

4. Respondent and Syngenta are corporations and at all times relevant herein have, either directly or through their subsidiaries, been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. Pursuant to an Agreement and Plan of Merger (“Merger Agreement”) dated February 2, 2016, ChemChina has agreed to cause China National Agrochemical Corporation Saturn (NL) B.V., an indirect wholly owned subsidiary of ChemChina, to submit a public tender offer for all publicly held registered shares and American Depository Shares of Syngenta at an offer price of \$465 per share, for total consideration of up to \$43 billion in cash (“Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

6. For purposes of this Complaint, the relevant lines of commerce in which to analyze the Acquisition are formulated crop protection products based on the active ingredients paraquat, abamectin, and chlorothalonil. Formulated crop protection chemicals are based on key active ingredients that are diluted from a concentrated technical grade and formulated by the Respondent, Syngenta, and other chemical companies for application in the fields. Paraquat is an herbicide, which controls weeds and other vegetation. Abamectin is an insecticide, which controls insects and related pests. Chlorothalonil is a fungicide, which controls fungus.

7. Paraquat is a non-selective “burndown” herbicide, which means it does not discriminate between the weeds it controls and crops. It is used to clear fields prior to the growing season. Paraquat does not have the resistance issues of alternatives such as glyphosate and is significantly less expensive than other alternatives.

8. Abamectin is an insecticide used to kill mites, psyllid, and leafminers. It is used primarily in citrus and tree nut crops. Available alternatives to abamectin are either significantly more expensive because they are patent-protected or less effective.

9. Chlorothalonil is a broad-spectrum fungicide used primarily in peanuts and potatoes. Chlorothalonil is particularly effective because, unlike most fungicides, it operates with four modes of action and is critical for resistance management among growers.

10. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the paraquat, abamectin, and chlorothalonil formulated crop protection chemical markets is the United States. The U.S. Environmental Protection Agency requires that manufacturers register both the technical active ingredient and the formulated products for sale in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et. seq. This registration requirement limits market access to a set of products consistent with U.S. regulatory requirements.

IV. MARKET STRUCTURE

11. The markets for formulated crop protection products using the active ingredients paraquat, abamectin, and chlorothalonil in the United States are highly concentrated. Syngenta is the market leader in each of the three product markets, while ADAMA is either the largest or the second largest generic supplier. Post-Acquisition, the combined share of the Respondent and Syngenta would be over 60% in formulated crop protection products with the active ingredient paraquat. ADAMA is the generic market leader in formulated crop protection products with the active ingredient abamectin and post-Acquisition, the combined market share would be approximately 80%. ADAMA is the second largest generic supplier of formulated crop protection products with the active ingredient chlorothalonil, and post-Acquisition the combined market share would be over 40%.

V. EXPANSION AND ENTRY BARRIERS

12. Entry into the relevant markets is not likely to be sufficient to counteract the anticompetitive effects of the Acquisition. New generic crop protection entrants typically forecast and ultimately achieve minimal market penetration while ADAMA, in contrast, has successfully maintained significantly higher market shares for an extended period of time. No new entrant is likely to become as robust a competitor as ADAMA is today for formulated crop protection products based on the active ingredients paraquat, abamectin, and chlorothalonil.

VI. EFFECTS OF THE ACQUISITION

13. The effects of the Acquisition, if consummated, may be to substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating actual, direct, and substantial competition between ChemChina and Syngenta in the relevant markets. Specifically, the Acquisition would remove an important competitive constraint on ADAMA, thereby increasing the likelihood that the merged entity will unilaterally exercise market power in the relevant markets and that customers in the United States would be forced to pay higher prices or accept reduced service for crop protection formulations based on the active ingredients paraquat, abamectin, and chlorothalonil.

VII. VIOLATIONS CHARGED

14. The allegations contained in Paragraphs 1 through 13 above are hereby incorporated by reference as though fully set forth here.

15. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

16. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

17. The Merger Agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourth day of April, 2017, issues its complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: