

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of)
)
)

KONINKLIJKE DSM N.V.,)
a corporation;)
)

ROCHE HOLDING AG,)
a corporation;)
)

and)
)
)

FRITZ GERBER,)
an individual.)
)

Docket No. C-4098
ORDER TO HOLD SEPARATE
AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of the Roche Vitamins and Fine Chemicals business of Respondent Roche Holding AG (“Roche”) by Respondent Koninklijke DSM N.V. (“DSM”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public

record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets:

1. Respondent DSM is a corporation organized, existing and doing business under and by virtue of the laws of The Kingdom of the Netherlands, with its offices and principal place of business located at Het Overloon 1, 6411 TE, Heerlen, The Netherlands.

2. Respondent Roche is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation, with its offices and principal place of business located at Grenzacherstrasse 124, CH-4070, Basel, Switzerland.

3. Respondent Fritz Gerber is a member and the speaker of the shareholders' group with pooled voting rights, which group owns the majority of the voting shares of Respondent Roche. Mr. Gerber is the ultimate parent entity of Respondent Roche within the meaning of 16 C.F.R. § 801.1, with his office and principal place of business at Grenzacherstrasse 124, CH-4070, Basel, Switzerland.

4. The Federal Trade Commission has jurisdiction over 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 Hold Separate and Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the final Decision and Order), which are attached hereto as Appendix B and incorporated herein by reference and made a part hereof, shall apply:

- A. "DSM Firewalled Senior Executives" means Respondent DSM's: 1) Chief Executive Officer; 2) Chief Financial Officer; 3) the executive responsible for the Acquisition; 4) the respective staffs of the preceding persons; and 5) any other management-level employee of DSM who, due to his or her job responsibilities, must have access to both Novozymes/Roche Alliance Confidential Business Information and Feed Enzymes Confidential Business Information.
- B. "DSM Feed Enzymes Employees" means all employees of Respondent DSM that have job responsibilities related to the Feed Enzymes Business.
- C. "Feed Enzymes Business" means Respondent DSM's worldwide business related to the Feed Enzymes Products.

- D. “Feed Enzymes Confidential Business Information” means the Confidential Business Information related to the Feed Enzymes Business.
- E. “Novozymes/Roche Alliance Employees” means all employees of either Respondent DSM, Respondent Roche or the Novozymes/Roche Alliance that have any job responsibilities directly related to the Novozymes/Roche Alliance.
- F. “Novozymes/Roche Alliance Confidential Business Information” means the Confidential Business Information related to the business of the Novozymes/Roche Alliance.

II.

IT IS FURTHER ORDERED that:

- A. Pending divestiture of the Feed Enzymes Assets, Respondent DSM shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Feed Enzymes Business, to minimize any risk of loss of competitive potential for the Feed Enzymes Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Feed Enzymes Assets except for ordinary wear and tear.
- B. Respondent DSM shall maintain the operations of the Feed Enzymes Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the Feed Enzymes Assets) and shall use its best efforts to preserve the existing relationships with suppliers, vendors, customers, employees, and others having business relations with the Feed Enzymes Business. Such responsibilities include, but are not limited to:
 - 1. providing the Feed Enzymes Business with sufficient working capital to operate the Feed Enzymes Assets at least at current rates of operation, to meet all capital calls with respect to the Feed Enzymes Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Feed Enzymes Business;
 - 2. continuing, at least at their scheduled pace, any additional expenditures for the Feed Enzymes Business authorized prior to the date the Consent Agreement was signed by Respondents;
 - 3. making available for use by the Feed Enzymes Business funds sufficient to perform all necessary routine maintenance to, and replacements of, the Feed Enzymes Assets;
 - 4. providing the Feed Enzymes Assets with such funds as are necessary to maintain the viability, competitive vigor, and marketability of the Feed Enzymes Assets; and

