

***Case No COMP/M.3465 -
SYNGENTA CP /
ADVANTA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 17/08/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17-VIII-2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) with 6(2)
DECISION

To the notifying party :

Dear Sir/Madam,

**Subject: Case No COMP/M.3465 – Syngenta CP /Advanta
Notification of 02.07.2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02 July 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Syngenta Crop Protection AG (“Syngenta CP”, Switzerland) belonging to Syngenta AG (“Syngenta”, Switzerland) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Advanta B.V. (“Advanta”, Netherlands) by way of purchase of shares.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

2. Syngenta and its subsidiaries are a multinational group of companies operating worldwide in the agribusiness. Its focus is on crop protection and seeds. Syngenta CP is a 100% subsidiary of Syngenta. Syngenta was created by the spin off and merger of the crop protection business of Novartis AG and AstraZeneca plc and the seeds business of Novartis AG.²
3. Advanta and its subsidiaries are active in breeding, production, processing, packaging and sale of various kinds of seeds worldwide. Advanta was created as a joint venture by the concentration between Zeneca Limited and Cooperatieve Suiker Unie U.A.³ Advanta operates across 3 key regions: 1) North America, 2) Europe and 3) Australia, Asia and Africa. Advanta's European operations are managed by a European management team. The three main European crops are: 1) sugar beet seed, which is managed from Tienen (Belgium) 2) maize seed, which is managed from Kapelle (the Netherlands) and 3) seed for grasses, which are managed, alongside maize, from Kapelle (the Netherlands).

II. THE OPERATION

4. The notified transaction consists in the transfer of 100% of the shares in Advanta B.V. from AstraZeneca Holdings B.V. and Koninklijke VanderHave Groep B.V. Syngenta CP and the vendors have signed a binding agreement ("SPA") on 11.05.2004.
5. The notifying party states that the ultimate purpose of the whole transaction is for Syngenta CP to acquire and retain the North American maize, soybean and cereals business units of Advanta, this includes a company incorporated in Europe which holds a number of IP rights (maize germplasm, a molecular marker database, know-how and probes, specific maize transformation technology and IT systems) primarily used for the North American business. The notifying party intends to immediately re-sell the rest of the Advanta business, which includes the European, Australian, Asian and African operations.

III. CONCENTRATION

6. As Syngenta CP will, by the transfer of 100% of the shares in Advanta B.V., acquire sole control in Advanta, the transaction constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The concentration does not meet the thresholds set out in Articles 1(2) and 1(3) of the Merger Regulation. As stated above, the case has been referred to the Commission upon Syngenta's request under Article 4(5) of the Merger Regulation and is therefore deemed to have a Community dimension.
8. According to Article 8(3) of the EEA Agreement and Protocol 3 to that Agreement, seed products are among those that are not covered by the EEA Agreement.

² See Case No.COMP/M.1806 – Novartis/AstraZeneca, decision of 26 July 2000.

³ See Case No. COMP/M.556 – Zeneca/Vanderhave, decision of 9 April 1996.

Consequently, this decision does not relate to the effects of the notified transaction with regard to the markets for seed products in Norway, Iceland and Liechtenstein. However, the EEA Agreement does apply to seed treatment products.

V. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

9. The transaction affects several markets for sugar beet seeds, maize seeds, sunflower seeds, oilseed rape seeds, spring barley seeds, pea seeds and onion seeds in the EU, as well as markets for seed treatment products in the EEA.

Seed markets

(i) *Relevant product market*

10. The seed industry can in general be described as a two stage industry: breeding and commercial production of seeds. The first stage comprises the breeding and biotechnology programmes leading to the development of seed varieties that are produced as "parent seeds." Breeders attempt to develop new varieties with desirable characteristics low production cost, high yield, low impurities, and resistance to disease.
11. The second stage comprises production of commercial quantities of the seed, including cleaning and processing, chemical treatment and pelleting, marketing and distribution. These activities are less specialised and can be successfully carried out on a smaller scale by producer firms under licence agreements or contracts with breeders. In some instances, parent seed is licensed by breeders to other seed companies which may reproduce the original seed or produce their own hybrids. Thus, seed production is carried out by various categories of producers such as breeders (which may be active as producers as well); stand alone producers; and, in the case of sugar beet seed, sugar refiners.
12. In previous decisions⁴, the Commission has considered that the development and breeding of seed varieties and the production and sale of seeds can in general be included in one single relevant product market. The market investigation in the present case has also confirmed this.
13. Furthermore, as the various kinds of seeds are not mutually substitutable, seeds for different crops have been held to constitute separate product markets. The same conclusions apply in the present case. The transaction affects several seeds markets such as sugar beet seeds, maize seeds, sunflower seeds, oilseed rape seeds, spring barley seeds, pea seeds and onion seeds.
14. As explained below, a further sub-segmentation of certain of these crops might be possible.
15. Maize seeds: the notifying party submits that the market for maize seeds could be divided into grain and silage maize. Grain maize is mainly used for foodstuff and dominates in the south, while silage seeds is generally used as forage for cattle and is

⁴ See Case No. IV/M.556 - Zeneca/Vanderhave, decision of 9 April 1996, Case No. IV/M.1497 - Novartis/Maïsadour, decision of 30 June 1999, and Case No. IV/M.1512 - DuPont/Pioneer Hi-Bred International Commission, decision of 21 June 1999.

more commonly sown in the north. However, the germplasm on the basis of which the two types of seeds are bred are identical for both types. Furthermore, to a large extent, the climatic conditions allow the farmers to grow both types of maize. There are also some overlaps regarding its end use for animal feeding. Finally, most of the suppliers of maize seeds in Europe are active in both the silage and grain maize seed segments. Thus, for the purpose of this notification, a further subdivision of the maize market into grain maize and silage maize is not appropriate.

16. Oilseed rape seeds: the notifying party submits that a further sub-segmentation of oilseed rape seeds into winter oilseed rape and spring oilseed rape seeds is possible. The main difference is that winter and spring oilseed rape seeds are sown in different times of the year. The predominant oilseed rape used in Europe is winter oilseed rape, and spring oilseed rape seed is used only to a very limited extent in France, Germany, Poland and the United Kingdom. The notifying party argues that both winter and spring oilseed rape seeds are part of the same market because for both seeds the customers are identical and the crops are largely substitutable. Further, the notifying party claims that the winter type can be sown anywhere in Europe due to its favourable sowing and growing conditions. The market investigation has not provided a clear answer to a possible segmentation of the oilseed rape seed market. The final delineation of the relevant product market for oilseed rape seeds can be left open as the notified transaction would not raise serious doubts under any possible market definition.
17. Pea seeds: there are two types of pea crop: vining peas (also called garden peas) and combining peas. Vining peas are smaller and sweeter varieties containing less starch and more sugar. They are mainly sold to large food processors for commercial freezing and canning; for that reason they need to be grown and harvested at a short distance from the processing factories where they will be taken immediately after harvesting by farmers. Combining peas are harvested dry and at full maturity and are mainly used for animal feed and pet foods. The market investigation does not provide a clear response as to whether the market should be further sub-divided. However, it is indicated that suppliers tend to focus on specific segments of the market and it does not appear that all or the majority of the pea seed producers are present in both segments or are able to produce both varieties. For instance, Syngenta does not produce combining peas. From the customers' perspective, the sowing and harvest conditions are different. Further, end-customers are also different and there is no indication that the final use of both varieties overlap. Thus, vining peas, where both parties to the concentration are active, can be regarded as a distinct product market for the assessment of the competitive effect of the proposed transaction.
18. Onion seeds: There are two main types of onion crop: spring onions (also called bunching onions) and common or ordinary onions. Spring onions do not form a real bulb and have a green leaf part and a blanched part. They are normally sold fresh to end consumers. Common onions have a single large bulb, and there are a number of variations in terms of size and colour. They are sold to food processors as well as to supermarkets. There are thus strong indications that spring onions constitute a separate market, but for the purpose of this decision, this question may be left open as neither Syngenta nor Advanta supply such seeds.
19. There are different varieties of common onions. Advanta and Syngenta are both active in the supply of long day and intermediate variety onion seeds. The length of day corresponds to the amount of daylight required to grow the onion variety. The

