

THE HONORABLE REGINA S. CAHAN

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

LG ELECTRONICS, INC. et al.,

Defendants.

Case No.: 12-2-15842-8 SEA

SETTLEMENT AND CONSENT
DECREE AGAINST TOSHIBA
CORPORATION AND TOSHIBA
AMERICA ELECTRONIC
COMPONENTS, INC.

CLERK'S ACTION REQUIRED

SETTLEMENT AND CONSENT DECREE AGAINST TOSHIBA
CORPORATION AND TOSHIBA AMERICA ELECTRONIC COMPONENTS,
INC.

ATTORNEY GENERAL OF WASHINGTON
ARBITRATION DIVISION
800 FIFTH AVENUE, SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

1 **I. SETTLEMENT SUMMARY**

- 2 1.1 Plaintiff: State of Washington
- 3 1.2 Defendants: Toshiba Corporation
4 Toshiba America Electronic
5 Components, Inc.
- 6 1.3 Settlement Amount: \$1,300,000.00 (to be paid in
7 accordance with Paragraph 6.1)
- 8 1.4 Attorney for Plaintiff: Justin P. Wade
9 Assistant Attorney General
- 10 1.5 Attorney for Defendants: Christopher M. Curran
11 Dana E. Foster
12 White & Case LLP

13 **II. INTRODUCTION**

14 2.1. Plaintiff, State of Washington, by and through its Attorney General, on behalf of
15 itself and as *parens patriae* on behalf of persons residing in the State of Washington, commenced
16 an antitrust action on May 1, 2012, for injunction, restitution, and other relief pursuant to
17 Chapter 19.86 RCW, the Unfair Business Practices-Consumer Protection Act, against
18 Defendants Toshiba Corporation and Toshiba America Electronic Components, Inc. (together
19 “Defendants” or “Toshiba”) and other defendants in *State of Washington v. LG Electronics, Inc.*,
20 *et al.*, King County Superior Court, Civil No. 12-2-15842-8 SEA (the “Action”).

21 2.2. Plaintiff alleges price fixing and other anticompetitive conduct by various entities,
22 including the Defendants, in its complaint filed in this Action (the “Complaint”). The Complaint
23 alleges that Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize
24 the price of CRTs, as defined *infra*, at artificially high levels and to maintain the quantities of
CRTs at artificially low levels, in violation of Chapter 19.86 RCW, the Unfair Business
Practices-Consumer Protection Act.

25 2.3. Plaintiff and Defendants have engaged in extended arms-length negotiations
regarding possible resolution of the claims in the Complaint. Plaintiff and Defendants have now
agreed on a basis for the settlement of all of Plaintiff’s claims against Defendants in the matter,

1 and to the entry of this Settlement and Consent Decree ("Consent Decree") without trial or
2 adjudication of any issue of fact or law.

3 2.4. Plaintiff and Defendants have determined that this Consent Decree and the
4 amount of the Settlement Fund is reasonable in light of, among other things, Plaintiff's claims
5 and alleged damages; the merits of the Defendants' defenses; the risk and expense of future and
6 protracted litigation; and the extent of each party's investigation, discovery, and preparation for
7 trial.

8 2.5. Defendants do not admit the allegations of the Complaint or any liability or
9 violation of law and believe that they have valid defenses to Plaintiff's claims and any potential
10 claims that have been or could be asserted by Plaintiff against them. Nevertheless, Defendants
11 agree to entry of this Consent Decree to: (i) avoid the expense, inconvenience, and distraction of
12 burdensome and protracted litigation; (ii) obtain the releases contemplated by the Consent
13 Decree; and (iii) put to rest and terminate with finality all claims that have been or could have
14 been asserted against the Defendants by Plaintiff arising out of the facts alleged in the
15 Complaint. Neither the Complaint nor anything in this Consent Decree constitutes evidence of or
16 an admission regarding the existence or non-existence of any issue, fact, liability, wrongdoing, or
17 violation of any law alleged by Plaintiff.

18 2.6. Defendants recognize and state that this Consent Decree is entered into
19 voluntarily and that, other than the promises contained herein, no promises or threats have been
20 made by the Attorney General's Office or any member, officer, agent or representative thereof to
21 induce Defendants to enter into this Consent Decree.