5. providing such support services to the Feed Enzymes Business as are being provided to this business by Respondent DSM as of the date the Consent Agreement was signed by Respondents; *provided, however*, Respondent DSM's personnel providing such support services shall retain and maintain all Feed Enzymes Confidential Business Information on a confidential basis, and, except as is permitted by the Decision and Order in this matter and by this Order to Hold Separate and Maintain Assets, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves the Novozymes/Roche Alliance.
- C. Respondent DSM shall maintain a work force of equivalent size, training, and expertise as has been associated with the Feed Enzymes Business.
 - D. Respondent DSM shall provide all DSM Feed Enzyme Employees with reasonable and appropriate financial incentives to continue in their employment positions related to the Feed Enzymes Business pending divestiture of the Feed Enzymes Assets, including providing them with the same employee benefits offered by Respondent DSM to similarly situated employees, regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law) until the divestiture of the Feed Enzymes Assets is completed.
 - E. Respondent DSM shall provide the Feed Enzymes Core Employees with the following;
 1. reasonable and appropriate incentives to continue their employment with Respondent DSM in the Feed Enzymes Business until the divestiture of the Feed Enzymes Assets is completed;
 2. the Feed Enzymes Core Employees who accept employment with the Commission-approved Acquirer shall be offered the following incentives:
 - a. a payment equal to forty (40) percent of such employee's base annual salary to be paid upon the employee's completion of one (1) year of employment with the Commission-approved Acquirer; and
 - b. a severance payment if, less than twelve (12) months after the date on which such employee commences employment with the Commission-approved Acquirer, the Commission-approved Acquirer terminates the employment of such employee for reasons other than cause. The amount of such severance payment shall be equal to the payment that such employee would have received had he or she remained in the employ of Respondent DSM and been terminated at such time, less any severance payment actually paid by the Commission-approved Acquirer.
 - F. Respondent DSM shall not interfere with the employment by the Commission-approved Acquirer of any Feed Enzymes Core Employee, shall not offer any incentive to such employees to decline employment with the Commission-approved Acquirer or to accept

other employment with Respondent DSM, and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any confidentiality provisions relating to the Feed Enzymes Business or any non-compete or confidentiality provisions of employment or other contracts with Respondent DSM that would affect the ability of those individuals to be employed by the Commission-approved Acquirer.

III.

IT IS FURTHER ORDERED that:

- A. Respondent DSM shall, as of the Effective Date, hold the Feed Enzymes Business as a separate and independent business apart from the business related to the Novozymes/Roche Alliance and from the Novozymes/Roche Alliance Employees, except to the extent that Respondent DSM must exercise direction and control over the Feed Enzymes Business to assure compliance with this Order to Hold Separate and Maintain Assets, the Consent Agreement or the Decision and Order in this matter, and except as otherwise provided in this Order to Hold Separate and Maintain Assets.
- B. Respondent DSM:
1. shall not provide, disclose or otherwise make available, directly or indirectly, any Feed Enzymes Confidential Business Information to the Novozymes/Roche Alliance or to any Novozymes/Roche Alliance Employee;
 2. shall prevent all Novozymes/Roche Alliance Employees from soliciting, accessing, or using, directly or indirectly, any Feed Enzymes Confidential Business Information for any reason or purpose;
 3. shall institute procedures and requirements to ensure that the DSM Feed Enzyme Employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Feed Enzymes Confidential Business Information to the Novozymes/Roche Alliance or to any Novozymes/Roche Alliance Employee; and
 - b. do not solicit, access or use any Novozymes/Roche Alliance Confidential Business Information for any reason or purpose;
 4. shall institute procedures and requirements to ensure that all DSM Firewalled Senior Executives:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any

Novozymes/Roche Alliance Confidential Business Information to the Feed Enzymes Business or to any DSM Feed Enzymes Employee; and

- b. do not provide, disclose or otherwise make available, directly or indirectly, any Feed Enzymes Confidential Business Information to the Novozymes/Roche Alliance or to any Novozymes/Roche Alliance Employee,

and shall, prior to the Effective Date, require each DSM Firewalled Senior Executive to sign a non-disclosure agreement pursuant to which each such individual agrees to comply with the terms of this Paragraph; and

5. shall enforce the terms of this Paragraph III.B. as to:

- a. the Novozymes/Roche Alliance;
- b. all Novozymes/Roche Alliance Employees;
- c. the Feed Enzymes Business; and
- d. the DSM Feed Enzymes Employees,

and shall take such action to the extent necessary to cause each such individual or entity to comply with the terms of this Paragraph III.B., including all actions that Respondent DSM would take to protect its own trade secrets, commercial information, or other information of a proprietary or confidential nature.

