031 0064

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;	)	
	)	**Docket No.**
ROCHE HOLDING AG,	)	**DECISION AND ORDER**
a corporation;	)	
	)	
and	)	
	)	
FRITZ GERBER,	)	
an individual.	)	
	)	

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 that it

had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed 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 makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

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, the following definitions shall apply:

A. "DSM" means Koninklijke DSM N.V., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by DSM N.V. (including, but not limited to, DSM Food Specialties B.V., formerly known as Gist Brocades BSD B.V.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Effective Date, the term "DSM" shall include the businesses that formerly comprised Roche Holding AG's Vitamins and Fine Chemicals Division, and Roche Vitamins Ltd and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Roche" means Roche Holding AG, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Roche (including, but not limited to, F.

Hoffmann-La Roche Ltd, and, prior to the Effective Date: 1) Roche Holding AG's Vitamins and Fine Chemicals Division; and 2) Roche Vitamins Ltd), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Fritz Gerber" means Fritz Gerber, an individual, who 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.

D. "Respondents" means DSM, Roche, and Fritz Gerber, individually and collectively.

E. "Acquisition" means the acquisition contemplated by the Share and Asset Purchase Agreement dated as of February 10, 2003, between DSM and Roche Holding AG ("Acquisition Agreement") pursuant to which DSM shall acquire certain voting securities and assets that constitute the business of Roche's Vitamins and Fine Chemicals Division.

F. "Commission" means the Federal Trade Commission.

G. "BASF" means BASF Aktiengesellschaft, a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its registered office at 67056 Ludwigshafen, Federal Republic of Germany.

H. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s) or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution or sale of a product.

I. "Business Day" means any day excluding Saturday, Sunday and any United States Federal holiday.

J. "Closing Date" means the date on which Respondent DSM (or a Divestiture Trustee) and a Commission-approved Acquirer close on a transaction to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets pursuant to this Order.

K. "Commission-approved Acquirer" means: 1) an entity that is specifically identified in this Order to acquire particular assets that Respondent DSM is required to assign, grant, license, divest, transfer, deliver or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or 2) an entity approved by the Commission to acquire particular assets that Respondent DSM is required to assign, grant, license, divest, transfer, deliver or otherwise convey pursuant to this Order.

L. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondents that is not in the public domain related to the research, Development, manufacture, marketing, commercialization, distribution, importation,

exportation, cost, pricing, supply, sales, sales support, or use of a product.

M. "Contract Manufacture" means the manufacture of a Feed Enzymes Product to be supplied by Respondent DSM or a Designee for sale to the Commission-approved Acquirer.

N. "Designee" means any entity other than Respondent DSM that will manufacture Feed Enzymes Product(s) for a Commission-approved Acquirer.

O. "Development" means all development activities including, but not limited to, test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting clinical trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing and sale of a product (including any governmental price or reimbursement approvals), product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

P. "Direct Cost" means, with respect to Respondent DSM providing assistance or services to the Commission-approved Acquirer, the cost of direct labor and direct material used to provide the relevant assistance or service; *provided, however*, that, where Respondent DSM has an hourly rate that is: 1) charged by Respondent DSM for intra-group (*i.e.*, within DSM) assistance or service; 2) verified by the Commission-approved Acquirer or the Interim Monitor as the rate normally charged by Respondent DSM for such intra-group assistance or service; and 3) reasonable and determined in good faith, Respondent DSM may charge the Commission-approved Acquirer that hourly rate as in existence at the time such assistance or service is rendered to the Commission-approved Acquirer.

Q. "Divestiture Agreement" means: 1) any agreement between Respondent DSM and a Commission-approved Acquirer that is specifically referenced and attached to this Order and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed, and that have been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final; or 2) any agreement between Respondent DSM and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed that have been approved by the Commission to accomplish the requirements of this Order.

R. "Divestiture Trustee" means a trustee appointed by the Commission pursuant to the relevant provisions of this Order.

S. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any entity or authority who issues and maintains the domain name registration. "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

T. "DSM/BASF Alliance" means the business alliance created by and existing under the DSM/BASF Alliance Agreements.

U. "DSM/BASF Alliance Agreements" means the following agreements: 1) the "Distribution Agreement" between BASF Aktiengesellschaft and Gist-Brocades BSD B.V. (now known as DSM Food Specialties B.V.) dated August 16, 1994; 2) the "Cooperation Agreement" between BASF Aktiengesellschaft and Gist-Brocades BSD B.V. (now known as DSM Food Specialties B.V.) dated August 16, 1994, and all amendments, exhibits, attachments, agreements, and schedules thereto; 3) the "Toll Formulation Agreement" between BASF Aktiengesellschaft and Gist-Brocades BSD B.V. dated August 16, 1994; 4) "Payment Agreement" between BASF Aktiengesellschaft and Gist-Brocades BSD B.V. dated August 16, 1994; and 5) the "Accounting Method Agreement" between BASF Aktiengesellschaft and Gist-Brocades BSD B.V. dated October 25, 1994.

V. "Effective Date" means the date the Respondents close on the Acquisition Agreement.

W. "Employee Notification" means the "Notice of Divestiture and Requirement for Confidentiality" attached to this Order as public Appendix I and to the Order to Hold Separate and Maintain Assets as public Appendix A.

