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N. DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CR 11 0912

13 UNITED STATES OF AMERICA
14 v.
15 SANG HUN KIM,
16 Defendant.
17

No. CR
INFORMATION
VIOLATIONS:
15 U.S.C. § 1 - Conspiracy in Restraint of
Trade (Counts One - Seven);
San Francisco Venue

EMC

The United States of America, acting through its attorneys, charges:
SANG HUN KIM ("defendant"),

the defendant as follows:

1. During the time periods relevant to this Information, the defendant was an employee of Hitachi-LG Data Storage, Inc. ("HLDS") and had responsibilities relating to optical disk drive ("ODD") sales. Between 2005 and 2006 and between 2008 and September 2009, defendant was a Team Leader in charge of the Hewlett-Packard Company ("HP") account, and between 2003 and September 2009, he was a Team Leader in charge of the Dell, Inc. ("Dell") account. In addition, beginning in January 2009, he was the Deputy Chief Marketing Officer for HLDS.

INFORMATION
U.S. v. KIM

1 2. ODDs are devices that use laser light or electromagnetic waves to read and/or
2 write data. ODDs typically both read and write data, but some are only readers. There are
3 several types of ODDs, including the following: CD-ROM, CD-RW, DVD-ROM, DVD-RW,
4 and Combo drives. Optical disk drives can be manufactured according to varying specifications.
5 For example, ODDs are available in different heights (e.g., half-height and slim), and use
6 different types of interfaces to connect to a computer's motherboard (e.g., Parallel Advanced
7 Technology Attachment (PATA) and Serial Advanced Technology Attachment (SATA)).
8 HLDS and other ODD sellers typically sell their products to computer makers such as Dell and
9 HP.

10 3. Whenever in this Information reference is made to any act, deed, or transaction of
11 any corporation, the allegation means that the corporation engaged in the act, deed, or transaction
12 by or through its officers, directors, employees, agents, or other representatives while they were
13 actively engaged in the management, direction, control, or transaction of its business or affairs.

14 I.

15 THE DELL PROCUREMENT EVENTS

16 4. During the time periods relevant to Counts One and Two:

17 (a) Dell hosted ODD procurement events in which the defendant and co-
18 conspirators participated. Dell was a major manufacturer of desktop and laptop
19 computers, servers, and storage solutions marketed and sold to business enterprises and
20 individual consumers. Dell purchased ODDs that were incorporated into technology
21 products sold by Dell to businesses and individuals.

22 (b) Dell's ODD procurement events were competitive bidding events in which
23 participants would be awarded varying amounts of ODD supply depending on where
24 participants' pricing ranked in any particular event.

25 COUNT ONE: 15 U.S.C. § 1 (Bid Rigging)

26 FEBRUARY 2009 DELL PROCUREMENT EVENT

27 5. Paragraphs 1 through 4 of this Information are repeated, realleged, and
28 incorporated into this Count as if fully set forth herein.

1 6. From approximately February 2009 to approximately July 2009, the defendant
2 and co-conspirators entered into and engaged in a combination and conspiracy to suppress and
3 restrain competition for a February 2009 ODD procurement event held by Dell for the purchase
4 of half-height SATA Tray DVD-RW drives, in unreasonable restraint of interstate trade and
5 commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1.

6 7. The charged combination and conspiracy consisted of an agreement,
7 understanding, and concert of action among the defendant and co-conspirators, the substantial
8 terms of which were: to predetermine the rank order in which the bidders would finish on Dell's
9 February 2009 ODD procurement event for half-height SATA Tray DVD-RW drives; to submit
10 collusive, noncompetitive, and rigged bids for the procurement event; and to provide Dell with
11 ODDs and receive payment from Dell as a result of the collusive bidding.

12 MEANS AND METHODS OF THE CONSPIRACY

13 8. For the purpose of forming and carrying out the charged combination and
14 conspiracy, the defendant and co-conspirators did those things that they combined and conspired
15 to do, including, among other things:

16 (a) participating in meetings, discussions, and communications in the
17 United States or elsewhere to discuss bidding strategies and prices of ODDs;

18 (b) agreeing, during those meetings, discussions, and communications on
19 how participants would bid on ODDs;

20 (c) bidding on ODDs in accordance with the agreements reached;

21 (d) exchanging information on sales, production, market share, capacity, and
22 pricing of ODDs for the purpose of monitoring and enforcing adherence to the
23 agreements and preparing for future conspiratorial discussions; and

24 (e) authorizing, ordering, and consenting to the participation of subordinate
25 employees in the conspiracy.

