

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Plaintiff

- and -

LG PHILIPS LCD CO., LTD., L.G. PHILIPS LCD AMERICA, INC., SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS CANADA INC., HITACHI LTD., HITACHI DISPLAYS, LTD., HITACHI CANADA, LTD., HITACHI AMERICA LTD., HITACHI ELECTRONICS DEVICES (USA) INC., SHARP CORPORATION, SHARP ELECTRONICS CORPORATION, SHARP ELECTRONICS OF CANADA LTD., TOSHIBA CORPORATION, TOSHIBA MATSUSHITA DISPLAY TECHNOLOGY CO., LTD., TOSHIBA AMERICA CORPORATION, TOSHIBA OF CANADA LIMITED, AU OPTRONICS CORPORATION AMERICA, CHI MEI OPTOELECTRONICS USA, INC., CHI MEI OPTOELECTRONICS JAPAN CO., LTD. and CHUNGHWA PICTURE TUBES, LTD.

Defendants

(Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6)

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

AMENDED THIS 17 DAY OF JUNE 2009  
PURSUANT TO THE ORDER OF: *Fauschetter*  
DATED THE 17 DAY OF JUNE 2009  
LOCAL REGISTRAR, SUPERIOR COURT OF JUSTICE

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date May 2, 2007

Issued by

"M. Barnett"

Local registrar

Address of Court House  
court office 80 Dundas Street  
London, ON N6A 6A1

- TO: LG Philips LCD Co., Ltd.**  
20 Yoido-dong, Youngdungpo-gu  
Seoul 150-721  
Republic of Korea
- AND TO: LG Philips LCD America, Inc.**  
150 East Brokaw Road  
San Jose, CA 95112
- AND TO: Samsung Electronics Co. Ltd.**  
Samsung Main Building 250-2ga  
Taepyung-ro Chung-gu, Seoul, Korea
- AND TO: Samsung Electronics Canada Inc.**  
55 Standish Court  
Mississauga, Ontario L5R 4B2
- AND TO: Hitachi Ltd.**  
6-1 Marunouchi Center Building 13F  
Chiyoda-ku, Tokyo, 100-8220 Japan
- AND TO: Hitachi Canada, Ltd.**  
2495 Meadowpine Boulevard  
Mississauga, Ontario L5N 6C3

- AND TO: Hitachi America Ltd.**  
50 Prospect Avenue  
Tarrytown, New York 10591
- AND TO: Hitachi Displays, Ltd.**  
AKS Bldg. 5F.  
6-2 Kanda Neribeicho 3  
Chiyoda-ku, Tokyo, 101-0022 Japan
- AND TO: Hitachi Electronics Devices (USA), Inc.**  
575 Mauldin Road  
Greenville, South Carolina 29607  
USA
- AND TO: Sharp Corporation**  
22-22 Nagaike-cho, Abeno-ku  
Osaka 545-8522, Japan
- AND TO: Sharp Electronics Corporation**  
Sharp Plaza, Mahwah, New Jersey 07430'
- AND TO: Sharp Electronics of Canada Ltd.**  
335 Britannia Road East  
Mississauga, Ontario L4Z 1W9
- AND TO: Toshiba Corporation**  
1-1, Shibaura 1-chome, Minato-ku  
Tokyo, 105-8001, Japan
- AND TO: Toshiba of Canada Limited**  
191 McNabb Street  
Markham, Ontario L3R 8H2
- AND TO: Toshiba America Corporation**  
1251 Avenue of the Americas, Suite 4110  
New York, NY 10020
- AND TO: Toshiba Matsushita Display Technology Co., Ltd.**  
Rivage Shinagawa, 1-8, Konan 4-chome  
Minato-ku, Tokyo 108-0075, Japan
- AND TO: AU Optronics Corporation America**  
9720 Cypresswood Drive, Suite 241  
Houston, Texas
- AND TO: Chi Mei Optoelectronics USA, Inc.**  
101 Metro Drive, Suite 510  
San Jose, California  
USA
- AND TO: Chi Mei Optoelectronics Japan Co., Ltd.**  
Nansei Yaesu Building 4F, 2-2-10 Yaesu  
Chuo-ku, Tokyo 104-0028, Japan

