

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION
_____ /

No. M 07-1827 SI
MDL No. 1827

This Order Relates To:

No. C 11-0829 SI

METROPCS WIRELESS, INC.,
Plaintiff,

**ORDER DENYING DEFENDANT
MITSUI TAIWAN'S MOTION TO
DISMISS THE METROPCS' FIRST
AMENDED COMPLAINT**

v.

AU OPTRONICS CORPORATION, *et al.*,
Defendants.
_____ /

On October 28, 2011, the Court heard argument on the motion by defendant Mitsui & Co. (Taiwan), Ltd. ("Mitsui Taiwan") to dismiss the first amended complaint ("FAC") of plaintiff MetroPCS Wireless, Inc. Having considered the arguments of the parties and the papers submitted, and for good cause appearing, the Court hereby DENIES defendant's motion.

BACKGROUND

Plaintiff MetroPCS "provide[s] wireless mobile telecommunication services in selected major metropolitan areas in the United States." FAC at ¶20. It filed this action in the Northern District of Texas on December 17, 2010, seeking to recover for a "long-running conspiracy . . . to fix, raise, stabilize, and maintain prices for Liquid Crystal Display panels" See Compl. at ¶1. The action was subsequently transferred to this Court as part of MDL No. 1827, and, on July 8, 2011, MetroPCS filed its FAC.

1 The FAC alleges that MetroPCS was injured when it purchased “mobile wireless handsets” that
2 contained price-fixed LCD panels. FAC at ¶¶238-39. It includes antitrust claims under the Sherman Act,
3 California’s Cartwright Act, the Illinois Antitrust Act, and New York’s Donnelly Act, as well as a claim
4 under California’s Unfair Competition Law. FAC at ¶¶263-300. Among numerous other entities, the
5 FAC names as defendants two entities from the Mitsui corporate family: Mitsui Taiwan and Mitsui &
6 Co. (USA), Inc. (“Mitsui USA”). FAC at ¶¶35-36. The parent company, Mitsui & Co., Ltd. (“Mitsui”),
7 a Japanese company headquartered in Japan, is named as a co-conspirator but not a defendant. *See* FAC
8 at ¶37. The complaint alleges that the Mitsui entities participated in the conspiracy on behalf of Sanyo,
9 a manufacturer of LCD panels:

10 120. Defendant Mitsui participated in multiple bilateral meetings during the Relevant
11 Period, and agreed on prices and supply levels for LCD Products. In addition,
12 Mitsui attended at least one bilateral meeting with Defendant Chunghwa during
13 2001, and multiple bilateral meetings with co-conspirator Samsung in the U.S.
14 at which similar subjects were discussed. At that and other meetings, Mitsui
15 acted as an agent of Sanyo Consumer and reached agreements with other
16 competitors about prices for LCD Products sold in the United States and
17 elsewhere.

18 FAC at ¶120.

19 On August 5, 2011, Mitsui Taiwan¹ filed a motion to dismiss MetroPCS’s FAC. Mitsui Taiwan
20 argues that it “is headquartered in and organized under the laws of Taiwan, has no physical presence
21 in the United States, and lacks the ‘minimum contacts’ with the United States necessary to justify haling
22 [it] before this Court.” Motion at 1. Thus, it seeks to be dismissed from this lawsuit for lack of personal
23 jurisdiction. Alternatively, Mitsui Taiwan asserts that this Court lacks subject matter jurisdiction over
24 MetroPCS’s claims against it.

25 LEGAL STANDARD

26 Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s jurisdiction
27 over the subject matter of the complaint. *See* Fed. R. Civ. Pro. 12(b)(1). The party invoking the
28 jurisdiction of the federal court bears the burden of establishing that the court has the requisite subject
matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life Ins. Co. of America,*

¹Mitsui USA is not a party to Mitsui Taiwan’s motion.

1 511 U.S. 375, 377 (1994) (citation omitted). A complaint will be dismissed if, looking at the complaint
2 as a whole, it appears to lack federal jurisdiction either “facially” or “factually.” *Thornhill Pub’g Co.,*
3 *Inc. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). When the complaint is challenged
4 for lack of subject matter jurisdiction on its face, all material allegations in the complaint will be taken
5 as true and construed in the light most favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898
6 (9th Cir. 1986). In deciding a Rule 12(b)(1) motion which mounts a factual attack on jurisdiction, “no
7 presumption of truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts
8 will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover,
9 the plaintiff will have the burden of proof that jurisdiction does in fact exist.” *Mortensen v. First Fed.*
10 *Savings & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977).