C. Within ten (10) Business Days of the date this Order to Hold Separate and Maintain Assets becomes final, Respondent DSM shall require each DSM Feed Enzymes Employee to sign a non-disclosure/confidentiality agreement pursuant to which such individual(s) will be required to comply with the provisions of Paragraph III of this Order to Hold Separate and Maintain Assets. The DSM Feed Enzymes Employees must maintain all Feed Enzymes Confidential Business Information on a confidential basis and they shall be prohibited from:

- 1. disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing Feed Enzymes Confidential Business Information to or with any individual whose employment involves the Novozymes/Roche Alliance; or
- 2. soliciting, accessing, or using, directly or indirectly, any Novozymes/Roche Alliance Confidential Business Information for any reason or purpose.

These individuals shall not be involved in any way in the management, research, development, production, marketing, advertising, promotion, distribution, sales, after-sales support, or financial operations of any products of the Novozymes/Roche Alliance.

D. Within ten (10) Business Days of the date this Order to Hold Separate and Maintain Assets becomes final, Respondent DSM or Respondent Roche shall require each Novozymes/Roche Alliance Employee that is either an employee of Respondent DSM or Respondent Roche to sign a non-disclosure/confidentiality agreement pursuant to which such individual(s) will be required to comply with the provisions of Paragraph III of this Order to Hold Separate and Maintain Assets; *provided, however*, that the Respondents are not required to obtain signatures on the non-disclosure/confidentiality agreements for those Novozymes/Roche Alliance Employees whose only job responsibilities related to the Novozymes/Roche Alliance is as a non-management level field sales representative. The Novozymes/Roche Alliance Employees must maintain all Novozymes/Roche Alliance Confidential Business Information on a confidential basis and they shall be prohibited from:

1. disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any Novozymes/Roche Alliance Confidential Business Information to or with any DSM Feed Enzymes Employee; or
2. soliciting, accessing, or using, directly or indirectly, any Feed Enzymes Confidential Business Information for any reason or purpose.

The Novozymes/Roche Alliance Employees shall not be involved in any way in the management, research, development, production, marketing, advertising, promotion, distribution, sales, after-sales support, or financial operations of the Feed Enzymes Business.

E. Within ten (10) Business Days of the date this Order to Hold Separate and Maintain Assets becomes final, Respondent DSM and/or Respondent Roche shall circulate to all DSM Feed Enzymes Employees, all DSM Firewalled Senior Executives, and all Novozymes/Roche Alliance Employees a notice of this Order to Hold Separate and Maintain Assets and Consent Agreement, in the form attached as Appendix A to this Order to Hold Separate and Maintain Assets.

F. Within twenty (20) Business Days of the date this Order to Hold Separate and Maintain Assets becomes final, Respondent DSM shall establish written procedures, to be submitted for approval to any Interim Monitor the Commission may appoint, covering the management, maintenance, and independence of the Feed Enzymes Business consistent with the provisions of this Order to Hold Separate and Maintain Assets.

G. *Provided, however*, this Order to Hold Separate and Maintain Assets does not prohibit Respondent DSM from:

1. providing to (or procuring for) the Feed Enzymes Business corporate or administrative services;
2. engaging in activities designed to achieve efficiencies resulting from the Acquisition,

provided that any such activity: (i) does not reveal any Feed Enzymes Confidential Business Information to any Novozymes/Roche Alliance Employee, (ii) does not include any DSM Feed Enzymes Employees, and (iii) is conducted by employees who have no direct role in the research, Development, manufacture, distribution, marketing or sale of Feed Enzymes Products or the Novozymes/Roche Alliance and who have signed a non-disclosure/confidentiality agreement pursuant to which such individual(s) have agreed to disclose such information only to other individuals or entities who have signed the non-disclosure/confidentiality agreement pursuant to this Paragraph III.

