

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-4350

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Western Digital Corporation ("WD" 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 issued by the Commission, would charge Respondents 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 Order ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the laws have been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

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 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 Order Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. "Western Digital" means Western Digital Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Western Digital (including after the Acquisition Date, HGST), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Hitachi" means Hitachi, Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of Japan, with its headquarters address at 6-6 Marunouchi 1-chome, Chiyoda-ku, Tokyo, 100-8280, Japan. HGST is a wholly owned subsidiary of Hitachi, Ltd.
- C. "HGST" means Viviti Technologies Ltd. ("HGST"), a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of Singapore, with its headquarters address at 3403 Yerba Buena Road, San Jose, California 95135.
- D. "Commission" means the Federal Trade Commission.
- E. "3.5 Inch HDD" means a three and a half (3.5) inch w

other arrangements by HGST with any Person to provide any such research, development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport.

- H. "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
- I. "3.5 Inch HDD Products Business Employee(s)" means any employee whose duties primarily related to the 3.5 Inch HDD Products Business anytime during the twelve (12) month period prior to the Closing Date.
- J. "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.
- K. "Acquirer" means the following:
1. Toshiba; or
 2. a Person approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order
- L. "Closing Date" means the date on which the Respondent (a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets or rights related to the 3.5 Inch HDD Products Business to an Acquirer pursuant to this Order
- M. "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.
- N. "Employee Access Period" means the later of
1. one hundred fifty (150) days from the Closing Date; or
 2. the date that is sixty (60) days after the date the Acquirer transfers six (6) Primary Production Lines and such lines have been qualified as provided in the Transition Services Agreement Schedule 2.01 P.D.
- O. "Geographic Territory" means worldwide.
- P. "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.
- Q. "Interim Monitor" means any monitor appointed pursuant to Paragraph II of this Order
- R. "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.
- S. "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.
- T. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- U. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof
- V. "Remedial Agreement(s)" means
1. any agreement between Respondent and Acquirer that is specifically referenced and attached to the proposed Decision and Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the

proposed Decision and Order in connection with the Commission's determination to make the proposed Decision and Order final; and/or

2. any agreement between Respondent and Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.

W. "Third Party(ies)" means any non-governmental Person other than Respondent or the Acquirer.

X. "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-chome, Minato-Ku, Tokyo 105-8001, Japan. Toshiba America Electronic Components Inc., is a wholly owned subsidiary of Toshiba Corporation, with its principal

to preserve the existing relationships with the following suppliers; vendors and distributors; customers; employees; and others having business relations with the 3.5 Inch HDD Products Business Assets. Respondent's responsibilities shall include, but are not limited to, the following:

1. providing the 3.5 Inch HDD Products Business Assets with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the 3.5 Inch HDD Products Business Assets;
 2. continuing, at least at their scheduled pace, any additional expenditures for the 3.5 Inch HDD Products Business Assets, authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all marketing and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against the 3.5 Inch HDD Products Business Assets and/or to prevent any diminution in sales of 3.5 Inch HDD Products prior to divestiture;
 4. making available for use by the 3.5 Inch HDD Products Business Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of the 3.5 Inch HDD Products Business Assets;
 5. providing the 3.5 Inch HDD Products Business Assets with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the 3.5 Inch HDD Products Business;
 6. providing such support services to the 3.5 Inch HDD Products Business Assets as were being provided to such business by Respondent as of the date the Consent Agreement was signed by Respondent; and
 7. maintaining a work force at least equivalent in size, training, and expertise to what has been associated with the 3.5 Inch HDD Products Business Assets for the last fiscal year
- C. Until the Closing Date, Respondent shall provide all 3.5 Inch HDD Products Business Employees with retroactive pay of \$500,000.00 (five hundred thousand dollars) per employee.

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.

H. Pending divestiture of the 3.5 Inch HDD Products Business Assets, Respondent shall:

1. not use, directly or indirectly, any Confidential Business Information related to 3.5 Inch HDD Products Business other than as necessary to comply with the following (1) the requirements of the Order; (2) Respondent's obligations to the Acquirer under the terms of any Remedial Agreement related to the 3.5 Inch HDD Products Business; or (3) applicable law;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer or Persons specifically authorized by the Acquirer or the Commission to receive such information; and
3. 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 not to maintain the confidentiality of such Confidential Business Information under terms and in a manner consistent with the requirements of this Order

I. Respondent shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary from or contradict, the terms of the Order, it being understood that nothing in the Order shall be construed to reduce any obligations of Respondent under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made part hereof.

J. The English-language versions of all Remedial Agreements, as submitted to and approved by the Commission and attached to the proposed Decision and Order shall be the versions of such agreements used in interpreting and enforcing this Order.

K. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the 3.5 Inch HDD Products Business Assets within the Geographic Territory through their full transfer and delivery to the Acquirer, to minimize any risk of loss of competitive potential for the 3.5 Inch HDD Products Business Assets within the Geographic Territory, and to prevent the destruction, removal, wasting,

deterioration, or impairment of any of the 3.5 inch HDD Products Business Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this m

limited to, its obligations related to the 3.5inch HDD Products Business. The Respondent shall cooperate with all reasonable requests 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 the Orders;

5. the Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ at the expense of Respondent, but not consultants, accountants, attorneys and other representatives

- G. 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 the Orders.
- H. The Interim Monitor shall serve until termination of this Order to Maintain Assets pursuant to Paragraph VII.
- I. The Interim Monitor appointed pursuant to this Order may be the same person appointed as: (1) an Interim Monitor pursuant to Paragraph II of the proposed Decision and Order or (2) a Divestiture Trustee pursuant to Paragraph V of the proposed Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every thirty (30) days thereafter until Respondent has fully complied with its obligations to divest, license, transfer and/or grant assets as required by the proposed Decision and Order in this matter, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related proposed Decision and Order; *provided, however, that, after the proposed Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as the reports required to be submitted by Respondent pursuant to the Decision and Order*

V.

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. any other change in Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent.

