Agents, in the past, present, or the future against the Agency pertaining to the selection of applicants for the position of immigration judge during 1994 and 1995. Each Class Member wishing to receive monetary relief of any kind must first complete the Claim Form and Release, which is Exhibit 1 to the Settlement Agreement.

Class Counsel are solely responsible for all aspects of the distribution of the monetary relief, including determining the distribution methodology set forth in Exhibit 7 to the Settlement Agreement and (by and through the appointed Claims Administrator) the determination of relief to be accorded each individual.

Except as specifically stated otherwise in the Claim Form and Release, all information provided to Class Counsel for administration and distribution of the Settlement Fund shall be treated as confidential. The confidentiality provisions in the Protective Order issued by the EEOC AJ in the administrative case will continue to govern materials used in the mediation, negotiation, and administration of the Settlement Agreement.

Under the Settlement Agreement, class counsel has designated the sum of three million nine hundred sixty-six thousand six hundred sixty-six dollars ($3,966,666) to be allocated to a Litigation Fund for attorneys' fees, costs and expenses out of the Agency's total payment of $11.5 million. In addition to attorney fees, this sum covers such items as the cost of the services of expert witnesses, deposition transcripts, travel, and mediation.

The Settlement Agreement is subject to Final Approval by the EEOC AJ. The Settlement Agreement becomes effective upon the date that the EEOC AJ issues a decision approving the Settlement and all appeals have been finally determined or the time for filing appeals has expired. Once effective, the terms of the Settlement Agreement are binding on all Class Members, even those who do not seek recovery from the Settlement Fund.

Class Counsel will be responsible for notifying Class Members of the EEOC AJ's Final Approval of the Settlement Agreement and providing Class Members with the Claim Form, Exhibit 1 to the Settlement Agreement, necessary to seek monetary relief from the Settlement Fund. This Claim Form, and the Release therein, must be executed and timely submitted in order to receive monetary relief.

No funds shall be distributed until any administrative appeals of the EEOC AJ's Fianl Approval to the EEOC have been fully and finally resolved or the time for such appeal has passed, and/or the Agency has affirmed the Settlement Agreement, and/or the Agency's opportunity to abrogate the Settlement Agreement has expired, pursuant to part VII of the Settlement Agreement.

Although the Claims Administrator will withhold monies for payments of FICA, income and employment taxes (if any), each individual receiving an award from the Settlement Fund shall be ultimately responsible for satisfying all personal tax obligations.

**Rights of Class Members**

*Seek Monetary Relief or Do Nothing*

You may seek monetary relief provided you qualify for allocation under the distribution formula and timely submit the Claim Form and Release. You must submit a signed Claim Form and Release to obtain monetary relief under the Agreement. Despite your eligibility, you may elect to not seek monetary relief.

*Object to the Settlement Agreement*

If you object to any terms within the Settlement Agreement because you believe they benefit only the Class Agents or are otherwise not fair, adequate and reasonable to the Class as a whole, you must file a written petition to vacate the Settlement Agreement, postmarked no later than 30 days from the date of this notice of resolution.[1] The petition should be sent to Administrative Judge Richard E. Schneider, Equal Employment Opportunity Commission, Washington Field Office, 1801 L St., NW., Suite 100, Washington, DC 20507–1002.

You must also send a copy of any objection to Class Counsel: David Weiser, Kator, Parks, & Weiser, P.L.L.C., 812 San Antonio St., Suite 100, Austin, Texas 78701; and to Agency Counsel: Bruce I. Waxman, Chief Counsel, Employee/Labor Relations, U.S. Department of Justice, Exeuctive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

If you do not submit your objection in a timely manner, you waive your opportunity to present such objection or otherwise appeal. Your objection must show proof that you are a Class Member, state the basis for any objection, and provide documentation to support the objection.

**Fairness Hearing**

Pursuant to 29 CFR 1614.204(g)(4), the Administrative Judge will hold a hearing to determine the fairness, adequacy, and/or reasonableness of the Settlement Agreement on November 5, 2004, at the Embassy Suites Hotels, 1900 Diagnoal Road, Alexandria, VA, 22314 at 10 a.m.

If the EEOC AJ grants final approval to this Settlement Agreement despite objections or a petition to vacate, you will only be permitted to appeal the determination of Final Approval if you filed an objection or a petition to vacate with the EEOC AJ. The EEOC AJ will determine the rights of the Class Members with respect to the matters covered by the Settlement Agreement, and all Class Members are bound by the judgment.

[FR Doc. 04–21603 Filed 9–24–04; 8:45 am]

BILLING CODE 4410–30–M

[1] The notice of resolution is dated September 15, 2004. This statement does not refer to the date of publication in the **Federal Register**.

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Syngenta AG, AstraZeneca PLC, Koniklijke Cooperatie Cosun U.A. and Advanta B.V. Competitive Impact Statement, Proposed Final Judgment and Complaint

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Syngenta AG, et al.,* Civil Case No. 04 CV–1442. On August 25, 2004, the United States filed a Complaint alleging that the proposed acquisition by Syngenta AG (''Syngenta'') of Advanta B.V. (''Advanta''), a seed company jointly owned by two European companies, would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Syngenta to divest Advanta's world-wide sugar beet seed business. Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone 202/514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (telephone: 202/307–6351).

**J. Robert Kramer, II,**

*Director of Operations, Antitrust Division.*

### Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

On May 11, 2004, Syngenta AG (''Syngenta''), Syngenta Crop Protection AG, AstraZeneca Holdings B.V., AstraZeneca PLC, Koninklijke Vanderhave Groep B.V., and Koninklijke Cooperatie Cosun U.A. entered into an agreement under which Syngenta would purchase all the assets of Advanta B.V. (''Advanta''), a seed company jointly owned by AstraZeneca Holdings B.V. and Koninklijke Vanderhave Groep, B.V. The United States filed a civil antitrust Complaint on August 25, 2004, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition in the market for sugar beet seeds suitable for growing in the United States, in violation of section 7 of the Clayton Act. As a result of this loss of competition, prices of sugar beet seeds likely would increase and fewer new or improved sugar beet seed varieties likely would be developed, to the detriment of purchasers of sugar beet seeds, sugar beet processors, and consumers of sugar beet-based products.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment and Hold Separate Stipulation and Order, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Syngenta is required divest the worldwide sugar beet seed business of Advanta. Under the terms of the proposed Final Judgment and Hold Separate Stipulation and Order, Syngenta will take certain steps to ensure that Advanta's sugar beet seed business is operated as a competitively independent, economically viable, and ongoing business concern that remains independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

*II. Description of the Events Giving Rise to the Alleged Violation*

A. Defendants and the Proposed Transaction

Syngenta is a corporation organized and existing under the laws of Switzerland, with its principal offices in Basel, Switzerland. Syngenta is the ultimate parent entity of Syngenta Crop Protection AG. Syngenta is engaged in the development, production, and sale of agricultural products, including pesticides and seeds. Syngenta's total sales in 2003 were approximately $6.6 billion. In 2003, Syngenta's sales of sugar beet seeds in the United States were approximately $10 million; its global sugar beet seed sales were $99 million.