X. "Feed Enzymes Assets" means all of Respondent DSM's rights, title and interest in and to all assets related to Respondent DSM's worldwide business related to Feed Enzymes Products, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing or sale of the Feed Enzymes Products, including, without limitation, the following:

1. all Product Intellectual Property; *provided however,* that, for fields outside the field of animal nutrition, Respondent DSM may retain worldwide, irrevocable, perpetual, fully paid-up and royalty-free license(s) to the Product Intellectual Property (other than the Product Trademarks) to use, make, distribute, offer for sale, promote, advertise, sell, import or export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported or exported the following: 1) Phytase products anywhere in the world (on a non-exclusive basis); and, 2) non-starch polysaccharide degrading enzymes products or α-amylase products anywhere in the world, including the right to grant sub-licenses for any such purpose (on an exclusive basis, even as to the Commission-approved Acquirer).

2. license(s) within the field of feed enzymes to all Product Licensed Intellectual Property

to use, make, distribute, offer for sale, promote, advertise, sell, import or export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported or exported any Feed Enzymes Product anywhere in the world; *provided, however*, such license(s) shall be worldwide, irrevocable, perpetual, fully paid-up and royalty-free; *provided further, however*, such license(s) shall be on an exclusive basis (even as to Respondent DSM), subject only to certain pre-existing Third Party rights unrelated to Phytase that may exist in respect to non-starch polysaccharide degrading enzymes or α-amylase, in accordance with the Divestiture Agreement(s);

3. the Feed Enzymes Products and Product Registrations;

4. the Product Trade Dress;

5. a list of all customers and targeted customers for Feed Enzymes Products and the planned or proposed pricing of Feed Enzymes Products for such customers;

6. at the Commission-approved Acquirer's option, each of the Product Assumed Contracts;

7. all Product Marketing Materials;

8. all Website(s) related to the Feed Enzymes Product(s);

9. Product Scientific and Regulatory Material;

10. all unfilled customer orders for finished goods as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) Business Days after the Closing Date);

11. Product Manufacturing Technology, and Feed Enzymes Products' manufacturing processes;

12. at the Commission-approved Acquirer's option, all inventories in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Feed Enzymes Products' specific packaging and labels;

13. at the Commission-approved Acquirer's option (and, in the case of BASF, to the extent exercised in the Feed Enzymes Severance and Transitional Support Agreement), all manufacturing and other equipment located at the Feed Enzymes Granulation Facility that was used in, or suitable for use in, the research, Development or manufacture of the Feed Enzymes Products including, but not limited to, the machinery used in the granulation of the Feed Enzymes Products; and

14. all Respondent DSM's books, records and files related to the foregoing, including, but not limited to, the following specified documents: the Product Registrations; all data

submitted to and all correspondence with Agencies; all validation documents and data; all market studies; all sales histories, including, without limitation, clinical data, and sales force call activity, for the Feed Enzymes Products from January 1, 2000, through the Closing Date, and quality control histories pertaining to the Feed Enzymes Products owned by, or in the possession or control of, Respondent DSM, or to which Respondent DSM has a right of access, in each case such as is in existence as of the Closing Date;

provided, however, that in cases in which documents or other materials included in the Feed Enzymes Assets contain information that (i) relates both to the Feed Enzymes Product(s) and to other product(s) or businesses of Respondent DSM, and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Feed Enzymes Products, Respondent DSM shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent DSM provides the Commission-approved Acquirer with the above-described information without requiring Respondent DSM completely to divest itself of information that, in content, also relates to product(s) and businesses other than the Feed Enzymes Products;

provided further, however, the term "Feed Enzymes Assets" does not include: 1) any rights, title and interest in or to owned or leased real property or buildings or production facilities (other than the Feed Enzymes Granulation Facility); or 2) any rights, title and interest in or to the Phytaseed Intellectual Property.

Y. "Feed Enzymes Core Employees" means the Product Animal Nutritionist Employees, Product Marketing Employees, Product Manufacturing Employees, Product Patent Attorneys, and Product Research and Development Employees.

Z. "Feed Enzymes Granulation Facility" means Respondent DSM's feed enzyme granulating facility located in Seclin, French Republic.

AA. "Feed Enzymes Products" shall mean the following products that are either marketed, manufactured, or otherwise commercialized by, or are the subject of research or Development by Respondent DSM or the DSM/BASF Alliance: 1) Phytase; 2) non-starch polysaccharide degrading enzymes for use in animal nutrition; and 3) α-amylase for use in animal nutrition. The term "Feed Enzymes Products" includes all other products marketed or in Development by Respondent DSM or the DSM/BASF Alliance that are planned to be marketed for use in animals to enhance the animal's ability to digest phytate (including, but not limited to, the thermostable phytase molecules, designated DSM1 and DSM2), but expressly excludes any products acquired by Respondent DSM pursuant to the Acquisition (including those products acquired by Respondent DSM that are a part of the Novozymes/Roche Alliance).

BB. "Feed Enzymes Severance and Transitional Support Agreement" means the "Severance and Transitional Support Agreement" between BASF Aktiengesellschaft and DSM Food Specialities B.V." dated August 29, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Feed Enzymes Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The Feed Enzymes Severance and Transitional Support Agreement is attached to this Order and contained in non-public Appendix II.

CC. "Feed Enzymes Transitional Supply Agreement" means the "Transitional Supply Agreement" between BASF Aktiengesellschaft and DSM Food Specialties B.V. dated August 29, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Feed Enzymes Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The Feed Enzymes Transitional Supply Agreement is attached to this Order and contained in non-public Appendix II.

DD. "Feed Enzymes Releasee(s)" means the Commission-approved Acquirer or any entity controlled by or under common control with the Commission-approved Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Commission-approved Acquirer, or of such Commission-approved Acquirer-affiliated entities.

