

difficult, or impossible, for a potential entrant to achieve viable scale until approvals are obtained in those two jurisdictions. Finally, the process of convincing customers to switch to a new, untested, phytase enzyme is a difficult and lengthy one, often requiring customer validation testing that can take up to two additional years.

The proposed Consent Agreement effectively remedies the acquisition's anticompetitive effects in the worldwide market for phytase by requiring DSM to divest its phytase business to BASF no later than ten business days after DSM closes its proposed acquisition of RV&FC. This business consists of, among other things, phytase related intellectual property, phytase scientific and regulatory material, phytase manufacturing technology, books and records, and other assets used in the research, development, manufacturing, marketing and sale of phytase. BASF is well-positioned to take over these assets and become an independent competitor in the phytase market. As DSM's phytase alliance partner, BASF already has primary responsibility for marketing and selling the phytase enzyme produced by DSM, and customers already associate this product with BASF, not DSM. Further, BASF already has intimate knowledge of DSM's research, development, and manufacturing efforts related to phytase, and is well-positioned to take over these responsibilities. Finally, BASF poses no separate competitive concern as an acquirer of the phytase assets. For these reasons, the Commission is satisfied that BASF is a well-qualified purchaser of the divested assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture is successful. In order to reduce or eliminate any delay in pending research projects, the Consent Agreement requires that DSM provide technical assistance with ongoing research projects at BASF's request for a period of six months while these projects are being transferred to BASF. The Consent Agreement further requires DSM to contract manufacture phytase, at BASF's request, for up to two years. This provision is designed to eliminate any delay or interruption in BASF's ability to serve customers in the phytase market. In addition, the Consent Agreement requires DSM to provide BASF with the opportunity to enter into employment contracts with certain key employees, and requires DSM to provide certain employees with financial incentives to accept employment with BASF. For a period of one year, the Consent Agreement also prohibits DSM from hiring any BASF

employee with responsibilities related to phytase. Finally, the Consent Agreement establishes firewalls designed to prevent information relating to the DSM/BASF phytase business from flowing to the Novozymes/Roche alliance.

To preserve the full economic viability, marketability, and independence of the phytase assets pending divestiture, the Consent Agreement includes an Order to Hold Separate and Maintain Assets. This Order contains a number of provisions designed to ensure that the viability and competitiveness of the divested assets are not diminished prior to divestiture. Pursuant to this Order, the Commission has appointed KPMG, LLP as Interim Monitor to oversee the asset transfer and to ensure that DSM is expeditiously complying with its obligations under the Consent Agreement. The KPMG team is headed by John Ellison, who has over 30 years of experience in auditing and investigative work, and has acted as Monitor in several other divestitures for the European Commission. Mr. Ellison is supported by knowledgeable personnel, including a leading technical expert in the field of enzymes.

In order to ensure that the Commission remains informed about the status of the pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires DSM to submit a status report to the Commission within thirty days after the Order becomes final, and every thirty days thereafter until DSM has fully complied with the Commission's Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

[File No. 021 0242]

Surgical Specialists of Yakima, P.L.L.C., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 24, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT:

Joseph Lipinsky, FTC, Northwest Regional Office, 915 Second Avenue, Suite 2896, Seattle, WA 98174, (206) 220-4473.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 24, 2003), on the World Wide Web, at <http://www.ftc.gov/os/2003/09/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft