

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen Ohlhausen
Joshua Wright
Terrell McSweeney



_____)
In the Matter of)
)
PANASONIC CORPORATION,)
a corporation;)
)
and)
)
SANYO ELECTRIC CO., LTD.,)
a corporation.)
_____)

Docket No. C-4274

**PETITION OF PANASONIC CORPORATION AND SANYO ELECTRIC CO., LTD.
FOR APPROVAL OF SALE OF ASSETS TO FDK CORPORATION**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph II.U of the Decision and Order issued by the Commission in the above referenced matter (the “Order”), Respondents Panasonic Corporation (“Panasonic”) and Sanyo Electric Co., Ltd. (“Sanyo”) hereby petition the Commission to approve the sale by Sanyo of certain assets related to the manufacture of Sub-C Portable NiMH Battery Products (the “Assets”) to FDK Corporation (“FDK”).¹ The Assets will be transferred by Sanyo to FDK pursuant to an Equipment Sales Agreement (the “Sales Agreement”) in a manner that complies fully with the Order.²

¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Order.

² The Sales Agreement is attached as Exhibit A. A list of the Assets is set forth in Exhibit 1 to the Sales Agreement.

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The proposed sale of the Assets to FDK will accomplish the purpose and objectives of the Order. Pursuant to the Order, Sanyo has been manufacturing Sub-C and D Portable NiMH Battery Products at its Suzhou facility and selling them on an exclusive basis to FDK pursuant to the Suzhou Sub-C and D NiMH Battery Agreement. The Suzhou Sub-C and D NiMH Battery Agreement was part of a broader divestiture package of Sanyo's assets relating to the manufacture and sale of portable NiMH batteries to FDK. The Sales Agreement will further ensure that FDK remains a viable and independent competitor by severing the supply relationship between Sanyo and FDK, and enabling FDK to manufacture Sub-C NiMH batteries at FDK's own facility in Japan.³ In addition to the transfer of the Assets, Sanyo has committed to provide FDK, if requested, with technical training on the operation of the Assets.

For the reasons set forth above, and as explained in greater detail below, Respondents respectfully request that the Commission approve the proposed sale of the Assets to FDK.

I. Background

On December 19, 2008, Panasonic announced its intention to commence a cash tender offer to acquire a majority of the voting securities of Sanyo. The FTC filed a complaint on November 23, 2009, alleging that the proposed transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, by lessening competition in the market for portable NiMH batteries. On November 11, 2009, Panasonic and Sanyo executed an Agreement Containing Consent Order that included

³ FDK has elected not to acquire the equipment to make D-size portable NiMH batteries. At the time of Panasonic's acquisition of Sanyo, only Sanyo, and not Panasonic, manufactured D-size portable NiMH batteries. Thus, FDK's choice not to acquire the D-size manufacturing equipment does not diminish any competition between Respondents and FDK.

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the Order to settle the Commission's allegations. On January 8, 2010, the Commission issued the Order as final.

Pursuant to Paragraph II.A of the Order, and in accordance with the FDK Acquisition Agreements, Respondents divested Sanyo's assets relating to the manufacture and sale of Portable NiMH Battery Products to FDK, consisting primarily of Sanyo's Portable NiMH Battery Products manufacturing facility in Takasaki, Japan. The Takasaki plant is a premier manufacturing facility for Portable NiMH Battery Products, and at the time of the divestiture, produced approximately 30% of the portable NiMH batteries worldwide.⁴ The Order required Sanyo to supply to FDK Sub-C and D portable NiMH batteries, which were the only sizes of Sanyo's portable NiMH batteries that were not produced at the Takasaki facility, and which accounted for only a tiny fraction of Sanyo's overall portable NiMH sales.⁵ The Order also required access to certain key Sanyo employees, and the transfer of all Sanyo intellectual property necessary to make and sell portable NiMH batteries.⁶ FDK was granted the right to determine, subject to certain limitations, the volume and specifications for the production of Portable NiMH Battery Products in sizes Sub-C and D at the Suzhou facility, and to acquire all such products produced at the facility.⁷

Respondents commenced supply of Sub-C and D NiMH batteries from the Suzhou facility to FDK in January 2010. Since that time, Respondents have supplied Sub-C and

⁴ 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, p. 3.