22 2.7. Plaintiff and Defendants waive any right they may have to appeal from this
23 Consent Decree and from any Order adopting it, provided that no substantive changes are made
24 to the Consent Decree after it has been presented to the Court.

25 2.8. Plaintiff and Defendants acknowledge that they have not completed full discovery
26 in this matter and may thereafter discover facts different from or in addition to those which they
27 knew or believed to be true at the time they entered into this Consent Decree. Nevertheless,

1 Plaintiff and Defendants agree that this Consent Decree shall be effective and remain effective
2 notwithstanding such different or additional facts, and also waive any right they may have to
3 seek modification of this Consent Decree or any Order adopting it based upon discovery of such
4 different or additional facts.

5 2.9. Plaintiff and Defendants agree that this Consent Decree represents the entire
6 agreement of the parties.

7 2.10. Plaintiff and Defendants agree and represent that any persons signing this Consent
8 Decree are authorized to execute this Consent Decree on each party's respective behalf.

9 2.11. This Consent Decree shall not benefit any third party other than Releasees and it
10 shall not be construed to provide any rights to third parties other than Releasees.

11 **NOW, THEREFORE**, there being no just reason for delay for resolving the claims
12 contained in Plaintiff's Complaint against Defendants, and before the taking of any testimony,
13 and without trial or adjudication of any issue of any fact or law herein, and upon consent of the
14 parties hereto, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

15 **III. JURISDICTION AND SCOPE**

16 3.1. Jurisdiction: Solely for purposes of effectuating this Consent Decree, the Court
17 has jurisdiction over the parties and the subject matter herein, as well as the implementation,
18 enforcement, and performance of the terms included in this Consent Decree. The Attorney
19 General has authority to bring this Action under Chapter 19.86 RCW, the Unfair Business
20 Practices-Consumer Protection Act. Venue is proper in King County Superior Court.

21 3.2. Review: Plaintiff and Defendants have read and understand this Consent Decree
22 and enter into it voluntarily, each having been advised by its undersigned counsel of the meaning
23 and effect of each provision of this Consent Decree.

24 3.3. Signatures: For purposes of this document, a signature page sent via fax or
electronic mail shall be treated the same as an original signature, and signatures may be affixed
through counterparts.

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IV. DEFINITIONS

THE COURT ORDERS that the following definitions shall be used in interpreting the terms of this Consent Decree:

4.1. "Defendants" shall refer to Toshiba Corporation, with its principle place of business located at 1-1, Shibaura 1-chome, Minato-ku, Tokyo, Japan and Toshiba America Electronic Components, Inc., with its principle place of business located at 5231 California Avenue, Irvine, CA 92617.

4.2. "CRTs" shall refer to cathode ray tubes.

4.3. "CRT Products" shall refer to products containing CRTs, such as televisions and computer monitors.

4.4. "Plaintiff" shall mean the State of Washington, acting on its own behalf and as *parens patriae* on behalf of persons residing in the State of Washington, and the Attorney General acting on behalf of the State of Washington.

4.5. "Released Claims" means any claim or claims that arise out of or relate to the Relevant Conduct, prior to the Effective Date under RCW 19.86.030, or federal, or Washington statutory or common law regulating competition, unfair competition, unfair practices, price discrimination, unitary pricing, consumer protection, restitution, fraud protection, common law unjust enrichment, racketeering, civil conspiracy, or trade practice law, including, without limitation, any and all claims, demands, action, judgments, suits, liabilities, expenses (including costs, attorneys' fees and interest), penalties or cause of action that Plaintiff have had, now have, or hereafter could bring, against the Defendants (or any of them), whether in law, in equity, or otherwise, based on, arising out of or related to the Relevant Conduct, including, but not limited to, Washington's *parens patriae* claims and all of Plaintiff's claims asserted in the Action.

4.6. "Relevant Conduct" means Defendants' alleged participation in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of CRTs at artificially high levels, to maintain the production of CRTs at artificially low levels, or other anticompetitive conduct regarding CRTs or CRT Products, including the conduct alleged in the Complaint.

1 4.7. "The Settlement Fund" shall be \$1,300,000.00 (one million three hundred
2 thousand dollars) in United States dollars.

3 4.8. "Effective Date" shall mean the date this Consent Decree is entered by the Court.

4 V. CERTIFICATION

5 5.1. Defendants hereby certify to the Attorney General that they do not manufacture or
6 sell CRTs for use in televisions or computer monitors.