distinction is not clear cut with long day varieties requiring 15+ hours of sunlight and intermediate requiring 14-16 hours of daylight. These varieties are planted in Northern Europe where there is more daylight in the spring/summer. So for example, in Belgium, the Netherlands, the UK and Sweden all or virtually all seeds sold are long day whereas in France, Austria and Germany 10-20% of seed sold are intermediate. The notifying party does not consider that the different varieties, except from spring onions, should constitute separate product markets as from an end-user perspective the onions are fully substitutable. Furthermore, in some countries given the overlapping coverage of long day and intermediate varieties there is also supply-side substitutability between them. In such countries it is therefore particularly unlikely that long day and intermediate onion seeds would constitute separate markets.

20. However, the question whether the market for onions should be further sub-divided into different varieties can be left open as the notified transaction would not raise serious doubts on any possible market definition
21. Advanta and Syngenta also supply seeds for onion sets. An onion set is a small onion bulb which is grown densely and harvested quickly as a small bulb, and then dried. The advantage to the grower in planting onion sets is timing, as onions produced from onion sets mature more quickly.
22. The notifying party submits that seeds for onion sets and onion seeds are substitutable from the perspective of the grower (the only difference is that onions produced from onion sets mature more quickly), as well as the end product (the onion) is substitutable from demand-side. There are thus strong indications that seeds for onion sets and onion seeds should be included in the same market, however, for the purpose of this decision, this question may be left open as the transaction would not raise competition concerns under any market definition.

(ii) *Relevant geographical market*

23. In a previous decision⁵, the Commission has held that there are indications that the markets for seeds are national markets. In particular, it was pointed out that prices and supply conditions to final consumers differ in various Member States, and that commercial seed is, to a substantial degree, customised (e.g., disease resistance, chemical treatments, size of seeds, etc.) to suit the conditions of each country or regional area.
24. In addition, official trials are conducted in the respective Member States to assure quality control. Before seeds can be sold, they must pass two series of tests: (i) DUS: distinctness, uniformity and stability; and (ii) VCU: value for cultivation and use. The statistical results of these trials are made available to national industry associations which will (on behalf of farmers) carry out further trials from which they produce "Recommended Lists" indicating preferred varieties based on their performance characteristics. As a result, customers normally buy seeds that are adapted to local soil and climatic conditions from producers operating in their own Member State.

⁵ Case No. IV/M.556 - Zeneca/Vanderhave, decision of 9 April 1996.

25. Nevertheless, the notifying party recognises an increasing “Europeanization“ of the seeds business and state that that seeds markets are (at least increasingly) Community-wide, which has also been expressed in a Commission decision⁶. The reason being that once the seed producer has obtained a national registration in a Member State, the new variety will be included in the “European list”. Inclusion in the European list allows the producer to sell the respective variety in all EU Member States. There are no indications that the relevant markets would be worldwide in scope.
26. The market investigation carried out in the present case widely agrees with the national market definition, although certain respondents also recognize a certain further Europeanization of the seeds markets. However, it can be concluded that there are still strong indicators, in particular the existence of national registration and/or national recommendation lists, that the relevant geographic market for seeds should still be viewed as national.

Seed treatment market

(i) Relevant product market

27. Seed treatment means the treatment (“dressing”) of seeds with specific formulations in order to protect the seeds in the early stages of their development. Seed treatment therefore targets seed or soil born diseases or soil dwelling or early season insects. The seed is dressed before it is planted. Seed treatment formulations consist of either fungicides or insecticides or a combination of both, but not of herbicides because these are agents for weed control. Although seed treatment formulations are mostly based on the same active ingredients, which are also used for the formulation of insecticides and fungicides for crop protection, they contain additional specific inerts such as additives, polymers, anti-freezing agents, dyes or pigments, in order to ensure that the dressed seeds are marked as such or the seed dressing sticks to the seeds. Seed treatment producers such as Syngenta sell their products either to seed companies such as Advanta, to wholesalers, to dealers/co-operatives or directly to large farmers.
28. In the most recent decisions, the Commission has argued that seed treatment constitutes a separate product market rather than a particular type of application of insecticides and fungicides.⁷ It has also been held that the seed treatment area may be split into insecticides and fungicides, and that these two sectors may again be split by crop. The notifying party has adopted the product market definition which has been applied in previous Commission decisions. Although in the Ciba-Geigy/Sandoz decision⁸ it was concluded that there were no separate markets for seed treatment, the market investigation in the present case does not support this. To the contrary, the market investigation has provided evidence, in line with more recent decisions such as Bayer/Aventis Crop Science⁹, that seed treatment constitutes a separate market and that this market may be split into insecticides and fungicides and may again be split by

⁶ Case No. IV/M.1420 - BASF/Svalöf Weibull, decision of 3 March 1999.

⁷ See Case No. COMP/M. 1806 - AstraZeneca/Novartis, decision of 26 July 2000, Case No. COMP/M.2547 - Bayer/Aventis Crop Science, decision of 17 April 2002.

⁸ Case No M. 737 -Ciba-Geigy/Sandoz, decision of 17 July 1996.

⁹ Case No. COMP/M.2547 -Bayer/Aventis Crop Science, decision of 17 April 2002.

crop. The investigation has confirmed that crop protection and seed treatment products target different pests, registration regulations differ and the customers and distribution channels are not identical. Therefore for the purpose of this decision the above mentioned segmentation can be applied.

(ii) Relevant geographic market

29. As regards the geographic scope of the relevant markets, the Commission has in previous decisions considered markets to be national.¹⁰ The notifying party believes that this view is incompatible with past achievements to harmonise product characteristics and registration requirements on an EEA-wide basis and to promote parallel trade between EEA states and are of the opinion that the seed treatment markets should be defined as being at least EEA-wide.
30. The market investigation has indicated to a large extent that the seed treatment markets are still national. Although, some customers and competitors are of the opinion that an EEA-wide definition of the seed treatment market could be considered, there are indicators (in particular the existence of national registration and/or national recommendation lists) that the relevant geographic market for seed treatments could be viewed as national. However, as the transaction does not lead to any serious doubts in these markets, the exact definition of the geographic market can be left open.

VI. COMPETITIVE ASSESSMENT

31. The transaction will result in both horizontally and vertically affected markets. Syngenta and Advanta have overlapping business activities leading to affected markets in the following seeds businesses: sugar beet, maize, oilseed rape (and winter oilseed rape), sunflower, spring barley, peas (and vining peas) and onions. Moreover, the following seed treatment markets could be considered vertically affected: fungicides for maize, fungicides for sunflowers, insecticides for sugar beet, fungicides for vegetables, fungicides for cereals, and insecticides for cereals.