**AND TO:      **Chunghwa Picture Tubes, Ltd.****  
1127 Heping Road, Bade City  
Taoyuan, Taiwan

**CLAIM**

1. The Plaintiff claims on behalf of themselves and other persons in Canada who are similarly situated:
  - (a) a declaration that the Defendants conspired each with the other to raise, maintain, fix and stabilize the price of large panel liquid crystal display ("LCD") (i.e. LCD panels that are 10 inches or larger, measured diagonally) and televisions, computer monitors and laptops containing LCD (collectively "LCD Products") during the period beginning at least January 1, 1998 to December 11, 2006 ("Conspiracy Period");
  - (b) general damages for conspiracy, intentional interference with economic interests, and conduct that is contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34 in the amount of \$150,000,000.00;
  - (c) punitive and exemplary damages in the amount of \$15,000,000.00;
  - (d) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*, R.S.C. 1985, c. C-34;
  - (e) pre-judgement and post-judgement interest at the rate of 10% compounded annually or as otherwise ordered by the Honourable Court;
  - (f) costs of this action on a substantial indemnity basis; and
  - (g) such further and other relief as this Honourable Court awards.

## **NATURE OF THE ACTION**

2. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of LCD Products sold in Canada and worldwide. During the Conspiracy Period, the Defendants and their senior executives participated in illegal and secretive meetings and made agreements relating to the prices, market share divisions and production levels for LCD Products.
3. LCD panels use liquid crystal to control the passage of light. An LCD panel is made of two glass sheets sandwiching a layer of liquid crystal. The front sheet is fitted with a colour filter and the back sheet has transistors fabricated on it. When voltage is applied to a transistor, the liquid crystal is bent, allowing light to pass through to form a pixel. The front glass sheet contains a colour filter that gives each pixel its own colour. The combination of these pixels in different colours forms the image on the panel.
4. While LCD is used in a variety of products, such as televisions, computer monitors, laptops, mobile phones, personal digital assistants, and digital cameras, this claim relates only to large panel LCDs used in televisions, computer monitors and laptops.

## **THE REPRESENTATIVE PLAINTIFF**

5. The plaintiff, The Fanshawe College of Applied Arts and Technology ("Fanshawe College") is a community college located in London, Ontario. Fanshawe College was established as a college of applied arts and technology pursuant to O.Reg. 34.03.
6. During the Conspiracy Period, Fanshawe College purchased LCD Products for use in its classrooms, computer laboratories and administration.

## **THE DEFENDANTS**

7. Various persons and/or firms involved in the manufacturing, marketing, selling and/or distribution of LCD Products to customers throughout Canada, not named as Defendants herein, including but not limited to AU Optronics Corp., Chi Mei Optoelectronics Corporation, and HannStar Display Corporation ("HannStar"), may have participated as co-conspirators in the violation alleged herein and may have performed acts and made agreements in furtherance thereof.
8. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators.

### **A. L.G. Philips**

9. LG Philips LCD Co., Ltd. is a Korean entity with its principal place of business in Seoul, Korea. LG Philips LCD Co., Ltd. is a joint venture created in 1999 by Philips Electronics NV and LG LCD. LG Philips LCD Co., Ltd. maintains offices in San Jose, California. During the Conspiracy Period, LG Philips LCD Co., Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
10. LG Philips LCD America, Inc. is a subsidiary of LG Philips LCD Co., Ltd. LG Philips America, Inc. an entity organized under the laws of California with its principal place of business in San Jose, California. During the Conspiracy Period, LG Philips LCD America, Inc. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

11. The business of each of LG Philips LCD Co., Ltd. and LG Philips LCD America, Inc. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of LCD Products in Canada and for the purposes of the conspiracy described hereinafter.

**B. Samsung**

12. Samsung Electronics Co. Ltd. is a business entity organized under the laws of South Korea, with its principal place of business in Seoul, Korea. During the Conspiracy Period, Defendant Samsung Electronics Co. Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
13. Samsung Electronics Canada Inc. is a subsidiary of Samsung Electronics Co. Ltd with its principal place of business in Mississauga, Ontario. During the Conspiracy Period, Samsung Electronics Canada Inc. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
14. The business of each of Samsung Electronics Co. Ltd. and Samsung Electronics Canada Inc. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of LCD Products in Canada and for the purposes of the conspiracy described hereinafter.

