn-Chem</i> | 3 |
| C. | The <i>Hartford Fire-Nippon Paper</i> Element. | 5 |
| III. | PARTIAL PROPOSED JURY INSTRUCTIONS..... | 8 |
| | INSTRUCTION NO. ** - ELEMENTS OF A SHERMAN ACT VIOLATION..... | 8 |
| | INSTRUCTION NO. ** - FTAIA - IMPORT TRADE OR COMMERCE..... | 9 |

TABLE OF AUTHORITIES

CASES

| | |
|---|---------|
| <i>Animal Science</i> , -- F.3d --, 2011 WL 3606995 (3d Cir. Aug.17, 2011) | passim |
| <i>Arbaugh v. Y & H Corp.</i> , 546 U.S. 500 (2006) | 5 |
| <i>Hartford Fire Insurance Co. v. California</i> , 509 U.S. 764 (1993) | 2, 6, 7 |
| <i>Minn-Chem, Incorporated v. Agrium Inco.</i> , -- F.3d --, 2011 WL 4424789 (7th Cir. Sept. 23, 2011) | 1, 4, 5 |
| <i>Turicentro, S.A. v. America Airlines Inc.</i> , 303 F.3d 293 (3d Cir.2002) | 5 |
| <i>United States v. Nippon Paper Industrial Co.</i> , 109 F.3d 1 (1st Cir. 1997) | 3, 7, 8 |

STATUTES

| | |
|---------------------|---|
| 15 U.S.C. § 1 | 2 |
| 15 U.S.C. § 6a | 3 |
| 18 U.S.C. § 3571(d) | 2 |

1 **I. INTRODUCTION**

2 On June 10, 2010, the United States filed a Superseding Indictment in this action. The
3 indictment purports to state a single count for price-fixing under the Sherman Act. 15 U.S.C. §
4 1. The indictment names two corporate defendants, AU Optronics Corporation ("AUO") and AU
5 Optronics Corporation America ("AUOA"), as well as six individual defendants who are either
6 current or former employees of AUO: (1) Hsuan Bin Chen; (2) Dr. Hui Hsiung; (3) Dr. Lai-Juh
7 Chen; (4) Shiu Lung Leung; (5) Borlong Bai; and (6) Tsannrong Lee.

8 The corporate defendants request that the jury be instructed on the elements of the
9 charged offense at the outset of trial. The corporate defendants' proposed instructions, which are
10 based on the points and authorities discussed below, are attached. In particular, the corporate
11 defendants request that the jury be instructed that it must find the substantive elements of the
12 offense required by both (a) *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993), and its
13 progeny; and (b) the Foreign Trade Antitrust Improvement Act (FTAIA). Important recent
14 decisions from the Third Circuit and Seventh Circuit make clear that the jury must be instructed
15 on these elements of the offense. *See Animal Science Products, Inc. v. China Minmetals Corp.*,
16 -- F.3d --, 2011 WL 3606995 (3d Cir. Aug.17, 2011); *Minn-Chem, Incorporated v. Agrium Inco.*;
17 -- F.3d --, 2011 WL 4424789 (7th Cir. Sept. 23, 2011).

18 The corporate defendants have consulted with the government and agreed that they will
19 brief the defendants' preinstruction request in time for the Court to hear argument on the issue at
20 the pretrial conference to be held on December 13th. The parties have also agreed that the
21 government may place on for a hearing at the pretrial conference a motion for preinstruction on
22 issues related to the alternative fine provision. 18 U.S.C. section 3571(d).

