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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ANALOGIX SEMICONDUCTOR, INC., a
Delaware corporation,

Plaintiff,

v.

SILICON IMAGE, INC., a Delaware
corporation; HDMI LICENSING, LLC, a
Delaware Corporation; and SIMPLAY LABS,
LLC, a Delaware Corporation;

Defendants.

Case Number C 08-2917 JF (PVT)

ORDER¹ GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND

[re: doc. no. 18]

Plaintiff Analogix Semiconductor, Inc. (“Analogix”) filed the instant case against Defendants Silicon Image, Inc. (“Silicon Image”), HDMI Licensing, LLC (“HDMI”), and Simplay Labs, LLC (“Simplay”), alleging violations of Sections 1 and 2 of the Sherman Act, § 16720 of the California Cartwright Act, and § 17200 of the California Business & Professions Code. Defendants move to dismiss the complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons set forth below, Defendants’ motion will be granted, with leave to amend.

¹ This disposition is not designated for publication and may not be cited.

1
2 **I. BACKGROUND**

3 The instant dispute involves High-Definition Multimedia Interface (“HDMI”) solutions.
4 HDMI solutions are chip-based interfaces that are utilized in the transmission of digital data. A
5 product that incorporates an HDMI solution typically is referred to as being “HDMI-enabled.”
6 For example, an HDMI-enabled digital transmitter, such as a DVD player or cable box that has a
7 built-in HDMI transmitter solution, can communicate with an HDMI-enabled digital receiver,
8 such as a television that has a built-in HDMI receiver solution.

9 Defendant Silicon Image designs and manufactures HDMI transmitter and receiver
10 solutions. The complaint alleges that in 2001, Silicon Image met with several companies,
11 including Hitachi, Ltd., Matsushita Electric Industrial Co., Ltd., Philips Consumer Electronics
12 International B.V., Thomson Multimedia, and Toshiba Corporation, to establish a “working
13 group” for the purposes of creating an HDMI standard (“HDMI Standard”). The purpose of the
14 HDMI Standard is to foster a common specification for HDMI solutions. HDMI enjoys some
15 level of government support in certain product areas. For example, since 2003 the Federal
16 Communications Commission (“FCC”) has required that all high-definition cable boxes include
17 an HDMI solution or a Digital Visual Interface (“DVI”) solution. According to Analogix, DVI is
18 an alternative and less popular digital solution standard. In contrast, the HDMI Standard has
19 become the *de facto* industry protocol for many digital markets.

20 The members of the HDMI working group are referred to as the “Founders.” The
21 Founders allegedly are parties to the “Founder’s Agreement,” a document that is not publicly
22 available but has been referred to in Silicon Image’s financial statements. Analogix alleges that
23 the Founder’s Agreement provides the framework for the Founders’ control over the HDMI
24 Standard. The Founder’s Agreement also may include terms regarding revenue sharing among
25 the Founders.

26 In November 2002, the Founders announced the creation of Defendant HDMI Licensing.
27 HDMI Licensing is a wholly-owned subsidiary of Silicon Image and serves as the agent for the
28 licensing of the HDMI Standard to companies that make, use, or sell HDMI solutions or HDMI-

1 enabled products. HDMI Standard licensees include the Founders as well as “Adopters.”
2 Adopters are required to sign the “Adopter Agreement” before they can utilize the HDMI
3 Standard. Thus, if a company does not sign the Adopter Agreement, it effectively is excluded
4 from making, using or selling either HDMI solutions or HDMI-enabled products. Signatories to
5 the Adopter Agreement must update their products to comply with all revisions made to the
6 HDMI Standard. The Adopter Agreement grants a nonexclusive license to “necessary” patent
7 claims that cover the HDMI standard, but the Adopter Agreement does not disclose the actual
8 patents. In return for the nonexclusive license, Adopters pay royalties to HDMI Licensing.
9 Initially, Silicon Image received 100% of the royalty revenues, but since 2007 a revenue-sharing
10 agreement among the Founders has been in place.

11 Certain Founders and Adopters, including Silicon Image and Analogix, manufacture
12 HDMI solutions and sell these solutions to companies that manufacture HDMI-enabled products.
13 There also are certain companies that make both HDMI solutions and HDMI-enabled products.
14 Finally, manufacturers of HDMI solutions also may purchase HDMI solutions from other HDMI
15 manufacturers. For example, the complaint alleges that many, if not all, of the Founders have
16 purchased HDMI solutions from Silicon Image in the past.