**C. Hitachi**

15. Hitachi Ltd. is a business entity organized under the laws of Japan, with its principle place of business in Tokyo, Japan. During the Conspiracy Period, Hitachi Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout

Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

16. Hitachi Canada, Ltd. is a subsidiary of Hitachi Ltd. with its principal place of business in Mississauga, Ontario. During the Conspiracy Period, Hitachi Canada, Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
17. Hitachi America Ltd. is a subsidiary of Hitachi Ltd. Hitachi America Ltd. is a business entity organized under the laws of New York, with its principal place of business in Tarrytown, New York. During the Conspiracy Period, Hitachi America Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
18. In 2002, all the departments of planning, development, design, manufacturing and sales concerned with the display business of Hitachi, Ltd. were spun off into a separate company, Hitachi Displays, Ltd. Hitachi Displays, Ltd. is a business entity organized under the laws of Japan, with its principal place of business in Tokyo, Japan. During the Conspiracy Period, Hitachi Displays, Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
19. Hitachi Electronics Devices (USA), Inc. is a related company of Hitachi Displays, Ltd., and is a business entity with its principal place of business in Greenville, South Carolina. During the Conspiracy Period, Hitachi Electronic Devices (USA), Inc. manufactured,

marketed sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

20. The business of each of Hitachi Ltd., Hitachi Canada, Ltd., Hitachi America, Ltd. Hitachi Displays, Ltd. and Hitachi Electronics Devices (USA), Inc. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of LCD Products in Canada and for the purposes of the conspiracy described hereinafter.

**D. Sharp**

21. Sharp Corporation is a business entity organized under the laws of Japan, with its principal place of business in Osaka, Japan. During the Conspiracy Period, Sharp Corporation manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
22. Sharp Electronics of Canada Ltd. is a subsidiary of Sharp Corporation with its principal place of business in Mississauga, Ontario. During the Conspiracy Period, Sharp Electronics of Canada Ltd. manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
23. Sharp Electronics Corporation is a subsidiary of Sharp Corporation, with its principal place of business in Mahwah, New Jersey. During the Conspiracy Period, Sharp Electronics Corporation manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

24. The business of each of Sharp Corporation, Sharp Electronics of Canada Ltd. and Sharp Electronics Corporation is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of LCD Products in Canada and for the purposes of the conspiracy described hereinafter.

**E. Toshiba**

25. Toshiba Corporation is a business entity organized under the laws of Japan, with its principal place of business in Tokyo, Japan. During the Conspiracy Period, Toshiba Corporation manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
26. Toshiba of Canada Limited is a subsidiary of Toshiba Corporation with its principal place of business in Markham, Ontario. During the Conspiracy Period, Toshiba of Canada Limited manufactured, marketed sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
27. Toshiba America Corporation is a subsidiary of Toshiba Corporation with its principal place of business in New York, New York. During the Conspiracy Period, Toshiba America Corporation manufactured, marketed sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
28. The business of each of Toshiba Corporation, Toshiba of Canada Limited and Toshiba America Corporation is inextricably interwoven with that of the other and each is the

agent of the other for the purposes of the manufacture, sale and/or distribution of LCD Products in Canada and for the purposes of the conspiracy described hereinafter.

**F. Toshiba Matsushita Display Technology**

29. In April 2002, Toshiba Corporation and Matsushita Electric Industrial Co., Ltd. merged their LCD businesses to form a joint venture, Toshiba Matsushita Display Technology Co., Ltd. ("Toshiba Matsushita Display Technology"). Toshiba Matsushita Display Technology is a business entity organized under the laws of Japan with its principal place of business in Tokyo, Japan. During the Conspiracy Period, Toshiba Matsushita Display Technology manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

**G. AU Optronics**

30. AU Optronics Corporation America is a business entity with its corporate headquarters in Houston, Texas. AU Optronics America is a wholly owned and controlled subsidiary of AU Optronics Corp., a corporation with its headquarters in Hsinchu, Taiwan. During the Conspiracy Period, AU Optronics Corporation America manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