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INFORMATION
U.S. v. KIM

1 CO-CONSPIRATORS

2 9. Various corporations and individuals, not made defendants in this Court,
3 participated as co-conspirators in the offense charged in this Court and performed acts and made
4 statements in furtherance of the offense.

5 INTERSTATE TRADE AND COMMERCE

6 10. During the time period relevant to this Court, defendant and co-conspirators sold
7 and distributed ODDs in a continuous and uninterrupted flow of interstate and foreign trade and
8 commerce to customers located in states or countries other than the states or countries from
9 which the defendant and co-conspirators sold ODDs.

10 11. The business activities of the defendant and co-conspirators that are the subject of
11 this Court were within the flow of, and substantially affected, interstate and foreign trade and
12 commerce.

13 COUNT ONE IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

14 COUNT TWO: 15 U.S.C. § 1 (Bid Rigging)

15 MAY 2009 DELL PROCUREMENT EVENT

16 12. Paragraphs 1 through 4 and 8 through 11 of this Information are repeated,
17 realleged, and incorporated into this Count as if fully set forth herein.

18 13. From approximately May 2009 to approximately September 2009, the defendant
19 and co-conspirators entered into and engaged in a combination and conspiracy to suppress and
20 restrain competition for a May 2009 ODD procurement event held by Dell for the purchase of
21 half-height DVD-RW and 12.7mm Tray DVD-RW drives, in unreasonable restraint of interstate
22 trade and commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1.

23 14. The charged combination and conspiracy consisted of an agreement,
24 understanding, and concert of action among the defendant and co-conspirators, the substantial
25 terms of which were: to predetermine the rank order in which the bidders would finish on Dell's
26 May 2009 ODD procurement event for half-height DVD-RW and 12.7mm Tray DVD-RW
27 drives; to submit collusive, noncompetitive, and rigged bids for the procurement event; and to

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INFORMATION
U.S. v. KIM

1 provide Dell with ODDs and receive payment from Dell as a result of the collusive bidding.
2 COUNT TWO IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

3 II.

4 THE HP PROCUREMENT EVENTS

5 15. During the time periods relevant to Counts Three through Nine:

6 (a) HP hosted ODD procurement events in which the defendant and co-
7 conspirators participated. HP was a major manufacturer of computer hardware, software,
8 and services marketed and sold to business enterprises and individual consumers. HP
9 purchased ODDs that were incorporated into technology products sold by HP to
10 businesses and individuals.

11 (b) HP's ODD procurement events were competitive bidding events in which
12 participants would be awarded varying amounts of ODD supply depending on where
13 participants' pricing ranked in any particular event.

14 COUNT THREE: 15 U.S.C. § 1 (Bid Rigging)

15 NOVEMBER 2005 HP PROCUREMENT EVENT

16 16. Paragraphs 1 through 3, 8 through 11, and 15 of this Information are repeated,
17 realleged, and incorporated into this Count as if fully set forth herein.

18 17. From approximately November 2005 to approximately April 2006, the defendant
19 and co-conspirators entered into and engaged in a combination and conspiracy to suppress and
20 restrain competition for a November 2005 ODD procurement event held by HP for the purchase
21 of CD-ROM, CD-RW, DVD-ROM, and Combo drives, in unreasonable restraint of interstate
22 trade and commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1.

23 18. The charged combination and conspiracy consisted of an agreement,
24 understanding, and concert of action among the defendant and co-conspirators, the substantial
25 terms of which were: to predetermine the rank order in which the bidders would finish on HP's
26 November 2005 ODD procurement event for CD-ROM, CD-RW, DVD-ROM, and Combo
27 drives; to submit collusive, noncompetitive, and rigged bids for the procurement event; and to
28 provide HP with ODDs and receive payment from HP as a result of the collusive bidding.

INFORMATION
U.S. v. KIM

1 19. The combination and conspiracy charged in this Count was carried out, in part, in
2 the Northern District of California.

3 **COUNT THREE IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.**

4 **COUNT FOUR: 15 U.S.C. § 1 (Bid Rigging)**

5 **AUGUST 2006 HP PROCUREMENT EVENT**

6 20. Paragraphs 1 through 3, 8 through 11, 15, and 19 of this Information are repeated,
7 realleged, and incorporated into this Count as if fully set forth herein.

