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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 Attorneys for the United States

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA)
12 v.) Case No. CR 09-0045 SI
13 CHIENG-HON "FRANK" LIN,)
14 Defendant.)

15
16 **PLEA AGREEMENT**

17 The United States of America and Chieng-Hon "Frank" Lin ("defendant") hereby enter
18 into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
19 Procedure ("Fed. R. Crim. P.):

20 **RIGHTS OF DEFENDANT**

- 21 1. The defendant understands his rights:
- 22 (a) to be represented by an attorney;
 - 23 (b) to be charged by Indictment;
 - 24 (c) as a citizen of the United States and a permanent resident of Taiwan,
25 Republic of China and holder of a Taiwan passport, to decline to accept
26 service of the Summons in this case, and to contest the jurisdiction of the
27 United States to prosecute this case against him in the United States
28 District Court for the Northern District of California;

ORIGINAL

1 (d) to plead not guilty to any criminal charge brought against him;

2 (e) to have a trial by jury, at which he would be presumed not
3 guilty of the charge and the United States would have to prove every essential element of
4 the charged offense beyond a reasonable doubt for him to be found guilty;

5 (f) to confront and cross-examine witnesses against him and to
6 subpoena witnesses in his defense at trial;

7 (g) not to be compelled to incriminate himself;

8 (h) to appeal his conviction, if he is found guilty; and

9 (i) to appeal the imposition of sentence against him.

10 **AGREEMENT TO PLEAD GUILTY**
11 **AND WAIVE CERTAIN RIGHTS**

12 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
13 1(b)-(h) above, including all jurisdictional defenses to the prosecution of this case, and agrees
14 voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in
15 the United States District Court for the Northern District of California. The defendant also
16 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other
17 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28
18 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is
19 consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement,
20 regardless of how the sentence is determined by the Court. This agreement does not affect the
21 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) and (c). Nothing in
22 this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may
23 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel
24 or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive
25 indictment and plead guilty at arraignment to a one-count Information to be filed in the United
26 States District Court for the Northern District of California. The Information will charge that
27 beginning on or about September 14, 2001, and continuing until on or about December 1, 2006,
28 Chunghwa Picture Tubes, Ltd. ("Chunghwa") and co-conspirators participated in a conspiracy to

1 suppress and eliminate competition by fixing the prices of thin-film transistor liquid crystal display
2 panels ("TFT-LCD") sold in the United States and elsewhere, in violation of the Sherman Antitrust
3 Act, 15 U.S.C. § 1. The Information will further charge that the defendant, the former Chairman
4 and Chief Executive Officer of Chunghwa, joined and participated in the charged conspiracy from
5 on or about June 11, 2003 to December 1, 2006.

6 3. The defendant, pursuant to the terms of this Plea Agreement, will
7 plead guilty to the criminal charge described in Paragraph 2, above, and will make a factual
8 admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4,
9 below. The United States agrees that at the arraignment, it will stipulate to the release of the
10 defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing
11 hearing in this case.

12 **FACTUAL BASIS FOR OFFENSE CHARGED**

13 4. Had this case gone to trial, the United States would have presented
14 evidence sufficient to prove the following facts:

15 (a) For purposes of this Plea Agreement, the "relevant period" is
16 that period from on or about June 11, 2003, to on or about December 1, 2006. During the
17 relevant period, the defendant was Chairman and Chief Executive Officer of Chunghwa, an
18 entity organized and existing under the laws of Taiwan, Republic of China, and with its
19 principal place of business in Taoyuan, Taiwan, Republic of China. During the relevant
20 period, Chunghwa was a producer of TFT-LCD and was engaged in the sale of TFT-LCD
21 in the United States and elsewhere. TFT-LCD are glass panels composed of an array of
22 tiny pixels that are electronically manipulated in order to display images. TFT-LCD are
23 manufactured in a broad range of sizes and specifications for use in televisions, notebook
24 computers, desktop monitors, mobile devices, and other applications.