(i) Horizontal impact of the transaction

Sugar beet seeds

32. In the market for seeds for sugar beet, the proposed transaction would result in affected markets in 17 countries in the EU.
33. On a national level, the combined market share (in value, 2003) of the parties would be: Austria 30-40%, Belgium 50-60%, Czech Republic 20-30%, Denmark 20-30%, Finland 70-80%, France 40-50%, Hungary 30-40%, Ireland 15-20%, Italy 40-50%, Latvia 30-40%, Lithuania 15-20%, Netherlands 60-70%, Poland 20-30%, Portugal 60-70%, Slovakia 30-40%, Slovenia 15-20%, Spain 50-60%. On a European level, the parties combined market share would be 30-40%.
34. The operation would, in particular, lead to high combined market shares and significant overlaps in the following countries: 50-60% in Belgium (Syngenta [10-15]%, Advanta 40-50%), 70-80% in Finland (Syngenta [30-40]%, Advanta 40-50%),

¹⁰ See Case No COMP/M.2547 - Bayer/Aventis Crop Science, decision of 17 April 2002, Case No COMP/M.1806 - AstraZeneca/Novartis, decision of 26 July 2000.

40-50% in France (Syngenta [15-20]%, Advanta 30-40%), 60-70% in the Netherlands (Syngenta [15-20]%, Advanta 50-60%), 60-70% in Portugal (Syngenta [15-20]%, Advanta 50-60%), and 50-60% in Spain (Syngenta [20-30]%, Advanta 20-30%). In an overall EU market, the parties combined market share would be 30-40% (Syngenta [20-30]%, Advanta 15-20%).

35. In the sugar beet seeds markets in Austria, Greece, Ireland and a proportion of the market in Italy, the parties (to the extent they are active there) license their basic seeds to the local sugar industry instead of supplying commercial seeds. The sugar industry then produces the commercial seeds itself and sells them to the local farmers. The parties receive royalties for each unit sold by the sugar industry. Such royalties are in the range of 10 to 30% of the selling price. As a consequence, in the sugar beet seeds' markets in Austria, Greece, Ireland, and Italy there is a relatively large discrepancy between the market share in volume and the market share in value (which is limited to only 10% to 30% of the market value corresponding to the reported volume). The notifying party is of the opinion that value market shares are more economically important than volume shares, however volume market shares cannot be disregarded when there is such a large discrepancy between the figures.
36. Thus, based on volume, the parties' market share would be significantly different in Austria, Greece, Ireland and Italy. In Austria, Ireland and Italy, the position of the parties would create additional concerns since the combined market share of the parties would be 50-60% in Austria (Syngenta [40-50]%, Advanta 15-20%), 50-60% in Ireland (Syngenta [40-50]%, Advanta 10-15%) and, 50-60% in Italy (Syngenta [30-40]%, Advanta 20-30%). No overlaps would be created in Greece, since Syngenta is not active there.
37. The notifying party submits that market shares are very volatile in the market for sugar beet seeds. The reason being that recommendations are of key importance for the market performance of the sugar beet seed products, as sugar beet seeds which are not listed in recommendation lists will normally not be saleable at all. Therefore, the launch of new varieties which are included in the recommendation lists usually leads to substantial increases in market share, and recommendations lists are issued each year. On the other hand, the varieties which are replaced on the recommendation list will drop out of the market. Against this background, the notifying party claims that the current market shares only give a rough idea of the market power of a sugar beet seed producer.
38. On the one hand, certain data submitted by the notifying party show some fluctuation of market shares on a national level, since recommendations are made on a national basis (when looking at market shares based on value for the period 2001-2003), in particular with regard to Portugal and Spain. However, these changes show recent considerable increases of the parties' shares (for Portugal from 20-30% to 60-70%, and for Spain from 30-40% to 50-60%). The impact of a single national recommendation on the European market is limited. On the other hand, other data and information provided by the notifying party show that increases and decreases in market shares in the seeds business follow rather slow cycles and do not occur abruptly, which is related to the necessary time frame for the development, breeding, testing and commercialisation of a new variety.
39. The breeding and testing phase for new hybrids, such as sugar beet seeds, is 7-10 years, the commercial preparation phase 1-2 years, and the commercial phase around 7

years (with peak-sales for 3-4 years, followed by a declining period until phase out). In addition, the success of a newly launched variety can be foiled in its entirety by a slightly better variety of a competitor. Therefore, it is not likely that market shares would differ to such a significant degree from one year to another year as to disregard the high combined market shares of the parties.

40. In the sugar beet seeds business, there are mainly [3-5] major sugar beet seed companies active in breeding in the EU: *[name(s) of competitor(s)]*, Advanta and Syngenta. About 10 companies market sugar beet seeds based on license agreements with the [3-5] main breeders.
41. On a European level, there are 5 major players on the sugar beet seeds market: KWS ([20-30%]), Syngenta ([20-30%]), Advanta (15-20%), Strube Dieckmann (10-15%) and Danisco ([2-5%]). *[Specifies further the roles of some of these companies]*.
42. On a national level (based on value), Advanta is already prior to the proposed acquisition the market leader in Belgium, Finland, Netherlands, Portugal and Spain, and this position will be strengthened following the completion of the operation. The parties' combined share would be 50-60% in Belgium, 70-80% in Finland, 40-50% in France, 60-70% in the Netherlands, 60-70% in Portugal and 50-60% in Spain. The main competitor is KWS with [40-50]% in Belgium, [15-20]% in Finland, [30-40]% in France, [30-40]% in the Netherlands, [10-15]% in Portugal and [15-20]% in Spain. This means that in Finland, Netherlands, Portugal and Spain, the new combined entity would be more than double or three times the size of its closest competitor. In Belgium and France the parties would be the market leader. The remaining market shares would almost entirely be held by KWS.
43. Considering those national markets with significant differences and thus additional concerns when looking at volume figures, i.e. Austria, Ireland and Italy, Syngenta is already prior to the proposed acquisition the market leader (a position which will be further enhanced following the acquisition), with more than double the market share of its closest competitor. As stated above, the parties' combined market share by volume would be 50-60% in Austria (Syngenta [40-50]%, Advanta 15-20%), 50-60% in Ireland (Syngenta [40-50]%, Advanta 10-15%) and 50-60% in Italy (Syngenta [30-40]%, Advanta 20-30%). The closest competitor is again KWS with [15-20]% in Austria, [10-15]% in Ireland and [20-30]% in Italy.
44. In addition to the high combined market shares and significant overlaps of the parties in all mentioned markets, the sugar beet market is already an highly concentrated market. The proposed operation will result in an appreciable increase of such concentration by bringing together two of the [3-5] major European sugar beet breeders, which are also the main suppliers of sugar beet seeds in Europe.
45. The investigation has indicated that *[specifies this sentence]* reducing the number of competitors in such an already highly concentrated market would lessen the ability of other companies to compete and thus act as competitive constraints on the new entity.
46. Moreover, the seeds industry is a research-based industry (R&D plays a crucial role in the seed industry) and competition can be described more as "competition for the market" than "competition in the market". Companies which are active in the seeds business compete to develop a variety that will be the sole choice of the farmers. The possibility of creating a new variety is defined and limited by the source material available. This source material is called germplasm.