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II. MEMORANDUM IN SUPPORT OF PROPOSED INSTRUCTIONS

A. Procedural Background

This Court has previously discussed what the requisite elements of the offense are, but it has not conclusively resolved the issue. AUO and AUOA filed a motion to dismiss the Superseding Indictment on the grounds that it failed to allege every element of a criminal violation of the Sherman Act. The defendants contended that two elements had not been pleaded. *First*, the defendants pointed out that the Superseding Indictment failed to allege that any defendant intended by that defendant's conduct to produce a substantial anti-competitive effect in the United States, as required by the First Circuit's decision in *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1, 9 (1st Cir. 1997). *Second*, the defendants argued that although the Superseding Indictment plainly alleged "trade or commerce . . . with foreign nations" pursuant to the Foreign Trade Antitrust Improvement Act (FTAIA), the Indictment failed to allege either that defendants' alleged conduct "involved import trade or commerce" or that their conduct had a "direct, substantial and reasonably foreseeable effect" on domestic commerce. 15 U.S.C. § 6a.

In its opposition, the government primarily contended that it was not required to plead or prove either fact, because neither is an essential element of the offense. (Dkt. 281.)

On April 18, 2011, the Court denied the defendants' motion. (Dkt. 287.) For each of the two claims made by the defendants, the Court issued rulings in the alternative. First, with respect to the *Nippon Paper* element, the Court questioned whether the holding in *Nippon Paper* was applicable, noting that while the conduct alleged there was "wholly foreign," the Government has alleged limited domestic conduct here. (Opn. at 4-5.) In the alternative, the Court held that to the extent that the *Nippon Paper* standard did apply, the allegations in the Superseding Indictment of a conspiracy to fix prices of TFT-LCD panels worldwide, including in the United States, was a sufficient allegation of intent to produce a substantial domestic effect. (Opn. at 5 ("Even if *Nippon* applies to this case, the superseding indictment contains sufficient allegations to establish an 'intended and substantial effect in the United States.'").)

1 Second, with respect to the FTAIA element, the Court held that even if the FTAIA
2 applied to criminal cases, any allegation of a domestic overt act was sufficient to satisfy the
3 statute. (Opn. at 7-8.) In the alternative, the Court held that the Government's allegation that
4 price-fixed TFT-LCD panels had been sold in the United States was sufficient to constitute
5 "import trade or commerce." (Opn. at 7: "Thus, it appears that the criminal charges alleged in the
6 indictment are based at least in part on conduct involving 'import trade or import commerce' . . .
7 .").

8 In sum, with respect to both questions, this Court essentially reserved ruling on whether
9 either fact was a necessary element of the offense. The Third Circuit's ruling in *Animal Science*
10 and the Seventh Circuit's ruling in *Minn-Chem* lend substantial new support to the defendants'
11 position that both facts are indeed necessary elements of the offense, which must be submitted to
12 the jury and proved beyond a reasonable doubt.

13 **B. The FTAIA Element, and the Rulings in *Animal Science* and *Minn-Chem***

14 Like this case, both *Animal Science* and *Minn-Chem* involved allegations of global
15 conspiracies to fix prices. The *Animal Science* plaintiffs alleged that the defendants, Chinese
16 producers and exporters of magnesite, had engaged in a conspiracy to fix the price of magnesite
17 imported to the United States. 2011 WL 3606995 at *1. The *Minn-Chem* plaintiffs alleged that
18 the defendants, potash producers located in Canada, Russia, and Belarus, had engaged in a
19 conspiracy to fix the price of potash sold worldwide, including that imported into the United
20 States. 2011 WL 4424789 at *1-2.

21 In both cases, the defendants raised defenses based on the FTAIA. Both the Third Circuit
22 and the Seventh Circuit largely accepted the arguments made by the defendants regarding the
23 meaning and scope of the FTAIA. In so doing, those circuits clarified two critical points that are
24 directly applicable to this case.

25 *First*, the Third Circuit explicitly held-contrary to what the government has argued in this
26 case-that the exceptions to the FTAIA are substantive elements of the offense, not mere
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"jurisdictional" limitations. The Third Circuit relied on the "bright line" rule for distinguishing jurisdictional from substantive elements that the Supreme Court adopted in *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006). It concluded:

The FTAIA neither speaks in jurisdictional terms nor refers in any way to the jurisdiction of the district courts.. Indeed, the statutory text is wholly silent in regard to the jurisdiction of the federal courts. The FTAIA reads only that the Sherman Act "shall not apply" if certain conditions are met. Assessed through the lens of *Arbaugh's* "clearly states" test, the FTAIA's language must be interpreted as imposing a substantive merits limitation rather than a jurisdictional bar. Or, in the terminology set forth above, in enacting the FTAIA, Congress exercised its Commerce Clause authority to delineate the elements of a successful antitrust claim rather than its Article III authority to limit the jurisdiction of the federal courts. We therefore overrule our earlier precedent that construed the FTAIA as imposing a jurisdictional limitation on the application of the Sherman Act.