25 (b) During the relevant period, the defendant participated in a conspiracy
26 with other persons and entities engaged in the manufacture and sale of TFT-LCD, the
27 primary purpose of which was to fix the price of TFT-LCD sold in the United States and
28 elsewhere. In furtherance of the conspiracy, the defendant was aware of the existence of

1 the conspiracy among the employees and officers of Chunghwa, and that these employees
2 and officers were engaged in conversations and attended meetings, including group
3 meetings commonly referred to by the participants as "crystal meetings," with
4 representatives of other major TFT-LCD producing firms. The defendant was also aware
5 that during such meetings and conversations, agreements were reached to fix the price of
6 TFT-LCD to be sold in the United States and elsewhere. The defendant knowingly
7 authorized and consented to the participation of one or more of his subordinate employees
8 in that conspiracy. The defendant was a manager or supervisor in the conspiracy, which
9 involved at least five participants.

10 (c) During the relevant period, TFT-LCD sold by one or more of the
11 conspirator firms, and equipment and supplies necessary to the production and distribution
12 of TFT-LCD, as well as payments for TFT-LCD, traveled in interstate and foreign
13 commerce. The business activities of Chunghwa Picture Tubes, Ltd. and co-conspirators
14 in connection with the production and sale of TFT-LCD affected by this conspiracy were
15 within the flow of, and substantially affected, interstate and foreign trade and commerce.

16 (d) Acts in furtherance of this conspiracy were carried out within the
17 Northern District of California. TFT-LCD affected by this conspiracy were sold by one or
18 more of the conspirators to customers in this District.

19 **POSSIBLE MAXIMUM SENTENCE**

20 5. The defendant understands that the statutory maximum penalty which may be
21 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act
22 is:

23 (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);

24 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the
25 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross
26 pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18
27 U.S.C. § 3571(b) and (d)); and

28 (c) a term of supervised release of three (3) years following any term of

1 imprisonment. If the defendant violates any condition of supervised release, the defendant
2 could be imprisoned for up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. §
3 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing
4 Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

5 6. In addition, the defendant understands that:

6 (a) pursuant to U.S.S.G. §5 E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the
7 Court may order him to pay restitution to the victims of the offense; and

8 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the
9 defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

10 **SENTENCING GUIDELINES**

11 7. The defendant understands that the Sentencing Guidelines are advisory, not
12 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along
13 with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The
14 defendant understands that the Guidelines determinations will be made by the Court by a
15 preponderance-of-the-evidence standard. The defendant understands that although the Court is not
16 ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be
17 reasonable, based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. §
18 3553(a).

19 **SENTENCING AGREEMENT**

20 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree
21 that the appropriate disposition of this case is, and agree to recommend jointly that the Court
22 impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$50,000
23 payable in full before the fifteenth (15th) day after the date of judgment; a period of imprisonment
24 of 270 days; no order of restitution; and no period of supervised release (“the recommended
25 sentence”). The defendant agrees that he will not request that he be allowed to serve any part of
26 his sentence in home detention, intermittent confinement, or community confinement. The United
27 States will not object to the defendant’s request that the Court make a recommendation to the
28 Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal

1 Minimum Security Camp (and specifically to the Lompoc Prison Camp in Lompoc, California) to
2 serve his sentence and that the defendant be released following the imposition of sentence to allow
3 him to self-surrender to the assigned prison facility on a specified date. The parties agree that
4 there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately
5 taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing
6 Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or
7 support any sentence other than the recommended sentence set forth in this Paragraph 8. The
8 parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.
9 The defendant understands that the Court will order him to pay a \$100 special assessment pursuant
10 to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

11 9. The United States and the defendant agree that, pursuant to U.S.S.G. § 5E1.1(b),
12 defendant should not be ordered to pay restitution in light of the civil cases filed against Chunghwa
13 Picture Tubes, Ltd., defendant's former employer, including *In re TFT-LCD (Flat Panel) Antitrust*
14 *Litigation, No. M-07-1827 SI*, consolidated in the United States District Court, Northern District
15 of California, which potentially provide for a recovery of a multiple of actual damages.

16 10. The United States and the defendant agree that the applicable Guidelines fine and
17 imprisonment ranges exceed the fine and term of imprisonment contained in the recommended
18 sentence set out in Paragraph 8 above. Subject to the full and continuing cooperation of the
19 defendant, as described in Paragraph 13 of this Plea Agreement, and prior to sentencing in this
20 case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a
21 downward departure from the Guidelines fine and imprisonment range(s) in this case and will
22 request that the Court impose the fine and term of imprisonment contained in the recommended
23 sentence set out in Paragraph 8 of this Plea Agreement because of the defendant's substantial
24 assistance in the government's investigation and prosecutions of violations of federal criminal law
25 in the TFT-LCD industry and other display industries.

26 11. Subject to the ongoing, full, and truthful cooperation of the defendant
27 described in Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United
28 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the

1 defendant's cooperation and his commitment to prospective cooperation with the United States'
2 investigation and prosecutions, all material facts relating to the defendant's involvement in the
3 charged offense, and all other relevant conduct.

4 12. The United States and the defendant understand that the Court retains complete
5 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
6 Agreement.

7 (a) If the Court does not accept the recommended sentence, the United States and
8 the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be
9 rendered void. Neither party may withdraw from this Plea Agreement, however, based on
10 the type or location of the prison facility to which the defendant is assigned to serve his
11 sentence.

12 (b) If the Court does not accept the recommended sentence, the defendant will
13 be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant
14 withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made
15 in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this
16 Plea Agreement or made in the course of plea discussions with an attorney for the
17 government shall not be admissible against the defendant in any criminal or civil
18 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant
19 agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea
20 Agreement, the statute of limitations period for any Relevant Offense, as defined in
21 Paragraph 14 below, will be tolled for the period between the date of the signing of the
22 Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty
23 (60) days after the date of the signing of the Plea Agreement, whichever period is greater.
24 For a period of three (3) consecutive days following such a withdrawal of the guilty plea
25 under this subparagraph, the United States shall take no action, based upon either a
26 Relevant Offense or any actual or alleged violation of the Plea Agreement, to revoke the
27 defendant's release on his personal recognizance, to subject the defendant to service of
28 process, arrest, or detention, or to prevent the defendant from departing the United States.

DEFENDANT'S COOPERATION

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2 13. The defendant will cooperate fully and truthfully with the United
3 States in the prosecution of this case, the conduct of the current federal investigation of violations
4 of federal antitrust and related criminal laws involving the manufacture or sale of TFT-LCD in the
5 United States and elsewhere, any other federal investigation resulting therefrom, and any litigation
6 or other proceedings arising or resulting from any such investigation to which the United States is a
7 party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall
8 include, but not be limited to:

9 (a) producing in the United States and at other mutually agreed-upon locations
10 all non-privileged documents, including claimed personal documents, and other materials,
11 wherever located, in the possession, custody, or control of the defendant, requested by
12 attorneys and agents of the United States;

13 (b) making himself available for interviews in the United States and at other
14 mutually agreed-upon locations, not at the expense of the United States, upon the request of
15 attorneys and agents of the United States;

16 (c) responding fully and truthfully to all inquiries of the United
17 States in connection with any Federal Proceeding, without falsely implicating any person
18 or intentionally withholding any information, subject to the penalties of making false
19 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

20 (d) otherwise voluntarily providing the United States with any
21 non-privileged material or information, not requested in (a) - (c) of this paragraph, that he
22 may have that is related to any Federal Proceeding; and

23 (e) when called upon to do so by the United States in connection with any
24 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the
25 United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C.
26 § 1621), making false statements or declarations in grand jury or court proceedings (18
27 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. §
28 1503, *et seq.*).

GOVERNMENT'S AGREEMENT

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2 14. Subject to the full, truthful, and continuing cooperation of the
3 defendant, as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance
4 of the guilty plea called for by this Plea Agreement and the imposition of the recommended
5 sentence, the United States will not bring further criminal charges against the defendant for any act
6 or offense committed before the date of this Plea Agreement that was undertaken in furtherance of
7 an antitrust conspiracy involving the manufacture or sale of TFT-LCD or undertaken in connection
8 with any investigation of such a conspiracy ("Relevant Offense"). The nonprosecution terms of
9 this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or
10 securities laws, or to any crime of violence.

11 15. The United States agrees that when the defendant travels to the United States for
12 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
13 meetings with counsel in preparation therefor, the United States will take no action, based upon
14 any Relevant Offense, to subject the defendant to arrest, detention, or service of process, or to
15 prevent the defendant from departing the United States. This paragraph does not apply to the
16 defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
17 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
18 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401 - 402) in
19 connection with any testimony or information provided or requested in any Federal Proceeding.

