

HP Sues LG, Philips Over Disc Drive Price-Fixing Scheme

By **Erica Teichert**

Law360, Washington (October 24, 2013, 7:37 PM ET) -- Hewlett-Packard Co. slammed LG Electronics Inc., Koninklijke Philips NV, Pioneer Corp. and various subsidiaries with an antitrust suit in Texas federal court Thursday for their alleged involvement in a massive optical disc drive price-fixing conspiracy, claiming the scheme caused them to pay inflated prices for the products.

HP claimed they purchased billions of dollars worth of optical disc drives during the six-year conspiracy, which has been the subject of consumer multidistrict litigation as well as a U.S. Department of Justice investigation and plea agreement with one party.

The defendants and numerous co-conspirators allegedly shared confidential business information with one another and formed broad agreements to set optical disc drive prices in the market, which violated the Sherman Act as well as California antitrust laws, according to the complaint.

"HP paid higher prices for ODDs than it would have paid in a competitive market as a direct result of defendants' and their co-conspirators' unlawful conduct," the complaint said.

HP maintained it didn't know about the manufacturers' conduct until DOJ announced it was investigating the optical disc drive market in 2009, which led to a plea agreement with Hitachi-LG Data Storage Inc., a defendant in the case.

In 2011, Hitachi-LG agreed to pay \$21.1 million in criminal fines for its admitted involvement in the scheme from 2005-09. But HP alleged the conspiracy lasted from 2004-10.

The complaint noted that optical disc drive pricing behaved unusually during the conspiracy period, as prices would stay stable or even rise after the products were released into the consumer market.

"The cost of manufacturing ODDs should have declined as industry consolidation and manufacturing bases shifted to lower-cost countries. In a competitive market, this would be reflected in downward pricing trends as well. However, prices for ODDs started to level off," the complaint said.

According to HP, that pricing behavior is blatant evidence of the overarching scheme.

"If they had acted independently, ODD makers would have had different incentives, depending on the size of their market share in an existing generation of optical disc technology," the complaint said. "The fact that defendants and their co-conspirators uniformly held off on significant price reductions regardless of share demonstrates that they were acting conspiratorially. Because of these different incentives, stable prices cannot be explained merely as conscious parallelism."

The suit comes just one month after a California federal judge approved Hitachi-LG's \$26 million exit from multidistrict litigation over the price-fixing conspiracy from a putative class of plaintiffs who purchased the CD, DVD and Blu-ray drives contained in computers, video game consoles and movie disc players. The company's move could lead to more defendants settling that case, plaintiffs' attorneys claimed at the time.

Hitachi-LG was the first defendant to plead guilty and agree to cooperate with the DOJ's criminal probe of alleged price-fixing among companies that make optical disc drives. The company — a joint venture between Japan's Hitachi Ltd. and South Korea's LG Electronics Inc. — engaged in a series of conspiracies to rig bids for drives sold to Dell and HP and to work to fix prices for drives sold to Microsoft from 2004 through late 2009, according to prosecutors.

HP ran a similar procurement process, and Hitachi-LG likewise conspired with its rivals from late 2005 to March 2009 to decide on pricing and what order their would rank in before submitting noncompetitive bids for HP's business, the criminal information said.

The company was also charged with wire fraud for planning to undermine competition for HP's April 2009 bidding process by using email communications to send sensitive information from South Korea to an unnamed co-conspirator in San Jose, Calif.

HP is represented by Alistair B. Dawson of Beck Redden LLP and Fred Bartlit Jr., Karma Julianelli, Lester Houtz, Andre M. Pauka, Daniel R. Brody and Mark E. Ferguson of Bartlit Beck Herman Palenchar & Scott LLP.

Counsel information for the defendants was not immediately available.

The case is Hewlett-Packard Co. v. LG Electronics Inc. et al., case No. 4:13-cv-03134, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Beth Winegarner and Melissa Lipman. Editing by Chris Yates.

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