2011 WL 3606995 at *4 (citations and footnotes omitted). In *Minn-Chem*, the Seventh Circuit indicated that it agreed with the Third Circuit's analysis on this point, but reserved the issue for another case since its outcome would have been the same regardless. See 2011 WL 4424789 at *6 & n.3.

Second, both courts emphasized that the "import trade or commerce" exception to the FTAIA-the same exception that the government apparently intends to prove in this case-must be construed narrowly. The Third Circuit emphasized, as it previously had in *Turicentro, S.A. v. Am. Airlines Inc.*, 303 F.3d 293 (3d Cir.2002), that selling goods or services that are eventually imported does not constitute "import trade or commerce." Rather, "the relevant inquiry is whether the defendants' alleged anticompetitive behavior 'was directed at an import market.' Or, to phrase it slightly differently, the import trade or commerce exception requires that the defendants' conduct target import goods or services." *Animal Science*, 2011 WL 3606995 at *5 (quoting *Turicentro*, 303 F.3d at 303).

The Seventh Circuit agreed with this analysis, and it reasoned that the district court in *Minn-Chem* had interpreted the "import trade or commerce" exception far too broadly.

If foreign anticompetitive conduct can "involve" U.S. import

commerce even if it is directed entirely at markets overseas, then the "direct effects" exception is effectively rendered meaningless. Under the district court's reading of the statute, a foreign company that does *any* import business in the United States would violate the Sherman Act whenever it entered into a joint-selling arrangement overseas *regardless* of its impact on the American market. This would produce the very interference with foreign economic activity that the FTAIA seeks to prevent.

2011 WL 4424789 at *8 (emphasis in original). Relying on *Animal Science*, the Seventh Circuit concluded that the "import trade or commerce" exception must be interpreted more narrowly.

Thus, the relevant inquiry under the import-commerce exception is "whether the defendants' alleged anticompetitive behavior 'was directed at an import market.'" Contrary to what the district court seemed to think, it is not enough that the defendants are engaged in the U.S. import market, though that may be relevant to the analysis. Rather, "the import trade or commerce exception requires that the defendants' [foreign anticompetitive] conduct target [U.S.] import goods or services."

Id. at *9 (quoting and citing *Animal Science*).

The *Minn-Chem* plaintiffs failed to "allege any specific facts to support a plausible inference that the offshore defendants agreed to an American price or production quota for potash." *Id.* They had merely alleged general coordination to fix prices worldwide, and had made only conclusory allegations that the conspiracy was directed particularly at the United States. As a result, the Seventh Circuit ordered the suit be dismissed for failure to state a claim.

In sum, *Animal Science* and *Minn-Chem* support two propositions regarding the application of the FTAIA to this case. First, the jury must be instructed that the government is required to prove beyond a reasonable doubt that the defendants conduct involved "import trade or commerce." Second, the jury instructions must clarify that the government can satisfy that burden only by proving a conspiracy that is particularly directed at the American import market.

C. The *Hartford Fire-Nippon Paper* Element

In addition to the FTAIA elements, the defendants also request that the jury be instructed that, in order to find defendants guilty, it must find a "substantial and intended effect" on United States commerce as required by *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993), and

1 *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1, 9 (1st Cir. 1997).