11 Motions to dismiss for lack of personal jurisdiction are heard under Federal Rule of Civil
12 Procedure 12(b)(2). In order for a court to exercise jurisdiction over a non-resident defendant, the
13 defendant must have the requisite minimum contacts with the forum such that the exercise of jurisdiction
14 “does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*,
15 326 U.S. 310, 316 (1945). There are two forms of personal jurisdiction: “specific” and “general.” “A
16 court may exercise specific jurisdiction where the cause of action arises out of or has a substantial
17 connection to the defendant’s contacts with the forum.” *Glencore Grain Rotterdam B.V. v. Shivnath*
18 *Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002) (citing *Hanson v. Denckla*, 357 U.S. 235, 251
19 (1958)). “Alternatively, a defendant whose contacts are substantial, continuous, and systematic is
20 subject to a court’s general jurisdiction even if the suit concerns matters not arising out of his contacts
21 with the forum.” *Id.* (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 n.9
22 (1984)).

23 The plaintiff has the burden of establishing the district court’s personal jurisdiction over a
24 defendant. *Doe I v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (per curiam). However, a district
25 court should not act on the defendant’s motion to dismiss without first holding an evidentiary hearing.
26 *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir. 2003).
27 Therefore, the plaintiff need only make a prima facie showing of jurisdiction to avoid the defendant’s
28 motion to dismiss. *Id.*; cf. *Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir.

1 1977). Unless directly contravened, a plaintiff’s version of the facts is taken as true, and “conflicts
2 between the facts contained in the parties’ affidavits must be resolved in [plaintiff’s] favor for purposes
3 of deciding whether a prima facie case for personal jurisdiction exists.” *Unocal*, 248 F.3d at 922
4 (quoting *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996)); *see also Bancroft*
5 *& Masters, Inc. v. Augusta Nat’l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (holding that “[b]ecause the
6 prima facie jurisdictional analysis requires us to accept the plaintiff’s allegations as true, we must adopt
7 [plaintiff’s] version of events for purposes of this appeal”).

8
9 **DISCUSSION**

10 As mentioned above, Mitsui Taiwan moves for dismissal on the grounds that this Court lacks
11 both personal jurisdiction and subject matter jurisdiction.

12
13 **I. Personal Jurisdiction**

14 Mitsui Taiwan first argues that the Due Process Clause of the United States Constitution forbids
15 it from being subjected to this Court’s jurisdiction. It asserts that it lacks the necessary “minimum
16 contacts” with the forum to be forced to defend itself in this Court. In this instance, the relevant forum
17 for this minimum contacts analysis is the United States. *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d
18 1406, 1415-16 (9th Cir. 1989).

19 Mitsui Taiwan argues that this Court may not exercise either general or specific jurisdiction over
20 it. It argues that general jurisdiction is lacking because it has virtually no contacts with the United
21 States. According to an affidavit from Makoto Ichikawa, the General Manager of Mitsui Taiwan, Mitsui
22 Taiwan is headquartered in and organized under the laws of Taiwan, has no presence in the United
23 States, and has never sold or distributed TFT-LCD panels anywhere in the United States. Motion, Exh.
24 1 (“Ichikawa Decl.”) at ¶2-6; *see also id.* at ¶6 (stating that Mitsui Taiwan’s “sales of TFT-LCD panels
25 and products have been limited to Taiwan and few other countries outside North America”); *id.* at ¶9
26 (“[Mitsui Taiwan’s] only sales in the United States have been of products not related to TFT-LCD
27 products[,] occurred in a single year from 2002 to 2006 [and] constituted less than 1 percent of [Mitsui
28 Taiwan’s] income for that year . . .”).

1 Similarly, Mitsui Taiwan argues that its lack of contacts is fatal to any claim of specific
2 jurisdiction. It argues that it has never “purposefully availed” itself of the privilege of conducting TFT-
3 LCD business in the United States, and that MetroPCS’s claims therefore cannot “arise out of” any U.S.-
4 related activities. *See* Ichikawa Decl., ¶7 (stating that Mitsui Taiwan has never “billed or invoiced,”
5 “negotiated,” “received revenue,” “shipped,” or otherwise “entered into any agreements for the sale or
6 distribution of TFT-LCD panels or products in the United States”); *id.* at ¶10 (“[Mitsui Taiwan] has
7 never had any meetings or discussions with any other defendant or alleged conspirator in the United
8 States regarding any issue related to TFT-LCD panels or products.”).²