AstraZeneca PLC is a private limited company with its headquarters in London, England. AstraZeneca PLC is the ultimate parent entity of AstraZeneca Holdings B.V. Koninklijke Cooperatie Cosun U.A. is a cooperative with its headquarters in Cosunpark 1, the Netherlands. Koninklijke Cooperatie Cosun U.A. is the ultimate parent entity of Koninklijke Vanderhave Groep B.V.

Advanta is a company incorporated in the Netherlands with its headquarters in Kapelle, the Netherlands. AstraZeneca Holdings B.V. and Koninklijke Vanderhave Groep B.V. each hold 50% of the shares of Advanta. Advanta sells various kinds of agricultural seeds throughout the world, with global sales of 444 million euros ($548 million) in 2003. Advanta sells sugar beet seeds in the United States through its business unit Interstate Seeds. Advanta also markets sugar beet seeds in the United States through collaborations with Holly Hybrids, Seedex, and Croplan. In 2003, Advanta directly and through these collaborations had sugar beet seed sales of about $7 million in the United States.

Syngenta's acquisition of Advanta, as initially agreed to by Defendants on May 11, 2004, would lessen competition substantially in the market for sugar beet seeds suitable for growing in the United States. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on August 25, 2004.

B. The Effects of the Transaction on Competition for Sugar Beet Seeds Suitable for Growing in the United States

Sugar beet seeds are used by growers to produce sugar beets, which in turn are sold to sugar beet processors, who convert them into sugar for human consumption. Sugar beet growers in the United States purchased $50 million worth of sugar beet seeds in 2003.

Sugar beets are grown under many different climatic and environmental conditions throughout the United States. These different growing regions require sugar beet varieties with different characteristics. A sugar beet seed company identifies desirable traits for each region and breeds those traits into new varieties.

Advanta and Syngenta each have invested extensively in sugar beet seed research and development programs over a number of decades. Syngenta has breeding facilities in Longmont, Colorado and in Western Europe. Advanta also has several breeding facilities, all in Europe. Both develop sugar beet varieties specifically for the unique growing conditions found in various regions of the United States. For example, a sugar beet seed variety that is suitable for cultivation in France is not likely, without further development, to be suitable or attractive to growers in Minnesota or Idaho. The seed companies have not been equally successful in developing seeds for the various growing regions of the United States, and they compete to improve their sales in each region by developing seeds with better disease resistance, yield per acre, and sugar content.

Developing marketable sugar beet seeds can take five to ten years. During this development period, the seed developer will conduct coded registration trials in the region where the beet is intended to be grown. The results of these field trials are used to determine which new varieties will be submitted to sugar beet processors for coded registration trials. Each sugar beet processor in the United States annually conducts coded registration trials to select varieties of sugar beet seeds to recommend to the growers in the processor's growing region. These trials take two to three years to complete. Sugar beet growers typically will select for purchase only seed varieties that have been tested and recommended by the sugar processors to which they intend to market their crops.

Sugar beet seed companies that have processor-approved varieties compete for sales to growers based upon price and characteristics desired by growers, for example, traits that lower production costs, offer higher yield per acre, or provide resistance to diseases and pests prevalent in the growers' geographic region.

Syngenta develops and sells sugar beet seeds in the United States under the brand name Hilleshog. Syngenta accounts for nearly 20% of all the sugar beets seed developed and sold in the United States. Advanta sells sugar beet seeds through its business unit,

Interstate Seeds, under the brand name Vanderhave. Sugar beet seeds bred from genetic material developed by Advanta are also sold in the United States by Holly Hybrids and other companies. Advanta-bred sugar beet seed account for more than 16% of the seeds sold in the United States.

The market in the United States for sugar beet seeds suitable for growing in the United States is highly concentrated. Syngenta and Advanta are two of only three significant firms that develop sugar beet seeds for cultivation in the United States. The market for sugar beet seeds suitable for growing in the United States will become substantially more concentrated if Syngenta acquires Advanta. Syngenta's acquisition of Advanta will lessen competition substantially and make more likely increased prices and a slower pace of innovation.

New entry is not likely to thwart these anticompetitive effects. Successful entry into the sugar beet seed business is difficult, time consuming, and costly. Developing a new sugar beet seed variety can take five to ten years. Completing the trial tests required by a sugar beet processing company for acceptance on the processor's approved list of varieties can take an additional two to three years.

*III. Explanation of the Proposed Final Judgment*

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in sugar beet seeds by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Syngenta, within 90 days after the filing of the Complaint, or 5 days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, Advanta's worldwide sugar beet seed business. These assets include all tangible and intangible assets necessary to run Advanta's worldwide sugar beet seed operations, including research and development facilities, customer lists and contracts, all registered plant breeders rights, and licenses. The United States may extend the period of time available to Syngenta to complete the divestiture up to an additional 120 days.

The proposed Final Judgment requires divestment of Advanta's worldwide sugar beet seed business, including two major research facilities located in Europe that focus on sugar beet seeds: a facility in Rilland-Bath, the Netherlands; and a facility in Tienen, Belgium. At these facilities, Advanta also develops sugar beet seeds with characteristics desirable for production in the United States, such as beets that are resistant to diseases found in the U.S., but not in Europe. Advanta then contracts with a U.S.-based company to grow the varieties of seeds it intends for the U.S. market. Requiring the divestiture of Advanta's worldwide sugar beet seed business, including these European operations, will insure that the acquire will have the assets necessary to continue to develop sugar beet seeds suitable for growing in the United States, as well as to produce and sell those seeds.