EE. "Governmental Entity" means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.

FF. "Law" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law by any Governmental Entity.

GG. "Novozymes" means: 1) Novozymes A/S (a corporation organized and existing under the laws of The Kingdom of Denmark, having its principal place of business at Krogshoejvej 36, DK-2880 Bagvaerd, Denmark), its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Novozymes A/S and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; 2) Novo Nordisk A/S (a corporation organized and existing under the laws of The Kingdom of Denmark, having its principal place of business at Novo Allé, DK-2880 Bagsvaerd, Denmark) its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Novo Nordisk A/S and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; 3) any entity that controls Novozymes A/S and its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by such entity and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

HH. "Novozymes Products" means any product researched, Developed, manufactured, marketed, or sold pursuant to or in connection with the Novozymes/Roche Alliance.

II. "Novozymes/Roche Alliance" means the business alliance created and existing by virtue of the agreement between Novo Nordisk A/S and F. Hoffmann-La Roche Ltd dated June 8, 2000, and its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Novozymes/Roche and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. The term "Novozymes/Roche Alliance" includes any similar arrangement to market products between Novozymes and Respondent DSM.

JJ. "Patents" means all patents, patent applications and statutory invention registrations, in each case existing as of the Effective Date (*except* where this Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to any Feed Enzymes Product(s) of or owned by Respondent(s) (or, where specified, Novozymes) as of the Closing Date.

KK. "Phytase" means any product that: 1) is the subject of the research, Development of Respondent DSM or the DSM/BASF Alliance for the purpose of promoting or otherwise enhancing an animal's ability to digest phytate; or 2) any product that is manufactured, marketed or otherwise commercialized by Respondent DSM or the DSM/BASF Alliance that promotes or otherwise enhances an animal's ability to digest phytate;

provided, however, the product "Phytase" includes all uses and applications of this product (including, but not limited to, uses for animal nutrition or human nutrition), but expressly excludes any products acquired by Respondent DSM pursuant to the Acquisition (including those products acquired by Respondent DSM that are a part of the Novozymes/Roche Alliance).

LL. "Phytaseed Intellectual Property" means the patents, trademarks, copyrights, technology, trade secrets, know-how, and proprietary information that Respondent DSM holds jointly with Syngenta relating to the production of feed enzymes in plants or seeds.

MM. "Product Animal Nutritionist Employees" means all employees of Respondent DSM or the DSM/BASF Alliance who directly participated (irrespective of the portion of working time involved) in Feed Enzymes Product trials on animals or provided technical support on matters of animal nutrition related to Feed Enzymes Products to customers within the eighteen (18) month period immediately prior to the Closing Date; *provided however,* the term "Product Animal Nutritionist Employees" does not include those employees that the Commission-approved Acquirer expressly agrees to exclude. These employees are

identified in non-public Appendix III.

NN. "Product Assumed Contracts" means all contracts or agreements:

1. pursuant to which any Third Party purchases the Feed Enzymes Product(s) from Respondent DSM;

2. pursuant to which Respondent DSM purchases any materials from any Third Party for use in connection with the manufacture of the Feed Enzymes Product(s);

3. relating to the marketing of the Feed Enzymes Product(s) or educational matters relating to the Feed Enzymes Product(s);

4. relating to the manufacture of the Feed Enzymes Product(s);

5. constituting confidentiality agreements involving the Feed Enzymes Product(s);

6. involving any royalty, licensing or similar arrangement involving the Feed Enzymes Product(s);

7. pursuant to which any services are provided with respect to the Feed Enzymes Product(s) or the Feed Enzymes Product(s) business, including consultation arrangements; and/or

8. pursuant to which any Third Party collaborates with Respondent DSM in the performance of research or Development of the Feed Enzymes Product(s) or the Feed Enzymes Product(s) business;

provided, however, that where any such contract or agreement also relates to product(s) of Respondent DSM other than the Feed Enzymes Product(s) required to be divested pursuant to this Order, Respondent DSM shall assign the Commission-approved Acquirer all such rights under the contract or agreement as are related to the Feed Enzymes Product(s) required to be divested pursuant to this Order, but concurrently may retain similar rights for the purposes of the other product(s).

OO. "Product Background Technologies" means

1. Patents that both: 1) relate to any element of the manufacturing process used in the manufacture of Feed Enzymes Products; and 2) have been routinely used in the production of commercialized product(s) other than the Feed Enzymes Products prior to the date of the Acquisition Agreement, *i.e.*, February 10, 2003;

2. technology, trade secrets, know-how, and proprietary information that both: 1) relate to the manufacture of Feed Enzymes Products; and 2) have been routinely used in the

production of commercialized product(s) other than the Feed Enzymes Products prior to the date of the Acquisition Agreement, *i.e.*, February 10, 2003;

provided, however, "Product Background Technologies" specifically excludes Patents that cover specific Feed Enzymes Product(s) or product formulations of Feed Enzymes Product(s). (Such Patents are a part of the Product Intellectual Property.)

PP. "Product Copyrights" means rights to all original works of authorship of any kind related to any Feed Enzymes Product(s) and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials; all promotional materials for livestock producers; educational materials for the sales force; copyrights in all process development data and reports relating to the research and Development of Feed Enzymes Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Feed Enzymes, all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; customer information, promotional and marketing materials, the Feed Enzymes Product(s) sales forecasting models, education materials, sales training materials, Website content and advertising and display materials; all records relating to employees that accept employment with the Commission-approved Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Feed Enzymes Product(s) or relating to its biology; all adverse experience reports and files related thereto (including source documentation) and all periodic adverse experience reports and all data contained in electronic data bases relating to adverse experience reports and periodic adverse experience reports; all analytical and quality control data; and all correspondence with the relevant Agencies.