17 Analogix alleges that there are two distinct product markets for HDMI solutions. The
18 first is “discrete” HDMI solutions, which is comprised of HDMI solutions that have only HDMI
19 functionality. The second is the “HDMI Solution Product Market,” which Analogix defines as
20 including both discrete solutions and “integrated” HDMI solutions. Integrated HDMI solutions
21 are solutions that include both HDMI functionality and non-HDMI functionality, such as digital
22 video recording functionality. Analogix describes the integrated HDMI market as being
23 “broader” than the discrete HDMI market. In addition, integrated HDMI solutions generally are
24 priced higher than discrete HDMI solutions because of the more diverse functionality of an
25 integrated solution. The alleged geographic market for both discrete HDMI solutions and the
26 HDMI Solution Product Market is worldwide.

27 Analogix alleges that Silicon Image possesses more than ninety percent of the market for
28 discrete HDMI solutions; the remaining market share is split among several companies, including

1 Analogix. Analogix alleges further that while there is some competitive substitution between
2 integrated and discrete HDMI solutions, the discrete HDMI market in fact is a distinct and unique
3 market. In support of this allegation, the complaint refers to several statements by Silicon
4 Image’s CEO, who has stated that discrete solutions often are first on the market before
5 integrated solutions, and that certain customers are interested in purchasing only discrete HDMI
6 solutions. Regardless of customer preference, when a new HDMI Standard is implemented, the
7 new technology initially is available only in discrete HDMI solutions.

8 According to Analogix, Silicon Image and the Founders purposefully have structured the
9 HDMI market to their advantage. It is alleged that through the Founder’s Agreement, Silicon
10 Image and the other Founders have restrained competition by delaying disclosure of revisions to
11 the HDMI Standard. Allegedly, Adopters are not allowed to have any input regarding revisions
12 to the HDMI Standard. Analogix alleges that because of this lack of transparency, Silicon Image
13 and other Founders have a six to twelve month advantage in bringing products to market.² In
14 support of this allegation, the complaint includes multiple examples of instances in which
15 Founders were the first to market various HDMI solutions and HDMI-enabled products.

16 The Adopters Agreement requires that before selling the latest HDMI solutions or HDMI-
17 enabled products, Adopters must test their solutions and/or products at an authorized testing
18 center (“ATC”). Silicon Image owns four of the seven ATC’s worldwide, and it operates the
19 only ATC located in North America. Silicon Image’s ATC’s also are the only facilities that are
20 configured to test HDMI solutions, as opposed to HDMI-enabled products. Analogix contends
21 that the testing requirement further delays market entry by non-Founder competitors.

22 Analogix also alleges that Silicon Image’s control over the HDMI solutions market has
23 been expanded by Simplay, which like HDMI Licensing is a wholly-own subsidiary of Silicon
24 Image. Simplay administers the Simplay HD Testing Program, which tests HDMI solutions and
25

26 ² Silicon Image’s CEO allegedly has stated that the Founders have a “structural
27 advantage...because we are helping the founding members figure out where to go with the
28 development of the standard. It gives us about, roughly, a six- to 12-month lead in the market.”
Complaint ¶36.

1 HDMI-enabled products for compliance with a broad-based consumer electronics standard. This
2 consumer electronics standard incorporates the HDMI Standard as well as other technical
3 specifications. Analogix contends that the fees for the testing procedure are “exorbitant.” More
4 important, however, is the fact that certain retailers now require testing and certification under
5 the Simplay program before allowing the sale of HDMI-enabled products. As a result, Simplay
6 can theoretically delay or even prevent the sale of HDMI-enabled products to retail consumers.

7 Analogix claims that competition has been reduced within the discrete HDMI solutions
8 market because of the barriers erected by Silicon Image and other Founders. Specifically,
9 Analogix asserts that Silicon Image and the other Founders have conspired to reduce output and
10 raise prices. Moreover, through forced adherence to the restrictions imposed by the Adopter
11 Agreement, manufacturing costs allegedly are increased to the detriment of consumers.

12 The complaint also alleges that Silicon Image has acted unilaterally to exclude Analogix
13 from the HDMI solutions market. Analogix claims that Silicon Image has prevented testing of
14 Analogix’s HDMI solutions by recently instructing ATC’s to refuse Analogix’s testing
15 submissions. Because Silicon Image operates the only ATC’s for HDMI solutions, Analogix
16 now is excluded from the HDMI solutions market. Similarly, Analogix alleges that Simplay no
17 longer will test Analogix’s HDMI solutions because of the legal disputes now pending between
18 the parties.