2 In its April 18 Order, this Court suggested that *Nippon Paper* applies only to cases based
3 on "wholly foreign conduct." While it is true that the First Circuit used that phrase, 109 F.3d 1,
4 9, the conspiracy in *Nippon Paper* involved both foreign and domestic conduct. Moreover, the
5 holding in *Nippon Paper* was based on the Supreme Court's holding in *Hartford Fire*, which
6 involved mostly domestic conduct. It is not true that the principles of *Hartford Fire* and *Nippon*
7 *Paper* apply only to "wholly foreign" cases. Therefore, a substantial and intended effect on
8 domestic commerce is a necessary element of the charged offense in this case, regardless of
9 whether this case is characterized as "wholly foreign" or not.

10 *Hartford Fire* involved both domestic and foreign conduct; the suit named both domestic
11 and foreign defendants. In fact, most of the conduct in *Hartford Fire* was domestic-the primary
12 four defendants in the case were four large domestic insurance companies. See 509 U.S. at
13 774-81. But *Hartford Fire* also involved certain foreign defendants, namely several
14 London-based reinsurers. *Id.* at 794-95. Those foreign reinsurers argued that the Sherman Act
15 could not be applied to them. The Supreme Court rejected that argument because "it is well
16 established by now that the Sherman Act applies to foreign conduct that was meant to produce
17 and did in fact produce some substantial effect in the United States." *Id.* at 796.

18 In short, though *Hartford Fire* was based primarily on domestic conduct, the Supreme
19 Court held that the foreign aspect of the case could be reached only because it had a substantial
20 and intended effect on domestic commerce.

21 The First Circuit subsequently applied and extended the principles of *Hartford Fire* when
22 it decided *Nippon Paper*. The defendants in *Nippon Paper* actually sought to distinguish
23 *Hartford Fire*. They argued that unlike *Hartford Fire*, their case was based on "wholly foreign
24 conduct," and thus beyond the jurisdictional reach of the Sherman Act. The government, by
25 contrast, argued that the case was not "wholly foreign" because it involved both intended
26 domestic effects and also significant domestic acts. Indeed, in its arguments to the First Circuit,
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1 the government relied heavily on the fact that the indictment "alleged a vertical conspiracy in
2 restraint of trade that involved overt acts by certain coconspirators within the United States." 109
3 F.3d at 2.

4 The First Circuit rejected the defendant's arguments. It held that, even if the case was
5 based on "wholly foreign conduct," it could still proceed in American court because the foreign
6 conduct was intentionally aimed at the United States. It held that the indictment was sufficient
7 because it alleged "that the defendant orchestrated a conspiracy with the object of rigging prices
8 in the United States." *Id.* at 8. It held that even if the case had been based on "wholly foreign
9 conduct" (which in fact it was not, according to the government), the foreign conduct could be
10 reached because it had a substantial and intended effect on domestic commerce. In so holding,
11 the First Circuit simply applied *Hartford Fire*. See 109 F.3d at 9 ("We need go no further.
12 *Hartford Fire* definitively establishes that Section One of the Sherman Act applies to wholly
13 foreign conduct which has an intended and substantial effect in the United States.").

14 Taken together, *Hartford Fire* and *Nippon Paper* stand for the proposition that antitrust
15 cases based *partly or entirely* on foreign commerce may proceed in domestic court so long as the
16 conduct at issue had a substantial and intended effect on domestic commerce. To say that
17 *Hartford Fire* only applies when the case is based on "wholly foreign conduct" is to turn that case
18 on its head. Neither the Supreme Court nor the First Circuit ever suggested anything of the sort.
19 Both *Hartford Fire* and *Nippon Paper* stand for the same proposition: Foreign conduct is covered
20 by the Sherman Act if and only if it has a substantial and intended effect on domestic commerce.

