section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from America Online, Inc. (''AOL'') and its wholly owned subsidiary, CompuServe Interactive Services, Inc. (''CompuServe'').

The proposed consent order 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 agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the respondents' Internet access services. According to the FTC complaint, most subscribers to AOL's Internet service who wanted to cancel their service called AOL's customer service department. The responsibilities of AOL's customer service representatives included trying to retain subscribers who requested cancellation of their Internet service. The complaint alleges that AOL failed to implement appropriate measures to ensure that all customers' requests for cancellation were properly executed and that as a result, in numerous instances, subscribers who requested cancellation were not cancelled and continued to be charged monthly service fees. According to the complaint, this constituted an unfair business practice.

The complaint further alleges that AOL and CompuServe developed the ''CompuServe $400 Rebate program'' whereby consumers received a $400 cash rebate toward the purchase of an eligible computer, if they contracted for three years of CompuServe Internet service. In connection with the rebate program, respondents promised to provide rebate checks within 8–10 weeks, and in some cases, 45 days. According to the complaint, after receiving rebate requests in conformance with the offer, respondents extended the time period in which they would deliver the rebates without consumers agreeing to this extension of time and failed to deliver the rebates to consumers within the promised time period. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent AOL and CompuServe from engaging in similar acts and practices in the future. Specifically, Parts I and II address the cancellation of any Internet or online service, or any other product or service sold by means of a continuity program. Part I of the proposed order requires respondents to establish and maintain appropriate measures for ensuring that consumers' requests for cancellation of any such service or continuity program are promptly processed and that billing will cease prior to the next billing cycle.

Part II.A. of the proposed order prohibits respondents from continuing to charge any subscriber who has requested cancellation of any covered service or continuity program, even if the subscriber is recorded as having agreed to continue to be a subscriber, unless respondents first obtain the subscriber's express informed consent. For the subscriber's consent to be deemed ''informed,'' the respondents must clearly and conspicuously disclose, before the subscriber consents, certain specified information, including a description of the pricing plan to which the subscriber is agreeing.

Part II.B. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any Internet or online service and who is recorded as having agreed to continue to be a subscriber. The notices are to be sent by first class mail in envelopes with ''IMPORTANT: Confirmation of continued service'' printed on the front. The notices confirm that consumers have agreed to continue their service, inform them of the terms of their continued service, and give them the opportunity to send back a cancellation request form, if they do not wish to continue their service. Part II.C. requires that respondents cancel the service of any subscriber who returns the cancellation request form.

Part II.D. provides that respondents refund fees to certain subscribers who return the cancellation request form. Subscribers are to be given refunds if they return the form within thirty days of the mailing of the confirmation notice and do not use the service for any significant period of time after they were recorded as having agreed to continue as subscribers.

Part II.E. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any continuity program other than Internet or online service and who is recorded as having agreed to continue to be a subscriber. If the subscriber has an active Internet or online service account with respondents, the notice can be sent by e-mail. Otherwise, it is to be sent by first class mail. Part II.F. requires that respondents provide a method through which subscribers who are notified pursuant to Part II.E. are able to cancel via telephone or U.S. mail.

Part III addresses the delayed rebates allegation and applies to respondents' offering of a rebate in connection with Internet or online service. Part III.A. prohibits the respondents from making any representation about the time in which any such rebate will be mailed, or otherwise provided to purchasers, unless they have a reasonable basis for the representation at the time it is made. Part III.B. prohibits respondents from failing to provide any such rebate within the time specified or, if no time is specified, within thirty days.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part VIII is a provision ''sunsetting'' the order after twenty years, with certain exceptions.

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

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–25902 Filed 10–10–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 031 0064]

Koninklijke DSM N.V., 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 23, 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: Jeffrey Perry, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2331.

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 23, 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 Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from DSM N.V. (''DSM'') and Roche Holding AG (and its ultimate parent entity) (''Roche'') which is designed to remedy the anticompetitive effects of the acquisition of Roche's Vitamins and Fine Chemicals division (''RV&FC'') by DSM. Under the terms of the Consent Agreement, the companies would be required to divest DSM's phytase business to BASF AG (''BASF''). The divestiture will take place no later than ten business days from the date on which DSM closes its proposed acquisition of RV&FC.

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

Pursuant to a Share and Asset Purchase Agreement dated February 10, 2003, and amendments thereto, DSM proposes to acquire certain voting securities and assets from Roche Holding AG that together constitute Roche's Vitamins and Fine Chemicals division in a transaction valued at approximately $1.9 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the worldwide market for the research, development, manufacture, and sale of the feed enzyme phytase. The proposed Consent Agreement will remedy the alleged violations by replacing the competition in the phytase market that would otherwise have been eliminated by the proposed acquisition.

Phytase is an enzyme added to poultry and swine feed to promote the digestibility of phosphorous and other nutrients that are vital to efficient livestock production. Without the addition of phytase, monogastric (*i.e.* single-stomach) animals like pigs and chickens lack the ability to digest much of the phosphorous contained in animal feed. The phosphorous that is unavailable for digestion simply passes through the livestock undigested and is ultimately excreted in the manure. By ''unlocking'' this phosphorous for digestion, phytase has the dual benefit of ensuring that the animals receive the benefit of these vital nutrients, while at the same time reducing the environmental impact caused by runoff from livestock production. Given its unique advantages, as well as the significant cost savings associated with using phytase, it is highly unlikely that phytase customers would switch to any other method of supplementing phosphorous in animal feed, even if the prices of phytase were to increase significantly.

The worldwide market for phytase is highly concentrated. DSM, together with its alliance partner, BASF, pioneered the phytase market in 1996, and today remains the largest supplier of phytase in the world, with 2002 sales of approximately $80 million. Roche, with its alliance partner Novozymes, is the only significant competitor to the DSM/BASF alliance, with 2002 phytase sales of approximately $59 million. Together, these two competing alliances dominate the phytase market, controlling over 90% of the $150 million worldwide market for phytase.

The proposed acquisition would have a significant adverse effect on competition in the worldwide market for phytase. Prior to this acquisition, the DSM/BASF and Novozymes/Roche alliances competed vigorously for sales in the growing phytase market, resulting in substantial price discounting for phytase customers. Each alliance also invested significant resources in research and development efforts designed to improve its own products, in order to keep pace with similar investments being made by the other alliance. The proposed acquisition would link these two, previously independent, alliances, enabling them to coordinate their actions and eliminate the head-to-head competition between the only two significant competitors in the worldwide phytase market. In doing so, the proposed acquisition would allow DSM to exercise market power, thereby increasing the likelihood that phytase customers would be forced to pay higher prices and that innovation and product quality in this market would suffer.

Entry into the phytase market is difficult, time consuming, and ultimately unlikely to deter or counteract the competitive effects likely to result from the acquisition. Any company attempting to enter the phytase market faces serious obstacles in developing a phytase enzyme that does not infringe the various patents held by the market incumbents. This development process alone generally takes three to ten years, even for an experienced enzyme producer. In addition, the FDA approval process in the United States can take at least one to two years, and regulatory approval in Europe generally takes even longer. There are significant economies of scale associated with phytase production, and because sales in the United States and Europe each account for a significant portion of the total phytase market, it is 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.

[FR Doc. 03–25903 Filed 10–10–03; 8:45 am]

BILLING CODE 6750–01–P

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