QQ. "Product Employee Information" means the following:

1. a complete and accurate list containing the name of each relevant employee as of the execution date of the related Divestiture Agreement. This list shall be organized by the relevant respective employee categories defined in this Order, (*i.e.*, "Product Animal Nutritionist Employees," "Product Finance Employees," "Product Manufacturing Employees," "Product Marketing Employees," "Product Patent Attorneys," or "Product Research and Development Employees," as applicable);

2. with respect to each such employee:

    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 relevant Feed Enzymes Product(s); *provided, however*, in lieu of this description, Respondent DSM 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 the relevant Respondent'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); and

g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

3. at the Commission-approved Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

RR. "Product Finance Employees" means all employees of Respondent DSM or the DSM/BASF Alliance who directly participated in the preparation of the profit-and-loss statements, the cost accounting, or the pricing of Feed Enzymes Product(s), for the purposes of the DSM/BASF Alliance Agreements; *provided, however*, the term "Product Finance Employees" does not include those employees that the Commission-approved Acquirer expressly agrees to exclude. These employees are identified in non-public Appendix III.

SS. "Product Intellectual Property" means all of the following related to the Feed Enzymes Product(s):

1. Patents;

2. Product Copyrights;

3. Product Software;

4. Product Trademarks;

5. trade secrets, know-how, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process and in final Feed Enzymes Products, protocols, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, other than Product Licensed Intellectual Property;

6. rights to obtain and file for Patents and registrations thereof; and

7. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, the term "Product Intellectual Property" does not include: 1) the Product Licensed Intellectual Property; or 2) the names "DSM," "Roche," or the names of any other corporations or companies owned by Respondent(s) or related logos to the extent used on other of Respondent DSM's or Respondent Roche's Products.

TT. "Product Licensed Intellectual Property" means:

1. Product Software that both: 1) is used in connection with the analysis of research and development data for the Feed Enzymes Product(s); and 2) has been routinely used, prior to the date of the Acquisition Agreement, *i.e.*, February 10, 2003, by Respondent DSM for product(s) other than the Feed Enzymes Product(s); and

2. Product Background Technologies;

provided, however, that, in order for Respondent DSM to retain any interest in any such intellectual property, it shall demonstrate to the satisfaction of the Commission that such technology has been routinely used in the production of commercialized product(s) other than the Feed Enzymes Products prior to the date of the Acquisition Agreement, *i.e.*, February 10, 2003.

UU. "Product Manufacturing Employees" means all salaried employees of Respondent DSM or the DSM/BASF Alliance who directly participated (irrespective of the portion of working time involved) in the manufacture of the Feed Enzymes Product(s), including, but not limited to, those involved in the quality assurance and quality control of the Feed Enzymes Product(s), within the eighteen (18) month period immediately prior to the Closing Date; *provided, however,* the term "Product Manufacturing Employees" does not include those employees that the Commission-approved Acquirer expressly agrees to exclude. These employees are identified in non-public Appendix III.

VV. "Product Manufacturing Technology" means all technology, trade secrets, know-how, and proprietary information related to the manufacture, validation, packaging, release testing, stability and shelf life of the Feed Enzymes Product(s), including the Feed Enzymes Product(s)' formulation, in existence and in the possession of Respondent DSM or the DSM/BASF Alliance as of the Closing Date, including, but not limited to, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

WW. "Product Marketing Employees" means all management level employees of Respondent DSM or the DSM/BASF Alliance who directly participated (irrespective of the portion of working time involved) in the marketing, contracting, or promotion of the Feed Enzymes Product(s) within the eighteen (18) month period immediately prior to the Closing Date.

These employees include, without limitation, all management level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, but excluding administrative assistants; *provided, however*, the term "Product Marketing Employees" does not include those employees that the Commission-approved Acquirer expressly agrees to exclude. These employees are identified in non-public Appendix III.

XX. "Product Marketing Materials" means all marketing materials used anywhere in the world related to the Feed Enzymes Product(s) as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., vendor lists; sales data; reimbursement data), marketing information (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; educational materials; Website content and advertising and display materials; speaker lists), promotional and marketing materials, artwork for the production of packaging components, television masters and other similar materials related to the Feed Enzymes Product(s).

YY. "Product Patent Attorneys" means all employees of Respondent DSM or the DSM/BASF Alliance who are attorneys and who performed legal work (irrespective of the portion of working time involved) on Patents related to the Feed Enzymes Products; *provided, however*, the term "Product Patent Attorneys" does not include those employees that the Commission-approved Acquirer expressly agrees to exclude. These employees are identified in non-public Appendix III.

ZZ. "Product Registrations" means all registrations, permits, licenses, consents, authorizations and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing or sale of the Feed Enzymes Product(s) worldwide in existence for the Feed Enzymes Product(s) as of the Closing Date.

