

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	Case No. 1:04CV01442
<i>Plaintiff,</i>)	
)	Judge Reggie B. Walton
v.)	
)	
SYNGENTA AG,)	
ASTRAZENECA PLC,)	
KONINKLIJKE COOPERATIE COSUN U.A.)	
and)	
ADVANTA B.V.)	DECK TYPE: Antitrust
)	
)	Filed: 08/25/2004
<i>Defendants.</i>)	
_____)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate and Stipulation Order:

- A. “Acquirer” or “Acquirers” means Fox Paine & Company, LLC or any alternative entity or entities to whom defendant Syngenta divests Advanta’s Sugar Beet Seed Business.
- B. “Advanta” means Advanta B.V., a company incorporated in The Netherlands with its headquarters in Kapelle, The Netherlands, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

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

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

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

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

E. “The defendants” means (1) Advanta; (2) AstraZeneca; (3) Koninklijke; and (4) Syngenta.

F. “Fox Paine” means Fox Paine & Company, LLC, a company incorporated in Delaware, with its headquarters in Foster City, California, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

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

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

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendant Syngenta’s prompt divestiture of Advanta’s Sugar Beet Seed Business for the purpose of establishing a viable competitor in the research, development, licensing, production, and sale of agricultural sugar beet seeds in order to remedy the effects that the United States alleges would otherwise result from Syngenta’s acquisition of defendant Advanta. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that Advanta’s Sugar Beet Seed Business remains an independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by Syngenta, and that competition is maintained during the pendency of the ordered divestitures.

III.

JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A, may be filed with and entered by this Court, upon the motion of any party or upon this Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with this Court.

B. The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the entry of the Final Judgment by this Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment. From the date of the signing of this Hold Separate Stipulation and Order by the parties, defendants shall comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of this Court.

C. The defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to this Court.

E. In the event that (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. The defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until the divestiture required by the Final Judgment has been accomplished:

A. Syngenta shall preserve and maintain Advanta's Sugar Beet Seed Business as an independent, ongoing, economically viable competitive business with research, development, licensing, production, and sale of agricultural sugar beet seeds held entirely separate, distinct, and apart from those of Syngenta's other operations. Syngenta shall not coordinate its research, development, licensing, production or sale of agricultural sugar beet seeds with Advanta's Sugar Beet Seed Business. Within twenty (20) days after the entry of the Hold Separate Stipulation

and Order, defendant Syngenta will inform the United States of the steps the defendants have taken to comply with the Hold Separate Stipulation and Order.

B. Except as is necessary to carry out its obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment, Syngenta shall take all steps necessary to ensure that (1) Advanta's Sugar Beet Seed Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the sugar beet seed business; (2) the management of Advanta's Sugar Beet Seed Business will not be influenced by Syngenta; and (3) the books, records, competitively sensitive research, development, licensing, production or sale information, and decision making associated with Advanta's Sugar Beet Seed Business will be kept separate and apart from Syngenta's other operations.

C. Syngenta shall use all reasonable efforts to ensure that the research, development, licensing, production, sales, and revenues of Advanta's Sugar Beet Seed Business shall be maintained and increased and that research, development, licensing, production, and sales support shall be maintained for the Advanta Sugar Beet Seed Business at 2004 or previously approved 2005 levels, whichever are higher.

D. Syngenta shall provide sufficient working capital and lines and sources of credit to continue to maintain the Advanta's Sugar Beet Seed Business as an economically viable and competitive, ongoing business, consistent with the requirements of Sections V(A) and V(B).

E. Syngenta shall take all steps necessary to ensure that Advanta's Sugar Beet Seed Business is fully maintained in operable condition at no less than current capacity, and shall maintain and adhere to normal product improvement, upgrade, repair, and maintenance schedules for the assets included in Advanta's Sugar Beet Seed Business.

F. Defendants Syngenta and Advanta shall not, except in the ordinary course of business or as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any part of Advanta's Sugar Beet Seed Business.

G. Syngenta shall take all steps necessary to have maintained in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of Advanta's Sugar Beet Seed Business.

H. The defendants shall take no action that would jeopardize, delay, or impede the sale of Advanta's Sugar Beet Seed Business.

I. The defendants shall not transfer, reassign to other areas within the company, or reduce the salary agreements of any employee whose primary responsibilities relate to Advanta's Sugar Beet Seed Business, except for transfer bids initiated by employees pursuant to defendants' regular, established job-posting policy. The defendants shall provide the United States within ten (10) calendar days notice of any such transfer.

J. Syngenta shall appoint a person or persons to oversee Advanta's Sugar Beet Seed Business and to be responsible for the defendants' compliance with this section. This person shall have complete managerial responsibility for Advanta's Sugar Beet Seed Business, subject to the provisions of the Final Judgment. In the event such person is unable to perform his or her duties, Syngenta shall appoint, subject to the approval of the United States, a replacement within

ten (10) working days. Should Syngenta fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. The defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture required by the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: August 25, 2004

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

“/s/”
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ORDER

It is SO ORDERED, this 27th day of August, 2004.

“/s/”

United States District Court Judge