21 Regardless of whether this case is characterized as "wholly foreign," it is clear on the face
22 of the indictment that this case is based to a large extent on foreign conduct. The Indictment
23 alleges that defendant AUO and each of the executives are nationals of Taiwan. (Indictment, 4,
24 6-11.) Nearly all of the conduct alleged in the Indictment took place overseas. (*Id.*, 17(a-b)
25 (alleged "crystal meetings" in Taiwan); 17(h) (alleged meetings involving "lower-level marketing
26 employees" in Taiwan); 17(i) (alleged "back-to-back, one-on-one meetings" in Taiwan).) In fact,
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1 this case involves far more foreign conduct than *Hartford Fire* and as much foreign conduct as
2 *Nippon Paper*. Applying *Hartford Fire* and *Nippon Paper*, the foreign conduct alleged in this
3 case is covered by the Sherman Act if and only if it had a substantial and intended effect on
4 domestic commerce. That is a fact necessary for conviction. It is thus an essential element of the
5 offense which the government must prove beyond a reasonable doubt at trial.

6 **III. PARTIAL PROPOSED JURY INSTRUCTIONS**

7 Consistent with the principles set forth above, the defendants request the following jury
8 instructions describing the elements of the offense, and describing the meaning of "import trade
9 or commerce." The defendants will of course submit additional proposed jury instructions at the
10 appropriate time.

11 **INSTRUCTION NO. ** - ELEMENTS OF A SHERMAN ACT VIOLATION**

12 Defendants AU Optronics and AUO America are charged in the Indictment with
13 knowingly joining in a single ongoing conspiracy to suppress and eliminate competition by fixing
14 prices in the market for TFT-LCD panels, in violation of Section 1 of Title 15 of the United
15 States Code, commonly known as the Sherman Antitrust Act. In order for one or both of these
16 defendants to be found guilty of that charge, the government must prove each of the following
17 elements beyond a reasonable doubt:

18 *One*, that beginning on or about September 14, 2001 and ending on or about December 1,
19 2006, there was an agreement or mutual understanding between two or more persons to fix the
20 prices of TFT-LCD panels as charged in the Indictment;

21 *Two*, that on or about the various dates set forth in the Indictment, one or both corporate
22 Defendants voluntarily and intentionally became members of the conspiracy knowing that the
23 object of the conspiracy was to suppress and eliminate competition by fixing prices of TFT-LCD
24 panels and intending to help accomplish that goal;

25 *Three*, that the Defendants' conduct had a substantial and intended effect on United States
26 commerce;

1 *Four*, that the conspiracy described in the Indictment involved import trade or commerce.

2 **INSTRUCTION NO. ** - FTAIA - IMPORT TRADE OR COMMERCE**

3 Because the alleged conspiracy predominantly involved conduct which occurred, if at all,
4 in foreign countries, I instruct you as a matter of law that the conduct of AU Optronics
5 Corporation and AU Optronics Corporation America alleged in the indictment was "conduct
6 involving trade or commerce with foreign nations."

7 Section 6a of the Sherman Act, which is known as the Foreign Trade Antitrust
8 Improvement Act, provides that the Act does not apply to "conduct involving trade or commerce
9 with foreign nations" unless the conduct involved "import trade or commerce." Therefore, before
10 you may find either defendant guilty, you must find beyond a reasonable doubt that the
11 defendants' conduct involved "import trade or commerce." I will now instruct you on how to
12 make this determination.

13 In order to conclude that the conduct of the defendant involved import trade or
14 commerce, you must find beyond a reasonable doubt that defendants' anticompetitive conduct, if
15 any, was directed at the United States import market.

16 It is not sufficient, without more, for the government to establish that the defendants were
17 engaged in the United States import market. It is similarly not sufficient for the government to
18 establish that the defendants were engaged in global anticompetitive behavior involving products
19 that were eventually imported into the United States. Rather, the government must establish
20 beyond a reasonable doubt that the defendants' anticompetitive conduct targeted United States
21 import goods.

22 The transmission of payments for TFT-LCD panels, even if those payments traveled
23 across the United States border, is irrelevant to the question of whether the defendant engaged in

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conduct involving import trade or commerce; nor does ancillary activity in support of the supposed conspiracy transform the conspiracy into "conduct involving import trade or commerce."