47. The notifying party states that access to germplasm constitutes the intrinsic value and asset of a seed developer. The sugar beet seed business is characterised by a narrow germplasm base. Apart from the [3-5] major breeders (Syngenta, Advanta, *[name(s) of competitor(s)]*), there are some other, mainly local breeders, with proprietary germplasm. The major breeders, such as Syngenta, Advanta, *[name(s) of competitor(s)]*, license their products to other sugar beet seed companies which are not carrying out significant research in this area. Considering the importance of recommendation lists, R&D is of particular interest in the sugar beet seeds business (for example the notifying party submits that Syngenta spends [...] % of its yearly turnover generated with sugar beet seeds on R&D).
48. The notifying party also submits that economies of scale play a considerable role for R&D in the seeds industry, and the market investigation has also indicated that the new entity will benefit from the economy of scale to enlarge its market position in the future.
49. Given the limited number of sugar beet suppliers and breeders (of which Syngenta and Advanta are two of the most important players) in combination with the importance of R&D in the sugar beet seeds industry, the proposed acquisition will not only create a new market leader on the European sugar beet seeds market, but will also strengthen the parties leading positions on the above mentioned national levels. Thus, it is likely to significantly impede effective competition in those markets identified in paragraphs 34 and 36 in which the operation creates significant overlaps and high combined market shares, either by creating a dominant position of the merged entity or (in the case of the Belgian and French markets) by non-coordinated effects in a highly concentrated oligopolistic market.
50. The notifying party has submitted that the market for sugar beet seeds is characterised by a narrow customer base and thus strong bargaining power vis-à-vis the sugar beet seeds producers. The main group of customers is the sugar industry, and the seed companies normally sell their commercial seeds to the sugar industry which then acts as a distributor to the growers.
51. The market investigation has confirmed that the sugar companies exercise a relatively strong bargaining power vis-à-vis the sugar producers. However, it has also been pointed out that this bargaining power may not be sufficiently strong to off-set the market power of the already highly concentrated sugar beet suppliers, and even less so following the proposed acquisition when the number of main suppliers will be reduced from [3-5] to [2-4]. It has also been stressed that with fewer sugar beet suppliers, the possible bargaining power of the sugar companies will be reduced accordingly as there will be less suppliers to negotiate with.
52. Considering all of the above, in particular the parties' high combined market shares and significant overlaps, and the reduction of [3-5] to [2-4] major sugar beet producers creating a strong market leader in a R&D based industry, the proposed concentration raises serious doubts as to its compatibility with the common market since it may significantly impede effective competition in the common market or in a substantial part thereof by the creation of a dominant position of the merged entity in the market for sugar beet seeds in Finland, the Netherlands, Portugal, Spain, Austria, Ireland and Italy; and by the creation of non-coordinated effects in an oligopolistic market for sugar beet seeds in Belgium and France.

Maize seeds

53. On a European level, the notifying party submits that the maize market in Europe is characterised by the presence of a limited number of players which have about 80% of the European market. The proposed transaction will reduce this number to five and create the second biggest supplier of maize seeds in Europe with a market share of 15-20% (in value 2003). However, the most important player at the European level is Pioneer, with a market share of [30-40]%, and other competitors are Limagrain ([10-15]%), KWS ([10-15]%) and RAGT ([5-10]%).
54. On a national level, the concentration would lead to affected markets in 11 countries in the EU. The combined market share (in value 2003) of the parties would be: Belgium (30-40%), Denmark (40-50%), France (15-20%), Germany (15-20%), Greece (20-30%), Hungary (15-20%), Ireland (20-30%), the Netherlands (40-50%), Portugal (15-20%), Spain (20-30%) and United Kingdom (40-50%). The proposed transaction would in particular lead to high combined market shares and significant overlaps in Denmark with 40-50% (Syngenta [20-30]%, Advanta 20-30%), the Netherlands with 40-50% (Syngenta [10-15]%, Advanta 30-40%) and in the United Kingdom with 40-50% (Syngenta [15-20]%, Advanta 30-40%).
55. In Denmark, the acquisition will combine two of the three main players in this market, who previously enjoyed a similar market share (around 20-30%). After the proposed transaction, the parties will be around twice as big as their next competitor, KWS ([20-30]%), and the third player will be Limagrain ([15-20]%)
56. In the Netherlands, Advanta holds a particularly strong position with 30-40% of the market. Advanta's maize products are top of the Dutch recommendation list. Its combination with Syngenta ([10-15]%) will create a player around twice as big as the next competitor, Limagrain ([20-30]%), and the third competitor would be KWS ([15-20]%).
57. Finally, the concentration will combine the first and third maize seed supplier in the United Kingdom (Advanta with 30-40% and Syngenta with [15-20]% respectively), followed by KWS with [20-30]%. The merged entity will be the clear market leader with almost double the position of KWS, its closest competitor.
58. In addition, barriers to entry in these markets are high. The market for seed development and production is a research-based industry, and there is a long process before a variety of a product line is put on the market. The breeding and testing phase for maize could last between 7 and 10 years; while the commercial preparation (mainly the registration process in Member States) could last 1 to 2 additional years. The overall duration of the process and the necessity of incurring in heavy investments long before any revenue is possible (after launching a new variety) make market entry extremely difficult. This is reflected by the fact that no new entry has taken place in the past years.
59. Moreover, market shares tend to remain stable. The notifying party submits that increases and decreases in markets shares of product lines (such as maize seeds) follow rather slow cycles and do not occur abruptly. The Commission has no evidence that competitors have new varieties in the pipeline that would challenge in the short/medium term the position of the parties in the maize seed markets and the notifying party has also recognised that they do not think that conventional breeding will lead to a breakthrough in the seeds business on the short-term. Moreover, demand-side is rather

fragmented as maize is normally sold via large number of small retailers to a corresponding large number of end-consumers.

60. Considering the above and in particular the parties' high combined market share and significant overlaps, the proposed concentration raises serious doubts as to its compatibility with the common market since it may significantly impede effective competition in the common market or in a substantial part thereof by the creation of a dominant position of the merged entity in the market for maize seeds in Denmark, the Netherlands and the United Kingdom.

Sunflower seeds

61. On a European level, the parties' combined market share would be 30-40%. The parties' main competitors in the market for sunflower seeds on a European-wide market are Monsanto ([20-30]%), Pau Euralis ([10-15]%), Pioneer ([5-10]%) and KWS ([2-5]%).
62. On the basis of national markets, the proposed transaction would lead to affected markets in five countries in the EU. The combined market share (in value 2003) of the parties would be: Czech Republic (30-40%), France (15-20%), Hungary (40-50%), Italy (30-40%), and Spain (50-60%). In particular, the operation would lead to high market shares in Hungary with 40-50%, (Syngenta [40-50]%, Advanta 5-10 %) and in Spain with 50-60% (Syngenta [40-50]%, Advanta 5-10%). The notifying party has also submitted that Advanta's sales and shares are estimated to increase by 5-10% in Hungary and by 15-20% in Spain in the next five years.
63. On a national level, Syngenta is currently the market leader in both Hungary and Spain, a position which will be further enhanced following completion of the proposed acquisition. In Hungary, the parties' market share (40-50%) will be more than twice the share of the next largest competitor, Pioneer ([15-20]%). In Spain, the parties' market share would be more than three times as high as its closest competitors, Pau Euralis ([10-15]%) and Monsanto ([5-10]%).
64. Considering the above and in particular the parties' high combined market share and significant overlaps, the proposed concentration raises serious doubts as to its compatibility with the common market since it may significantly impede effective competition in the common market or in a substantial part thereof by the creation of a dominant position of the merged entity in the market for sunflower seeds in Hungary and Spain.