The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Syngenta does not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Syngenta will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition on the market for sugar beet seeds suitable for growing in the United States.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal Court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

*VI. Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Syngenta's acquisition of Advanta. The United

States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, production, and sale of sugar beet seeds suitable for growing in the United States.

*VII. Standard of Review Under the APPA for the Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1448–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainly of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

*VIII. Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Dated: September 14, 2004.

Respectfully submitted,

''/s/''

*Angela L. Hughes, D.C. Bar # 303420.*

**Final Judgment**

*Whereas,* plaintiff, United States of America, filed its Complaint on August 25, 2004, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And whereas,* the defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

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[1] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] Cf. BNS, 858 F.2d at 463 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained I the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

*And whereas,* the essence of this Final Judgment is the prompt and certain divestiture of defendant Advanta's worldwide sugar beet seed business to assure that competition is not substantially lessened;

*And whereas,* plaintiff requires defendant Syngenta to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas,* the defendants have represented to the United States that the divestiture required below can and will be made and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now therefore,* before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

*I. Jurisdiction*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

*II. Definitions*

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means Fox Paine & Company, LLC or any alternative entity or entities to whom the defendant Syngenta divests Advanta's Sugar Beet Seed Business.

B. ''Advanta'' means Advanta B.V., a company incorporated in The Netherlands with its headquarters in Kapelle, The Netherlands, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Advanta's Sugar Beet Seed Business'' means Advanta's business engaged in the research, development, licensing (as licensor or as licensee), production or sale of agricultural sugar beet seeds anywhere in the world, including the business currently conducted through Interstate Seeds, a business unit of Advanta USA, Inc., and also includes:

1. The assets set forth in Schedule A;

2. All tangible assets other than those listed in Schedule A that are used in connection with Advanta's worldwide sugar beet seed operations, including but not limited to all research and development activities; all manufacturing and agricultural equipment, tooling and fixed assets, personal property, sugar beet seed inventory, germplasm, materials, supplies, and other tangible property; all licenses, permits, and authorizations issued by any governmental organization relating to Advanta's world-wide sugar beet seed operations; all contracts, agreements, leases, commitments, certifications, and understandings relating to Advanta's worldwide sugar beet seed operations, including supply and distribution agreements; all customer lists, contracts, accounts, and credit records; all performance records and all other records relating to Advanta's research, development, licensing, production or sale of sugar beet seed worldwide, provided, however, that the Advanta sugar beet seed assets to be divested shall not include Advanta facilities or assets that are predominantly used: (1) In connection with operations related to Advanta's worldwide non-sugar beet seed activities; or (2) in connection with the carrying out of Advanta's company-wide administrative functions; and

3. All intangible assets that are utilized in connection with Advanta's worldwide sugar beet seed operations, including but not limited to all patents, registered plant breeders' rights and trademarks; licenses and sublicenses; trade names; goodwill; service marks; service names; technical information; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; all research data concerning historic and current research and development; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Advanta provides to its employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

D. ''AstraZeneca'' means AstraZeneca PLC, a private limited company with its headquarters in London, England, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures (including AstraZeneca Holdings, a joint owner of Advanta) and their directors, officers, managers, agents, and employees.

E. ''The defendants'' means (1) Advanta; (2) AstraZenece; (3) Koninklijke; and (4) Syngenta.

F. ''Fox Paine'' means Fox Paine & Company, LLC a corporation with headquarters in Foster City, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Koninklijke'' means Koninklijke Cooperatie Cosun U.A., a co-operative with its headquarters in Cosunpark 1, The Netherlands, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (including Koninklijke Vanderhave Groep B.V., a joint owner of Advanta), and their directors, officers, managers, agents, and employees.

H. ''Syngenta'' means Syngenta AG, a company incorporated in Switzerland, with headquarters in Basel, Switzerland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

*III. Applicability*

A. This Final Judgment applies to the defendants, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. The defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units or assets that include Advanta's Sugar Beet Seed Business, that the purchaser agree to be bound by the provisions of this Final Judgment, provided, however, that Syngenta need not obtain agreement from the Acquirer(s).

*IV. Divestiture*

A. Defendant Syngenta is ordered and directed, within ninety (90) calendar days after the date of filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Advanta's Sugar Beet Seed Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, except that as to the patents listed in Schedule A 2(b), defendant Syngenta will grant to the Acquirer an exclusive, royalty-free license for use in connection with sugar beets for the life of the patient plus any extensions. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed one hundred and twenty (120) calendar days in total, and shall notify the Court in each such circumstance. Defendant Syngenta agrees to use its best efforts to divest the Advanta Sugar

Beet Seed Business as expeditiously as possible.

B. In the event that the United States objects to Fox Paine as the Acquirer of Advanta's Sugar Beet Seed Business, or if for any other reason defendant Syngenta does not divest Advanta's Sugar Beet Seed Business to Fox Paine, defendant Syngenta promptly shall make known, by usual and customary means, the availability of Advanta's Sugar Beet Seed Business. Defendant Syngenta shall inform any person making inquiry regarding a possible purchase of Advanta's Sugar Beet Seed Business that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Syngenta shall offer to furnish to each prospective Acquirer, subject to customary confidentiality assurances, all information and documents relating to Advanta's Sugar Beet Seed Business customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Syngenta shall make available such information to the United States at the same time that such information is made available to any other person.

C. Syngenta shall provide the Acquirer of Advanta's Sugar Beet Seed Business and the United States information relating to the personnel involved in the research, development, licensing, production, or sale of Advanta's sugar beet seeds anywhere in the world to enable the Acquirer to make offers of employment to these individuals. Syngenta will not interfere with any negotiations by the Acquirer to employ any of the defendants' employees whose responsibilities wholly or predominantly include the research, development, licensing, production, or sale of the products of Advanta's Sugar Beet Seed Business.

D. Syngenta shall permit prospective Acquirers of Advanta's Sugar Beet Seed Business to have reasonable access to personnel and to make inspections of the physical facilities of Advanta's Sugar Beet Seed Business; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Syngenta shall warrant to the Acquirer of Advanta's Sugar Beet Seed Business that each asset will be operational on the date of divestiture.

F. The defendants shall not take any action that will impede in any way the operation or divestiture of Advanta's Sugar Beet Seed Business.

