

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

**WESTERN DIGITAL CORPORATION,
a corporation.**

Docket No. C-

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Western Digital Corporation (“Western Digital” or “Respondent”) of Viviti Technologies Ltd. (“HGST”), a wholly owned subsidiary of Hitachi, Ltd. (“Hitachi”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets (“Order to Maintain Assets”), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Western Digital Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3355 Michelson Drive, Irvine, California 92612.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order¹ s use

3. at the Acquirer's option, the Shenzhen Facility Option Assets.
- G. "3.5 Inch HDD Product(s)" means the HGST *Mars* product lines for 3.5 Inch HDDs with one, two, or three platters, used in non-portable desktops and tower personal computers.
- H. "3.5 Inch HDD Products Business" means the research, development, manufacture, distribution, finishing, packaging, marketing, sale, storage and transport of 3.5 Inch HDD Products by HGST before the Acquisition Date, including any contracts, agreements or other arrangements by HGST with any Person to provide any such research, development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport.
- I. "3.5 Inch HDD Products Business Assets" means the following assets primarily related to the 3.5 Inch HDD Products Business:
1. the 3.5 Inch HDD Manufacturing Assets;
 2. the 3.5 Inch HDD Products Business Records;
 3. the 3.5 Inch HDD Products Intellectual Property License; and
 4. the 3.5 Inch HDD Products Patents License.
- J. "3.5 Inch HDD Products Business Employee(s)" means any employee whose duties primarily related to the 3.5 Inch HDD Products Business at any time during the twelve (12) month period prior to the Closing Date.
- K. "3.5 Inch HDD Products Business Firewalled Employees" means:
1. all employees at the Shenzhen Facility whose duties involve the contract manufacture of the 3.5 Inch HDD Products for the Acquirer;
 2. all 3.5 Inch HDD Products Business Key Employees;
 3. all employees of Respondent seconded to the Acquirer during the Transition Services Period;
 4. all employees of Respondent whose duties involve the supply of Heads and/or Media to the Acquirer; and
 5. all employees of Respondent with access to Confidential Business Information related to the 3.5 Inch HDD Products whose duties relate to Respondent's own 3.5 Inch HDD business.

- L. “3.5 Inch HDD Products Business Key Employee(s)” means an employee designated by the Acquirer as a Product Manager, a Design Manager, a Manufacturing Manager, and a Quality Assurance Manager.
- M. “3.5 Inch HDD Products Business Records” means (i) all documents and records (including all electronic records and files wherever stored) that are exclusively used in the 3.5 Inch HDD Products Business and (ii) copies of all documents and records (including all electronic records and files wherever stored) that are primarily related to 3.5 Inch HDD Products Business including, without limitation:
1. all documents and information related to employees, contractors, and others employed or contracted by Respondent whose duties primarily relate to the 3.5 Inch HDD Products Business;
 2. all Software primarily related to 3.5 Inch HDD Products; and
 3. all 3.5 Inch HDD Products Manufacturing Documents.
- N. “3.5 Inch HDD Products Business Divestiture Agreement” means:
1. the WD-Toshiba Asset Purchase Agreement; or
 2. any agreement that receives the prior approval of the Commission between Respondent (or a Divestiture Trustee) and an Acquirer for the divestiture of the 3.5 Inch HDD Products Business entered into pursuant to Paragraph II (or Paragraph IV) of this Order, and any attachments, amendments, exhibits, and schedules related thereto.
- O. “3.5 Inch HDD Products Contract Manufacturing Agreement” means:
1. the Manufacturing Agreement by and between Toshiba Corporation, Hitachi Global Storage Products (Shenzhen) Co. Ltd., and Western Digital Corporation, dated on the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto as of the Closing

corporate trade dress of “WD,” “HGST,” or “Hitachi,” or any other trademark, trade dress, or corporate name, or (ii) patents owned by Respondent.

Q. “3.5 Inch HDD

- X. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondent that is not in the public domain and that is directly related to the operation and management of the 3.5 Inch HDD Products Business including, but not limited to, information related to the cost, supply, sales, sales support, customers, contracts, research, development, distribution and marketing of 3.5 Inch HDD Products; *provided, however,* this provision shall not include:
1. information that subsequently falls within the public domain through no violation of this Order;
 2. information that Respondent develops or obtains independently, without violating any applicable law or this Order; and
 3. information that becomes known to Respondent from a Third Party not in breach of applicable law or other confidentiality obligation.
- Y. “Design Manager” means an employee of Respondent, designated by the Acquirer, who has managerial or supervisory duties, in whole or in part, in the research or design of 3.5 Inch HDD Products within the twelve (12) month period immediately prior to the Closing Date, and may be an individual identified in Cu