**H. Chi Mei**

31. Chi Mei Optoelectronics USA, Inc. ("CMO USA"), formerly known as International Display Technology USA Inc., is a business entity with its corporate headquarters in San Jose, California. CMO USA is a wholly owned and controlled subsidiary of Chi Mei Optoelectronics Corporation, a corporation with its headquarters in Tainan County, Taiwan. During the Conspiracy Period, CMO USA manufactured, marketed, sold and/or

distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

32. Chi Mei Optoelectronics Japan Co., Ltd. ("CMO Japan"), formerly known as International Display Technology Co., Ltd., is an entity organized under the laws of Japan with its principal place of business in Tokyo, Japan. CMO Japan is a wholly owned and controlled subsidiary of Chi Mei Optoelectronics Corporation. During the Conspiracy Period, CMO Japan manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
33. The business of each of CMO USA and CMO Japan is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture sale and/or distribution of LCD Products in Canada and for the purposes of the conspiracy described hereinafter.

#### **I. Chunghwa**

34. Chunghwa Picture Tubes, Ltd. ("Chunghwa") is a business entity organized under the laws of Taiwan, with its principal place of business in Taoyuan, Taiwan. During the Conspiracy Period, Chunghwa manufactured, marketed, sold and/or distributed LCD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

#### **THE LCD INDUSTRY**

35. The LCD industry has several characteristics that served to facilitate the conspiracy alleged herein.

**A. World-Wide Market Concentration**

36. The market for LCD Products is substantial. In 2006, manufacturers produced approximately 48.4 million LCDs to be used in televisions alone. Flat-panel television sales – most using LCD technology – were expected to reach approximately US\$88 billion in 2006 and US\$100 billion in 2007.
37. During the Conspiracy Period, the Defendants controlled a significant share of the LCD market, both in Canada and internationally. In 2005, LG.Philips (21.4%), Samsung (20.9%), AU Optronics (14.5%), Chi Mei (11.8%), and Chunghwa (7.3%) controlled approximately 75% of the global LCD market.

**B. Barriers to Entry**

38. The market for the manufacture and sale of LCD is subject to high barriers to entry. Efficient LCD fabrication plants are large and expensive. Setting up a state-of-the-art manufacturing facility can cost upwards of US\$3 billion. LCD is subject to technological advances, so that manufacturers must undertake significant research and development expenses. These barriers to entry, and high manufacturing and research and development costs make it less likely that new competitors will enter the LCD market and undercut the Defendants' cartel prices.

**C. Manufacturing and Cross Purchasing**

39. Glass is the most expensive input in LCD panels. Glass sizes advance in "generations". Later generation glass offers greater economies of scale: larger sheets allow display manufacturers to produce more and larger panels from a single substrate more efficiently.

40. Each new generation glass substrate requires significant new investment. A fabrication ("fab") line that works with one glass size cannot be switched to another glass size without substantial retrofitting. Because building a new fab line or retrofitting an old line is very expensive and because glass is nearly all sourced from the same supplier, Corning Incorporated, LCD manufacturers use standard sizes for their products. In addition, because fabrication plants are most efficient when using standard sizes for panels, different manufacturers with different generation fabs only make the most efficient size panels for that fab.
41. When the Defendants require other panel sizes that are not efficiently made by their fabs, they cross-purchase from each other:
- (a) LG Phillips supplies certain size panels to other Defendants and buys other size panels from Chunghwa, Chi Mei and AU Optronics;
  - (b) HannStar and Chunghwa have an agreement whereby they supply certain size LCD panels to each other;
  - (c) Samsung has a joint venture with Sony Corporation to supply each other with panels;
  - (d) Samsung purchases panels from AU Optronics and HannStar;
  - (e) Chunghwa makes panels for AU Optronics and Mitsubishi; and
  - (f) Chi Mei makes panels for Sharp, Toshiba, Panasonic and Sanyo.

42. These cross-purchasing agreements provide opportunity for collusion and coordination among the participants, as well as a means of detecting cheating on agreements to limit outputs and fix prices.