9 This Court previously considered Mitsui Taiwan’s argument in connection with its motion to
10 dismiss in the Electrograph matter. *See* Order Granting Mitsui Taiwan’s Motion for Judgment on the
11 Pleadings and for Dismissal, Master Docket No. 3395 (August 29, 2011). As in this case,
12 Electrograph’s complaint alleged that Mitsui Taiwan participated in the conspiracy as an agent for
13 Sanyo.³ Its complaint did not, however, contain any allegations about the actions of the other Mitsui
14 entities. In opposition to Mitsui Taiwan’s motion to dismiss, Electrograph argued that personal
15 jurisdiction was proper because the Mitsui entities acted as a “single integrated enterprise.” The Court
16 rejected this argument because Electrograph’s complaint did not contain any allegations to support its
17 assertion that Mitsui operated as a single integrated enterprise. *Id.* at 6 (“The primary problem with
18 Electrograph’s theory is that no ‘single integrated entity’ allegations appear in its complaint.”). Further,
19 while Electrograph had attempted to introduce extrinsic evidence to support its single integrated entity
20 theory, the Court found those documents, most of which consisted of public filings or customer
21 presentations, inadequate to support its theory. *Id.* at 7 (“Other items Electrograph has provided are

22
23 ²The Court GRANTS the unopposed requests for judicial notice filed by MetroPCS and Mitsui
Taiwan.

24
25 ³Many documents produced by Electrograph have also been produced by MetroPCS, and support
the assertion that Mitsui Taiwan participated in the conspiracy in Taiwan. For example, one document,
26 produced by Chunghwa Picture Tubes, documents a March 20, 2001, meeting with Mitsui Taiwan
regarding sales of Sanyo products. The document contains information on the price, shipment status,
27 and customers of variously sized Sanyo LCD panels. Declaration of Philip J. Iovieno in Support of
MetroPCS’ Opposition (“Iovieno Decl.”), ¶11 & Exh. 10; *see also id.*, Exh. 33 (declaration of
28 Chunghwa employee that “[b]etween 2001 and 2004, I and other Chunghwa employees met and
exchanged information with employees of . . . Mitsui Busan (the Taiwanese agent for Sanyo Epson).”),
Exh. 34 (memo documenting meeting between Hitachi and Mitsui Taiwan employee regarding pricing).

1 consistent with its single integrated entity theory, but do little to establish that Mitsui actually operated
2 in an integrated fashion.”). The Court suggested, however, that “evidence that the Mitsui entities
3 worked together” might be sufficient to create personal jurisdiction over Mitsui Taiwan. *Id.* at 8.

4 Seizing on this last statement, MetroPCS has provided the Court with a number of documents
5 that it claims demonstrate the degree to which the Mitsui entities worked together to advance the
6 conspiracy. These documents support MetroPCS’s allegations that the Mitsui entities cooperated and
7 supported each other’s participation in the conspiracy. Numerous emails show that all three Mitsui
8 entities communicated with each other regarding the pricing of Sanyo LCD panels as well as the pricing
9 of their competitors. For example, several emails reflect exchanges of pricing information between
10 Mitsui Taiwan and Mitsui USA. *See, e.g.*, Iovieno Decl., Exh. 11 (email from Mitsui Taiwan directing
11 Mitsui USA employee to “update your discussion with Dell . . . LG reduced the price to USD168 and
12 got half the allocation”), Exh. 12 (email from Mitsui USA stating that “we spoke with Samsung rep here
13 and he mentioned that they did not move on Dell aggressive requests for November pricing, as a matter
14 of fact he said that they actually RAISED pricing for one model . . .”), Exh. 13 (email from Mitsui
15 USA stating that “this is very frustrating because we know for fact that other 12.1 XGA suppliers are
16 not meeting target and are in our same price range, and Dell has resorted to making claims to suppliers
17 that they Dell have in fact received lower pricing that what we are fairly sure was proposed from LG
18 or Samsung for AtlasII”), Exh. 14 (email from Mitsui USA stating that “I checked with LG Austin and
19 he confirmed LG price stays at \$168 with the same payment terms”), Exh. 27 (email from Mitsui USA
20 stating that “[b]efore meeting Dell today, we heard from Samsung rep / Mike Hanson that LG has
21 actually met Sept 12.1 XGA price target of \$158 but this price is for Dell only He said that
22 Samsung had gone to \$160/pc and was considering lower”), Exh. 28 (email from Mitsui USA
23 documenting pricing conversation with LG Austin), Exh 30 (email from Mitsui USA containing price
24 information from LG). Significantly, the bulk of these communications specifically discuss Mitsui’s
25 pricing to Dell computer, an American company. Further, the emails suggest that while Mitsui USA
26 appears to have been responsible for price negotiations with Dell, Mitsui Taiwan communicated about
27 pricing and quantity with Quanta, a manufacturer of Dell products.