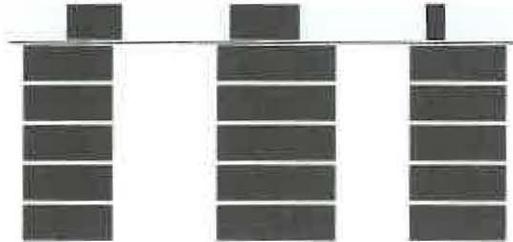
⁵ Id.; Order, ¶ II.G.

⁶ Id.; Order, ¶ II.G.

⁷ Id.; Order, ¶ II.G.

D batteries to FDK pursuant to the Suzhou Sub-C and D NiMH Battery Agreement. [REDACTED]

[REDACTED]



II. The Proposed Transaction

In August 2014, FDK contacted Respondents and proposed that FDK acquire the Assets. FDK indicated to Sanyo that while the manufacturing and sales arrangement between the parties pursuant to the Suzhou Sub-C and D NiMH Battery Agreement had been satisfactory, FDK would now prefer to purchase the Assets and continue to manufacture portable NiMH batteries at its own facility in Japan. FDK has elected not to acquire the equipment necessary to manufacture D-size portable NiMH batteries.⁸

On March 20, 2015, Sanyo and FDK, along with Sanyo Energy (Suzhou) Co., Ltd. (“Sanyo Suzhou”) and i-Logistics (Shanghai) Corp. (“i-Logistics”), a subsidiary of Itochu Logistics Corp., entered into the Sales Agreement. [REDACTED]

[REDACTED]

⁸ The Assets may be used to manufacture Sub-C portable NiMH batteries, but collectively do not enable the manufacture of D-size portable NiMH batteries.

⁹ Sales Agreement, Article 2.2. The Sales Agreement is structured as two distinct sales: Sanyo Suzhou first sells the Assets to i-Logistics, which then ships, delivers and sells the Assets to FDK. The transaction has been structured in this manner in light of the regulatory and other complexities in exporting used manufacturing equipment from China to other countries. I-Logistics is required to sell the equipment to FDK, and is expressly prohibited from disposing of the sold equipment in any other manner, including selling the equipment to other purchasers. (Article 1).

[REDACTED]

[REDACTED]¹⁰ Sanyo Suzhou has also agreed to provide technical training to FDK on the use of the Assets.¹¹ The Sales Agreement is conditioned upon a grant of approval by the Commission pursuant to Paragraph II.U of the Order.¹²

The transfer of the assets from Sanyo to FDK does not raise any competition concerns. The transaction involves only the assets related to the manufacture of the Sub-C Portable NiMH Battery Products that Sanyo has been selling to FDK pursuant to the Suzhou Sub-C and D NiMH Battery Agreement. The transaction does not involve the sale of any competing products and thus will have no effect on market shares or market concentration with respect to Portable NiMH Battery Products. The transaction is an improvement of the status quo insofar as FDK will no longer need to rely on a competitor for its supply of Portable NiMH Battery Products. Sanyo is selling all of the equipment at the Suzhou facility that has been requested by FDK. The transfer of the Assets is consistent with the FTC's policy of limiting ongoing commercial dealings between the parties to a divestiture. FDK will be able to integrate the Assets into its existing Portable NiMH Battery Products production and be positioned to continue its competition in the market for portable NiMH batteries.

III. Request for Confidential Treatment

¹⁰ Sales Agreement, Article 7 and Exhibit 1. [REDACTED]

¹¹ Article 6.

¹² Article 10.1(8) and 12.

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This petition, including Exhibit A, contains certain confidential and competitively sensitive business information. Disclosure of such information may prejudice FDK, and cause harm to the competitiveness of its Portable NiMH Battery Products business. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4), 4.9(c), Respondents have redacted such information from the public version of this petition, and request confidential treatment for such information under Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) , and Sections 552(b)(4) and (b)(7) of the Freedom of Information Act, 5 U.S.C. §§552(b)(4), 552 (b)(7). In the event that a determination is made that any material marked as confidential is not subject to confidential treatment, Respondents request the Commission provide immediate notice of that determination to the undersigned.

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that the Commission approve the proposed sale of the Assets to FDK.

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