8 21. From approximately August 2006 to approximately December 2006, the
9 defendant and co-conspirators entered into and engaged in a combination and conspiracy to
10 suppress and restrain competition for an August 2006 ODD procurement event held by HP for
11 the purchase of half-height PATA and SATA DVD-ROM drives, in unreasonable restraint of
12 interstate trade and commerce, in violation of the Sherman Act, Title 15, United States Code,
13 Section 1.

14 22. The charged combination and conspiracy consisted of an agreement,
15 understanding, and concert of action among the defendant and co-conspirators, the substantial
16 terms of which were: to predetermine the rank order in which the bidders would finish on HP's
17 August 2006 ODD procurement event for half-height PATA and SATA DVD-ROM drives; to
18 submit collusive, noncompetitive, and rigged bids for the procurement event; and to provide HP
19 with ODDs and receive payment from HP as a result of the collusive bidding.

20 **COUNT FOUR IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.**

21 **COUNT FIVE: 15 U.S.C. § 1 (Bid Rigging)**

22 **MAY, AUGUST, AND NOVEMBER 2008 AND**

23 **FEBRUARY 2009 HP PROCUREMENT EVENTS**

24 23. Paragraphs 1 through 3, 8 through 11, 15, and 19 of this Information are repeated,
25 realleged, and incorporated into this Count as if fully set forth herein.

26 24. From approximately May 2008 to approximately June 2009, the defendant and
27 co-conspirators entered into and engaged in a combination and conspiracy to suppress and
28 restrain competition for ODD procurement events held by HP for the purchase of half-height

INFORMATION
U.S. v. KIM

1 SATA DVD-RW drives in May 2008, August 2008, November 2008, and February 2009, in
2 unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, Title
3 15, United States Code, Section 1.

4 25. The charged combination and conspiracy consisted of an agreement,
5 understanding, and concert of action among the defendant and co-conspirators, the substantial
6 terms of which were: to predetermine the rank order in which the bidders would finish on HP's
7 May 2008, August 2008, November 2008, and February 2009 ODD procurement events for half-
8 height SATA DVD-RW drives; to submit collusive, noncompetitive, and rigged bids for the
9 procurement events; and to provide HP with ODDs and receive payment from HP as a result of
10 the collusive bidding.

11 COUNT FIVE IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

12 COUNT SIX: 15 U.S.C. § 1 (Bid Rigging)

13 JULY AND OCTOBER 2008 HP PROCUREMENT EVENTS

14 26. Paragraphs 1 through 3, 8 through 11, 15, and 19 of this Information are repeated,
15 realleged, and incorporated into this Count as if fully set forth herein.

16 27. From approximately July 2008 to approximately March 2009, the defendant and
17 co-conspirators entered into and engaged in a combination and conspiracy to suppress and
18 restrain competition for ODD procurement events held by HP for the purchase of 12.7mm SATA
19 DVD-RW drives in July and October 2008, in unreasonable restraint of interstate trade and
20 commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1.

21 28. The charged combination and conspiracy consisted of an agreement,
22 understanding, and concert of action among the defendant and co-conspirators, the substantial
23 terms of which were: to predetermine the rank order in which the bidders would finish on HP's
24 July and October 2008 ODD procurement events for 12.7mm SATA DVD-RW drives; to submit
25 collusive, noncompetitive, and rigged bids for the procurement events; and to provide HP with
26 ODDs and receive payment from HP as a result of the collusive bidding.

27 COUNT SIX IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

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INFORMATION
U.S. v. KIM

COUNT SEVEN: 15 U.S.C. § 1 (Bid Rigging)

OCTOBER 2008 SUPPLEMENTAL HP PROCUREMENT EVENT

29. Paragraphs 1 through 3, 8 through 11, 15, and 19 of this Information are repeated, realleged, and incorporated into this Count as if fully set forth herein.

30. From approximately October 2008 to approximately March 2009, the defendant and co-conspirators entered into and engaged in a combination and conspiracy to suppress and restrain competition for a supplemental October 2008 ODD procurement event held by HP for the purchase of 12.7mm SATA DVD-RW drives, in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Act, Title 15, United States Code, Section 1.

31. The charged combination and conspiracy consisted of an agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were: to predetermine the rank order in which the bidders would finish on HP's October 2008 ODD procurement event for 12.7mm SATA DVD-RW drives; to submit collusive, noncompetitive, and rigged bids for the procurement event; and to provide HP with ODDs and receive payment from HP as a result of the collusive bidding.

COUNT SEVEN IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.


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INFORMATION
U.S. v. KIM


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