AAA. "Product Research and Development Employees" means all employees of Respondent DSM or the DSM/BASF Alliance who directly participated (irrespective of the portion of working time involved) in the research, Development, or regulatory approval process, of the Feed Enzymes Product(s) within the eighteen (18) month period immediately prior to the Closing Date; *provided, however*, the term "Product Research and Development Employees" does not include those employees that the Commission-approved Acquirer expressly agrees to exclude (other than inventors listed on Patents related to Phytase as further provided herein). "Product Research and Development Employees" also includes any employee of either Respondent DSM or the DSM/BASF Alliance who is listed as an inventor of any Patent related to Phytase regardless of when that Patent was filed or the research, Development, or regulatory work of that employee was performed. These employees are identified in non-public Appendix III.

BBB. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and clinical trial materials and information related to the Feed Enzymes Product(s), and all rights thereto, in any and all jurisdictions.

CCC. "Product Software" means computer programs related to the Feed Enzymes Product(s), including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Website; *provided, however*, that "Product Software" does not include software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).

DDD. "Product Trade Dress" means the current trade dress of the Feed Enzymes Product(s), including, but not limited to, product packaging associated with the sale of the Feed Enzymes Product(s) worldwide and the lettering of the Feed Enzymes Product(s)' trade name or brand name.

EEE. "Product Trademark(s)" means all trademarks, trade names and brand names including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Feed Enzymes Product(s). The term "Product Trademarks" includes the following trademarks: Natuphos®, Natugrain®, and Natustarch®.

FFF. "Proposed Acquirer" means an entity proposed by Respondent DSM (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the acquirer for particular assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by Respondent DSM pursuant to this Order.

GGG. "Roche Commitment Agreement" means the "Commitment to the United States Federal Trade Commission" by Roche signed by Dr. Franz B. Humer and Mr. Fritz Gerber and dated August 29, 2003. The Roche Commitment Agreement is attached to this Order and contained in non-public Appendix II.

HHH. "Supply Cost" means Respondent DSM's actual costs, calculated in good faith and in accordance with past practice under the DSM/BASF Alliance, associated with the production of the Feed Enzymes Product(s) for the Commission-approved Acquirer pursuant to the Transitional Supply Agreement. Notwithstanding the preceding, the term "Supply Cost" shall expressly exclude any intra-company business profit transfer and any allocation for capital charges for capital projects initiated after the date of the Acquisition Agreement, *i.e.,* February 10, 2003.

III. "Syngenta" means Syngenta AG, a corporation organized, existing, and doing business

under and by virtue of the laws of the Swiss Confederation, with its registered office at Schwarzwaldalle 215, 4058 Basel, Switzerland.

JJJ. "Third Party(ies)" means any private entity other than: (1) the Respondents, or (2) the Commission-approved Acquirer for the relevant assets to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed, related to a particular Feed Enzymes Product(s).

KKK. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondent DSM. "Website" shall not include (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondent DSM that are incorporated in such Website(s), such as stock photographs used in the Website(s), except to the extent that Respondent DSM can convey its rights, if any, therein; or (2) content unrelated to the Feed Enzymes Product(s).

II.

IT IS FURTHER ORDERED that:

A. Not later than ten (10) Business Days after the Effective Date, Respondent DSM shall divest the Feed Enzymes Assets (to the extent that such assets are not already owned, controlled or in the possession of BASF), absolutely and in good faith, to BASF pursuant to and in accordance with the Feed Enzymes Severance and Transitional Support Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of BASF or to reduce any obligations of Respondent DSM under such agreement), and such agreement, if it becomes one of the Divestiture Agreements for the Feed Enzymes Assets, is incorporated by reference into this Order and made a part hereof. If Respondent DSM does not divest the Feed Enzymes Assets to BASF within ten (10) Business Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Feed Enzymes Assets;

provided however, that if Respondent DSM has divested the Feed Enzymes Assets to BASF prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent DSM that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent DSM, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Feed Enzymes Assets to BASF (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. On or before the date on which Respondent DSM closes on a transaction to divest the Feed

Enzymes Assets, Respondent DSM shall terminate, absolutely and in good faith, the DSM/BASF Alliance pursuant to and in accordance with the Feed Enzymes Severance and Transitional Support Agreement and in a manner that preserves the full economic viability, marketability and competitiveness of the business associated with the Feed Enzymes Assets.

C. On or before the date on which Respondent DSM closes on a transaction to divest the Feed Enzymes Assets, Respondent DSM shall waive all rights it may have to object to, limit or otherwise prohibit the licensing of the Phytaseed Intellectual Property by Syngenta to the Commission-approved Acquirer.

D. Respondent DSM shall not seek to influence, participate in, or interfere with any negotiations or discussions between the Commission-approved Acquirer and Syngenta that relate to the licensing of the Phytaseed Intellectual Property and shall consent to the license of any of the Phytaseed Intellectual Property by Syngenta to the Commission-approved Acquirer.

E. Any Divestiture Agreement that has been approved by the Commission between Respondent DSM (or a Divestiture Trustee) and a Commission-approved Acquirer of the Feed Enzymes Assets shall be deemed incorporated into this Order, and any failure by Respondent DSM to comply with any term of such Divestiture Agreement related to the Feed Enzymes Assets shall constitute a failure to comply with this Order.

F. Respondent DSM shall include in any Divestiture Agreement related to the Feed Enzymes Assets the following provisions:

1. Respondent DSM shall Contract Manufacture and deliver to the Commission-approved Acquirer, in a timely manner and under reasonable terms and conditions, a supply of the Feed Enzymes Products, at Respondent DSM's Supply Cost, for a period of time sufficient to allow the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the Feed Enzymes Products independently of Respondent DSM.