19 **II. STANDARD OF REVIEW**

20 For purposes of a motion to dismiss, the plaintiff’s allegations are taken as true, and the
21 Court must construe the complaint in the light most favorable to the plaintiff. *Jenkins v.*
22 *McKeithen*, 395 U.S. 411, 421 (1969). “Dismissal under Rule 12(b)(6) is appropriate only where
23 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal
24 theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). “While
25 a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
26 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
27 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause
28 of action will not do.” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007) (citations

1 omitted).

2 III. DISCUSSION

3 A. Sherman Act § 1

4 Section 1 of the Sherman Act prohibits “[e]very contract, combination . . . or
5 conspiracy, in restraint of trade.” 15 U.S.C. § 1. Thus, a successful claim under Section 1
6 requires (1) an agreement that (2) unreasonably restrains trade and (3) has an effect on interstate
7 or foreign commerce. *See, e.g., Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1062 (9th Cir. 2001).
8 At the pleading stage the plaintiff only need allege facts that, if true, would establish the three
9 elements of a Section 1 claim. *See Twombly*, 127 S. Ct. at 1964-66.

10 1. Alleged Conspiracy between Silicon Image, HDMI Licensing, and Simplay

11 Silicon Image contends that a conspiracy among Silicon Image, HDMI Licensing, and
12 Simplay cannot exist as a matter of law because it is well-settled that a company cannot
13 unlawfully conspire with its wholly-owned subsidiaries. *See Copperweld Corp. v. Independence*
14 *Tube Corp.*, 467 U.S. 752, 777 (1984) (“[parent company] and its wholly owned subsidiary...are
15 incapable of conspiring with each other for purposes of § 1 of the Sherman Act.”). The Court
16 agrees that to the extent that the complaint alleges that Silicon Image and its wholly-owned
17 subsidiaries were co-conspirators, such an allegation does not state a cognizable claim.
18 However, Analogix also alleges that there were additional conspirators, namely the other
19 Founders. If HDMI Licensing and Simplay are involved in horizontal arrangements among
20 Silicon Image and other Founders, the Court may consider Silicon Image and its subsidiaries to
21 be a single entity and still subject them to Section 1 liability. *See Copperweld*, 467 U.S. at 771 (a
22 “parent and its wholly owned subsidiary have a complete unity of interest.”).

23 2. Founder’s Agreement and the HDMI Standard

24 Silicon Image and the other Founders are members of what is commonly referred to as a
25 standards-setting organization (“SSO”). SSO’s are not illegal *per se* and often create a net pro-
26 competitive effect. *See, e.g., Rambus, Inc. v. Infineon Techs. AG*, 330 F. Supp. 2d 679, 696 (E.D.
27 Va. 2004) (“Product uniformity through standardization, especially in technological markets,
28 facilitates the comparison of competing products, which benefits consumers in the short run and

1 provides incentives for engineers to develop the next generation of compatible products, thereby
2 providing longer-term consumer benefits.”). Accordingly, any alleged agreement among the
3 members of a SSO is analyzed under a rule of reason. *Allied Tube & Conduit Corp. v. Indian*
4 *Head, Inc.*, 486 U.S. 492, 501 (1988). SSO’s may be abused in furtherance of anticompetitive
5 goals. In *Allied Tube*, the Supreme Court noted that SSO’s “often have economic incentives to
6 restrain competition and that the product standards set by such associations have a serious
7 potential for anticompetitive harm.” *Id.* at 500. Absent safeguards such as free flow of
8 information regarding technical designs and fair licensing terms, a SSO may be used as a tool to
9 restrict competition. *See id.* at 501. A single dominant entity may influence a SSO to “magnify
10 its power and effectuate anticompetitive effects on the market in question.” *Rambus*, 330 F.
11 Supp. 2d at 696-97.