G. Syngenta shall warrant to the Acquirer of Advanta's Sugar Beet Seed Business that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of Advanta's Sugar Beet Seed Business, and that following the sale of Advanta's Sugar Beet Seed Business, the defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Advanta's Sugar Beet Seed Business.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include all of Advanta's Sugar Beet Seed Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Advanta's Sugar Beet Seed Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in researching, developing, licensing, producing and selling sugar beet seeds in the United States. Divestiture of Advanta's Sugar Beet Seed Business may be made to one or more Acquirers, provided that it is demonstrated to the sole satisfaction of the United States that the divested Sugar Beet Seed Business will remain viable and that divestiture of that business will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to section IV or section V of this Final Judgment:

1. Shall be made to an Acquirer or Acquirers that, in the United State's sole judgment, has the managerial intent and capability (including the necessary operational, technical and financial capability) to compete effectively in the research, development, licensing, production, and sale of sugar beet seeds in the United States; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and the defendants give the defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

*V. Appointment of Trustee*

A. If defendant Syngenta has not divested Advanta's Sugar Beet Seed Business within the time period specified in section IV(A), Syngenta shall notify the United States of that fact in writing. Upon application of the United States, which shall first have consulted with the European Commission, the Court shall appoint a trustee selected by the United States, and approved by the Court to effect the divestiture of Advanta's Sugar Beet Seed Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Advanta's Sugar Beet Seed Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States in its sole discretion at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of section IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendant Syngenta any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. The defendants shall not object to a sale of Advanta's Sugar Beet Seed Business by the trustee on any ground other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of Syngenta, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of Advanta's Sugar Beet Seed Business and for all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid Syngenta and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Advanta's Sugar Beet Seed Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the

personnel, books, records, and facilities of Advanta's Sugar Beet Seed Business, and the defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. The defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Advanta's Sugar Beet Seed Business and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Advanta's Sugar Beet Seed Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include, without limitation, extending the trust and the term of the trustee's appointment by a period requested by the United States.

*VI. Notice of Proposed Divestiture*

A. Within two (2) business days following execution of a definitive divestiture agreement, defendant Syngenta or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Syngenta. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Advanta's Sugar Beet Seed Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from the defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer and any other potential Acquirer. The defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendant Syngenta and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by the defendants under section V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

*VII. Financing*

The defendants shall not finance all or any part of any purchase made pursuant to section IV or V of this Final Judgment.

*VIII. Hold Separate*

Until the divestiture required by this Final Judgment has been accomplished, the defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. The defendants shall take no action that would jeopardize the divestiture order by this Court.

*IX. Affidavits*

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under section IV or V, the defendants shall deliver to the United States an affidavit that describes the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Advanta's Sugar Beet Seed Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Syngenta has taken to solicit buyers for Advanta's Sugar Beet Seed Business, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, the defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions the defendants have taken and all steps the defendants have implemented on an ongoing basis to comply with section VIII of this Final Judgment. The defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in the defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendant Syngenta shall keep all records of all efforts made to preserve Advanta's Sugar Beet Seed Business and to divest Advanta's Sugar Beet Seed Business until one year after such divestiture has been completed.

*X. Compliance Inspections*

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time

duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants, be permitted:

1. Access during the defendants' office hours to inspect and copy, or at the United States' option, to require the defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of the defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the United States, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

*XI. No Reacquisition*

Defendants Syngenta and Advanta may not reacquire any part of Advanta's Sugar Beet Seed Business during the term of this Final Judgment.

*XII. Retention of Jurisdiction*

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

*XIII. Expiration of Final Judgment*

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

*XIV. Public Interest Determination*

Entry of this Final Judgment is in the Public interest.

Date:

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

**BILLING CODE 4410–11–M**

# SCHEDULE A

1. FACILITIES TO BE DIVESTED TO THE ACQUIRER

At the Acquirer's option, all assets utilized in Advanta's Sugar Beet Seed Business located at:

West Fargo, North Dakota, USA

Kapelle, Netherlands

Rilland, Netherlands

Bergen Op Zoom, Netherlands

Tienen, Belgium

Nerac, France

Soissons, France

Gomiecourt, France

La Reunion, France

Boothby, Lincolnshire, England

Sleaford, Lincolnshire, England

Beijing, China

Cesena, Italy

Sopronhorpacs, Hungary

Leszno, Poland

Poznan, Poland

Nitra, Slovakia

Kiev, Ukraine

Moscow, Russia

Las Condes, Santiago, Chile

Paine, Chile

Marchena, Andalucia, Spain

Zaragoza, Aragon, Spain

SCHEDULE A

2(a). SUGAR BEET PATENTS TO BE DIVESTED TO THE ACQUIRER

| COUNTRY / TERRITORY | FILING DATE | APPLICATION NO. | GRANT DATE | PATENT NO. | OWNER | TITLE |
|---|---|---|---|---|---|---|
| EP | 08/18/1997 | EP19970936530 | 11/12/2003 | 0938574 | SES EUROPE N.V. S.A. | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| WO | 8/18/1997 | PCT/BE97/00092 | | W0 00/44915 | SES EUROPE N.V. S.A | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| HU | 8/18/1997 | P-9904271 | | | SES EUROPE N.V. S.A | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| US | 8/18/1997 | 09/242,216 | 10/2/2001 | 6,297,428 | SES EUROPE N.V. S.A | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| EA | 8/18/1997 | 199900144 | | | SES EUROPE N.V. S.A SES | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| SK | 8/18/1997 | PV 197-99 | | | SES EUROPE N.V. S.A | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| UA | 8/18/1997 | 99020962/M | | | SES EUROPE N.V. S.A | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| PL | 8/18/1997 | P-331837 | | | SES EUROPE N.V. S.A | P15 OR METHOD FOR INDUCING VIRAL RESISTANCE INTO A PLANT (BNYVV RESISTANCE) |
| EP | 7/9/1999 | 98870159.5 | | EP 1144551A | SES EUROPE N.V. S.A | METHOD OF GENETIC MODIFICATION OF A WILD TYPE VIRAL SEQUENCE |
| WO | 7/9/1999 | PCT/BE99/00089 | | W0 00/03025 | SES EUROPE N.V. S.A | METHOD OF GENETIC MODIFICATION OF A WILD TYPE VIRAL SEQUENCE |
| US | 7/9/1999 | 09/743,905 | | | SES EUROPE N.V. S.A | METHOD OF GENETIC MODIFICATION OF A WILD TYPE VIRAL SEQUENCE |