2. After Respondent DSM commences delivery of the Feed Enzymes Products to the Commission-approved Acquirer pursuant to a Divestiture Agreement and for the term of the Contract Manufacture related to the Feed Enzymes Products, Respondent DSM will make inventory of the Feed Enzymes Products available for sale or resale only to the Commission-approved Acquirer.

3. Respondent DSM shall make representations and warranties to the Commission-approved Acquirer that the Feed Enzymes Products supplied through Contract Manufacture pursuant to the Divestiture Agreement meet the specifications provided in the Feed Enzymes Transitional Supply Agreement. Respondent DSM shall agree to indemnify, defend and hold the Commission-approved Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from

the failure of the Feed Enzymes Products supplied to the Commission-approved Acquirer pursuant to the Divestiture Agreement by Respondent DSM to meet such specifications. This obligation shall be contingent upon the Commission-approved Acquirer giving Respondent DSM prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Divestiture Agreement shall be consistent with the obligations assumed by Respondent DSM under this Order; *provided, however*, Respondent DSM may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondent DSM's responsibilities to supply the Feed Enzymes Products in the manner required by this Order; *provided further, however*, this obligation shall not require Respondent DSM to be liable for any negligent act or omission of the Commission-approved Acquirer or for any representations and warranties, express or implied, made by the Commission-approved Acquirer that exceed the representations and warranties made by Respondent DSM to the Commission-approved Acquirer.

4. Respondent DSM shall make representations and warranties to the Commission-approved Acquirer that Respondent DSM will hold harmless and indemnify the Commission-approved Acquirer for any liabilities or loss of profits resulting from the failure by Respondent DSM to deliver the Feed Enzymes Products in a timely manner as required by the Divestiture Agreement unless Respondent DSM can demonstrate that its failure was entirely beyond the control of Respondent DSM and in no part the result of negligence or willful misconduct by Respondent DSM.

5. During the term of the Contract Manufacture between Respondent DSM and the Commission-approved Acquirer, upon request of the Commission-approved Acquirer or Interim Monitor (if applicable), Respondent DSM shall make available to the Commission-approved Acquirer or the Interim Monitor all records that relate to the manufacture of the Feed Enzymes Products that are generated or created after the Closing Date.

6. Upon reasonable notice and request from the Commission-approved Acquirer to Respondent DSM, Respondent DSM shall provide in a timely manner at no greater than Direct Cost:

    a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the Feed Enzymes Products;

    b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the Feed Enzymes Products in substantially the same manner and quality employed or achieved by Respondent DSM; and,

c. consultation with knowledgeable employees of Respondent DSM and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) obtains all Agency approvals necessary to manufacture the Feed Enzymes Products independently of Respondent DSM and sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the Feed Enzymes Products.

7. Upon reasonable notice and request from the Commission-approved Acquirer to either Respondent DSM or Respondent Roche, as appropriate, Respondent DSM or Respondent Roche shall provide in a timely manner, at no greater than Direct Cost, assistance with knowledgeable employees of the relevant Respondent to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property.

8. Respondent DSM shall grant to the Commission-approved Acquirer rights and immunities under Patents that are owned or licensed by Respondent DSM as of the Effective Date or that may be assigned, granted, licensed, or otherwise conveyed to DSM after the Effective Date sufficient to allow the Commission-approved Acquirer freedom to practice in the research, Development, manufacture, use, import, export, distribution and sale of the Feed Enzymes Products (but only as to those products that are commercialized or in Development as of the Closing Date) in the field of animal nutrition.

9. Respondent DSM shall covenant to the Commission-approved Acquirer that: 1) any Third Party assignee, transferee or licensee of the above-described Patents shall agree to provide a covenant not to sue the Feed Enzymes Releasees, at least as protective as those extended pursuant to the preceding Paragraph II.F.8, as a condition of such assignment, transfer or license; and 2) with respect to any Third Party rights licensed to Respondent DSM as of or after the Effective Date, and as to which Respondent DSM does not control the right of prosecution of any suit, legal or other action, Respondent DSM shall not actively induce, assist or participate in any suit, legal or other action or proceeding relating to the Feed Enzymes Products (but only as to those products that are commercialized or in Development as of the Closing Date) against the Feed Enzymes Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

G. Respondent DSM shall submit to the Commission-approved Acquirer, at Respondent DSM's expense, all Confidential Business Information related to the Feed Enzymes Products.

H. Respondent DSM shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order or the

related Order to Hold Separate and Maintain Assets) related to the research, Development, manufacturing, marketing, or sale of the Feed Enzymes Products, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except to the Commission-approved Acquirer.

I. For a period of five (5) years after the Closing Date, Respondent DSM shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Product Patent Attorneys and Product Research and Development Employees. For a period of two (2) years after the Closing Date, Respondent DSM shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Product Animal Nutritionist Employees and Product Marketing Employees. For a period extending from the Closing Date until one (1) year after the date on which the last delivery of Feed Enzymes Products to the Commission-approved Acquirer occurs (pursuant to the Divestiture Agreement to Contract Manufacture Feed Enzymes Products between Respondent DSM and the Commission-approved Acquirer), Respondent DSM shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Product Manufacturing Employees. These periods are hereinafter referred to as the "Employee Access Periods."

J. Respondent DSM shall provide any Proposed Acquirer with the opportunity to enter into employment contracts with the Feed Enzymes Core Employees in connection with the divestiture of the Feed Enzymes Assets; *provided, however*, that any such employment contracts entered into prior to the Closing Date shall be contingent upon approval by the Commission of the agreements relating to the Feed Enzymes Assets (*i.e.*, those agreements proposed by Respondent DSM (or the Divestiture Trustee) to the Commission) as the Divestiture Agreements for the Feed Enzymes Assets.