**D. Licensing Agreements**

43. Many of the Defendants have entered into licensing and other agreements, all of which create additional opportunity for collusion and substantially lessen competition in the LCD market:

- (a) Samsung and LG Phillips recently agreed to an unprecedented level of cooperation in their LCD businesses;
- (b) Chi Mei has licensing arrangements with Sharp, AU Optronics, Chunghwa, HannStar and Hitachi;
- (c) AU Optronics entered into licensing agreements with Sharp in 2005 and with Samsung in 2006;
- (d) Chungwa entered into a licensing agreement with Sharp in December 2006; and
- (e) NEC has a joint venture with Mitsubishi.

**E. Consolidation**

44. The LCD industry has experienced significant consolidation during the Conspiracy Period:

- (a) in 2001, Acer Display and Unipac Electronics merged to create AU Optronics. Then, in 2006, AU Optronics acquired Quanta Display to become the third largest manufacturer of LCD;

- (b) Toshiba and Matsushita merged their LCD operations in 2002, forming Toshiba Matsushita Display Co., Ltd.;
  - (c) Hitachi, Toshiba and Matsushita entered into a joint venture for the production of LCD panels for televisions in 2004; and
  - (d) in 2005, Fujitsu Limited transferred its LCD business to Sharp.
45. This consolidation resulted in more market power for the companies involved.

#### **F. Trade Associations**

46. The LCD industry is served by several major trade organizations that put on industry-wide meetings several times a year. These meetings have facilitated collusion, and the trade associations have themselves functioned as a means by which the conspiracy was effectuated and implemented.
47. One such trade association is the Taiwan TFT LCD Association ("TTLA"), which was founded in 2000. One of its missions is "promoting the cooperation within competition". TTLA's annual fiscal plans state that one of its activities is to "call international meeting[s] on LCD field and invite Japan and Korea TFT LCD affiliations to visit TTLA." AU Optronics, Chi Mei, and HannStar are members of the TTLA.
48. South Korean manufacturers, including LG.Philips and Samsung, had similar trade associations during the Conspiracy Period, known as EDIRAK (the Electronic Display Industrial Research Association of Korea) and KODEMIA (the Korea Display Equipment Material Industry Association). Since 1996, EDIRAK had a cooperation pact with the United States Display Consortium.

49. The Semiconductor Equipment Association of Japan ("SEAJ"), founded in 1995, serves Japanese LCD manufacturers. Its members include Sharp, Toshiba, Hitachi, and a subsidiary of Samsung.
50. In June 2001, a market seminar was held at National Chiao Tung University, Hsinchu, Taiwan. Representatives of most, if not all, of the Defendants attended this seminar, where pricing was discussed.
51. The Society for Information Display ("SID") puts on multiple meetings each year, including the SID International Symposium and Business Conference ("SID") and the International Display Research Conference. The 2004 and 2005 SID featured presentations about the LCD market and a networking reception, and was attended by executives from all of the major LCD producers.
52. The conspiracy was also carried out at the annual meetings of the Global FPD Partners' Conference ("GFPC"), which have been held since 2005. The meetings promoted the exchange of information and networking among the Defendants. Representatives from at least some of the Defendants participated in the annual meetings.

#### **G. Market Reporting**

53. The LCD industry is analyzed by several market research firms that offer monthly market data on pricing, supply, utilization of fabs, and other key indicators of market activity. The capacity and pricing data reported by these firms comes directly from manufacturers. Manufacturers typically report historical, current and prospective information. Thus, the Defendants had access to each other's future plans for increasing capacity, capacity utilization, market share, pricing, and the advent of new technology. Because there were very few companies that needed to be analyzed in order to obtain this data, all competitors in the LCD market had timely access to

reliable information about their competition's pricing as well as future supply and capacity decisions. By monitoring and analyzing this information over time, participants in the conspiracy were able to signal their respective intent, verify that the conspiracy was working, and identify any parties who might be deviating from the conspiracy.