H. The purpose of this Paragraph III is:

1. to ensure that, pending divestiture of the Feed Enzymes Assets and except as otherwise provided in this Order to Hold Separate and Maintain Assets: (a) no Novozymes/Roche Alliance Confidential Business Information is exchanged between the Novozymes/Roche Alliance and the Feed Enzymes Business or the Feed Enzymes Employees; and (b) no Feed Enzymes Confidential Business Information is exchanged between the Feed Enzymes Business and the Novozymes/Roche Alliance or the Novozymes Roche Alliance Employees;
2. to prevent interim harm to competition pending divestiture of the Feed Enzymes Assets; and
3. to help remedy the lessening of competition resulting from the Acquisition alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, 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 this Order to Hold Separate and Maintain Assets and the related Decision and Order (collectively "the Orders"), and the Divestiture Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Divestiture Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent DSM, which consent shall not be unreasonably withheld. If Respondent DSM has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent DSM of the identity of any proposed Interim Monitor, Respondent DSM shall be deemed to have consented to the selection of the proposed Interim Monitor.

- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent DSM shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondent DSM shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. 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 Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondent DSM of the divestiture of all relevant assets required to be divested pursuant to the Decision and Order in a manner that fully satisfies the requirements of the Orders and notification by the Commission-approved Acquirer to the Interim Monitor that it is both: 1) fully capable of manufacturing the relevant Feed Enzymes Products independently of Respondent DSM; and 2) fully capable of continuing all research and Development of the Feed Enzymes Products acquired pursuant to a Divestiture Agreement independently of Respondent DSM; or
 - b. the completion by Respondent DSM of the last obligation under the Orders pertaining to the Interim Monitor's service;

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
 4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent DSM's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent DSM's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent DSM 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.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent DSM on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent DSM, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondent DSM 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondent DSM shall report to the Interim Monitor in accordance with the requirements of this Order to Hold Separate and Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent DSM, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Orders or the Divestiture Agreement. Within one (1) month after the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent DSM of its obligations under the Orders.
8. 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.

- E. 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.
- F. If the Commission determines that the 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 in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to ensure compliance with the requirements of the Orders.
- H. The Interim Monitor appointed pursuant to this Order to Hold Separate and Maintain Assets or the relevant provisions of the attached Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order to Hold Separate and Maintain Assets.

V.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Hold Separate and Maintain Assets becomes final, and every thirty (30) days thereafter until Respondent DSM has fully complied with its obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II.A. of the related Decision and Order in this matter, Respondent DSM shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Hold Separate and 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 Hold Separate and Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent DSM pursuant to Paragraph V.A. of the Decision and Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Hold Separate and Maintain Assets.

VII.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Hold Separate and Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent DSM made to its principal United States office, Respondent DSM shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondent DSM 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 Respondent DSM relating to compliance with this Order to Hold Separate and Maintain Assets; and
- B. Upon five (5) days' notice to Respondent DSM and without restraint or interference from Respondent DSM, to interview officers, directors, or employees of Respondent DSM, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order to Hold Separate and Maintain Assets shall terminate on the earlier of:

- A. Three (3) Business Days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture of all of the Feed Enzymes Assets, as described in and required by the attached Decision and Order, is completed.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: September 22, 2003

APPENDIX A

TO THE ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

On September 5, 2003, DSM N.V. (“DSM”) and Roche Holding AG (“Roche”), hereinafter referred to collectively as “Respondents,” entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“FTC”) relating to the divestiture of certain assets. That Consent Agreement includes two orders: The Decision and Order and the Order to Hold Separate and Maintain Assets.