K. Not later than twenty-five (25) Business Days after the execution date of any proposed Divestiture Agreement related to Feed Enzymes Assets, Respondent DSM shall provide the Commission-approved Acquirer or the Proposed Acquirer the Product Employee Information related to the Feed Enzymes Core Employees. Failure by Respondent DSM to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Employee Access Periods with respect to that employee in an amount equal to the delay.

L. During the Employee Access Period, Respondent DSM shall not interfere with the hiring or employing by the Commission-approved Acquirer of Feed Enzymes Core Employees, and shall remove any impediments within the control of Respondent DSM that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondent DSM that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent DSM shall not make any counteroffer to a Feed Enzymes Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that these requirements shall not prohibit Respondent DSM from making offers of employment to or employing any Feed Enzymes Core Employee during the Employee Access Periods where the Commission-approved Acquirer has notified Respondent DSM in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further, that if Respondent DSM notifies the Commission-approved Acquirer in writing of its desire to make an offer of employment to a particular Feed Enzymes Core Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Business Days of the date the Commission-approved Acquirer receives such notice, Respondent DSM may make an offer of employment to that employee.

M. Respondent DSM shall provide all Feed Enzymes Core Employees employed by Respondent DSM with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondent DSM until the Closing Date for the divestiture of the Feed Enzymes Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law). In addition to the foregoing, Respondent DSM shall provide to each Feed Enzymes Core Employee employed by Respondent DSM who accepts employment with the Commission-approved Acquirer, an incentive 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;

provided, however, that nothing in these requirements or in this Order requires or shall be construed to require Respondent DSM to terminate the employment of any employee.

N. For a period of one (1) year after the Closing Date, Respondent DSM shall not:

1. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to Feed Enzymes Product(s) ("Feed Enzymes Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; *provided, however*, this provision shall not prohibit: (i) Respondent DSM from advertising for employees in newspapers, trade publications or other media not targeted specifically at the Feed Enzymes Employees, or (ii) a Feed Enzymes Employee from contacting Respondent DSM on his or her own initiative without any direct or indirect solicitation or encouragement from Respondent DSM; or

2. hire any Feed Enzymes Employee; *provided, however*, Respondent DSM may hire any former Feed Enzymes Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with Respondent DSM, as long as such employee was not solicited in violation of the non-solicitation requirements contained herein.

O. For a period of two (2) years after the Closing Date, Respondent DSM shall not market or promote Novozymes Products using the services of any Product Marketing Employee related to the Feed Enzymes Products.

P. For a period of five (5) years after the Closing Date, Respondent DSM shall not use any Product Finance Employee, Product Research and Development Employee, or Product Patent Attorney for any purpose related to the Novozymes/Roche Alliance or any Novozymes Product, and such employees shall not have access to any Confidential Business Information related to the Novozymes/Roche Alliance or Novozymes Products.

Q. Prior to the Closing Date, Respondent DSM shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Feed Enzymes Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the Feed Enzymes Products by the Commission-approved Acquirer.

R. Respondent DSM shall require, as a condition of continued employment post-divestiture, that each Feed Enzymes Core Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Feed Enzymes Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondent DSM (other than as necessary to comply with the requirements of this Order or the related Order to Hold Separate and Maintain Assets); *provided, however,* the requirements of this Paragraph II.R. may be extended to include employees (other than the Feed Enzymes Core Employees) of Respondent DSM that the Interim Monitor may determine are necessary to be included in order to ensure the proper maintenance of the confidentiality of the Confidential Business Information.

S. Respondent DSM shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Feed Enzymes Products by Respondent DSM's personnel to all of Respondent DSM's employees who (i) are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the Feed Enzymes Products, (ii) are involved in the research, Development, manufacturing, distribution, sale or marketing of the Novozymes Products and/or (iii) may have Confidential Business Information related to the Feed Enzymes Products. Such notification shall be in substantially the form set forth in the Employee Notification. Respondent DSM shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondent DSM shall provide a copy of such notification to the Commission-approved Acquirer. Respondent DSM shall maintain complete records of all such notifications at Respondent DSM's corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondent DSM shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondent DSM's

personnel.

T. Respondent DSM shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Feed Enzymes Products by Respondent DSM's personnel to all of Novozymes employees who are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the Novozymes Products.

U. Upon reasonable notice and request by the Commission-approved Acquirer, Respondent DSM shall make available to the Commission-approved Acquirer, at no greater than Direct Cost, such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Feed Enzymes Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) is fully qualified and able to manufacture the Feed Enzymes Products independently of Respondent DSM.

V. 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 business associated with the Feed Enzymes Assets, to minimize any risk of loss of competitive potential for the business associated with the Feed Enzymes Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Feed Enzymes Assets except for ordinary wear and tear.

W. Counsel for Respondent DSM (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer in order to:

1. assure Respondent DSM's compliance with any Divestiture Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or

2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Feed Enzymes Assets or the business related to the Feed Enzymes Products; *provided, however*, that Respondent DSM may disclose such information as necessary for the purposes set forth in this paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, however:

1. Respondent DSM shall require those who view such unredacted documents or other

materials to enter into confidentiality agreements with the Commission–approved Acquirer; *provided, however,* that Respondent DSM shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably; and

2. Respondent DSM shall use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

X. Respondent DSM shall maintain manufacturing facilities for the production of the Feed Enzymes Products that are ready, qualified and fully capable of producing the Feed Enzymes Products until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) is fully able to manufacture the Feed Enzymes Products independently of Respondent DSM; *provided, however,* the Commission may eliminate, or limit the duration of, Respondent DSM's obligation under this provision should the Commission determine that the Commission-approved Acquirer is not using commercially reasonable best efforts to manufacture the Feed Enzymes Products independently of Respondent DSM.

