

Paragraph II.F. further provides that at the request of CoolBrands, Proposed Respondents will distribute Dreamery, Godiva, and Whole Fruit for CoolBrands for a period not to exceed one (1) year in any areas of the U.S. where Dreyer's previously distributed these products. Paragraph II.G. requires Proposed Respondents to provide technical assistance to CoolBrands, as needed, for a period not to exceed one (1) year. Paragraph II.H. requires Proposed Respondents to provide administrative services to CoolBrands, as needed, for a period not to exceed one (1) year.

Paragraph II.I. requires that, for a period not to exceed five (5) years, Proposed Respondents will supply sufficient volumes of additional ice cream products (e.g., premium ice creams or novelty products) to CoolBrands to enable CoolBrands to profitably distribute Dreamery, Godiva, and Whole Fruit superpremium products. This provision was included in the Proposed Consent Agreement because Nestlé's DSD system handles more products than the Dreamery, Godiva, and Whole Fruit superpremium products that CoolBrands is acquiring, and the provision will enable CoolBrands to operate profitably for a limited term while CoolBrands attempts to attract independent distribution business from unaffiliated third parties.

Paragraph II.J. requires that Proposed Respondents modify the joint venture agreement between Dreyer's and Starbucks to allow Starbucks to manufacture, distribute, and sell the Starbucks brand of ice cream and other ice cream products themselves or in collaboration with other third-parties. Under the existing joint venture agreement between Dreyer's and Starbucks, Dreyer's is the sole manufacturer, distributor and salesman for the Starbucks brand of superpremium ice cream.

Paragraph III limits the ways in which Proposed Respondents may utilize an information it acquires with respect to CoolBrands.

Paragraph IV of the Proposed Consent Agreement allows the Commission to appoint an Interim Monitor to monitor compliance with the terms of this Proposed Order. The Proposed Consent Agreement provides the Monitor Trustee with the power and authority to monitor the Proposed Respondents' compliance with the terms of the Proposed Consent Agreement, and full and complete access to personnel, books, records, documents, and facilities of the Proposed Respondents to fulfill that responsibility. In addition, the Interim Monitor may request any other relevant information that relates to

the Proposed Respondents' obligations under the Proposed Consent Agreement. The Proposed Consent Agreement precludes Proposed Respondents from taking any action to interfere with or impede the Interim Monitor's ability to perform his or her responsibilities or to monitor compliance with the Proposed Consent Agreement.

The Interim Monitor may hire such consultants, accountants, attorneys, and other assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Proposed Consent Agreement requires the Proposed Respondents to bear the cost and expense of hiring these assistants.

Paragraph V.A. of the Proposed Consent Agreement authorizes the Commission to appoint a divestiture trustee in the event Nestlé fails to divest the assets as required by the Proposed Consent Agreement.

Paragraph VI. of the Proposed Consent Agreement provides that Proposed Respondents allow, Mars, Incorporated ("Mars"), to terminate its agreements and joint ventures with Dreyer's. Mars' agreements with Dreyer's involved Dreyer's manufacturing and distributing ice cream products for Mars. Mars planned to have Dreyer's manufacture and distribute a new superpremium ice cream for Mars. Mars will now be free to enter this market on their own or as part of a new joint venture, or other arrangement, with a third party.

Paragraph VII. of the Proposed Consent Agreement requires Proposed Respondents to permit Unilever's Ben & Jerry's subsidiary to terminate its distribution agreement with Dreyer's by December 31, 2003. The existing distribution agreement between Dreyer's & Ben & Jerry's required Ben & Jerry's to give Dreyer's approximately nine (9) months notice prior to terminating distribution. This provision will reduce the notice period that Ben & Jerry's must provide.

Paragraph VIII. through XII. detail certain general provisions. Paragraph VIII. prohibits Proposed Respondents from acquiring, without providing the Commission with prior notice, any ownership or other interest in Dreamery, Godiva, or Starbucks superpremium ice cream brands or in any of the Nestlé distribution assets that CoolBrands is acquiring, or other DSD distribution assets. These are the assets that Proposed Respondents are divesting. The provisions regarding prior notice are consistent with the terms used in prior orders. The Proposed Consent Agreement does not restrict the Proposed Respondents from

developing any new superpremium brands.

Paragraph IX. requires the Proposed Respondents to file compliance reports with the Commission, the first of which is due within thirty (30) days of the date on which the Proposed Consent Agreement becomes final, and every sixty (60) days thereafter until the divestitures are completed. Paragraph X. provides for notification to the Commission in the event of any changes in the corporate Proposed Respondents. Paragraph XI. requires Proposed Respondents to grant access to any authorized Commission representative for the purpose of determining or securing compliance with the Proposed Consent Agreement. Paragraph XII. terminates the Proposed Consent Agreement after ten (10) years from the date the Proposed Order becomes final.

### V. Opportunity for Public Comment

The Proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Agreement and the comments received and will decide whether it should withdraw from the agreement or make the Proposed Consent Agreement final.

By accepting the Proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Agreement, including the proposed sale of assets to CoolBrands, in order to aid the Commission in its determination of whether to make the Proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the Proposed Consent Agreement nor is it intended to modify the terms of the Proposed Consent Agreement in any way.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

**Concurring Statement of Commissioner  
Sheila F. Anthony Nestlé S.A./Dreyer's  
Grand Ice Cream Holdings, Inc./  
Dreyer's Grand Ice Cream, Inc.**

The Federal Trade Commission has voted to accept a proposed consent agreement designed to remedy the likely anticompetitive effects arising from the merger of Nestlé and Dreyer's. While I concur in the Commission's decision, I