#### **THE LCD INDUSTRY DURING THE CONSPIRACY PERIOD**

54. Since at least 1996, the LCD market has not behaved as would be expected of a competitive market free of collusion. Rather, the behaviour in this market strongly evidences that the Defendants engaged in a price-fixing conspiracy that had the purpose and effect of unnaturally stabilizing and raising prices for LCD Products.
55. After being introduced into a market, consumer electronics products and their components are typically characterized by steady downward pricing trends, as the manufacturers experience greater economies of scale and acquire more expertise. However, since at least 1996, the LCD market has been characterized by unnatural price stability and certain periods of substantial price increases.
56. Industry analysts commented on the unusual trends in the LCD industry:
- Unlike other PC products, which only go down in price, flat panel prices have jumped occasionally in the past. "LCD is one of the few (markets) where things have actually gone up in price," said Bob O'Donnell, an analyst with IDC.
57. Since at least 1996, the LCD market has not followed the normal principles of supply and demand. In a competitive market, price increases normally occur during shortage periods. Notwithstanding, there have been significant price increases in the LCD market during periods of both oversupply and shortage.

## **THE CONSPIRACY TO FIX PRICES OF LCD PRODUCTS**

58. The Plaintiff alleges that during the Conspiracy Period, the Defendants and unnamed conspirators conspired and/or agreed with each other to enhance unreasonably the prices of LCD Products and to lessen unduly competition in the production, manufacture, sale and/or supply of LCD Products in North America.
59. During the Conspiracy Period, senior executives and employees of the Defendants and unnamed co-conspirators, acting in their capacities as agents for the Defendants and unnamed co-conspirators, engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the Plaintiff, and as a result of the communications and meetings the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:
- (a) to enhance unreasonably the prices of LCD Products in North America;
  - (b) exchange information in order to monitor and enforce adherence to the agreed-upon prices for LCD Products;
  - (c) allocate the market share, customers, and/or to set specific sales volumes of LCD Products that each Defendant would supply in Canada; and
  - (d) to lessen unduly competition in the production, manufacture, sale and/or supply of LCD Products in North America.
60. In furtherance of the conspiracy, during the Conspiracy Period, the following acts were done by the Defendants, their servants and agents, and unnamed co-conspirators:
- (a) they enhanced unreasonably the prices of LCD Products in North America;

- (b) they allocated the volumes of sales of, and customers and markets for LCD Products among themselves;
  - (c) they reduced the supply of LCD Products;
  - (d) they communicated secretly, in person and by telephone, to discuss and fix prices and volumes of sales of LCD Products;
  - (e) they exchanged information regarding the prices and volumes of sales of LCD Products for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
  - (f) they refrained from submitting truly competitive bids for LCD Products in Canada, the United States and elsewhere;
  - (g) they submitted collusive, non-competitive and rigged bids for LCD Products in Canada, the United States and elsewhere;
  - (h) they took active steps to, and did, conceal the unlawful conspiracy from their customers; and
  - (i) they disciplined any corporation which failed to comply with the conspiracy.
61. The Defendants and unnamed co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were:
- (a) to harm the Plaintiff and other Class Members by requiring them to pay artificially high prices for LCD Products; and
  - (b) to illegally increase their profits on the sale of LCD Products.

62. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.
63. The acts particularized in paragraphs 58 to 62 were unlawful acts directed towards the Plaintiff and other purchasers of LCD Products, which unlawful acts the Defendants knew in the circumstances would likely cause injury to the Plaintiff and other purchasers of LCD Products and, as such, the Defendants are liable for the tort of civil conspiracy.
64. Further, or alternatively, the acts particularized in paragraphs 58 to 62 were unlawful acts undertaken by the Defendants with the intent to injure the Plaintiff and other purchasers of LCD Products and, as such, the Defendants are liable for the tort of intentional interference with economic interests.
65. Further, or alternatively, the acts particularized in paragraphs 58 to 62 are in breach of s. 45 of the *Competition Act* and render the Defendants liable to pay damages pursuant to s. 36 of the *Competition Act*. Further, or alternatively, the Canadian subsidiaries of the foreign Defendants are liable to the Plaintiff and the other class members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act*.
66. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

## INTERNATIONAL CRIMINAL INVESTIGATIONS

67. In late 2006, antitrust investigators from the European Commission ("EC"), the U.S. Department of Justice ("DOJ"), South Korea's Fair Trade Commission, and Japan's Fair Trade Commission stated that they are investigating the possibility of anticompetitive conduct in the LCD industry. Taiwan's antitrust regulator has indicated that it is monitoring developments in the LCD industry, but has not yet commenced a formal investigation.