SCHEDULE A

| COUNTRY / TERRITORY | FILING DATE | APPLICATION NO. | GRANT DATE | PATENT NO. | OWNER | TITLE |
|---|---|---|---|---|---|---|
| WO | 01/26/2000 | PCT/EP00/00609 | | W0 00/44915 | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| EA | 01/26/2000 | 200100820 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| EE | 01/26/2000 | 0390/01 PC | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| HU | 01/26/2000 | P0105157 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| SK | 01/26/2000 | PV 1057-2001 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| US | 01/26/2000 | 09/889,938 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| UA | 01/26/2000 | 2001085927 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| PL | 01/26/2000 | P-349573 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| EP | 01/27/1999 | 992002360.0 | | | SES EUROPE N.V. S.A | METHOD FOR CONVEYING BNYVV RESISTANCE TO SUGAR BEET PLANTS (RNA1) |
| US | 7/17/2000 | 09/617,659 | | | SES EUROPE N.V. S.A | METHOD FOR OBTAINING A GENETICALLY MODIFIED PLANT (NAKED DNA) |
| EP | 10/12/2000 | 00870230.0 | | | SES EUROPE N.V. S.A | METHOD FOR OBTAINING A GENETICALLY MODIFIED PLANT (NAKED DNA) |
| WO | 11/30/2001 | PCT/GB01/05321 | | | SES EUROPE N.V. S.A | T227-1 FLANKING SEQUENCES |

SCHEDULE A

| COUNTRY / TERRITORY | FILING DATE | APPLICATION NO. | GRANT DATE | PATENT NO. | OWNER | TITLE |
|---|---|---|---|---|---|---|
| US | 11/30/2001 | 10/415,602 | | | SES EUROPE N.V. S.A | T227-1 FLANKING SEQUENCES |
| EP | 11/30/2001 | 01998654.6 | | | SES EUROPE N.V. S.A | T227-1 FLANKING SEQUENCES |
| WO | 6/25/2002 | PCT/US02/19860 | | | SES EUROPE N.V. S.A | DOUBLE FRUCTAN BEETS |
| US | 6/25/2002 | 10/415,686 | | | SES EUROPE N.V. S.A | DOUBLE FRUCTAN BEETS |
| EP | 6/25/2002 | EP02746637.4 | | | SES EUROPE N.V. S.A | DOUBLE FRUCTAN BEETS |

2(b). PATENTS WITH SUGAR BEET APPLICABILITY TO BE LICENSED TO THE ACQUIRER

| COUNTRY / TERRITORY | FILING DATE | APPLICATION NO. | GRANT DATE | PATENT NO. | OWNER | TITLE |
|---|---|---|---|---|---|---|
| NL | 2/7/1996 (priority) | 1002275 (priority) | 8/8/1997 | 1002275 | Advanta Seeds B.V | MODIFICATION OF POLYSACCHARIDES |
| WO | 2/7/1997 | PCT/NL97/00039 | | W0 97/29186 | | |
| CA | 2/7/1997 | 2,245,818 | | | | |
| EP | 2/7/1997 | 97902728.1 | | | | |
| US CNT | 3/29/2002 | 10/112,797 | | | | |
| EP | 12/28/1992 | 92204098.5 | | | Advanta Seeds B.V. | METHOD FOR OBTAINING TRANSGENIC PLANTS SHOWING MODIFIED FRUCTAN PATTERN |
| NL | 4/15/1993 | 9300646 | | | | |
| WO | 12/28/1993 | PCT/NL93/00279 | | | | |
| EP | 12/28/1993 | 94904344.2 | | | | |
| PL | 12/28/1993 | 309606 | 6/30/2000 | 178789 | | |
| RU | 12/28/1993 | 951156830 | 7/20/2000 | 2152997 | | |
| UA | 12/28/1993 | 95063042 | | | | |
| US | 8/3/1995 | 08/446,834 | 2/15/2000 | 6,025,542 | | |
| US CON | 4/13/1998 | 09/059,484 | 11/16/1999 | 5,986,173 | | |
| NL | 7/8/1994 | 9401140 | | | Advanta Seeds B.V | PRODUCTION OF OLIGOSACCHARIDES IN TRANSGENIC PLANTS |
| NL | 4/5/1995 | 1000064 | | | | |
| WO | 7/7/1995 | PCT/NL95/00241 | | | | |
| AU | 7/7/1995 | 28091/95 | 5/6/1999 | 701190 | | |
| US CON | 2/5/1998 | 09/019,385 | 11/14/2000 | 6,147,280 | | |
| US CON | 3/24/2000 | 09/534,861 | | | | |
| US | 5/2/1997 | 08/765,876 | | | | |
| NZ | 7/7/1995 | 288753 | 6/8/2000 | 288753 | | |
| EP | 7/7/1995 | 95923598 | | | | |
| JP | 7/7/1995 | 50423496 | | | | |

SCHEDULE A

3. SUGAR BEET TRADEMARKS TO BE DIVESTED TO THE ACQUIRER

| Owner | Territory | Mark | Status | Registration number (Application number) | Registration date (Application date) |
|---|---|---|---|---|---|
| Advanta Seeds B.V. | China | VDH LOGO | Registered | 581792 | 10 Feb 92 |
| Advanta Seeds B.V. | China | VANDERHAVE LOGO | Registered | 581791 | 28 May 02 |
| D.J. Van derHave B.V. | Denmark | VANDERHAVE LOGO | Registered | 8771/92 | 25 Sep 92 |
| Advanta Seeds B.V. | Finland | VANDERHAVE LOGO | Registered | 119724 | 05 Jun 92 |
| Advanta Seeds B.V. | Finland | VDH LOGO | Registered | 122449 | 05 Oct 92 |
| Advanta Seeds B.V. | Norway | VANDERHAVE LOGO | Registered | 152458 | 24 Sep 92 |
| Advanta Seeds B.V. | Norway | VDH LOGO | Registered | 152459 | 24 Sep 92 |
| Advanta Seeds B.V. | Sweden | VDH LOGO | Registered | 233845 | 30 Apr 92 |
| Advanta Seeds B.V. | Sweden | VANDERHAVE LOGO | Registered | 235329 | 29 May 92 |
| Advanta Seeds B.V. | Argentina | VDH LOGO | Application | 2438965 | 24 Jun 03 |
| Advanta Seeds B.V. | Argentina | VANDERHAVE LOGO | Registered | 1445900 | 30 Jun 93 |
| Advanta Seeds B.V. | Austria | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Austria | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Belarus | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Belarus | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Benelux | VDH LOGO | Registered | 334343 | 23 Jul 75 |
| Advanta Seeds B.V. | Benelux | VANDERHAVE LOGO | Registered | 334342 | 23 Jul 75 |