Spring barley seeds

65. In the market for seeds for spring barley, Syngenta has a [40-50]% share (in value 2003) in the United Kingdom. However, Advanta's market share addition is not above 2%. In the UK, the main competitors are RAGT (15-20%), Monsanto ([10-15]%) and Nickerson/Limagrain ([5-10]%). Considering the small increment of market shares and the existence of several competitors, it is not likely that the proposed operation will result in any competition concerns in the United Kingdom. On a European level the parties' market share is only 10-15%.
66. The barley seeds market is a royalty-based business (barley crops are predominantly self-replicating), and thus, market shares based on volume may differ significantly. Based on volume, the parties would have high combined market shares and substantial

overlaps in France with 50-60% (Syngenta [10-15]%, Advanta 40-50%). In France, the main competitors are Secobra (10-15%), Serasem (10-15%) and Nickerson/Limagrain ([5-10]%). Advanta is already prior to the operation the market leader with 40-50%, a position which will be further enhanced. Following competition of the proposed transaction, the parties will also become around three times as big as their next competitors.

67. Thus, considering the above and in particular the parties' high combined market share and significant overlaps, the proposed concentration raises serious doubts as to its compatibility with the common market since it may significantly impede effective competition in the common market or in a substantial part thereof by the creation of a dominant position of the merged entity in the market for spring barley seeds in France.

Pea seeds

68. On a European level the parties' combined market share of the overall market for pea seeds would be 10-15% (in value 2003), and for vining pea seeds their share would be 20-30%. One of the main competitors is Seminis with a market share of [15-20]% for overall pea seeds and [30-40]% for vining pea seeds.
69. Considering an overall market for pea seeds the parties activities overlap on a national basis in Finland (10-15%), Italy (10-15%) and in the United Kingdom (30-40%). In the Netherlands, where Syngenta holds [40-50]% of the market, there is a *de minimis* overlap of not above 2% from Advanta.
70. When considering the market for vining pea seeds separately, the market shares increase to 20-30% in Finland (Syngenta [5-10]%, Advanta 10-15%), 10-15% in Italy (Syngenta [10-15]%, Advanta not above 2%), and 50-60% in the United Kingdom (Syngenta [20-30]%, Advanta 20-30%). In the Netherlands, the combined market share would be around 50-60%; however, the overlap is again not above 2%. Thus, the proposed transaction will only lead to high combined market shares and significant overlaps in the United Kingdom.
71. In the United Kingdom, the parties were already prior to the proposed acquisition, the first and the second most important players ([20-30]% Syngenta, 20-30% Advanta). They are followed by Van Waveren ([20-30]%) and Seminis ([15-20]%). After the implementation of the proposed transaction, the parties would not only become the clear market leader, more than twice as big as the next competitor, but the transaction would also remove the second largest supplier of vining pea seeds in the United Kingdom.
72. The parties submit that, in Europe, the main customers for vining peas are large food processing groups, which tend to develop their own lists of preferred pea varieties and buy directly from the seed producers and pass the seeds on to the growers. This would imply important buying power from the customer side.
73. However, demand side concentration appears to be somewhat of less importance in the United Kingdom compared to continental Europe. In the United Kingdom, food processing companies buy from the grower and not from the seed producers. In this manner, and contrary to continental Europe, seed producers normally have a direct selling relationship with farmers. Thus, the indirect relation between seed producers and large food processors reduces the buying power in the vining pea markets in the United Kingdom. In addition, any possible buying power will also be further reduced

as one of the main suppliers of vining pea seeds in the United Kingdom would disappear.

74. Following the above and in particular the parties' high combined market share and significant overlaps, the proposed concentration raises serious doubts as to its compatibility with the common market since it may significantly impede effective competition in the common market or in a substantial part thereof by the creation of a dominant position of the merged entity in the market for vining pea seeds in the United Kingdom.

Oilseed rape seeds

75. On a European level, the parties would have a combined market share of 10-15% in the market for oilseed rape seeds, and 10-15% if winter oilseed rape seed is considered as a separate market. Norddeutsche Pflanzenzucht ("NPZ") and Monsanto are the most important players in the breeding of seeds for oilseed rape. NPZ has on a European level an estimated market share of [20-30]%, followed by Monsanto with [15-20]%, Limagrain with [2-5]%, and Pau Euralis with [2-5]% for oilseed rape seeds. In the market for winter oilseed rape seeds, the market share of NPZ would be [20-30]%, [15-20]% for Monsanto, [5-10]% for Limagrain and [2-5]% for Pau Euralis.
76. The parties' activities in the market for oilseed rape overlap only in Germany and the United Kingdom, with a market share (in value 2003) of 15-20% in both countries. If the segment of winter oilseed rape is considered separately, the parties' combined market shares would be 15-20% in Germany and 20-30% in the United Kingdom. In these two markets, the parties face competition from other important players, such as NPZ (with a market share of around [60-70]% in Germany for both possible product markets) and Monsanto (with a [15-20]% in the United Kingdom for oilseed rape and [15-20]% for winter oilseed rape). Syngenta is not active in the spring oilseed rape seeds business in the EU.
77. In the light of the above considerations, the proposed transaction will not raise serious doubts as to its compatibility with the common market or in a substantial part thereof in either the market for oilseed rape seeds or for winter oilseed rape in Germany or in the United Kingdom.

Onion seeds

78. On the basis of an overall market for onion seeds, the parties' combined market share on a European level (in value 2003) is 5-10%. The new entity would face competition from important players such as Bejo ([20-30]%) and Seminis ([5-10]%).
79. Both parties are active in six Member States: Belgium, France, Germany, the Netherlands, Sweden and the United Kingdom. The only significant overlaps are in Germany (15-20%), Netherlands (15-20%), Sweden (15-20%) and in the United Kingdom (20-30%). Based on volume, the parties' market share in Germany would reach to 30-40%. In all these markets, the parties would still face strong competition from important European players such as Bejo with markets shares (in value) of [30-40]% in Germany, [70-80]% in the Netherlands, [40-50]% in Sweden and [30-40]% in the United Kingdom. Other competitors are Nickerson ([20-30]% in the United Kingdom) or Takii ([15-20]% in Germany).

80. Both Syngenta and Advanta are active in long day and intermediate varieties. The parties' activities would result in affected markets with regard to long day onion seeds in Belgium, Germany, Sweden and in the United Kingdom, and for intermediate onion seeds in Germany. In Belgium, the Netherlands, the United Kingdom and Sweden all or virtually all seeds sold are long day, whereas in Germany around 80% is long day and 20% intermediate.
81. For long day onion seeds, the combined market shares (in value 2003) of the parties would be 10-15% in Belgium, 15-20% in Germany, 20-30% in Sweden and 20-30% in the United Kingdom. By volume (2003) the market shares would be similar or only slightly higher in Belgium (15-20%), Sweden (20-30%) and in the United Kingdom (20-30%), and in Germany the parties' combined share would increase to 40-50%. For intermediate onion seeds, the parties' activities would only result in affected markets in Germany (10-15% by value and 30-40% by volume). However, as explained above, it is particularly unlikely that long day onion seeds and intermediate onion seeds would constitute separate markets in Germany, as growers in Germany have a choice to either use long day or intermediate onion seeds due to weather conditions. Thus, it is not likely that the proposed operation will result in any competition concerns in any of the mentioned markets.
82. The overall market share data for onion seeds provided by the notifying party does not include spring onions. Since neither of the parties supply seeds for spring onions, the market shares of the parties would be even lower if spring onions were included in the data, and thus no competition concerns would arise.
83. In addition to onion seeds, Syngenta and Advanta both supply seeds for onion sets and the overall market shares for onion seeds provided by the notifying party includes seeds for onion sets. The segment of seeds for onion sets is small and of minor importance compared to the overall onion seeds market. In addition, if seeds for onion sets were viewed separately, the parties' combined market share would be 30-40% (Syngenta [20-30]%, Advanta not above 2%) on a European level, and the only affected market would be the Netherlands. In the Netherlands, the parties' combined market share would be 40-50% (Syngenta [40-50]%, Advanta not above 2%). Since the increment would only be minor, no competition concerns would arise.
84. In the light of the above considerations, the proposed transaction will not raise serious doubts as to its compatibility with the common market or in a substantial part thereof with regard to any possible market for onions mentioned above.

