Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including, but not limited to, an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement shall in no way operate to terminate the Consent Order that Nestlé has entered into in this matter.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment from Nestlé Food Company ("Nestlé"), an agreement containing a consent order to divest certain assets. The agreement is designed to remedy any anticompetitive effect stemming from Nestlé's acquisition of most of the assets of Allen Products Company, Inc., d/b/a ALPO PetFoods, and its subsidiaries ("Alpo"), a wholly-owned subsidiary of Grand Metropolitan Incorporated ("Grand Metropolitan). Nestlé is an indirect subsidiary of and controlled by Nestlé S.A.

The agreement has been placed on the public record for 60 days for reception of comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

The Commission's draft complaint charges that on or about September 16, 1994, Nestlé and its parent Nestlé S.A. agreed to acquire certain assets of Alpo, a wholly-owned subsidiary of Grand Metropolitan, for \$510 million. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the draft complaint, Nestlé and Alpo are direct competitors in the United States market for the manufacture and production of canned cat food. According to the draft complaint, the market is highly concentrated and entry is difficult or unlikely. Nestlé acquisition of Alpo may reduce competition in the United States canned cat food market by eliminating the direct competition between Nestlé and Alpo, by increasing the likelihood that Nestlé will become a dominant firm, and by increasing the likelihood of collusive behavior among the few remaining significant competitors. Consequently, the acquisition may lead to higher prices for purchasers of canned cat food.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order, Nestlé must divest its canned cat food manufacturing facility located in Fort Dodge, Iowa, within twelve months, to a purchaser approved by the Commission. The assets to be divested included: (1) All rights to the real property, buildings, machinery, fixtures, equipment, furniture, tools, supplies and spare parts; (2) all warranties and technical information concerning the equipment; and (3) at the option of the purchaser, all supply contracts that Nestlé has the absolute right to assign. A separate asset maintenance agreement requires the respondent to maintain the assets that are to be divested in a marketable and viable condition pending divestiture.

If Nestlé fails to complete the divestiture within the twelve months, the Commission may appoint a trustee to divest the facility. In addition, at the option of the purchaser, the trustee is empowered to grant the purchaser a non-exclusive license to use any and all of Alpo's wholly-owned private label formulations for the manufacture of canned cat food. The license may extend up to five years.

For ten years, the agreement containing consent order also requires Nestlé to obtain Commission approval before acquiring either stock in another company engaged in, or assets used in, the manufacture or production of canned cat food in the United States.

By accepting the consent order 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 and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–2307 Filed 1–30–95; 8:45 am]
BILLING CODE 6750–01–M

[File No. 932 3343]

Ninzu, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission. **ACTION:** Proposed consent agreement.

summary: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Maryland-based marketers to possess and rely upon competent and reliable scientific substantiating evidence to support any performance, benefits, efficacy, or safety claims they make for any weight loss or weight control product or program or any acupressure device they market in the future.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Brian Dahl, FTC/S-4002, Washington, DC 20580. (202) 326-3182.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following 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 sixty (60) days. Public comment is invited. Such comments or views 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)).

United States of America Before Federal Trade Commission

In the matter of Ninzu, Inc., Davish Merchandising, Inc., Order By Phone, Inc., corporations, and Michael B. Metzger, individually and as an officer and director of said corporations, File No. 932 3343.

Agreement containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/