68. The EC confirmed that, on December 8, 2006, it sent formal requests for information to a number of LCD manufacturers. The EC stated that the purpose of the investigation is to "ascertain whether there is evidence of a cartel agreement and related practices concerning price fixing for these products." The EC further stated that it is aware of investigations in other jurisdictions and that it has had discussions with other authorities in relation to the case.

69. In a December 11, 2006 filing with the Securities and Exchange Commission, LG Phillips LCD disclosed:

In December 2006, we received notice that we were under investigation by the Korean Fair Trade Commission, the Japanese Fair Trade Commission, the Antitrust Division of the U.S. Department of Justice and regulatory bodies of other competitive markets with respect to possible anti-competitive activities in the LCD industry. We are cooperating fully with the investigations, which remain preliminary.

70. In its 2007 Annual Report, Hitachi disclosed:

In addition, in December 2006, the Company and a subsidiary in Europe received requests for information from the European Commission, a subsidiary in Japan received requests for information from the Antitrust Division of the of the U.S.

Department of Justice and the Fair Trade Commission of Japan and an affiliate in Japan received requests for information from the Fair Trade Commission of Japan in respect of alleged antitrust violations relating to the liquid crystal displays.

71. Samsung, in its 2006 Annual Report, stated that the DOJ and other nations' antitrust authorities had initiated an investigation into alleged antitrust violations by the sellers of LCD, which include Samsung and some of its foreign subsidiaries.
72. News reports indicate that Sharp and AU Optronics have also confirmed being investigated by antitrust regulators in relation to the conspiracy.

#### **DAMAGES**

73. The Plaintiff suffered the following damages:
  - (a) the price of LCD Products has been enhanced unreasonably at artificially high and non-competitive levels; and
  - (b) competition in the sale of LCD Products has been unduly restrained.
74. During the period covered by this claim, the Plaintiff purchased LCD Products. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff paid more for LCD Products than they would have paid in the absence of the illegal conspiracy and, as a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.
75. The Plaintiff asserts that their damages and the damages of other persons who are similarly situated are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the Defendants and the prices which would have been obtained in the absence of the unlawful conspiracy.

76. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the Plaintiff's rights and the rights of others who are similarly situated, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.
77. The Plaintiff's damages and those of other persons who are similarly situated have been suffered in the Province of Ontario and elsewhere in Canada.
78. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), ss. 36, 45 and 46.
79. The Plaintiff pleads and relies on section 17 (g), (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario on the basis that the claim is:
- (a) in respect of a tort committed in Ontario (rule 17.02(g));
  - (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
  - (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
  - (d) against a person carrying on business in Ontario (rule 17.02(p)).
80. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*.

81. The Plaintiff states that they are representative of persons in Canada who purchased LCD Products in Canada during the Conspiracy Period.
82. The Plaintiff proposes that this action be tried at London, Ontario.

May 2, 2007

**Siskinds** <sup>LLP</sup>  
Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

Charles M. Wright LSUC#: 36599Q  
Andrea L. DeKay LSUC #43818M  
Tel: (519) 672-2121  
Fax: (519) 672-6065

**Sutts, Strosberg** <sup>LLP</sup>  
Barristers & Solicitors  
600-251 Goyeau Street  
P.O. Box 670, Stn A  
Windsor, Ontario N9A 6V4

Harvey T. Strosberg  
Tel: (519) 258-9333  
Fax: (519) 561-6203

Lawyers for the Plaintiff

**ONTARIO SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

(Proceeding under the *Class Proceedings Act, 1992*)

**SECOND FRESH AS AMENDED  
STATEMENT OF CLAIM**

**Siskinds <sup>LLP</sup>**

Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

Charles M. Wright LSUC#: 36599Q  
Andrea L. DeKay LSUC #43818M  
Tel: (519) 672-2121  
Fax: (519) 672-6065

**Sutts, Strosberg <sup>LLP</sup>**

Barristers & Solicitors  
600-251 Goyeau Street  
P.O. Box 670, Stn A  
Windsor, Ontario N9A 6V4

Harvey T. Strosberg, Q.C. LSUC#126400  
Tel: (519) 258-9333  
Fax: (519) 561-6203

Lawyers for the Plaintiff