DATED: November 2, 2011

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AU OPTRONICS CORPORATION AMERICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

Case No. CR-09-0110 (SI)

**AUO DEFENDANTS' RESPONSE TO
UNITED STATES' MEMORANDUM RE:
FINAL JURY INSTRUCTIONS**

Judge: Hon. Susan Illston
Place: Courtroom 10, 19th Floor

A. Introduction

The defendant AU Optronics Corporation is a global corporation which ships almost none of its TFT-LCD products directly to the United States. It is accused of agreeing to fix prices at meetings held in Taiwan. Yet, on the eve of closing arguments, the government maintains that this is a “domestic case.” *See* Govt. Mem, at 1 (“Since there was conduct in the United States, this is a ‘domestic’ case.”) (Doc. No. 810). The government therefore claims that the case is controlled by case law announced over a hundred years ago, directed solely at domestic trusts, holding that under the Sherman Act the crime of price-fixing consists of nothing more than an agreement to do so. *Id.* (citing *Nash v. United States*, 229 U.S. 373, 378 (1913) (“[T]he Sherman Act punishes the conspiracies at which it is aimed on the common-law footing,-that is to say, it does not make the doing of any act other than the act of conspiring a condition of liability.”)).

One hundred years ago, when *Nash* was decided, the Foreign Trade Antitrust Improvement Act (“FTAIA”), which created a presumption that anti-competitive conduct abroad is *not* subject to United States jurisdiction, had not been enacted. *Hartford Fire Insurance Co. v. California*, 509 U.S. 764 (1993), which requires that to exercise extraterritorial jurisdiction over foreign anticompetitive conduct, that conduct must have a substantial and intended effect on United States commerce, had not been decided, nor had *United States v. Nippon Paper Industries Company*, 109 F.3d 1 (1st Cir. 1997), holding to the same effect. *Nash* came nearly a century before the Supreme Court, in interpreting the FTAIA, cautioned against applying United States antitrust principles to foreign conduct. *F. Hoffmann-LaRoche Ltd. v. Empagran S.A.*, 542 U.S. 155, 168 (2004) (applying American antitrust remedies to foreign conduct risks “undermin[ing] foreign nations’ own antitrust enforcement”).

The government’s position is entirely inconsistent with the instructions it proposed, and the Court accepted. If this were a domestic case, the Court would not have decided to instruct on paragraphs (A) or (B) contained in the “Application of the Sherman Act” instruction, which describe facts that the government must prove beyond a reasonable doubt before this Court can exercise extraterritorial jurisdiction over the defendants’ alleged conduct in Taiwan. And if this were a domestic case, the Court

would not have decided to instruct on paragraphs (A) or (B) in its instruction on “The Elements of The Offense,” which concern the FTAIA exceptions that the government must prove to bring the defendants’ foreign conduct within the scope of the Sherman Act.

The fact that some act occurred in the United States plainly does not render a case almost entirely based on foreign conduct a “domestic” case. *Kruman v. Christie’s International PLC*, 284 F.3d 384, 395 (2d Cir. 2002) (“The application of the FTAIA hinges on whether the ‘conduct’ involves foreign trade or commerce. Clearly, when there is conduct directed at reducing the competitiveness of a foreign market, as there was in this case, such conduct involves foreign trade or commerce, regardless of whether some of the conduct occurred in the United States.”). The government’s contention that this is a domestic case requiring it to prove “the crime” by establishing no more than that there was an agreement to fix prices in a Taiwan hotel room by Chinese and Korean businessmen is, to use a legal term, loopy.

B. The Price-Fixing Instruction

Because the defendants’ position taken in an email to the Court last Friday, February 24, 2012, has not yet been incorporated in a formal pleading, AUO repeats it here.

In Stipulated Instruction No. 15, concerning price-fixing, at lines 16-17, the instruction reads: “The agreement is the crime, even if it is never carried out.” (Doc. No. 807) On Friday, this Court struck similar language twice from the Government’s Proposed Instructions Nos. 6 and 7, and quite correctly so. Tr. at 4610:23-4611:8. While that language may be correct in a domestic antitrust matter, it is flatly erroneous in this case.