SCHEDULE A

| Owner | Territory | Mark | Status | Registration number (Application number) | Registration date (Application date) |
|---|---|---|---|---|---|
| Advanta Seeds B.V. | Benelux | VDH LOGO + BG-SUPER | Registered | 334344 | 30 Jul 75 |
| Advanta Seeds B.V. | Benelux | VDH LOGO TURBO QUATTRO | Registered | 419970 | 17 Jun 86 |
| Advanta Seeds B.V. | Benelux | VDH LOGO + QUATTRO | Registered | 420058 | 17 Jun 86 |
| Advanta Seeds B.V. | Benelux | VDH + BAAL | Registered | 407612 | 12 Apr 85 |
| Advanta Seeds B.V. | Bosnia and | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Bosnia and | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Bulgaria | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Bulgaria | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Croatia | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Croatia | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Czech Republic | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Czech Republic | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Estonia | VDH LOGO | Registered | 15880 | 01 Jun 95 |
| Advanta Seeds B.V. | Estonia | VANDERHAVE LOGO | Registered | 15652 | 04 May 95 |
| Advanta Seeds B.V. | France | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | France | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Germany | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Germany | VDH LOGO | Registered | 513122 | 17 Aug 90 |

SCHEDULE A

| Owner | Territory | Mark | Status | Registration number (Application number) | Registration date (Application date) |
|---|---|---|---|---|---|
| Advanta Seeds B.V. | Germany | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Germany | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Hungary | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Hungary | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | India | VDH LOGO | Application | 594204B | 08 Apr 93 |
| Advanta Seeds B.V. | International | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | International | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Ireland | VANDERHAVE LOGO | Registered | 144244 | 31 Jan 91 |
| Advanta Seeds B.V. | Ireland | VDH LOGO | Registered | 144245 | 31 Jan 91 |
| Advanta Seeds B.V. | Italy | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Italy | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Japan | VANDERHAVE LOGO | Registered | 2545967 | 30 Jun 93 |
| Advanta Seeds B.V. | Japan | VDH LOGO | Registered | 2577323 | 30 Sep 93 |
| Advanta Seeds B.V. | Kazakhstan | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Kazakhstan | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Korea, Democratic | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Latvia | VDH LOGO | Registered | M31122 | 20 Nov 95 |
| Advanta Seeds B.V. | Latvia | VANDERHAVE LOGO | Registered | M31358 | 20 Nov 95 |
| Advanta Seeds B.V. | Lithuania | VDH LOGO | Registered | 21380 | 18 Jan 93 |

SCHEDULE A

| Owner | Territory | Mark | Status | Registration number (Application number) | Registration date (Application date) |
|---|---|---|---|---|---|
| Advanta Seeds B.V. | Lithuania | VANDERHAVE LOGO | Registered | 21373 | 18 Jan 93 |
| Advanta Seeds B.V. | Macedonia | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Macedonia | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Moldova | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Moldova | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Morocco | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Morocco | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Portugal | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Portugal | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Romania | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Romania | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Russian Federation | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Russian Federation | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Slovakia | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Slovakia | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Slovenia | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Slovenia | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Spain | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Spain | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |

SCHEDULE A

| Owner | Territory | Mark | Status | Registration number (Application number) | Registration date (Application date) |
|---|---|---|---|---|---|
| Advanta Seeds B.V. | Switzerland | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Switzerland | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | Turkey | VANDERHAVE LOGO | Registered | 162697 | 29 Jun 95 |
| Advanta Seeds B.V. | Turkey | VDH LOGO | Registered | 162485 | 29 Jun 95 |
| Advanta Seeds B.V. | Ukraine | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V. | Ukraine | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| Advanta Seeds B.V. | U.K. | VDH LOGO | Registered | 1454536 | 01 Feb 91 |
| Advanta Seeds B.V. | U.K. | VANDERHAVE LOGO | Registered | 1454538 | 01 Feb 91 |
| Advanta Seeds B.V. | U.S.A. | VDH LOGO | Registered | 1596720 | 15 May 90 |
| Advanta Seeds B.V. | Uzbekistan | VDH LOGO | Registered | 513122 | 19 May 87 |
| Advanta Seeds B.V.. | Uzbekistan | VANDERHAVE LOGO | Registered | 513123 | 19 May 87 |
| SES Europe N.V .S.A. | Benelux | 'KIEMEND ZAAD'(IMAGE) | Registered | 313523 | 29 Nov 72 |
| SES Europe N.V .S.A. | Bosnia Herzegovina | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Germany | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | France | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | International (WIPO) | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Italy | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Yugoslavia | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |

SCHEDULE A

| Owner | Territory | Mark | Status | Registration number (Application number) | Registration date (Application date) |
|---|---|---|---|---|---|
| SES Europe N.V .S.A. | Morocco | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Austria | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Portugal | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Spain | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |
| SES Europe N.V .S.A. | Switzerland | 'KIEMEND ZAAD'(IMAGE) | Registered | R394179 | 29 Nov 72 |

