

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

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In the Matter of)
)
PANASONIC CORPORATION,)
a corporation,)
)
and	Docket No. C-4274)
)
SANYO ELECTRIC CO., LTD.,)
a corporation.)
)
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COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Panasonic Corporation (“Panasonic”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Sanyo Electric Co., Ltd. (“Sanyo”) (collectively “Respondents”), a corporation subject to the jurisdiction of the Commission, in violation of 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Panasonic Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of Japan, with its head office located at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Panasonic Corporation of North America is a wholly-owned subsidiary of Panasonic Corporation with offices at 1 Panasonic Way, Secaucus, NJ 07094.

2. Respondent Sanyo Electric Co., Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Japan, with its head office at 5-5 Keihan-Hondori 2-Chome, Moriguchi City, Osaka 570-8677, Japan. Sanyo North America Corporation

is a wholly-owned subsidiary of Sanyo Electric Co., Ltd., with its principal place of business at 2055 Sanyo Ave., San Diego, CA 92145.

3. Respondents are engaged in, among other things, the production and sale of rechargeable batteries, including, but not limited to, portable nickel metal hydride batteries.

4. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. Pursuant to a Capital and Business Alliance Agreement (the “Agreement”) concluded on December 19, 2008, 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”).

III. THE RELEVANT MARKET

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the acquisition is portable nickel metal hydride batteries (“portable NiMH”).

7. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the acquisition on the portable NiMH battery market is worldwide.

IV. THE STRUCTURE OF THE MARKET

8. The worldwide market for portable NiMH batteries is highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”) with significant differentiation among suppliers based on quality and reputation. The combination of Respondents’ portable NiMH battery businesses would consolidate the only two portable NiMH battery suppliers that produce high-quality, reliable products. Post acquisition, a combined Panasonic and Sanyo will have a market share in excess of 65 percent. The post-merger HHI would be 4,675 and the acquisition will increase the HHI level by 2,028. This market concentration level far exceeds the thresholds set out in the *Horizontal Merger Guidelines* and thus creates a presumption that the proposed acquisition will create or enhance market power.

V. ENTRY CONDITIONS

9. Neither new entry nor repositioning and fringe 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. The market for portable NiMH batteries offers very limited prospects for growth, making it unlikely that a potential competitor would have the incentive to

make the substantial investments necessary to enter the market *de novo*. Existing fringe competitors would have to significantly improve their portable NiMH production facilities, improve the quality of their portable NiMH batteries, and overcome customers' unwillingness to rely on a portable NiMH battery supplier that lacks the track record for producing reliable, high-quality products. The limited growth prospects for the portable NiMH battery market make it unlikely that the fringe competitors would undertake the significant investments necessary to reposition and expand.

VI. EFFECTS OF THE ACQUISITION

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the portable NiMH battery market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. By eliminating actual, direct, and substantial competition between Respondents in the worldwide portable NiMH battery market;
- b. By increasing the likelihood that Respondents would unilaterally exercise market power in the worldwide portable NiMH battery market; and
- c. By increasing the likelihood that U.S. consumers would be forced to pay higher prices for portable NiMH batteries.

VII. VIOLATIONS CHARGED

11. The Acquisition described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-third day of November, 2009, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: