

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

*In the Matter of Panasonic Corporation and Sanyo Electric Co., Ltd
File No. 091-0050*

I. Introduction

The Federal Trade Commission (“Commission”) has accepted from Panasonic Corporation (“Panasonic”), subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”), which is designed to remedy the anticompetitive effects resulting from Panasonic’s proposed acquisition of 100% of the voting securities of Sanyo Electric Co., Ltd. (“Sanyo”). Under the terms of the Consent Agreement, Sanyo will divest its assets relating to the manufacture and sale of portable NiMH batteries to FDK Corporation (“FDK”), a subsidiary of Fujitsu, Ltd.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement or make final the accompanying Decision and Order (“Order”).

Pursuant to an agreement concluded on December 19, 2008 (the “Agreement”), Panasonic announced its intention to commence a cash tender offer to acquire 100 percent of the voting securities of Sanyo for an aggregate purchase price of approximately \$9 billion (the “Acquisition”). The Commission’s complaint alleges the facts described below and that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for portable NiMH batteries.

II. The Parties

Panasonic, headquartered in Osaka, Japan, is a leading manufacturer of consumer electronics such as televisions, DVD players, and computers. Panasonic’s Components and Devices Division produces rechargeable batteries, as well as semiconductors and mechanical components.

Headquartered in Osaka, Japan, Sanyo Electric Co., Ltd., is a leading producer of electronic devices and components, including digital cameras, televisions, car navigation systems, home appliances, and consumer electronics. Sanyo’s rechargeable battery business is operated out of its Components Division, which also manufactures batteries, semiconductors, capacitors, small motors, and optical pickups.

III. Portable NiMH Batteries

There are three rechargeable battery chemistries: nickel cadmium (“NiCd”), nickel metal hydride (“NiMH”) and lithium-ion (“Li-ion”). While each battery chemistry is used in varying degrees to power batteries for portable electronic devices, the evidence shows that portable NiMH batteries are a relevant antitrust market. First of all, there are a number of products, most notably two-way radios, that have a large installed base of customers that cannot switch to another type of rechargeable battery because the products were designed specifically to accommodate portable NiMH batteries. Second, even for customers who use NiMH batteries but are not locked in to purchasing them, there is a strong preference for portable NiMH batteries for performance and cost reasons. Both sets of customers would not switch to a different battery technology in response to a five to ten percent increase in the price of portable NiMH batteries.

The relevant geographic market for portable NiMH batteries is worldwide. Manufacturing of portable NiMH batteries is concentrated in Asia, and orders are shipped to customers located throughout the world.

Panasonic and Sanyo produce the highest quality portable NiMH batteries, and consequently the two firms are uniquely close competitors. The remaining suppliers of portable NiMH batteries produce lower quality batteries and are therefore more distant competitors to Panasonic and Sanyo. As the only suppliers of high quality portable NiMH batteries, Panasonic and Sanyo control the vast majority of the market. The lower quality suppliers have fringe positions and do not affect competition between Panasonic and Sanyo.

As each other’s most significant competitors for portable NiMH batteries, Panasonic and Sanyo respond directly to competition from each other with lower prices, better services and improved products, to the benefit of consumers. By eliminating this direct and substantial competition, the proposed acquisition would allow Panasonic to exercise market power unilaterally, thereby increasing the likelihood that purchasers of portable NiMH batteries would be forced to pay higher prices and restraining the direct competition that promoted innovation and high quality service. The proposed acquisition eliminates a competitor to which customers otherwise could have diverted their sales – in a market where the alternative sources of supply are usually not viable options.

Neither new entry nor repositioning and expansion sufficient to deter or counteract the anticompetitive effects of the proposed acquisition in the portable NiMH market is likely to occur within two years. Existing competitors would have to significantly improve their portable NiMH production facilities, improve the quality of their portable NiMH batteries, and overcome the resistance of customers to switch to a portable NiMH battery supplier that lacks the track record of effectively meeting the needs of those customers served by Panasonic and Sanyo. Also, because NiMH is an older battery technology, it has a relatively small growth potential for the sale of portable NiMH batteries, so it is unlikely that a potential competitor would be able to justify the investments necessary to enter the market for portable NiMH batteries.

IV. The Consent Agreement

The proposed Order eliminates the competitive concerns raised by Panasonic's proposed acquisition of Sanyo by requiring the divestiture of Sanyo's assets relating to the manufacture and sale of portable NiMH batteries to FDK Corporation ("FDK"), a subsidiary of Fujitsu, Ltd. This divestiture must occur with fifteen days after the Acquisition but may be extended an additional thirty days, if necessary, to allow European Commission approval of the divestiture to FDK.

FDK has the industry experience, reputation, and resources to replace Sanyo as an effective competitor in the portable NiMH battery market. Headquartered in Tokyo, Japan, FDK manufactures and sells electronic components and batteries worldwide, and is a subsidiary of Fujitsu, a multinational computing, telecommunications and electronics company. FDK does not currently compete against Panasonic and Sanyo in the sale of portable NiMH batteries, but it does manufacture and sell alkaline batteries. FDK also sources and resells a broad range of batteries, including carbon-zinc, lithium primary, and manganese batteries.

Pursuant to the Order, FDK would receive all the assets necessary to operate Sanyo's current portable NiMH battery business, including most importantly, the NiMH battery manufacturing facility in Takasaki, Japan ("Takasaki plant"). The Takasaki plant is a premier manufacturing facility for portable NiMH batteries, producing approximately 30 percent of the portable NiMH batteries worldwide. The Order also requires Sanyo to supply to FDK sizes Sub C/D portable NiMH batteries, which are the only sizes of Sanyo's portable NiMH batteries not produced at the Takasaki plant and account for a tiny fraction of Sanyo's overall portable NiMH sales. In addition to the employees of the Takasaki plant, who would automatically transfer to FDK, the Order requires Sanyo to provide FDK access to certain other key Sanyo employees needed to successfully operate the business. The Order also requires Sanyo to transfer all intellectual property necessary to make and sell portable NiMH batteries, including Sanyo patents and licenses related to portable NiMH batteries. A divestiture of Sanyo's portable NiMH assets will ensure that FDK has a full line of high-quality portable NiMH batteries, enabling it to compete immediately with the merged entity.

The Commission has appointed Philip Comerford, Jr., Managing Director of ING Capital LLC and Head of the Mergers & Acquisitions Group, as the interim monitor to oversee the divestiture of the NiMH battery business. In order to ensure that the Commission remains informed about the status of the proposed divestitures, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the divestiture is accomplished.

If the Commission determines that FDK is not an acceptable purchaser, or the manner of the divestiture is not acceptable, the parties must unwind the sale to FDK and divest the portable NiMH battery assets within six months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six months, the Commission may appoint a trustee to divest the portable NiMH battery assets.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order To Maintain Assets, or to modify their terms in any way.