

**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

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Western Digital Corporation (“Western Digital”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Viviti Technologies Ltd., formerly known as Hitachi Global Storage Technologies Ltd. (“HGST”), a wholly-owned subsidiary of Hitachi, Ltd. (“Hitachi”), in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Western Digital is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its head office and principal place of business located at 3355 Michelson Drive, Irvine, California 92612. Respondent is engaged in, among other activities, the manufacture, marketing, and sale of hard disk drives (“HDDs”).

II. JURISDICTION

2. Respondent is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

3. Pursuant to a Stock Purchase Agreement (the “Merger Agreement”) dated March 7, 2011, Western Digital proposes to acquire HGST from Hitachi in a transaction valued at approximately \$4.5 billion (“Acquisition”). Both Respondent and HGST manufacture, market, and sell HDDs, including, but not limited to, 3.5 inch desktop HDDs (“desktop HDDs”).

IV. THE RELEVANT PRODUCT MARKET

4. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is desktop HDDs. Desktop HDDs are installed in non-portable personal computers, and offer the highest storage capacities and lowest price per gigabyte of storage capacity of any of the different types of HDDs on the market. Other types of available HDDs, such as 2.5 inch HDDs for mobile computing, and HDDs for use in enterprise computing, are more expensive than desktop HDDs and offer additional features, at additional cost, that are generally considered unnecessary and superfluous in desktop computing. For these reasons, no other types of HDDs are reasonable substitutes for desktop HDDs.

V. THE RELEVANT GEOGRAPHIC MARKET

5. For the purposes of this Complaint, the relevant geographic area in which to analyze the likely effects of the Acquisition on the desktop HDD market is worldwide.

VI. THE STRUCTURE OF THE MARKET

6. The desktop HDD market is highly concentrated, as measured by the Herfindahl-Hirschman Index (“HHI”). The combination of Respondent’s HDD business with HGST’s HDD business would consolidate two of three remaining desktop HDD suppliers in the market. Post-Acquisition, a combined Western Digital and HGST would have a market share for desktop HDDs of approximately 50 percent, with only one remaining competitor. The post-merger HHI would be 5,000 and the Acquisition will increase the HHI level by 800. This market concentration level far exceeds the thresholds set out in the *Horizontal Merger Guidelines*, and thus, creates a presumption that the Acquisition will create or enhance market power.

VII. ENTRY CONDITIONS

7. Entry into the desktop HDD market would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Deterrents to entry into the desktop HDD market include high capital expenditures, and intellectual property barriers. Further, the market for desktop HDDs provides limited potential for growth, making it unlikely that a potential competitor would have the incentive to make the substantial investments necessary to enter the market *de novo*. Existing component manufacturers in the HDD industry are unwilling to enter the desktop HDD market and compete with their customers, the HDD manufacturers.

VIII. EFFECTS OF THE ACQUISITION

8. The effects of the Acquisition, if consummated, may be to substantially lessen competition, and to tend to create a monopoly in the relevant market, in violation 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. Specifically, the Acquisition would, among other anticompetitive effects:

- a. eliminate actual, direct, and substantial competition between Western Digital and HGST in the relevant market;
- b. increase the likelihood that Western Digital will exercise market power unilaterally in the relevant market;
- c. increase the likelihood of coordinated interaction among competitors in the relevant market; and
- d. increase the likelihood that U.S. consumers would be forced to pay higher prices for desktop HDDs.

IX. VIOLATIONS CHARGED

9. The allegations contained in Paragraphs 1 through 9 above are hereby incorporated by reference as though fully set forth here.

10. The Acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

11. The Acquisition, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Merger Agreement described in Paragraph 3 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of March, 2012, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

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