The government’s theory is that the charged agreement was formed in Taiwan hotel rooms in 2001. The government has conceded in its own instructions that there are four reasons why the charged agreement does not, in itself, constitute the Count One offense.

First, both paragraphs (A) and (B) of the Government’s Proposed Instruction No. 4 on the “Application of the Sherman Act,” much discussed on Friday, require acts or effects within the United States. Second, both paragraphs (A) and (B) of Government’s Proposed Instruction No. 5 on the “Elements of the Offense” require acts or effects within the United States. Government’s Proposed

Instruction No. 9, “Statute of Limitations,” requires an act in furtherance of the conspiracy after June 9, 2005. And Stipulated Instruction No. 18, “Venue,” requires an act in furtherance of the conspiracy in the Northern District of California.

That being so, it would be error for the government to argue, or the jury to be instructed, that proof of a price-fixing agreement in Taiwan in 2001 “is the [charged] crime,” for in this case much more must be proven to convict. We ask that the Court strike the quoted language from Stipulated Instruction No. 15 as it did on Friday with the same language in other instructions proposed by the government.

C. The Gross Gains Instruction

At Friday’s instructional conference, the Court ruled over defense objection that the jury would be instructed in the guilt phase of the trial on the “gross gains” calculation related to the alternative fine issue, rather than in a separate, subsequent proceeding if and when the corporations are convicted of price-fixing. At that point in the conference, the defendants objected to the first paragraph of the government’s Proposed Instruction No. 14 on gross gains, which reads as follows:

The government does not have to prove that anyone derived monetary or economic gain from the alleged conspiracy or that the alleged conspiracy caused any monetary or economic harm in order for you to find a defendant guilty of the offense. To find a defendant guilty, all that you must find is that the government has proven the elements of the offense, which I previously described.

Because the government again has submitted an excerpt of a form instruction for domestic antitrust matters without considering the facts of this case, or even its other proposed instructions, the paragraph is patently erroneous.

We begin with the sentence: “To find a defendant guilty, all that you must find is that the government has proven the elements of the offense, which I previously described.” The Court’s draft jury instructions contain a previous instruction titled “Elements of the Offense.” That “Elements” instruction contains three numbered elements, one with alternate paragraphs (A) and (B). But the aforementioned “Elements” instruction only contains half the factual components that the government must prove before the jury can find a defendant guilty. Specifically, the government must prove beyond a reasonable doubt one of the two alternative elements stated in paragraphs (A) and (B) in the separate

instruction titled “Application of the Sherman Act.” It must also prove an overt act within the statute of limitations, as well as an act within the venue of the Northern District of California. The first paragraph of Government’s Proposed Instruction No. 14, “Gross Gains,” ignores these requirements, and obviously may not be given.

Of equal importance, the first sentence—“The government does not have to prove that anyone derived monetary or economic gain from the alleged conspiracy or that the alleged conspiracy caused any monetary or economic harm in order for you to find a defendant guilty of the offense.”—is equally flawed. Paragraphs (A) and (B) in the “Application” and “Elements” instructions both require a showing of a detrimental impact on United States commerce. The gross gains paragraph now being challenged carries the same message as would an instruction in an interstate transportation of stolen property (“ITSP”) case that informs the jury that the stolen property has to be proven to have traveled in interstate commerce but does not have to be proven to have done so. The instructional conflict must be eliminated.

Finally, the gross gains instruction properly comes into play only when and if the jury has convicted one or both of the corporations. It makes no sense to have incorporated in a penalty phase an instruction with directions as to what does and does not have to be proven in the guilt phase of the trial. The entire paragraph should be deleted from the gross gains instruction.

D. Expert Opinion Testimony

The defense does not object to the government’s proposed amendment of the “Opinion Evidence, Expert Witness” instruction.

E. The “Targeted” Language in the “Elements of the Offense” Instruction

The Court correctly inserted the “targeted” language in the “Elements of the Offense” instruction.

DATED: February 26, 2012

NOSSAMAN LLP

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