

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 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 Company, Ltd., with its principal place of business at 2055 Sanyo Ave., San Diego, CA 92145.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Panasonic” means Panasonic Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Panasonic, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, Panasonic shall include Sanyo.
- B. “Sanyo” means Sanyo Electric Co., Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Sanyo, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. “Respondent(s)” means Panasonic and Sanyo, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Decision and Order” means:
 1. the proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued by the Commission in this matter.

- F. “Divestiture Assets” means the Portable NiMH Battery Business Assets and Portable NiMH Battery Business License as defined in the Decision and Order.
- G. “Divestiture Business” means the Portable NiMH Battery Business as defined in the Decision and Order.
- H. “Divestiture Business Employees” means the Portable NiMH Battery Business Employees as defined in the Decision and Order.
- I. “Divestiture Business Key Employees” means the Portable NiMH Battery Business Key Employees as defined in the Decision and Order.
- J. “Divestiture Products” means Portable NiMH Battery Products produced by Respondent Sanyo prior to the Acquisition Date.
- K. “Interim Monitor” means any monitor appointed pursuant to this Order to Maintain Assets or the Decision and Order.
- L. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Until the Divestiture Date, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Business, and minimize any risk of loss of competitive potential for such business; and shall prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Assets, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Divestiture Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of such assets.
- B. Until the Divestiture Date, Respondents shall maintain the operations of the Divestiture Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such business, and shall use their best efforts to preserve the existing relationships with suppliers; vendors and distributors; customers; employees; and others having business relations with such business. Respondents’ responsibilities shall include, but are not limited to, the following:
 - 1. providing the Divestiture Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of such business; including without limitation,
 - a) providing sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry

- on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the business,
- b) making available for use by the Divestiture Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including without limitation, the Divestiture Assets, and
 - c) continuing, at least at their scheduled pace, any additional expenditures authorized for the Divestiture Business prior to the date the Consent Agreement was signed by Respondents including, without limitation, all research, development, manufacturing, distribution, marketing and sales expenditures;
2. providing such resources as may be necessary to respond to competition against any Divestiture Products and/or to prevent any diminution in sales of any such products during and after the Acquisition process and prior to the complete transfer and delivery of the Divestiture Assets to an Acquirer;
 3. providing such resources as may be necessary to maintain the competitive strength and positioning of each Divestiture Product at customer accounts for such product;
 4. providing such support services to the Divestiture Business as were being provided to such business by Respondent(s) as of the date the Consent Agreement was signed by Respondents; and
 5. maintaining a work force at least equivalent in size, training, and expertise to what has been associated with the Divestiture Business for the last fiscal year.
- C. Until the Divestiture Date, Respondents shall provide all Divestiture Business Employees with reasonable financial incentives to continue in their positions and to research, develop, and manufacture the Divestiture Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Sanyo until the Acquisition Date, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by applicable law), and additional incentives as may be necessary to prevent any diminution of the competitiveness of the Divestiture Business.
- D. Respondents shall provide financial incentives to Divestiture Business Key Employees as needed to facilitate the employment of such employees by the Acquirer, provided that such incentives need not exceed twenty (20) percent of each such Employee's annual salary.
- E. For a period lasting until one (1) year from the Acquisition Date, Respondents shall
1. within 10 days of a request by the Acquirer, provide the following information to the Acquirer (to the extent permitted by applicable law) regarding each Divestiture Business Employee not employed by SANYO Twicell (Takasaki) on the Divestiture Date:

- a) the date of hire and effective service date;
 - b) job title or position held;
 - c) a specific description of the employee's responsibilities related to the Divestiture Products; *however*, in lieu of this description, Respondents may provide the employee's most recent performance appraisal;
 - d) the base salary or current wages;
 - e) the most recent bonus paid, aggregate annual compensation for Respondent Sanyo's last fiscal year and current target or guaranteed bonus, if any;
 - f) employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 - g) any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees;
 - h) copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees;
2. not interfere with the hiring or employing by the Acquirer of any Divestiture Business Employee and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Acquirer, including without limitation, any non-compete or non-disclosure provisions of any employment agreements with respect to Divestiture Products or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Business Employee who has received a written offer of employment from the Acquirer; and
 3. not hire any Divestiture Business Employee of the Acquirer or solicit or otherwise attempt to induce such employee to terminate his or her employment relationship with the Acquirer.

provided, however, Respondents may i) hire any Divestiture Business Employee whose employment has been terminated by the Acquirer or who independently applies for employment with Respondents, as long as such employee was not solicited in violation of the non-solicitation requirements contained herein; ii) advertise for employees in newspapers, trade publications or other media not targeted specifically at Divestiture Business Employees; or iii) hire a Divestiture Business Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from Respondents.