SCHEDULE A

4. SUGAR BEET PLANT BREEDER RIGHTS TO BE DIVESTED TO THE ACQUIRER

| Species | Variety name | Registered owner | Country | Registration number (Application Number) | Registration date (Application date) | Status |
|---|---|---|---|---|---|---|
| Sugarbeet | Stru 2906 | Hermann Strube | Community Plant Variety Office (CPVO) | (2002/0132) | (07.03.02) | Application pending |
| Sugarbeet | Dieck 3903 | Dieckmann U. | CPVO | (2002/0116) | (28.02.02) | Application pending |
| Sugarbeet | Stru 3903 | Hermann Strube | CPVO | (2002/0133) | (07.03.02) | Application pending |
| Sugarbeet | Dieck 12 | Dieckmann U. | CPVO | 8084 | 06.08.01 | Granted |
| Sugarbeet | Dieck 13 | Dieckmann U. | CPVO | 9675 | 15.07.02 | Granted |
| Sugarbeet | Dieck 24 | Dieckmann U. | CPVO | 9677 | 15.07.02 | Granted |
| Sugarbeet | Dieck 28 | Dieckmann U. | CPVO | 9678 | 15.07.02 | Granted |
| Sugarbeet | Dieck 29 | Dieckmann U. | CPVO | 9676 | 15.07.02 | Granted |
| Sugarbeet | Stru 2901 | Dr Hermann Strube | CPVO | 10049 | 23.09.02 | Granted |
| Sugarbeet | Stru 2902 | Dr Hermann Strube | CPVO | 10050 | 23.09.02 | Granted |
| Sugarbeet | Stru 2903 | Hermann Strube | CPVO | 10547 | 10.02.03 | Granted |
| Sugarbeet | Stru 4904 | Hermann Strube | CPVO | (1999/1837) | (15.12.99) | Application pending |
| Sugarbeet | Stru 4903 | Hermann Strube | CPVO | (1999/1836) | (15.12.99) | Application pending |
| Sugarbeet | F99201 | Van der Have Sugar Beet Seed | CPVO | 8080 | 06.08.01 | Granted |
| Sugarbeet | F99202 | Van der Have Sugar Beet Seed | CPVO | 9067 | 02.04.02 | Granted |
| Sugarbeet | F99203 | Van der Have Sugar Beet Seed | CPVO | 9068 | 02.04.02 | Granted |
| Sugarbeet | M99202 | Van der Have Sugar Beet Seed | CPVO | 8079 | 06.08.01 | Granted |
| Sugarbeet | M99401 | Van der Have Sugar Beet Seed | CPVO | 9664 | 15.07.02 | Granted |
| Sugarbeet | M99402 | Van der Have Sugar Beet Seed | CPVO | 8203 | 06.08.01 | Granted |
| Sugarbeet | F01204 | Van der Have Sugar Beet Seed | CPVO | (2001/1309) | (13.08.01) | Application pending |
| Sugarbeet | SES001 | SES Europe N.V. S.A. | CPVO | (2001/0635) | (06.04.01) | Application pending |
| Sugarbeet | SES002 | SES Europe N.V. S.A. | CPVO | (2001/0636) | (06.04.01) | Application pending |
| Sugarbeet | SES003 | SES Europe N.V. S.A. | CPVO | (2001/0637) | (06.04.01) | Application pending |
| Sugarbeet | SES004 | SES Europe N.V. S.A. | CPVO | (2001/0638) | (06.04.01) | Application pending |
| Sugarbeet | SES005 | SES Europe N.V. S.A. | CPVO | (2001/0639) | (06.04.01) | Application pending |
| Sugarbeet | SES006 | SES Europe N.V. S.A. | CPVO | (2001/0640) | (06.04.01) | Application pending |
| Sugarbeet | SES007 | SES Europe N.V. S.A. | CPVO | (20010641) | (06.04.01) | Application pending |
| Sugarbeet | SES008 | SES Europe N.V. S.A. | CPVO | ()2001/0642 | (06.04.01) | Application pending |
| Sugarbeet | SES009 | SES Europe N.V. S.A. | CPVO | (2001/0643) | (06.04.01) | Application pending |



BILLING CODE 4410–11–C

**Certificate of Service**

I hereby certify that I have caused a copy of the foregoing Complaint, proposed final Judgment, and Hold Separate Stipulation and Order to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid:

*Counsel for Defendant Syngenta AG:*

Kenneth S. Prince, Esquire, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022–6069.

*Counsel for Defendants AstraZeneca plc, Koninklijke Cooperatie Cosun U.A., and Advanta B.V.:*

Paul W. Bartel, II, Davis Polk & Wardwell, 450 Lexington Avenue. New York, NY 10017.

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Angela L. Hughes,
*Member of the DC Bar, #303420, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Suite 500 Washington, DC 20530, (202) 307–6410, (202) 307–2784 (Fax).*

**Complaint**

The United States of America, acting under direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants and complains and alleges as follows:

1 . On May 11, 2004, Syngenta Crop Protection AG, Syngenta AG (''Syngenta''), AstraZeneca Holdings B.V., AstraZeneca PLC Koninklijke Vanderhave Groep B.V., and Koninklijke Cooperatie Cosun U.A. entered into an agreement under which Syngenta would purchase all the assets of Advanta B.V. (''Advanta''), a seed company jointly owned by AstraZeneca Holdings B.V. and Koninklijke Vanderhave Groep, V.B. The United States seeks to enjoin this transaction because it would significantly increase Syngenta's share of the highly concentrated market for sugar beet seeds in the United States, substantially lessening competition in that market.

2. Syngenta and Advanta are two of only three companies that develop virtually all of the sugar beet seeds sold in the United States. With Advanta eliminated as an independent competitor, competition for the development of new, improved varieties of sugar beets seeds will be reduced and anticompetitive coordination between the remaining two significant sugar beet seed companies will become more likely.

3. If Syngenta acquires Advanta, fewer new or improved varieties of sugar beet seeds are likely to be developed, or will be developed more slowly, and prices of sugar beet seeds are likely to increase. As a result, purchasers of sugar beet seeds and ultimate consumers of sugar beets will be harmed. The proposed acquisition therefore violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

*I. Jurisdiction and Venue*

4. This Complaint is filed and this action is instituted under section 15 of the Clayton Act, 15 U.S.C. 25, in order to prevent and restrain the defendants from violating section 7 of the Clayton Act, 15 U.S.C. 18.

5. Defendants are engaged in the development, production, and sale of agricultural seeds, including sugar beet seeds, in the flow of interstate commerce. The defendants' activities in the development, production, and sale of agricultural seeds, including sugar beet seeds, substantially affect interstate commerce. The Court has subject matter jurisdiction over this action. 28 U.S.C. 1331, 1337(a) and 1345.

6. The defendants have consented to personal jurisdiction and venue in this judicial district.

*II. The Defendants*

7. Syngenta is a corporation organized and existing under the laws of Switzerland, with its principal offices in Basel, Switzerland. Through its subsidiary, Syngenta Crop Protection AG, Syngenta is engaged in the manufacture and sale of agriculture-related products, including crop protection products and seeds. Syngenta is the third largest agricultural seed company in the world, with global seed sales of $1 billion in 2003. In 2003, Syngenta's sales of sugar beet seeds in the United States, which are marketed under the Hilleshog brand, were approximately $10 million.