12 Here, the alleged horizontal agreement involves various alleged arrangements between
13 Silicon Image and other Founders to restrict competition within the HDMI solutions market. The
14 overall arrangement allegedly includes both the non-public Founder’s Agreement and the
15 Adopter Agreement. Defendants do not dispute that there is an agreement among the Founders,
16 but rather that such an agreement violates antitrust law. For purposes of the instant motion, the
17 Court concludes that Analogix sufficiently has pled facts that demonstrate the existence of an
18 agreement among the Founders and Silicon Image regarding the HDMI solutions market. *See*
19 *Twombly*, 127 S. Ct. at 1965 (“a [Section 1] claim requires a complaint with enough factual
20 matter (taken as true) to suggest that an agreement was made.”)

21 3. Relevant Market

22 Silicon Image contends that Analogix has failed to plead adequately that the alleged
23 agreement among the Founders has caused harm to a defined market. “Failure to identify a
24 relevant market is a proper ground for dismissing a Sherman Act claim.” *Tanaka*, 252 F.3d at
25 1063. There is no requirement that a relevant market for purposes of a Section 1 claim be pled
26 with specificity. *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1045 (9th Cir.
27 2008). Thus, Analogix’s complaint is not deficient for purposes of a Rule 12(b)(6) motion so
28 long as the description of the alleged market is inadequate as a matter of law. *See id.* However,

1 there are several threshold requirements for legal sufficiency. For example, the relevant market
2 must be defined by the products or producers, not its consumers. *Id.* In addition, the relevant
3 market must “encompass the product at issue as well as all economic substitutes for the product.”
4 *Id.* In other words, the relevant market should be defined by the reasonable interchangeability
5 between the product and its substitutes. *See id.*

6 The complaint at issue defines two relevant markets:

7 a. The Discrete HDMI Solution Product Market is the market for discrete
8 HDMI solutions that interface digital video and audio data transmissions
9 from a digital transmitter to a digital receiver.

10 b. The HDMI Solution Product Market includes both the Discrete HDMI
11 Solution Product Market and integrated HDMI solutions – i.e., solutions
12 that incorporate HDMI-related functionality along with non-HDMI-related
13 functionality.

14 Complaint ¶72. The Court agrees with Defendants that this description is legally inadequate.
15 Analogix has not described how interchangeable the markets for discrete and integrated solutions
16 are. The complaint sets forth in relatively vague terms that a customer may prefer to purchase a
17 discrete solution over an integrated solution for a variety of reasons, including cost, technological
18 improvements, and the nature of the non-HDMI functionality in the integrated solution. Nor is it
19 clear the extent to which other standards, such as DVI, present viable substitutes to either discrete
20 or integrated HDMI solutions. While the complaint states that the HDMI Solution Product
21 Market “includes” integrated and discrete solutions, it does not explain whether the HDMI
22 Solution Product Market is composed solely of discrete and integrated HDMI solutions, or
23 whether there are other solutions within this market. Finally, Silicon Image correctly points out
24 that the FCC requirement regarding HDMI implementation applies only to cable-ready television
25 sets. The complaint does not describe how the HDMI solution market should be defined in terms
26 of other HDMI-enabled product markets. It is unclear whether specific HDMI solutions are
27 designed for specific HDMI-enabled products, or if a particular HDMI solution can be
28 incorporated into multiple HDMI-enabled products. In other words, while Silicon Image may
control ninety percent of the discrete HDMI solution market, it is not clear whether it has the
same market share in HDMI-enabled products that incorporate those discrete solutions.

1 Ultimately, Analogix’s complaint does not adhere to the requirement that a plaintiff must
2 “define its proposed relevant market with reference to the rule of reasonable interchangeability
3 and cross-elasticity of demand.” *In re eBay Seller Antitrust Litig.*, 545 F.Supp.2d 1027, 1031
4 (N.D. Cal. 2008) (quoting *Queen City Pizza, Inc. v. Domino’s Pizza Inc.*, 124 F.3d 430, 436 (3d
5 Cir.1997). The rule of reasonable interchangeability requires some explanation regarding
6 possible substitutes. *See Queen City*, 124 F.3d at 436-37. DVI-enabled solutions apparently
7 exist and are a substitute for certain digital consumer products. In an amended complaint
8 Analogix should set forth additional information regarding the substitutability of DVI or other
9 digital technology solutions as applied to the relevant markets.

10 Likewise, if there minimal cross-elasticity of demand because HDMI-enabled solutions
11 are the only relevant market, the Founders should be able to increase prices with relative
12 impunity. However, instead of referring to ways in which previous price changes influence
13 substitution, Analogix’s definitions of the relevant markets seem to depend mostly on where
14 Silicon Image enjoys some level of success. An amended complaint should include facts that
15 support Analogix’s allegation as to why the discrete HDMI solution and HDMI Solution Product
16 Market are the relevant markets for purposes of its antitrust claims, to the exclusion other digital
17 solution formats.