(ii) Vertical impact of the transaction

85. Syngenta is a producer of seed treatment (in addition to seeds) and sells its products to either seed companies such as Advanta, to wholesalers, to dealers/co-operatives or directly to larger farmers.
86. Vertically affected markets exist where Syngenta is a supplier of seed treatment destined to treat a certain seed crop, and Advanta is a supplier of the seed crop concerned, and either Syngenta has a market share of 25% or more in the seed treatment market and the geographic market concerned, or Advanta has either alone or together with Syngenta a market share of 25% or more in the seed market and the geographic market concerned.

87. The transaction will lead to a number of vertically affected markets. However, the transaction would not raise serious doubts in these seed treatment markets. There is no indication from the investigation of any foreclosure effect in these markets. Although, Syngenta has substantial market shares in certain national markets for seed treatment fungicides, the combined market shares of the parties in the relevant downstream seed category markets are rather low or moderate. In addition, other important competitors are active in these markets and customers are able to find alternatives to Syngenta's seed treatment products.
88. The following markets would thus be considered to be vertically affected:
89. (i) Seed treatment fungicides for maize in Austria, Belgium, Germany, Greece, Hungary, Netherlands, Spain; Syngenta has a market share (in value 2003) of [30-40]% in Austria, [50-60]% in Belgium, [80-90]% in Germany, [70-80]% in Greece, [30-40]% in Hungary, [10-15]% in the Netherlands and [90-100]% in Spain. On EEA level, the market share of Syngenta is [30-40]%. Despite the high market share in Germany, Greece and Spain, the combined market share of Syngenta and Advanta in the downstream corresponding seed category market is not higher than 20-30%.
90. (ii) Seed treatment fungicides for sunflowers in France, Hungary, Spain; Syngenta has a market share (in value 2003) of [90-100]% in France, [80-90]% in Hungary and [50-60]% in Spain. At EEA level, Syngenta has a market share of [80-90]%. Despite the high market share in France, the combined share of the parties in the downstream corresponding seed category market is only 15-20% in France. In Hungary the combined market share of the parties in the downstream corresponding seed category market is 40-50%.
91. (iii) Seed treatment insecticides for sugar beet in Finland, Poland; Syngenta has a market share (in value 2003) of [40-50]% in Finland and [2-5]% in Poland. In the downstream corresponding seed category market the combined market share of the parties is 70-80% in Finland and 20-30% in Poland. On EEA level, the market share of Syngenta is only [not above 2]%
92. (iv) Seed treatment fungicides for vegetables (vining peas) in the United Kingdom, Netherlands. Syngenta has a market share (in value 2003) of [50-60]% in the Netherlands and [60-70]% in the United Kingdom, where the parties have a combined market share of 50-60%. At EEA level, Syngenta has a market share of [40-50]%. In the downstream corresponding seed category market the combined market share of the parties is 50-60% in the Netherlands and 50-60% in the United Kingdom.
93. (v) Seed treatment fungicides for cereals in Austria, Belgium, Denmark, France, Germany, Netherlands, and in the United Kingdom; Syngenta has a market share (in value 2003) of [30-40]% in Austria, [20-30]% in Belgium, [30-40]% in Denmark, [30-40]% in France, [20-30]% in Germany, [90-100]% in the Netherlands and [5-10]% in the United Kingdom. On EEA level, Syngenta has a market share of [20-30]%. Despite the high market share in the Netherlands, the combined market share of the parties in the downstream seed category market is only 5-10%.
94. (vi) Seed treatment insecticides for cereals in France, and in the United Kingdom: Syngenta has a market share (in value 2003) of [30-40]% in France and [20-30]% in the United Kingdom. On EEA level, Syngenta has a market share of [20-30]%

95. Advanta currently purchases seed treatment from a variety of suppliers including Syngenta. In addition, according to the notifying party, Syngenta currently realises only a small portion of its EEA-wide turnover in the seed treatment area with sales to Advanta.
96. The notifying party also submits that the remainder of Advanta's seed treatment requirements, which is currently not covered with supplies from Syngenta, is small compared to the overall demand for seed treatment in the EEA. Thus, in the unlikely event that Syngenta would in the future cover all of Advanta's requirements, this would therefore only have an insignificant impact on the EEA seed treatment market.
97. In general, the market investigation has confirmed the views of the notifying party that, in the hypothetical case in which, Syngenta decides to sell seed treatment exclusively to Advanta or to increase the prices it charges for other customers, these customers will be able to find alternatives to Syngenta's seed treatments as there are alternative suppliers present on the market to which third parties can turn to.
98. Syngenta's main competitors are Bayer, BASF and Monsanto, who currently offer competitive seed treatment formulations. The notifying party estimates that in the total seed treatment market within the EEA, Bayer has a market share (2003) of [40-50]%, Syngenta of [20-30]%, BASF of [10-15]%, and Monsanto of [2-5]%
99. Furthermore, the Commission has acknowledged in a previous decision¹¹ that the fact alone that a seed treatment supplier is linked to a seed company is not a decisive competitive factor. Syngenta has since its creation in 2000, and thus before the acquisition of Advanta, been vertically integrated, and active in both seed treatment and seeds. Also other seed treatment suppliers have close links to seed companies, either because they are themselves integrated into the downstream market for seeds, as is the case for Bayer and Monsanto, or because they maintain long-standing relationships with seed companies. Although vertically integrated, Syngenta's own seed business purchases seed treatment from seed treatment manufacturers other than Syngenta. Syngenta, on the other hand, sells seed treatment to other seed manufacturers who have their own seed treatment business.
100. The above mentioned arguments also apply to the markets where Syngenta has very high market shares (above 70%). These are the markets for seed treatment fungicides for maize in Germany, Greece and Spain; for seed treatment fungicides for sunflowers in France and Hungary; and for seed treatment fungicides for cereals in the Netherlands. Despite the strong upstream position of Syngenta in these markets, the combined market share of the parties on the relevant downstream seed category markets are rather low or moderate, except for Hungary where the combined market share is 40-50% (Syngenta [40-50]%, Advanta 5-10%). The high market shares of Syngenta in the upstream seed treatment market in Hungary, will reinforce the serious doubts with regard to the creation of a dominant position in the downstream market for sunflower seeds already identified above.
101. It follows from the above, that the proposed concentration is not likely to lead to any foreclosure effects and therefore it does not raise serious doubts as to a significant

¹¹ See Case No. COMP/M.2547 – Bayer/Aventis Crop Science, decision of 17 April 2002.

impediment of effective competition in the common market or in a substantial part of it, or in the EEA with regard to any of the seed treatment markets.