8. Advanta is a company incorporated in The Netherlands with its headquarters in Kapelle, The Netherlands. Advanta is the fifth-largest agricultural seed company in the world. Advanta sells its sugar beet seeds in the United States through its business unit Interstate Seeds. Advanta-bred sugar beet seeds are also marketed in the United States through collaborations with Holly Hybrids, Seedex, and Croplan. In 2003, Advanta, directly and through these collaborations, had sugar beet seed sales of about $7 million in the United States.

9. AstraZeneca PLC is a private limited company with its headquarters in London, England. AstraZeneca PLC is the ultimate parent entity of AstraZeneca Holdings B.V., which holds 50% of the shares of Advanta.

10. Koninklijke Cooperatie Cosun U.A. is a co-operative with its headquarters in Cosunpark 1, the Netherlands. Koninklijke Cooperatie Cosun U.A. is the ultimate parent entity of Koninklijke Vanderhave Groep B.V., which holds 50% of the shares of Advanta.

*III. Trade and Commerce*

11. Sugar beet seeds are used by growers to produce sugar beets, which in turn are sold to sugar beet processors, who convert them into sugar for human consumption. Sugar beet growers in the United States purchased $50 million worth of sugar beet seeds in 2003.

12. Sugar beets are grown under many different climatic and environmental conditions throughout the United States. These different growing regions require sugar beet varieties with different characteristics. A sugar beet seed company identifies desirable traits for each region and breeds those traits into new varieties.

13. Advanta and Syngenta each have invested extensively in sugar beet seed research and breeding programs over a number of decades. Syngenta has breeding facilities in Longmont, Colorado and in Western Europe. Advanta also has several breeding facilities, all in Europe. Both develop sugar beet varieties specifically for the unique growing conditions found in various regions of the United States. For example, a sugar beet seed variety that is suitable for cultivation in France is not likely, without further breeding, to be suitable or attractive to growers in Minnesota or Idaho. The seed companies have not been equally successful in developing seeds for the various growing regions of the United States, and they compete to improve their sales in each region by further development.

14. Developing marketable sugar beet seeds can take five to ten years. During this development period, the seed developer will conduct field trials in the region where the beet is intended to be grown. The results of these field trials are used to determine which new varieties will be submitted to sugar beet processors for coded registration trials.

15. Each sugar beet processor in the United States annually conducts trials to select varieties of sugar beet seeds to recommend to the growers in the processor's growing region. These trials take two to four years to complete. Sugar beet growers typically will only select for purchase seed varieties that have been tested and approved by the sugar processors to which they intend to market their crops.

16. Sugar beet seed companies that have processor-approved varieties compete for sales to growers based upon

price and characteristics desired by growers—for example, traits that lower production costs, offer higher yield per acre or provide resistance to diseases and pests prevalent in the growers' geographic region.

*IV. The Relevant Markets*

17. A small but significant increase in the price of sugar beet seeds would not cause growers of sugar beets in the United States to shift to other crops and use sufficiently fewer sugar beet seeds so as to make such a price increase unprofitable. Accordingly, sugar beet seeds suitable for growing in the United States is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. The United states is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

*V. Anticompetitive Effects*

18. The market for sugar beet seeds suitable for growing in the United States is highly concentrated. Only three major companies—Syngenta, Advanta, and one other—breed sugar beet seeds for cultivation in the United States.

19. Syngenta-developed sugar beet seeds account for nearly 20% of all the sugar beet seeds sold in the United States.

20. Advanta-developed sugar beet seeds account for more than 16% of the sugar beet seeds sold in the United States.

21. Purchasers of sugar beet seeds have benefited from competition between Syngenta and Advanta through lower prices and improved products.

22. The sugar beet seed market in the United States will become substantially more concentrated if Syngenta acquires Advanta. The number of significant sugar beet seed developers will be reduced from three to two. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in appendix A), the proposed transaction will increase the HHI in sugar beet seeds by more than 600 points to a post-acquisition level of over 5000.

23. The proposed transaction will substantially lessen competition for the research and development of sugar beet seeds suitable for cultivation in the United States. With only two major companies competing to develop new and better seeds, less innovation is likely.

24. The proposed transaction would make it more likely that the two remaining major seed companies will engage in anticompetitive coordination to increase prices or reduce production.

*VI. Entry*

25. Successful entry would not be timely, likely, or sufficient to thwart these anticompetitive effects.

26. Developing a new sugar beet seed variety takes five to ten years. Completing the trial tests required by sugar beet processing companies can take two to three additional years.

*VII. Violation Alleged*

27. The effect of Syngenta's proposed acquisition of Advanta may be to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

28. Unless restrainted, the transaction likely will have the following effects, among others:

a. Competition generally in sugar beet seeds suitable for growing in the United States will be substantially lessened;

b. Actual competition between Syngenta and Advanta will be eliminated;

c. Innovation in development of sugar beet seeds will be reduced; and

d. Prices for sugar beet seeds will increase.

29. Unless prevented, the acquisition of Advanta by Syngenta would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

*VIII. Requested Relief*

Wherefore, Plaintiff requests:

1. That the proposed acquisition by Syngenta of Advanta be adjudged and decreed to be unlawful and to violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

2. That defendants and all persons acting on their behalf be permanently enjoined from and restrained from carrying out the agreement dated May 11, 2004, or from entering into or carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Syngenta and Advanta;

3. That plaintiff be awarded its costs of this action; and

4. That plaintiff have such other relief as the Court may deem just and proper.

Dated: August 25, 2004.

Respectfully submitted,

R. Hewitt Pate (DC Bar #473598)
*Assistant Attorney General.*

J. Bruce McDonald
*Deputy Assistant Attorney General.*

Dorothy B. Fountain
*Deputy Director of Operations and Civil Enforcement.*

Roger W. Fones (DC Bar #303255)
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Angela L. Hughes (DC Bar #303420)

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J. David McDowell
*Trial Attorneys, United States Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 7th Street, NW., Suite 500, Washington, DC 20530 Telephone: (202) 307–6410, Facsimile: (202) 307–2784.*

**Appendix A—Definition of HHI**

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

[FR Doc. 04–21548 Filed 9–24–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the