18 4. Market Power

19 Pleadings for a rule of reason claim must allege that the defendant has market power in a
20 particular market. *Newcal*, 513 F.3d at 1044 (“In order to state a valid claim under the Sherman
21 Act, a plaintiff must allege that the defendant has market power within a ‘relevant market.’ That
22 is, the plaintiff must allege both that a ‘relevant market’ exists and that the defendant has power
23 within that market.”). As noted above, Analogix alleges that Silicon Image has a ninety percent
24 market share in the discrete solution market and a “significant percentage” of the total HDMI
25 solution product market. Analogix also contends that Silicon Image has acknowledged that it is
26 able to boost prices by controlling the HDMI Standard. However, the sufficiency of these
27 allegations is unclear because of the vagueness of the market to which they apply. Should
28 Analogix allege facts that define a legally cognizable market and show “evidence of restricted

1 output and supracompetitive prices,” such allegations will be sufficient to survive a motion to
2 dismiss. *See Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995).

3 B. Section 2 of the Sherman Act

4 “A claim of monopolization under § 2 of the Sherman Act has two elements: (1) the
5 possession of monopoly power in the relevant market; and (2) the willful acquisition or
6 maintenance of that power as distinguished from growth or development as a consequence of a
7 superior product, business acumen, or historic accident.” *In re eBay*, 545 F. Supp. 2d at 1031
8 (citing *U.S. v. Grinnell Corp.*, 384 U.S. 563, 570 (1966)). Silicon Image contends that
9 Analogix’s Section 2 claim (like its Section 1 claim) fails to plead adequately the relevant
10 market. In addition, Silicon Image asserts that Analogix has failed to plead adequately facts
11 supporting an allegation of monopoly power within the relevant market, and as a result there is
12 no evidence of harm to the relevant market. *See Bhan v. NME Hosp., Inc.*, 929 F.2d 1404, 1413-
13 14 (9th Cir. 1991).

14 As is apparent from the foregoing discussion, the Court agrees that Analogix has failed to
15 plead adequately the relevant market. A proper definition of the relevant market is required for a
16 successful claim under either Section 1 or Section 2 of the Sherman Act. *Newcal*, 513 F.3d at
17 1044 n.3 (“The ‘relevant market’ and ‘market power’ requirements apply identically under the
18 two different sections of the [Sherman] Act.”).³

19 C. Cartwright Act and Unfair Competition

20 “California’s Cartwright Act, Cal. Bus. & Prof. Code §§ 16700-16770, is patterned after
21 the Sherman Act. California courts look to federal case law interpreting the Sherman Act for
22 guidance in interpreting the Cartwright Act.” *Big Bear Lodging Ass’n v. Snow Summit, Inc.*, 182
23 F.3d 1096, 1101 n.2 (9th Cir. 1999). Because Analogix has failed to plead adequately the
24 relevant product market for purposes of a claim under either Section 1 or 2 of the Sherman Act,
25 Analogix’s claim under the California Cartwright Act also will be dismissed with leave to

26 _____
27 ³ The parties also disagree as to whether Analogix pled both attempted monopolization
28 and monopolization. Because Analogix will be granted leave to file an amended complaint, the
Court expresses no opinion as to this issue.

1 amend.

2 Analogix's unfair competition claim also will be dismissed. The complaint premises the
3 unfair competition claim on conduct that was allegedly unlawful under the antitrust laws. *See*
4 *Chavez v. Whirlpool Corp.*, 113 Cal. Rptr. 2d 175, 184 (Ct. App. 2001).⁴

5 **IV. ORDER**

6 Good cause therefor appearing, IT IS HEREBY ORDERED that Defendants' motion to
7 dismiss Analogix's complaint as to claims 1 through 4 is GRANTED, with leave to amend. Any
8 amended complaint must be filed within thirty (30) days of the date of this Order.

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DATED: October 28, 2008

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JEREMY FOGEL
United States District Judge

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27 ⁴ Analogix also argues that it has asserted a claim for fraud under California unfair
28 competition law. However, the complaint does not allege expressly the elements of fraud.
Analogix may attempt to plead a fraud claim in its amended complaint.

1 This Order has been served upon the following persons:
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