

**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;**

and

**ROCHE HOLDING AG,
a corporation;**

and

**FRITZ GERBER
an individual.**

Docket No. C-4098

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Koninklijke DSM N.V. (“DSM”), a corporation, and Roche Holding AG (“Roche”), a corporation, both subject to the jurisdiction of the Commission, have entered into a Share and Asset Purchase Agreement whereby DSM would acquire certain voting securities and assets that together constitute the Roche Vitamins and Fine Chemicals business 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 (“FTC 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 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, 6411 TE, The Netherlands. DSM's principal subsidiary in the United States is located at 1 Columbia Nitrogen Road, Augusta, Georgia 30903.
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. Roche's principal subsidiary in the United States is located at 1201 North Orange Street, Wilmington, Delaware 19801.
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. Respondents DSM and Roche, together with their respective alliance partners, BASF and Novozymes, are engaged in, among other things, the research, development, manufacture and sale of feed enzymes, including, but not limited to, phytase.
5. Respondents DSM and Roche are, and at all times 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

6. On or about February 10, 2003, Respondents DSM and Roche entered into a Share and Asset Purchase Agreement ("Agreement"), pursuant to which DSM will acquire certain voting securities and assets that together constitute Roche's Vitamins and Fine Chemicals business (the "Acquisition"). Under the terms of the Agreement, and the amendments thereto, the Acquisition is valued at approximately \$1.89 billion.

III. THE RELEVANT MARKET

7. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of phytase. Phytase is a feed enzyme used in animal feed to improve the digestibility of phytate contained in the feed, thereby releasing phosphorous and other nutrients.
8. For the purposes of this Complaint, the world is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKET

9. DSM and Roche have each formed an alliance with a partner in their respective phytase businesses. DSM has an ongoing alliance with BASF, and Roche has an ongoing alliance with Novozymes. These two competing phytase alliances are the only two significant suppliers of phytase in the world. Thus, the market for the research, development, manufacture and sale of phytase is highly concentrated, as measured by the Herfindahl-Hirschman Index. The proposed acquisition, if consummated, would link these two, previously independent, alliances.

V. ENTRY CONDITIONS

10. Entry into the research, development, manufacture and sale of phytase is a difficult and time consuming process because of, among other things, the requirement of regulatory approval to sell phytase in the United States and other jurisdictions, the technical expertise required to develop and manufacture phytase, the distribution network required to market and sell phytase, and the patent positions of the current market participants.

11. For the reasons described in Paragraph 10, new entry into the relevant market is not likely to occur in a manner timely and sufficient to deter or counteract the adverse competitive effects of the Acquisition described in Paragraph 12.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant 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 DSM's and Roche's respective alliances in the relevant market;
- b. by substantially increasing the likelihood that DSM will unilaterally exercise market power in the relevant market;
- c. by increasing the likelihood of coordinated interaction in the relevant market;
- d. by reducing current incentives to improve service or product quality, or to pursue further innovation in the relevant market; and
- e. by increasing the likelihood that customers of phytase would be forced to pay higher prices.

VII. VIOLATIONS CHARGED

13. The Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Acquisition, 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-second day of September, 2003, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: