

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
325 7th Street, N.W.,
Washington, D.C. 20530,
Plaintiff,

v.

SYNGENTA AG
Schwarzwaldallee 215
CH-4058 Basel
Switzerland,

ASTRAZENECA PLC
15 Stanhope Gate
London W 1K 1LN
England,

KONINKLIJKE COOPERATIE COSUN U.A.
Cosunpark 1
4814 ND BREDA
Postbus 3411
4800 MG BREDA
The Netherlands,

and

ADVANTA B.V.
Dijkwelsestraat 70
4420 AA Kapelle,
The Netherlands
Defendants.

CIVIL CASE NO.: 1:04CV01442
JUDGE: Reggie B. Walton
DECK TYPE: Antitrust
DATE STAMP: 08/25/2004

COMPLAINT

The United States of America, acting under direction of the Attorney General of

the United States, brings this civil action to obtain equitable relief against the defendants and complains and alleges as follows:

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

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

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

I.

JURISDICTION AND VENUE

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

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

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

II.

THE DEFENDANTS

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

8. Advanta is a company incorporated in The Netherlands with its headquarters in

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

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

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

III.

TRADE AND COMMERCE

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

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

13. Advanta and Syngenta each have invested extensively in sugar beet seed research

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

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

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

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

IV.

THE RELEVANT MARKETS

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

V.

ANTICOMPETITIVE EFFECTS

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

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

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

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

22. The sugar beet seed market in the United States will become substantially more concentrated if Syngenta acquires Advanta. The number of significant sugar beet seed developers

will be reduced from three to two. Using a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”) (defined and explained in Appendix A), the proposed transaction will increase the HHI in sugar beet seeds by more than 600 points to a post-acquisition level of over 5000.

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

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

VI.

ENTRY

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

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

VII.

VIOLATION ALLEGED

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

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

- a. competition generally in sugar beet seeds suitable for growing in the United States will be substantially lessened;
- b. actual competition between Syngenta and Advanta will be eliminated;
- c. innovation in development of sugar beet seeds will be reduced; and
- d. prices for sugar beet seeds will increase.

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

VIII.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

1. That the proposed acquisition by Syngenta of Advanta be adjudged and decreed to be unlawful and to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
2. That defendants and all persons acting on their behalf be permanently enjoined from and restrained from carrying out the agreement dated May 11, 2004, or from entering into or carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Syngenta and Advanta;
3. That plaintiff be awarded its costs of this action; and

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

Dated: August 25, 2004

Respectfully submitted,

“/s/”
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APPENDIX A

DEFINITION OF “HHI”

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

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