28 Based on the above, the Court finds that the exercise of specific jurisdiction over Mitsui Taiwan

1 is appropriate. Specific jurisdiction exists where three factors are met:

2 (1) The non-resident defendant must purposefully direct his activities or consummate
3 some transaction with the forum or resident thereof; or perform some act by which he
4 purposefully avails himself of the privilege of conducting activities in the forum, thereby
5 invoking the benefits and protections of its laws; (2) the claim must be one which arises
out of or relates to the defendant’s forum-related activities; and (3) the exercise of
jurisdiction must comport with fair play and substantial justice, *i.e.*, it must be
reasonable.

6 *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011).

7 The documents MetroPCS has produced establish that Mitsui Taiwan “purposefully directed”
8 its conspiratorial activities towards the United States. The evidence described above establishes that
9 Mitsui Taiwan’s conspiratorial activities were expressly targeted at the United States. *See also* Iovieno
10 Decl., Exh. 36, 37 (emails discussing prices of LCD products in United States). Further, Mitsui Taiwan
11 knew that its price-fixing activities would cause harm to Dell and other American companies. This is
12 sufficient to satisfy the “purposeful direction” prong of the specific jurisdiction analysis. *See*
13 *CollegeSource*, 653 F.3d at 1076 (“[The ‘purposefully direct’ test] requires that the defendant allegedly
14 must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that
15 the defendant knows is likely to be suffered in the forum state.” (internal quotation marks omitted)).

16 The other elements of the analysis are easily satisfied. MetroPCS’s injury – its contention that
17 it paid artificially high prices for LCD products – directly relates to Mitsui Taiwan’s conspiratorial
18 activities. Finally, the exercise of jurisdiction over Mitsui Taiwan would be reasonable. Typically, the
19 burden of establishing that jurisdiction would be unreasonable involves a seven-factor analysis:

20 (1) the extent of the defendants’ purposeful injection into the forum state’s affairs; (2)
21 the burden on the defendant of defending in the forum; (3) the extent of the conflict with
22 the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the
23 dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance
of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the
existence of an alternative forum.

24 *Dole Food Co. v. Watts*, 303 F.3d 1104, 1114 (9th Cir. 2002). Here, however, Mitsui Taiwan has not
25 made any attempt to show that the exercise of jurisdiction would be unreasonable. *See College Source*,
26 653 F.3d at 1076 (“If [the plaintiff satisfies the first two prongs of the specific jurisdiction inquiry], the
27 burden then shifts to [the defendant] to set forth a ‘compelling case’ that the exercise of jurisdiction
28 would not be reasonable.”). In any event, given its close affiliation with Mitsui USA, which remains

1 a defendant regardless of the outcome of Mitsui Taiwan's motion, the Court finds that the exercise of
2 jurisdiction over Mitsui Taiwan is reasonable.

3

4 **II. Subject Matter Jurisdiction**

5 Mitsui Taiwan next moves to dismiss the complaint for lack of subject matter jurisdiction,
6 claiming that the Foreign Trade Antitrust Improvements Act of 1984 ("FTAIA") bars MetroPCS's
7 antitrust claims. The Court previously rejected this argument in its order on Mitsui Taiwan's motion
8 to dismiss the Electrograph complaint. *See* Order Granting Mitsui Taiwan's Motion for Judgment on
9 the Pleadings and for Dismissal, Master Docket No. 3395 (August 29, 2011). Mitsui Taiwan has not
10 convinced the Court to depart from this prior ruling. Its liability is not based upon its own foreign sales
11 of LCD products, but is based on the role it allegedly played in fixing prices of Sanyo LCD panels later
12 sold in the United States. Accordingly, its conduct falls within the domestic-injury exception to the
13 FTAIA.

14

15 **CONCLUSION**

16 For the foregoing reasons and for good cause shown, the Court hereby DENIES Mitsui Taiwan's
17 motion to dismiss. Docket No. 40 in 11-0829; Docket No. 3218 in 07-1827.


18

19 **IT IS SO ORDERED.**

20

21 Dated: November 9, 2011

22



SUSAN ILLSTON
United States District Judge

23

24

25

26

27

28