20 16. The defendant understands that he may be subject to administrative
21 action by federal or state agencies other than the United States Department of Justice, Antitrust
22 Division, based upon the conviction resulting from this Plea Agreement, and that this Plea
23 Agreement in no way controls whatever action, if any, other agencies may take. However, the
24 United States agrees that, if requested, it will advise the appropriate officials of any governmental
25 agency considering such administrative action of the fact, manner, and extent of the cooperation of
26 the defendant as a matter for that agency to consider before determining what administrative action,
27 if any, to take.

1 **REPRESENTATION BY COUNSEL**

2 17. The defendant has reviewed all legal and factual aspects of this case with his
3 attorney and is fully satisfied with his attorney's legal representation. The defendant has
4 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory
5 explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives
6 available to the defendant other than entering into this Plea Agreement. After conferring with his
7 attorney and considering all available alternatives, the defendant has made a knowing and
8 voluntary decision to enter into this Plea Agreement.

9 **VOLUNTARY PLEA**

10 18. The defendant's decision to enter into this Plea Agreement and
11 to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats,
12 assurances, promises, or representations other than the representations contained in this Plea
13 Agreement. The United States has made no promises or representations to the defendant as to
14 whether the Court will accept or reject the recommendations contained within this Plea
15 Agreement.

16 **VIOLATION OF PLEA AGREEMENT**

17 19. The defendant agrees that, should the United States determine in good
18 faith, during the period that any Federal Proceeding is pending, that the defendant has failed to
19 provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has
20 otherwise violated any provision of this Plea Agreement, the United States will notify the
21 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and
22 may also notify his counsel by telephone of its intention to void any of its obligations under this
23 Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to
24 prosecution for any federal crime of which the United States has knowledge. The defendant may
25 seek Court review of any determination made by the United States under this Paragraph to void any
26 of its obligations under the Plea Agreement. The defendant agrees that, in the event that the United
27 States is released from its obligations under this Plea Agreement and brings criminal charges
28 against the defendant for any Relevant Offense, the statute of limitations period for such offense

1 will be tolled for the period between the date of the signing of this Plea Agreement and six (6)
2 months after the date the United States gave notice of its intent to void its obligations under this
3 Plea Agreement.

4 20. The defendant understands and agrees that in any further prosecution
5 of him resulting from the release of the United States from its obligations under this Plea
6 Agreement based on the defendant's violation of the Plea Agreement, any documents, statements,
7 information, testimony, or evidence provided by him to attorneys or agents of the United States,
8 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any
9 such further prosecution. In addition, the defendant unconditionally waives his right to challenge
10 the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R.
11 Evid. 410.

12 21. The defendant agrees to and adopts as his own the factual statement contained in
13 Paragraph 4, above. In the event that the defendant breaches the Plea Agreement, the defendant
14 agrees that the Plea Agreement, including the factual statement contained in Paragraph 4, above,
15 provides a sufficient basis for any possible future extradition request that may be made for his
16 return to the United States to face charges either in the Information referenced in Paragraph 2 of
17 this Plea Agreement or in any related indictment. The defendant further agrees not to oppose or
18 contest any request for extradition by the United States to face charges either in the Information
19 referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

20 **ENTIRETY OF AGREEMENT**

21 22. This Plea Agreement constitutes the entire agreement between the
22 United States and the defendant concerning the disposition of the criminal charge in this case. This
23 Plea Agreement cannot be modified except in writing, signed by the United States and the
24 defendant.


25 23. The undersigned attorneys for the United States have been authorized
26 by the Attorney General of the United States to enter this Plea Agreement on behalf of the United
27 States.


28 24. A facsimile signature shall be deemed an original signature for the

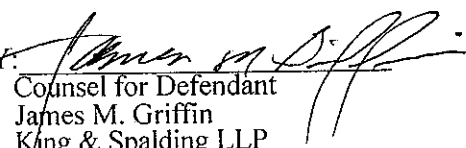
1 purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose
2 of executing this Plea Agreement.

3
4 DATED: January 12, 2009

Respectfully submitted,

5 BY: 
6 Chieng-Hon "Frank" Lin
Defendant

BY: 
Niall E. Lynch, CA No. 157959
Michael L. Scott, CA No. 165452
Heather S. Tewksbury, CA No. 222202
Alexandra J. Shepard, CA No. 205143
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8 BY: 
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