7 5.2. In the event that either of the Defendants manufactures or sells CRTs for use in
8 televisions or computer monitors within three (3) years of the Effective Date of this Consent
9 Decree:

10 5.2.1. Within thirty (30) days, Defendants shall send a copy of this Consent
11 Decree to its officers, directors, and sales managers with responsibility for CRT sales to or in the
12 United States and direct them to comply with its terms.

13 5.2.2. Defendants shall certify that they have established an antitrust compliance
14 program and shall establish (if not already established), maintain and update a program or
15 programs for the purpose of compliance with federal and state antitrust laws, including the
16 Sherman Act and RCW 19.86.030. Such program or programs shall provide relevant compliance
17 education regarding the legal standards imposed by the antitrust laws, the remedies that might be
18 applied in the event of violations, and their obligations in the event they observe violations of the
19 antitrust laws.

20 VI. MONETARY RELIEF

21 6.1. Within sixty (60) days of the Effective Date, Defendants shall pay to the State of
22 Washington one million three hundred thousand (\$1,300,000.00) United States dollars by wire
23 transfer to the State of Washington or to such other recipient as the Plaintiff shall designate.
24 Plaintiff represents and warrants that it has provided to Defendants bank account information
sufficient to facilitate the wire transfer prior to presenting this Consent Decree to the Court.

1 7.1.3. If Plaintiff proceeds to trial against the remaining, non-settling defendants
2 in the Action, Toshiba agrees to use reasonable efforts to make available for in-person testimony
3 at trial in this Action, at Plaintiffs' expense, at least one lay witness (*i.e.*, not an expert witness)
4 that is currently employed by the Defendants, provided Plaintiff provides notice to Defendants of
5 its intent to call such witness at least 90 (ninety) days before trial. Defendants agree to make such
6 witness available to Plaintiff, at Plaintiff's expense, for a preparation session of six (6) hours or
7 less, which shall take place either in Seattle no more than two (2) days prior to the date on which
8 the witness is expected to testify or at a mutually convenient time at a location where the witness
9 resides or works, but no more than 90 (ninety) days before trial. Preferably, this witness will be a
10 person (if any) whom Defendants have produced in person at any trial that occurs in the United
11 States in any action from the MDL Proceedings prior to trial in this Action, as reasonably
12 required by the State upon reasonable notice.

13 7.2. Materials produced by Defendants under the Consent Decree shall be treated in
14 accordance with any protective order in this Action. To the extent that any document to be
15 produced pursuant to this Consent Decree is subject to a protective order in the MDL
16 Proceedings, such production will be subject to the provisions of such protective order.

17 7.3. Defendants shall provide assistance to the Attorney General by responding to
18 reasonable inquiries from the Attorney General regarding any discovery materials produced by
19 Defendants in this Action. Defendants shall use their best efforts to provide affidavits on behalf
20 of officers, employees or agents as necessary for the purpose of authenticating, where it is
21 possible to do so, up to 20 specific business records, as reasonably required by the Attorney
22 General for trial. Plaintiff shall give Defendants reasonable notice of any request for
23 authenticating affidavits, and shall not request such an affidavit more than forty-five (45) days
24 prior to the date on which trial of Plaintiff's Action is set to begin.

 7.4. Plaintiff and Defendants shall use their best efforts to effectuate this Consent
Decree, including cooperating in seeking any court approvals.

1 7.5. In the event that Plaintiff reasonably believes a breach of this Consent Decree has
2 occurred, and for the purpose of determining or securing compliance with this Consent Decree,
3 Plaintiff may issue a Civil Investigative Demand pursuant to RCW 19.86.110(4)(c) requiring
4 Defendants to:

5 7.5.1. produce non-privileged documents, and/or

6 7.5.2. subject to the reasonable convenience of Defendants, and without restraint
7 or interference from it, allow Plaintiff to interview directors, officers, employees, and agents of
8 Defendants, who may have counsel present, regarding any such matters.

8 **VIII. RELEASE, DISCHARGE AND COVENANT NOT TO SUE**

9 8.1. Upon the Effective Date, and in consideration of payment of the Settlement Fund,
10 and for other good and valuable consideration, Defendants shall be completely released,
11 acquitted, and forever discharged to the fullest extent permitted by law from the Released
12 Claims. The release, discharge, and covenant not to sue described in this paragraph applies to
13 Defendants, wherever located, and to all of their respective past and present, direct and indirect,
14 wholly and partially owned subsidiaries, parent companies, joint ventures, and Affiliates (where
15 “Affiliates” is defined as any other entity that is now or was previously owned by or an owner of
16 Defendants, where “owned” and “owner” mean holding directly or indirectly 50% or greater
17 equity or beneficial interest); and each and all of the past, present and former principals, partners,
18 officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors,
19 administrators, and assigns of each of the foregoing, and any predecessors or successors of any
20 of the foregoing (collectively, “Releasees”).

21 8.2. The release, discharge, and covenant not to sue set forth in Paragraph 8.1, above,
22 includes only the Released Claims and does not include any claims other than the Released
23 Claims, including without limitation any claims arising out of product liability or breach of
24 contract claims in the ordinary course of business (except to the extent any alleged breach of
contract arises from an alleged antitrust violation), or any other claims wholly unrelated to the
Relevant Conduct or any of the allegations in the Action.

1 **IX. ENFORCEMENT AND RETENTION OF JURISDICTION**

2 9.1 Jurisdiction is retained by this Court ^{for 3 years} for the purpose of enabling any of the parties
3 to this Consent Decree to apply to this Court at any time for such further orders and directions as
4 may be necessary or appropriate for the construction or implementation of any of the provisions
5 of this Consent Decree, for the enforcement of compliance, and for the punishment of any
6 violations.

7 9.2 In any contempt of court proceeding initiated to enforce this Consent Decree due
8 to a violation of its terms, Plaintiff or Defendants may seek, and the Court shall have the
9 authority to grant, all remedies available in such a proceeding.

10 9.3 Nothing herein precludes Plaintiff from enforcing the provisions of this Consent
11 Decree, or from pursuing any law enforcement action with respect to the acts or practices of
12 Defendants not covered by this Consent Decree or any acts or practices conducted after the
13 Effective Date.

14 9.4 Nothing in this Consent Decree shall be construed to limit or bar any other
15 governmental entity (other than the State of Washington and its officials, agencies, and
16 subdivisions) from pursuing other available remedies against Defendants.

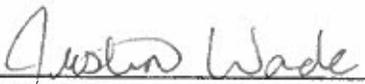
17 9.5 This Consent Decree shall be construed and interpreted to effectuate the intent of
18 the parties, which is to provide for a complete resolution of the relevant claims with respect to
19 Defendants as provided in this Consent Decree.

20 9.6 Neither the existence of this Consent Decree nor anything contained herein shall
21 be deemed or construed to be an admission by Defendants or evidence of any liability,
22 wrongdoing or violation of law by Defendants, or the truth of any of the claims or allegations
23 contained in the Complaint.

24 9.7 Solely for the purpose of determining or securing compliance with this Consent
Decree, Defendants authorize its attorneys to accept service of a motion by Plaintiff to enforce or
interpret this Consent Decree.

1 Presented By:

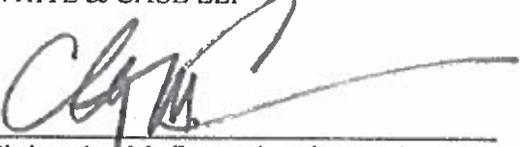
2 ROBERT W. FERGUSON
Attorney General

3
4 

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6 800 5th Ave., Ste. 2000
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7 (206) 464-7030
justinw@atg.wa.gov
Attorney for Plaintiff State of Washington

8
9 *Agreed to, Approved for Entry, and
Notice of Presentation Waived:*

10 WHITE & CASE LLP

11 

12
13 Christophe M. Curran (*pro hac vice*)
701 Thirteenth Street, NW
Washington District of Columbia 20005-3807
14 (202) 626-3643
ccurran@whitecase.com

15 Attorney for Toshiba Corporation and
16 Toshiba America Electronic Components, Inc.

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1 For the State of Washington:

2 Dated: May 24, 2018

By: Justin Wade
JUSTIN P. WADE, WSBA #41168
Assistant Attorney General
Attorney for Plaintiff State of Washington
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7 For Toshiba:

8 Dated: May 24, 2018

By: Christopher M. Curran *by express client authorization*
Christopher M. Curran
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701 13th Street, NW
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