The Decision and Order requires DSM to divest to BASF Aktiengesellschaft (“BASF”) the assets relating to an alliance between DSM and BASF that was formed in 1994 (“DSM/BASF Alliance”) for the purposes of researching, developing, producing, and marketing certain feed enzymes used in animal nutrition. These feed enzymes include those marketed under the following names: Natuphos®, Natugrain®, and Natustarch®. These assets are hereinafter referred to as the “DSM/BASF Alliance Assets.” Both the Decision and Order and the Order to Hold Separate and Maintain Assets require Respondents to commit that no Confidential Business Information relating to the DSM/BASF Alliance Assets will be disclosed to or used by any employee of the combined entity formed by the acquisition of Roche’s Vitamins and Fine Chemicals division (“Combined Entity”). In particular, this is to protect such information from being used in any way for the research, development, formulation, marketing, distribution, sale or manufacture of any product that competes or may compete with any product that is marketed by BASF after the proposed merger. In particular, those products marketed pursuant to the alliance between Novozymes A/S and Roche (specifically, the alliance formed in 2000 by agreement between Novo Nordisk A/S and F.Hoffmann-La Roche Ltd). The Novozymes/Roche alliance also markets and produces various feed enzymes that compete directly with those marketed by the DSM/BASF Alliance. The Decision and Order also requires the complete divestiture of ALL documents (including electronically stored material) that contain Confidential Business Information related to the DSM/BASF Alliance to BASF. Accordingly, no employee of the Combined Entity may maintain copies of documents containing such information.

Under the Decision and Order, the Respondents are required to divest the DSM/BASF Alliance Assets to BASF. Until a complete divestiture of all of the DSM/BASF Alliance Assets occurs, the requirements of the second order – the Order to Hold Separate and Maintain Assets – are in place to insure the continued marketability, viability and competitive vigor of the DSM/BASF Alliance Assets. This includes preserving the work force that performs functions related to the DSM/BASF Alliance Assets. You are receiving this notice because you are either (i) an employee with work responsibilities related to the DSM/BASF Alliance Assets, (ii) an employee for Novo Nordisk, Novozymes, Roche or the Novozymes/Roche Alliance who has work responsibilities in some way related to products that compete or may compete with the DSM/BASF Alliance Assets, or (iii) an employee or former employee of DSM or Roche who might have Confidential Business Information in your possession related to the DSM/BASF Alliance Assets.

All Confidential Business Information related to DSM/BASF Alliance Assets must be retained and maintained by the persons involved in the operation of that business on a confidential basis, and such persons must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment involves responsibilities unrelated to the DSM/BASF Alliance Assets (such as persons with job responsibilities related to DSM or Novozymes/Roche products that compete or may compete with the DSM/BASF Alliance Assets). In addition, any person who possesses such Confidential Business Information related to the DSM/BASF Alliance Assets and who becomes involved in the Combined Entity's business related to any product that competes or may compete with the DSM/BASF Alliance Assets must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment relates to such businesses. Finally, any DSM, Roche, or former DSM or Roche employee with documents that contain information that he or she believes might be considered Confidential Business Information related to the DSM/BASF Alliance Assets and who has not received specific instructions as to how the documents in his or her possession should be disposed of should contact the contact person identified at the end of this notice.

Furthermore, the Decision and Order places restrictions upon the functions that certain employees of DSM or Roche can perform for the Combined Entity. These restrictions will last for two (2) years for the Product Animal Nutritionist Employees and Product Marketing Employees, for five (5) years for the Product Patent Attorneys and Product Research and Development Employees, and for one (1) year following the end of the Contract Manufacture period for Product Manufacturing Employees.

Any violation of the Decision and Order, or the Order to Hold Separate and Maintain Assets may subject DSM, Roche, or the Combined Entity to civil penalties and other relief as provided by law.

APPENDIX B
AGREEMENT CONTAINING CONSENT ORDER
AND
PROPOSED DECISION AND ORDER