- FF. “Heads Supply Agreement” means the Heads Supply Agreement by and between Toshiba Corporation, Western Digital (Malaysia) SDN BHD, Western Digital Corporation, dated on the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto. This Heads Supply Agreement is attached to this order and contained in non-public Appendix C.
- GG. “Intellectual Property” means any type of intellectual property, including without limitation, patents, copyrights, trademarks, trade dress, trade secrets, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, or development information.
- HH. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order.
- II. “Know-How” means all knowledge, information and know-how in the possession of Respondent or within the knowledge of any employee or consultant of Respondent on or before the Closing Date that relates to the 3.5 Inch HDDs Products.
- JJ. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- KK. “Manufacturing Period” means the period beginning on the Closing Date and ending on the later of:
1. one (1) year after the Closing Date; or
 2. the date the Acquirer transfers twelve (12) Primary Production Lines and such lines have been qualified as provided in the Transition Services Agreement Schedule 2.01 Part D.
- LL. “Manufacturing Manager” means an employee of Respondent, designated by the Acquirer, who has managerial or supervisory duties, in whole or in part, in the manufacture or production of 3.5 Inch HDD Products within the twelve (12) month period immediately prior to the Closing Date, and may be an individual identified in Confidential Appendix B.
- MM. “Media” means the components of 3.5 Inch HDDs that consist of a flat, circular platter coated with a magnetically sensitive material used for storing electronic data.
- NN. “Media Supply Agreement” means the Media Supply Agreement by and between Toshiba Corporation, WD Media (Malaysia) SDN, and Western Digital Corporation, dated on the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto. This Media Supply Agreement is attached to this order and contained in non-public Appendix D.

OO. "Monitor Agreement" means the Monitor Agreement dated February 26, 2012, between ING Financial Markets LLC, and Western Digital Corporation. The Monitor Agreement is attached as Appendix E to this Order.

1. for 3.5 Inch HDD Products, the capacity of ten (10) fully configured Primary Production Lines; *provided, however*, that after the Rolling Manufacturing Asset Transfer Date, Respondent may reduce the number of lines on a rolling basis to enable the transfer of lines; and
2. for Heads and/or Media, the capacity to supply fifty (50) percent of Heads and/or Media that is required to support the number of 3.5 Inch HDD Products produced from sixteen (16) fully configured Primary Production Lines; *provided, however*, Respondent shall also reserve the capacity to supply fifty (50) percent of Heads and/or Media that is required to support the number of 3.5 Inch HDD Products produced from any of the six (6) additional fully configured primary production lines from the Shenzhen Option Assets that are purchased by the Acquirer.

WW. “Re-Work Lines” means re-work production lines used to disassemble HDDs as referenced

1. for 3.5 Inch HDD Products, the transfer price as determined under the 3.5 Inch HDD Products Contract Manufacturing Agreement; or
2. for Heads and/or Media, the price as determined under the 3.5 Inch HDD Products Input Supply Agreement(s).

CCC. “Third Party(ies)” means any non-governmental Person other than Respondent or the Acquirer.

DDD. “Toshiba” means Toshiba Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Japan, with its headquarters address at 1-1, Shibaura 1-chrome, Minato-Ku, Tokyo 105-8001, Japan. Toshiba America Electronic Components Inc., is a wholly owned subsidiary of Toshiba Corporation, with its principal office at 19900 MacArthur Boulevard, Suite 400, Irvine, California 92612.

EEE. “Toshiba Cross-License Agreement” means the Form of Amended and Restated Patent Cross-License Agreement by and between Toshiba Corporation and Western Digital Technologies, Inc., dated on the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto. This Toshiba Cross-License Agreement is attached to this order and contained in non-public Appendix F.

FFF. “Transfer Period” means the period beginning on the Closing Date and ending on the later of:

1. one (1) year after Closing Date; or
2. the date the Acquirer transfers sixteen (16) Primary Production Lines and such lines have been qualified as provided in the Transition Services Agreement Schedule 2.01 Part D.

GGG. “Transition Services Agreement” means:

1. the Transition Services Agreement by and between Western Digital Corporation and Toshiba Corporation, dated on the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto. This Transition Services Agreement is attached to this order and contained in non-public Appendix G; or
2. any agreement that receives the prior approval of the Commission between Respondent (or a Divestiture Trustee) and an Acquirer for the provision of transition services related to the divestiture of the 3.5 Inch HDD Products Business entered into pursuant to Paragraph II (or Paragraph IV) of this Order, and any attachments, amendments, exhibits, and schedules related thereto.

