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Hitachi-LG Strikes \$26M Deal In Disk-Drive Antitrust MDL

By **Melissa Lipman**

Law360, New York (January 18, 2013, 3:51 PM ET) -- Hitachi-LG Data Storage Inc. on Thursday agreed to pay \$26 million to exit multidistrict antitrust litigation over optical disk drives, making the Korean joint venture the first to settle with direct purchasers in the price-fixing case.

The putative direct purchaser class asked the California district court for preliminary approval of the deal, which also releases LG Electronics Inc. and Hitachi Ltd. from the case alleging price-fixing of optical disk drives and related products such as DVD players and computers.

In addition to the cash payment, the settlement also calls for the companies to help the plaintiffs with their case, including producing witnesses.

"Courts have approved so-called 'ice breaker' settlements, such as the one entered with [Hitachi-LG], because of their many benefits to the class and their supportive nature to uncovering the individuals involved in the alleged conspiracy," the motion said.

Consolidated in the Northern District of California in 2010, the suits accuse Hitachi-LG and a slew of other major electronics makers, including Samsung Electronics Co. Ltd. and Toshiba Corp., of fixing prices for the disk drives.

The judge overseeing the case originally dismissed the complaints in late 2011, ruling the plaintiffs' evidence didn't come close to supporting the kind of sprawling conspiracy alleged. But after narrowing their complaints, the plaintiffs survived a second dismissal bid in April.

Now the direct buyers have reached a deal with Hitachi-LG that encompasses anyone nationwide who bought either optical disk drives or products incorporating those drives directly from the defendants from 2004 through 2011.

The proposed settlement's definition of optical disk drives includes both read-only and recordable-rewritable versions of CD, DVD and Blu-ray drives. The broader optical disk drive product category encompasses desktop and laptop computers, video game consoles and CD, DVD and Blu-ray players, according to the motion.

Hitachi-LG, which is owned 51 percent by Hitachi and 49 percent by LG, will pay out the \$26 million for the settlement fund, but all three companies have agreed to provide witnesses to help the plaintiffs with their case against the remaining defendants.

The joint venture has already paid \$21.1 million as part of a plea bargain with the U.S. Department of Justice after it admitted to conspiring to limit competition for drives sold to Dell Inc., Microsoft Corp. and Hewlett-Packard Co. The September 2011 deal marked the first

charges to come out of the DOJ's probe of the optical disk drive industry.

A few months later, three Hitachi-LG executives likewise agreed to plead guilty for conspiring to rig bids and fix prices on drives sold to the three companies. A fourth executive also admitted to participating in the plot in April.

The DOJ isn't the only regulator to have taken an interest in the sector. The European Commission sent formal statements of objection to more than a dozen optical disk drive suppliers in July based on similar concerns.

The proposed direct purchaser class is represented by attorneys from Saveri & Saveri Inc., the Alioto Law Firm, Berman DeValerio, Cotchett Pitre & McCarthy LLP, Hausfeld LLP, Kaplan Fox & Kilsheimer LLP, Lieff Cabraser Heimann & Bernstein LLP and Pearson Simon Warshaw & Penny LLP.

Hitachi-LG Data Storage is represented by Ropes & Gray LLP. Hitachi is represented by Vinson & Elkins LLP. LG is represented by Davis Polk & Wardwell LLP.

The case is In re: Optical Disk Drive Products Antitrust Litigation, case number 3:10-md-02143, in the U.S. District Court for the Northern District of California.

--Additional reporting by Ben James. Editing by Elizabeth Bowen.

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