Y. Respondent DSM shall not join, or file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the Feed Enzymes Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Feed Enzymes Products (but only as to those products that are commercialized or in Development as of the Closing Date) under:

1. any Patents owned or licensed by Respondent DSM as of the Effective Date or acquired after the Effective Date that claim the use of such Feed Enzymes Products to enhance or otherwise facilitate the digestion of phytate in animals;

2. any Patents that are used in the business of the Novozymes/Roche Alliance that claim the use of such Feed Enzymes Products to enhance or otherwise facilitate the digestion of phytate in animals;

3. any Patents owned or licensed at any time after the Effective Date by Respondent DSM that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of such Feed Enzymes Products in the field of animal nutrition other than such Patents that claim inventions conceived by and reduced to practice by Respondent DSM's employees or the employees of the Novozymes/Roche Alliance after the Effective Date; or

4. any Patents that are used in the business of the Novozymes/Roche Alliance that are owned or licensed by Novozymes at any time after the Effective Date that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of such Feed Enzymes Products in the field of animal nutrition other than such Patents that claim inventions conceived by and reduced to practice by Respondent

DSM's employees or the employees of the Novozymes/Roche Alliance after the Effective Date.

Z. Respondent DSM shall not, in any jurisdiction throughout the world: 1) use the Product Trademarks or any mark confusingly similar to the Product Trademarks, as a trademark, tradename, or service mark in connection with feed enzymes; 2) attempt to register the Product Trademarks; 3) or attempt to register any mark confusingly similar to the Product Trademarks in connection with feed enzymes; 4) challenge or interfere with the Commission-approved Acquirer's use and registration of the Product Trademarks; or 5) challenge or interfere with the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in the Product Trademarks against Third Parties.

AA. Respondent Roche agrees to abide by the applicable terms of the Feed Enzymes Severance and Transitional Support Agreement and by all terms of the Roche Commitment Agreement. Such commitment, if approved by the Commission in connection with the Commission's determination to make this Order final, shall be deemed incorporated into this Order, and any failure by Respondent Roche to comply with any term of the Roche Commitment Agreement shall constitute a failure to comply with this Order.

BB. The purpose of the divestiture of the Feed Enzymes Assets is to ensure the continued use of the Feed Enzymes Assets in the same business in which the Feed Enzymes Assets were engaged at the time of the announcement of the Acquisition, fully independent of Respondent DSM, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

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 and the Order to Hold Separate and Maintain Assets (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 Respondent DSM's 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 Order to Hold Separate and Maintain Assets 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 Respondent DSM's 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 assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to this 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 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 Respondent DSM's 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. Respondent DSM 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 Order to Hold Separate and

Maintain Assets 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 or the relevant provisions of the Order to Hold Separate and Maintain Assets in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

A. If Respondent DSM has not fully complied with its obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to Paragraph II.A. in a manner that satisfies the requirements of Paragraph II.A. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent DSM shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent DSM to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent DSM, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent DSM has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent DSM of the identity of any proposed Divestiture Trustee, Respondent DSM shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent DSM shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the

Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by the Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent DSM shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described in herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent DSM shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent DSM shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent DSM shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent DSM's absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent DSM from among those approved by the Commission; *provided further, however*, that Respondent DSM shall select such entity within five (5) Business Days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent DSM, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent DSM, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent DSM, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent DSM shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee.

7. In the event that the Divestiture Trustee determines that he or she is unable to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed in a manner that preserves their marketability, and viability and competitiveness and ensures their continued use in the research, Development, manufacture, distribution, marketing, promotion, sale, or after-sales support of the relevant Feed Enzymes Products, the Divestiture Trustee may assign, grant, license, divest, transfer, deliver or otherwise convey such additional assets of Respondent DSM and effect such arrangements as are necessary to satisfy the requirements of this Order.

8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by this Order.

9. The Divestiture Trustee shall report in writing to Respondent DSM and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

10. Respondent DSM may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to

sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the relevant provisions of the Order to Hold Separate and Maintain Assets in this matter.

V.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent DSM has fully complied with Paragraphs II.A. (*i.e.* has assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed all relevant assets to the Commission-approved Acquirer in a manner that fully satisfies the requirements of the Order), II.B., and all its responsibilities to render transitional services to the Commission-approved Acquirer as provided in the Divestiture Agreements, 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. Respondent DSM shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent DSM shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent DSM shall include in its reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

B. One (1) year after the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent DSM shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VI.

IT IS FURTHER ORDERED that Respondent DSM shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent DSM 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 the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any demonstrated legally recognized privilege, and upon written request with reasonable notice to Respondent DSM made to its principal United States offices, Respondent DSM shall permit any duly authorized representative 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 related to compliance with this Order; 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 will terminate ten (10) years after the date on which this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

APPENDIX I
TO THE DECISION AND ORDER

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.

NON-PUBLIC APPENDIX II

[REDACTED FROM PUBLIC RECORD VERSION]

NON-PUBLIC APPENDIX III

[REDACTED FROM PUBLIC RECORD VERSION]