- F. Respondents shall not disclose or convey any Confidential Business Information that is exclusively related to the Divestiture Business, directly or indirectly, to any Person or Persons except as follows:
 1. Respondents may disclose Confidential Business Information to the Acquirer or Persons specifically authorized by the Acquirer to receive such information; and

2. Respondents may disclose Confidential Business Information as necessary to comply with the Orders, to manufacture sintered cathodes, to fulfill the terms of the Suzhou Sub-C and D NiMH Battery Agreement or to produce or have produced Sanyo-Branded Retail Batteries pursuant to rights retained or licensed under any Divestiture Agreement *so long as* in doing so, Respondents do not disclose or convey any Confidential Information to any Person, other than Divestiture Business Employees, involved in the research, development, manufacture, sale, marketing or distribution of any of Respondents' Portable NiMH Battery Products (other than Sanyo-Branded Retail Batteries and products produced pursuant to the Suzhou Sub-C and D NiMH Battery Production Agreement and the Sintered Cathode Supply Agreement).

provided however, that the restrictions contained in this paragraph shall not apply to information that i) subsequently falls within the public domain by means other than a violation of this Order or Respondents' breach of a confidentiality or non-disclosure agreement; ii) is required by Law to be publicly disclosed; or iii) is lawfully possessed by Respondent Panasonic as of the Acquisition Date.

- G. Respondents shall prevent the disclosure or use of Confidential Business Information except as permitted or authorized by the Orders and shall,
 1. require that each Divestiture Business Employee retained by Respondents after the Divestiture Date, his or her direct supervisor, and any other employee designated by the Interim Monitor (if one has been appointed) sign a confidentiality agreement that requires such employee to maintain Confidential Business Information as strictly confidential and not use such information or disclose it to any other Person except as authorized by Respondents in accordance with this Order; and
 2. provide, within thirty (30) days of the Divestiture Date, written notice of the restrictions on the disclosure and use of Confidential Business Information contained in this Order to all employees not required to sign a confidentiality agreement who were involved in the Divestiture Business at any time during the twelve (12) months prior to the Divestiture Date, or who otherwise may possess Confidential Business Information. Respondents shall provide such written notice by electronic mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Divestiture Date.
- H. Respondents shall adhere to and abide by the Divestiture Agreements (which agreements shall not contradict or limit, or be construed to contradict or limit, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof).
- I. The English-language versions of all Divestiture Agreements, as submitted to and approved by the Commission and attached to the Decision and Order, shall be the versions of such agreements used in interpreting and enforcing this Order.

- J. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Businesses through its full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. The Commission may appoint a Monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets and/or the Decision and Order.
- B. The Commission appoints ING Financial Markets LLC (“ING”), as Interim Monitor and approves the agreement between ING and Respondents, attached hereto as Confidential Appendix A, which agreement, *inter alia*, names Philip Comerford, Jr. as ING designated Project Manager.
- C. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order, and shall take no action that interferes with or hinders the Interim Monitor’s authority, rights or responsibilities as set forth in this Order or any agreement between the Interim Monitor and Respondents.
- D. The Interim Monitor’s duties and responsibilities shall include the following:
1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of the Order and in consultation with the Commission;
 3. the Interim Monitor shall, in his or her sole discretion, consult with Third Parties in the exercise of his or her duties under this Order or any agreement between the Interim Monitor and Respondents; and
 4. the Interim Monitor shall evaluate the reports submitted by Respondents pursuant to this Order, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
- E. Respondents shall grant and transfer to the Interim Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor’s duties and responsibilities, including but not limited to the following:

1. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders;
 2. subject to any demonstrated legally recognized privilege, Respondents shall provide the Interim Monitor full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets;
 3. the Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions to which the Monitor and Respondents agree and that the Commission approves;
 4. the Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
 5. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor; and
 6. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission or require the Interim Monitor to report to Respondents the substance of communications to or from the Commission or the Acquirer.
- F. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- G. The Interim Monitor shall serve until the termination of this Order to Maintain Assets.
- H. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided for in this Paragraph.

- I. The Commission may on its own initiative, or at the request of an Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- J. An Interim Monitor appointed pursuant to this Order may be the same Person appointed as the Interim Monitor or Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every sixty (60) days thereafter until Respondents have fully complied with their obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by the proposed Decision and Order in this matter, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the related Decision and Order; provided, however, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as the reports required to be submitted by Respondents pursuant to the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior:

- A. any proposed dissolution of Respondents; or
- B. if the following may affect compliance obligations arising out of this Order,
 - 1. any proposed acquisition, merger or consolidation of Respondents; or
 - 2. any other change in Respondents, including without limitation, assignment and the creation or dissolution of subsidiaries.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. The day after the Divestiture Date;
- B. The day the related Decision and Order becomes final; or
- C. The Commission otherwise directs that this Order to Maintain Assets is terminated, *provided that*, if the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. §2.34, this Order to Maintain Assets shall terminate no later than three (3) days after such action by the Commission.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: November 23, 2009

CONFIDENTIAL APPENDIX A

Interim Monitor Agreement

[Redacted From Public Record Version, But Incorporated By Reference]