HHH. “Transition Services Period” means the period beginning on the Closing Date and ending on the later of:

1. the end of the Transfer Period; or
 2. if the Acquirer purchases the Shenzhen Facility Option Assets, the date the Acquirer transfers the Shenzhen Facility Option Assets and such lines have been qualified as provided in the Transition Services Agreement Schedule 2.01 Part D.
- III. “WD-Toshiba Asset Purchase Agreement” means the Asset Purchase Agreement by and between Western Digital Corporation and Toshiba Corporation, dated January 20, 2012, and any attachments, amendments, exhibits, and schedules related thereto. This Asset Purchase Agreement is attached to this order and contained in non-public Appendix H.
- JJJ. “WD-Toshiba License Agreement” means the Form of Intellectual Property License and Sublicense Agreement by and between Western Digital Technologies, Inc., Hitachi Global Storage Technology Netherlands BV, and Toshiba Corporation, dated on the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto. This WD-Toshiba License Agreement is attached to this order and contained in non-public Appendix I.

II.

IT IS FURTHER ORDERED that:

- A. Not later than fifteen (15) days after the Acquisition Date, Respondent shall divest, license, transfer and/or grant absolutely, and in good faith, the 3.5 Inch HDD Products Business Assets to Toshiba pursuant to and in accordance with the 3.5 Inch HDD Products Business Divestiture Agreement, the 3.5 Inch HDD Products Patents License, and the 3.5 Inch HDD Products Business Intellectual Property License (which agreements shall not limit or contradict, or be construed to vary from or contradict, the terms of this Order), and each such agreement, if it becomes a Remedial Agreement related to the 3.5 Inch HDD Products Business Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that this period may be extended by up to fifteen (15) days, if necessary, to permit Respondent to obtain prior approval of the Remedial Agreements from all Government Entities, *so long as* Respondent divests, licenses, transfers and/or grants the 3.5 Inch HDD Products Business Assets as required by this Order within five (5) days of obtaining all such approvals;

provided further, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that Toshiba is not an acceptable Acquirer of the 3.5 Inch HDD Products Business Assets then Respondent shall immediately rescind the transaction with Toshiba, in whole or in part, as directed by the Commission, and sha

minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondent has complied with the terms of this Paragraph before the date on which this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent or appoint the Divestiture Trustee, to effect such modifications to the manner of divestiture to Toshiba (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. At the Acquirer's option

4. during the term of any 3.5 Inch HDD Products Contract Manufacturing Agreement and/or 3.5 Inch HDD Input Supply Agreement, upon written request of the Acquirer or the Interim Monitor, make available to the Acquirer or the Interim Monitor all records that relate to the manufacture or supply of the 3.5 Inch HDD Products, Heads used in 3.5 Inch HDD Products, and/or Media used in 3.5 Inch HDD Products that are generated or created after the Closing Date; and
5. not seek, pursuant to any dispute resolution mechanism incorporated in any 3.5 Inch HDD Products Contract Manufacturing Agreement and/or 3.5 Inch HDD Input Supply Agreement, a result that would be inconsistent with the terms or the remedial purposes of this Order.

E. Within twenty (20) days of the Closing Date, Respondent shall:

1. submit to the Acquirer, at Respondent's expense, all 3.5 Inch HDD Products Business Records related to the 3.5 Inch HDD Products;
2. deliver, in good faith, such 3.5 Inch HDD Products Business Records to the Acquirer;
 - a. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

hjj49r8800 0.0000 T 0. 4 TD(5 I)Tj12.720012.720012.720012.720012.723d.2800 0.00mD(nd)Tj12.00

5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except the Acquirer or other Persons specifically authorized by such Acquirer to receive such information; and
6. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to 3.5 Inch HDD Products to employees associated with Respondent's own 3.5 Inch HDD business;

provided, however, that Respondent may use any Intellectual Property or Know-How that is conveyed or licensed to Respondent or that Respondent retains the right to use pursuant to any Remedial Agreement; *provided further, however,* to the extent that the use of such Intellectual Property or Know-How involves disclosure of Confidential Business Information to another Person, such Person must agree to maintain the confidentiality of such Confidential Business Information under terms and in a manner consistent with the requirements of this Order.

- F. Not later than thirty (30) days after the Closing Date, Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondent's personnel to all 3.5 Inch HDD Products Business Employee and all 3.5 Inch HDD Products Business Firewalled Employees. Respondent shall:
 1. give such notification by e-mail with return receipt requested or similar transmission and keep a file of such receipts for one (1) year after the Closing Date;
 2. maintain complete records of all such agreements at Respondent's corporate headquarters and provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with; and
 3. shall provide an Acquirer with copies of all certifications, notifications, and reminders sent to Respondent's personnel.
- G. Respondent shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each 3.5 Inch HDD Products Business Firewalled Employee retained by Respondent, the direct supervisor of any such employee, and any other employee retained by Respondent and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information strictly confidential, including the non-disclosure of such information to any other employee, executive or other personnel of Respondent (other than as necessary to comply with the requirements of this Order).
- H. Any 3.5 Inch HDD Products Business Firewalled Employee identified in Paragraph I.K.3, as a condition of continued employment by Respondent, shall be prohibited from working on Respondent's own 3.5 Inch HDD business for a period of six (6) months after such employee ceases to work with the Acquirer.

Employee's employment has been terminated by the Acquirer; (2) Respondent may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at Acquirer's employees; or (3) a 3.5 Inch HDD Products Business Employee independently applies for employment with Respondent, as long as such employee was not solicited by Respondent.

M. During the Transition Services Period, Respondent shall provide, at no greater than Direct Cost, assistance from knowledgeable employees of Respondent in the transfer of the 3.5 Inch HDD Products Business Assets from Respondent to the Acquirer in a timely and orderly manner pursuant to a Transition Services Agreement.

N. Until Respondent completes the divestiture required by Paragraph II.A, Respondent:

1. shall take such actions as necessary to:

a. maintain the full economic viability and marketability of the 3.5 Inch HDD
Pr

III.

IT IS FURTHER ORDERED that:

- A. The Commission may appoint an Interim Monitor to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order, the Order to Maintain Assets, and any Remedial Agreement.
- B. The Commission appoints ING Financial Markets LLC (“ING”) as Interim Monitor and approves the Monitor Agreement between ING and Respondent which agreement, *inter alia*, names Philip Comerford, Jr., as ING designated Project Manager.
- C. No later than one (1) day after the Closing Date, Respondent shall, pursuant to the Monitor Agreement and to this Order, transfer to the Interim Monitor all the rights, powers, and authorities necessary to permit the Interim Monitor to perform their duties and responsibilities in a manner consistent with the purposes of this Order.
- D. The Interim Monitor shall serve until the later of (1) the Transition Services Period or (2) the termination of all Respondent’s obligations under all Remedial Agreements; *provided, however*, the Commission may extend or modify this period as may be necessary to

- a. assuring that Respondent expeditiously complies with all of its obligations and perform all of its responsibilities as required by the this Order, the Order to Maintain Assets, and the Remedial Agreements;
 - b. monitoring any Transition Services Agreement;
 - c. assuring that Confidential Business Information is not received or used by Respondent or the Acquirer, except as allowed in this Order and in the Order to Maintain Assets, in this matter.
2. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. the Interim Monitor shall serve for such time as is necessary to monitor Respondent's compliance with the provisions of this Order, the Order to Maintain Assets, and the Remedial Agreements.
4. subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with this Order, the Order to Maintain Assets, and the Remedial Agreements.
5. the Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such re for the be

The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements.

8. Within one (1) month from the date the Interim Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements.
 9. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; Provided, however, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- G. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- H. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph III.
- I. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, the Order to Maintain Assets, and the Remedial Agreements.
- J. An Interim Monitor appointed pursuant to this Order may be the same Person appointed as a trustee pursuant to Paragraph IV of this Order and may be the same Person appointed as Interim Monitor under the Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, all of the 3.5 Inch HDD Products Business Assets pursuant to Paragraph II of this Order, the Commission may appoint a trustee to divest, license, transfer and/or grant any of the 3.5 Inch HDD Products Business Assets that have not been divested pursuant to Paragraph II of this Order in a manner that satisfies the requirements of Paragraph II of this

Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
- C. Within ten (10) days after appointment of a trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.
- D. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the 3.5 Inch HDD Products Business Assets that have not been divested pursuant to Paragraph II of this Order.
 - 2. the trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a divestiture plan or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 - 3. subject to any demonstrated legally recognized privilege, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's

accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

4. the trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer or Acquirers that receives the prior approval of the Commission, as required by this Order; *provided, however*, if the trustee receives bona fide offers for particular assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such assets, the trustee shall divest the assets to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of the date of the Commission's approval of such entity.

9. Respondent may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, ho hfrm*

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C.

Non-Public Confidential Appendix A
3.5 Inch HDD Products Contract Manufacturing Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

Non-Public Confidential Appendix B
3.5 Inch HDD Products Business Key Employees

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Confidential Appendix C
Heads Supply Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Confidential Appendix D
Media Supply Agreement**

[Redacted From the Public Record Version, B

**Non-Public Confidential Appendix E
Monitor Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Confidential Appendix F
Toshiba Cross-License Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Confidential Appendix G
Transition Services Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Confidential Appendix H
WD-Toshiba Asset Purchase Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Confidential Appendix I
WD-Toshiba License Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]