(iii) Other markets

102. Other seed markets in which both Syngenta and Advanta are active in are: soybeans, winter wheat and winter barley. However, to the extent there are any overlaps, these are only minor and would not result in any affected markets. The notifying party also submits that in none of these markets, with the exception of the market for winter barley in Germany (where there is no overlap between Syngenta and Advanta), Syngenta's share does not exceed 25% in any country in the EU. The notifying party also states that Advanta's share does not exceed 25% in any of the markets mentioned.

VII. COMMITMENTS OFFERED BY SYNGENTA

103. In order to remove the serious doubts as to the compatibility of the notified operation with the common market, the notifying party has offered commitments pursuant to Article 6(2) of the EC Merger Regulation ("the Commitments"). The Commitments are attached to this decision and form an integral part thereof.

104. In order to address the competition concerns raised by the Commission, Syngenta commits to divest Advanta's European business ("the Divestment Business") to a purchaser approved by the Commission, which is independent from and unconnected to Syngenta.

105. The Divestment Business consists mainly of the business of all companies belonging to the Advanta group incorporated in Europe (including Russia and Turkey), with the exception of Advanta Technology Ltd. UK ("ATL"), a company that owns or has the right to certain intellectual property rights related primarily to Advanta's North American maize and soybean operations. Syngenta will grant to the Purchaser licenses for all intellectual property rights which are necessary to run the Divestment Business and which are currently owned by ATL. Thus, the Divestment Business comprises all companies of the Advanta group that are effectively active in the European markets. It has its own management, research and development, intellectual property rights and sales forces and therefore constitutes a viable business operating on a stand-alone basis.

106. Since after the divestiture of the Divestment Business Syngenta will retain no business operations of Advanta in the European Union, the Commitments remove entirely the overlap of the parties' operations on all relevant product and geographic markets within the European Union.

107. The Commission therefore concludes that the Commitments restore the competitive conditions prevailing pre-merger in all the markets for which the Commission has identified serious doubts with regard to possible competition problems.

108. In order to ensure that Syngenta complies with these Commitments, the Commission attaches conditions and obligations to this decision. The undertakings set out in section B and D of the Commitments constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved. The other commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

VIII. CONCLUSION

109. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to the condition of full compliance with sections B and D of the Commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said Commitments. This decision is adopted in application of Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 and Article 57 of the EEA Agreement.

For the Commission

signed
Franz FISCHLER
Member of the Commission

GLEISS LUTZ

Rechtsanwälte

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NON-CONFIDENTIAL VERSION

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August 2, 2004
Referenz/reference
br004 non-confidential Commitments

**Case COMP/M.3465 - Syngenta CP/Advanta
COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 (the "*Merger Regulation*"), Syngenta Crop Protection AG ("*Syngenta CP*") hereby provides the following Commitments (the "*Commitments*") in order to enable the European Commission (the "*Commission*") to declare the acquisition of sole control in Advanta B.V. ("*Advanta*"; with Syngenta CP jointly referred to as the "*Parties*") by Syngenta CP compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "*Decision*").

Gleiss Lutz Hootz Hirsch
Partnerschaftsgesellschaft von
Rechtsanwälten, Steuerberatern
AG Stuttgart PR 136

The Commitments shall take effect upon the date of adoption of the Decision.

in association with

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

HERBERT SMITH
Bangkok Beijing Brussels Hong Kong
London Moscow Paris Shanghai
Singapore Tokyo

STIBBE
Amsterdam Brussels London New York

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For the avoidance of doubt, the business to be divested is an Advanta¹ business. Syngenta CP procures that, with effect from the time of closing of the sale of Advanta to Syngenta CP, Advanta will comply with the commitments below.

These Commitments are given by the Parties without prejudice to the Parties' position as stated in the Form CO notification and elsewhere, that the notified concentration does not with respect to the markets identified in the Commission decision significantly impede effective competition within the common market or a substantial part thereof and is therefore compatible with the common market and the functioning of the EEA agreement.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

AstraZeneca: AstraZeneca Holdings B.V.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Cosun: Koninklijke VanderHave Groep B.V.

Divestment Business: the business or businesses as defined in Section B and the Schedule that Syngenta CP commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Syngenta CP and who has received from Syngenta CP the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

¹ Advanta B.V. is incorporated under the laws of the Netherlands, with its registered office at 4420 AA Kapelle and registered with the Commercial/Company Register at Kapelle under number 22039534.

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Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of *[business secret]* from the Effective Date.

Hold Separate Manager: the person appointed by Syngenta CP for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Syngenta CP, and who has the duty to monitor Syngenta CP's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

SPA the Agreement for the sale and purchase of shares in Advanta B.V. entered into between, *inter alia*, AstraZeneca and Cosun and Syngenta CP on 11 May 2004.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of *[business secret]* from the end of the First Divestiture Period.

Vendors: AstraZeneca and Cosun collectively.

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Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Syngenta CP commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 14. To carry out the divestiture, Syngenta CP commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Syngenta CP has not entered into such an agreement at the end of the First Divestiture Period, Syngenta CP shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. Syngenta CP shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Syngenta CP has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and if the closing of the sale of the Divestment Business takes place within a period not exceeding six months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Syngenta CP shall,

for a period of *[business secret]* after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

[business secret]

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Structure and definition of the Divestment Business

4. The Divestment Business consists of Advanta's European Business as defined in the SPA², plus the assets listed at Schedule 8 Part A of the SPA, that is the Advanta world-wide sugar beet seeds business, Advanta's grass breeding station in Oregon and Advanta's sunflower research and development programme, personnel and know-how located at West Fargo, North Dakota. Apart from those businesses and assets which are not owned by Advanta companies incorporated in Europe, Syngenta CP will retain Advanta Technology Limited (UK) ("*ATL*"), a company that owns or has the right to use intellectual property primarily related to the Advanta Maize and Soybean business. The ATL intellectual property includes (1) the US (and Canadian) maize germplasm held by ATL ("*ATL Germplasm*"), (2) [*other intellectual property rights (such as molecular markers) - **business secret***]. Syngenta CP will grant to the Purchaser licenses for all intellectual property rights which are necessary to run the Divestment Business and which are currently owned by ATI.

The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes

- (a) (with the reservation as to ATL made above) all tangible and intangible assets (including intellectual property rights), which are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all existing licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment
2. In the SPA "European Business" means the business of all companies in the Advanta Group incorporated in Europe (other than Advanta B.V. which is not operative) and the assets, properties and rights thereof including the assets, properties and rights listed in Part A of Schedule 8 but excluding those assets, properties and rights listed in Part B of Schedule 8. "Europe" means Great Britain, Ireland and Continental, Central and Eastern Europe, Turkey and Russia.

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Business (items referred to under (a)-(c) hereinafter collectively referred to as "*Assets*");

- (d) the Personnel; and
- (e) the benefit, for a transitional period of *[business secret]* after Closing and *[business secret]* licenses for all intellectual property rights which are necessary to run the Divestment Business and which are currently owned by ATL including:
 - (1) the ATL Germplasm,
 - (2) *[the other intellectual property rights (such as molecular markers) - business secret]*.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- 5. From the Effective Date until Closing, Syngenta CP shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Syngenta CP undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans

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- (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

6. Syngenta CP commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business - including the Hold Separate Manager - have no involvement in any business retained and vice versa. Syngenta CP shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
7. Until Closing, Syngenta CP shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Syngenta CP shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

8. Syngenta CP shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Syngenta CP may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Syngenta CP is required by law.

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Non-solicitation clause

9. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of *[business secret]* after Closing.

Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Syngenta CP shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

11. Syngenta CP shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
12. To the extent this will occur after the Effective Date, the Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

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13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;³
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
14. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Syngenta CP has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Syngenta CP must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

³ For the avoidance of doubt, the acquisition of the 10% minority shareholding in Advanta Holding Corporation, Delaware, US, a company in which Syngenta CP will acquire 90% of the shares, will neither constitute a connection within the meaning of this Section 13(a) nor impede the Purchaser's independence.

Section E. Trustee

I- Appointment Procedure

15. Syngenta CP shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Syngenta CP has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Syngenta CP at that time or thereafter, Syngenta CP shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Syngenta CP in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

17. No later than one week after the Effective Date, Syngenta CP shall submit a list of one or more persons whom Syngenta CP proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Syngenta CP shall submit a list of one or more persons whom Syngenta CP proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:

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- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

18. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Syngenta CP shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Syngenta CP shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

19. If all the proposed Trustees are rejected, Syngenta CP shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 17.

Trustee nominated by the Commission

20. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Syngenta CP shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

21. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Syngenta CP, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Syngenta CP with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Syngenta CP, in accordance with paragraphs 6 and 7 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with Syngenta CP, determine all necessary measures to ensure that Syngenta CP does not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the

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- Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Syngenta CP as the disclosure is reasonably necessary to allow Syngenta CP to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Syngenta CP or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Syngenta CP such measures as the Monitoring Trustee considers necessary to ensure Syngenta CP's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending Syngenta CP a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers, hi addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission,

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sending Syngenta CP a non-confidential copy at the same time, if it concludes on reasonable grounds that Syngenta CP is failing to comply with these Commitments;

- (vii) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Syngenta CP, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 24. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee (in case the Divestiture Trustee and the Monitoring Trustee are different persons) and a non-confidential copy to Syngenta CP.

III. Duties and obligations of the Parties

25. Syngenta CP shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Advanta's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Divestment Business shall provide the Trustee upon request with copies of any document. Syngenta CP and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
26. Syngenta CP shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Syngenta CP shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Syngenta CP shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
27. Syngenta CP shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Syngenta CP shall cause the documents required for effecting the sale and the Closing to be duly executed.

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28. Syngenta CP shall indemnify the Trustee and its employees and agents (each an *"Indemnified Party"*) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Syngenta CP for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. At the expense of Syngenta CP, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Syngenta CP's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Syngenta CP refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Syngenta CP. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 27 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Syngenta CP during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
- IV. Replacement, discharge and reappointment of the Trustee
30. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Syngenta CP to replace the Trustee; or
 - (b) Syngenta CP, with the prior approval of the Commission, may replace the Trustee.
31. If the Trustee is removed according to paragraph 29, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has

effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 14-18.

32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

33. The Commission may, where appropriate, in response to a request from Syngenta CP showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Syngenta CP seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Syngenta CP be entitled to request an extension within the last month of any period.

(Werner Berg, Rechtsanwalt)

duly authorised for and on behalf of

Syngenta CP

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SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

Advanta's world-wide business has been explained in the Parties' answer to question 6 of the Commission's questionnaire of 21 June 2004 to which we refer the Commission. For the Advanta structure we refer to the holding charts attached as Annex 4.1.2/2 (Advanta Confidential Annex) to the notification of 2 July 2004.

- a) Advanta's European business

The core piece of the Divestment Business is Advanta's European business. *[business secret]* The three main European crops *[business secret]* are:

Sugar beet seed, which is managed from Tienen, Belgium.

Advanta is involved in the European sugar beet seed markets with the brands Vanderhave Sugar Beet Seed and SES. Both ran their own breeding programs to develop a broad range of varieties in both multigerm and monogerm seed types. The two main breeding stations are located at Rilland (the Netherlands) for VDH and Tienen (Belgium) for SES. Tienen is also the centre for development of new technologies for both breeding programs. Advanta has production facilities in France and Italy. Once it has been harvested, the sugar beet seed is sent to Tienen for processing.

Maize seed, which is managed from Kapelle, the Netherlands

Advanta has five major maize breeding stations in Europe, located at Rilland (the Netherlands), Buggingen (Germany), Mulsans, Rennes and Nerac (all in France). Seed production takes place in several countries. The seeds are then moved to the central processing site at the Advanta headquarters in Kapelle for treatment and packing. Advanta has its own distribution network throughout Europe and an affiliated distributor in each of 13 European countries, *[business secret]*

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Seed for grasses, which are managed, alongside maize, from Kapelle, the Netherlands.

Advanta utilises the major grass production areas in Eastern and Western Europe. Having cleaned the seeds at one of the two major sites in Hedensted (Denmark) and Kapelle, quality controls, mixing and bagging take place at these sites. Advanta has its own marketing and sales organisation for sales to mainly European customers, but also to other parts of the world.

Sunflower, cereals and oil seed rape seed account for the majority of the remaining sales in the Europe region.

Advanta's Central and Eastern European business is managed as a coordinated sub-territorial business unit within Europe.

b) Advanta's world-wide sugar beet seeds business

Advanta's North American sugar beet seed operations are managed by Interstate Seed, a regional business unit selling, inter alia, sugar beet seeds, principally in its Dakota and Minnesota trading areas.

Advanta's Australasian, Asian and African (the "AAA" region) sugar beet seed activities are is managed through regional business units.

Advanta also has a number of affiliated companies and smaller regional operations in the South American markets.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

all properties owned by Advanta in Europe as listed in Schedule 4 to the SPA and all leases listed in Schedule Schedule 4 to the SPA (to the extent this is not hindered by

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change of control clauses in and the subsequent termination of these agreements), as well as any assets wholly or predominantly utilised in connection with the world-wide sugar beet seeds business;

(b) the following main intangible assets:

all intangible assets owned by Advanta or Affiliated Undertakings of Advanta as listed in Schedule 7 to the SPA which are wholly or predominantly utilised in connection with Advanta's non-European sugar beet seeds business, and all intangible assets owned by Affiliated Undertakings of Advanta for the European territory [*business secret*] except those owned by ATL which will be licensed to the Purchaser [*business secret*] on terms to be negotiated with the Purchaser.

(c) the following main licences, permits and authorisations:

all main licences, permits and authorisations existing to run the Divestment Business (to the extent this is not hindered by change of control clauses in and the subsequent termination of these agreements);

(d) the following main contracts, agreements, leases, commitments and understandings:

all contracts, agreements, leases, commitments and understandings existing to run the Divestment Business (to the extent this is not hindered by change of control clauses in and the subsequent termination of these agreements);

(e) the following customer, credit and other records:

the records on all costumers of the European Business, including but not limited to those listed in Annex 8.6/2 (Advanta Confidential Annex) to the notification of 2 July 2004,

(f) the following Personnel:

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all Personnel that is employed by the Divestment Business in Europe (including Turkey and Russia) as well as the personnel which is reasonably necessary to manage Advanta's world-wide sugar beet seed business.

(g) the following Key Personnel:

[business secret]

3. The Divestment Business shall not include:

- (i) all businesses and assets of Advanta and its Affiliated Undertakings incorporated outside Europe (for the avoidance of doubts Europe includes Russia and Turkey) apart from Advanta's sugar beet seed business and the assets wholly or predominantly utilised in connection with that (sugar beet seed) business and the other assets listed in Schedule 8, Part A of the SPA;
- (ii) those intangible assets owned by ATL which will be licensed to the Purchaser on terms to be negotiated with the Purchaser.