ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 155 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

CHINA NATIONAL AGROCHEMICAL CORPORATION

AND

SYNGENTA AG

CASE NUMBER: 2016JUN0322

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

Background

1. On 30 June 2016, the Competition Commission ("Commission") received notice of an intermediate merger whereby China National Agrochemical Corporation ("China National") intends to acquire 100% of the issued shares in Syngenta AG ("Syngenta"). Once the proposed merger is finalised, it is intended that Syngenta will be owned by China National. China National plans to operate Syngenta as a stand-alone business unit within its subsidiary group.

Parties and their activities

2. China National is an international company headquartered in China. It focuses on the discovery, development, manufacture and sale of a broad and diversified line of agrochemicals or crop protection products. In South Africa, China National operates through

Adama South Africa (Pty) Ltd ("Adama") which is involved in the testing and registration of agrochemical products. Adama has no production facilities in South Africa, as all production occurs off-site pursuant to external tolling agreements. Adama provides the following products in South Africa:

- Crop protection products: fungicides, insecticides, selective and non-selective herbicides and seed treatment products;
- Non-crop products: household and professional fungicides, insecticides and herbicides;
- Active ingredients: used in fungicides, insecticides and selective herbicides.

3. Syngenta is an international company headquartered in Switzerland. Syngenta is active in the agricultural sector, particularly in seeds and crop protection products in over 90 countries. Syngenta has production facilities in the United Kingdom, United States of America, France, China, India and Brazil. In South Africa, Syngenta has a formulation plant in Brits in the North West, where it manufacture agrochemicals. Syngenta through its subsidiary, Syngenta SA (Pty) Ltd ("Syngenta SA") provides the following products in South Africa:
    - *Crop protection products:* fungicides, insecticides, selective and non-selective herbicides, plant growth and seed treatment products.
    - *Lawn and garden:* flower seeds, turf and landscape and vector control products.
    - *Seeds:* sunflower seeds that require less water to allow crops to grow in dryer conditions.

Areas of overlap

4. The Commission's investigation identified horizontal overlaps in the business activities of the merging parties in the market for the manufacture and supply of agrochemicals or crop protection products, namely fungicides, insecticides, herbicides (selective and non-selective) and seed treatment products. These products are sold to the end-users (e.g. farmers) by third party distributors such as AECI (Pty) Ltd (trading as Nulandis), Wenkem SA (Pty) Ltd (Wenkem) and Nexus AG (Nexus), amongst others.

Competitive analysis

5. The Commission assessed the competition effects of the proposed merger on the following markets:
   - *Insecticides* – for cereals (wheat), corn, grapes, pome fruit, soybeans, tomatoes, potatoes and other specialty crops.
   - *Non-selective herbicides* – for cereals (wheat), corn, grapes, soybeans and other specialty crops.
   - *Selective herbicides* - for cereals (wheat), corn, grapes, other diverse field crops (DFC), potatoes, soybeans, sugarcane, sunflowers, tomatoes and other specialty crops.
   - *Fungicides* - for cereals (wheat), citrus, corn, grapes, other DFC, pome fruit, soybeans, tomatoes, vegetables- cucurbits, vegetables- leafy/ brassica/ okra and other specialty crops.
   - *Seed treatment* - for cereals (wheat), potatoes and other specialty crops.

6. The Commission found that the merged entity will continue face competition from reputable firms such as Bayer (Pty) Ltd ("Bayer"), BASF South Africa (Pty) Ltd ("BASF"), Monsanto International Sarl ("Monsanto"), Villa Crop Protection (Pty) Ltd ("Villa Crop"), Agchem Africa (Pty) Ltd ("Agchem"), Dow, DuPont and Arysta LifeScience (Pty) Ltd ("Arysta"), amongst others on a number of markets. According to market participants contacted, there about more than forty (40) suppliers of agrochemicals in South Africa supplying a range of original and generic agrochemicals.

7. Based on the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any of the affected markets. This based on the fact that there are other suppliers of agrochemicals and seed treatment products such as Bayer, BASF, Monsanto, Villa Crop, Agchem, Dow, DuPont and Arysta.

Public interest concerns

8. In relation to employment, given that the businesses of the merging parties will continue to operate independently, the Commission found it unlikely that the proposed merger will result

in job losses. With respect to the potential impact a particular sector or region, the Commission was concerned about the possibility of the merging parties moving Syngenta's formulation plant outside of South Africa. Currently, China National imports all its products into South Africa from its manufacturing facilities abroad and Syngenta has a formulation or manufacturing plant in Brits, in the North West Province.

9. The Commission was concerned that the merger may result in the merging parties importing all their products at the expense of using the manufacturing plant, post-merger. This will have an adverse effect on the agrochemicals sector or the North West region and thus raises a substantial public interest concern. The Commission found that the likelihood of the merging parties importing most of their products at the expense of using the manufacturing plant will affect the economy two-fold, namely, (i) by import substitution and/or (ii) likely job losses should the manufacturing plant be closed or relocated elsewhere whether within South Africa or internationally.

10. In order to remedy the abovementioned negative impact on a particular industrial sector or region, the merging parties and the Commission agreed on a condition requiring the merged entity to not relocate the manufacturing plant of Syngenta outside of the North West Province in South Africa for a period of time.

Conclusion

11. The Commission therefore approves the proposed merger subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

China National Agrochemicals Corporation / Syngenta AG

CC CASE NUMBER: 2016Jun0322

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Acquiring Firm**" means China National Agrochemical Corporation;

1.2. "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.3. "**Commission**" means the Competition Commission of South Africa;

1.4. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.5. "**Conditions**" mean these conditions;

1.6. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.7. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.8. **"Manufacturing Plant"** means the formulation plant of the Target Firm located in Brits (North West Province);

1.9. "**Merger**" means the acquisition of control over Syngenta AG by China National Agrochemical Corporation;

1.10. **"Merged Entity"** means the merged business activities of the Acquiring Firm and Target Firm;

1.11. "**Merging Parties**" mean the Acquiring Firm and Target Firm, as defined in this section, collectively; and

1.12. **"Target Firm"** means Syngenta AG.

2. Recordal

2.1. On 30 June 2016, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the Merger, the Commission is of the view that it is unlikely to substantially prevent or lessen competition in the relevant markets.

2.2. Although, the Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition, the investigation found that the Acquiring Firm imports all its products in the agrochemicals sector from its manufacturing facilities abroad to South Africa whilst the Target Firm has a Manufacturing Plant in the North West Province. The Commission is concerned that the Merger may result in the Merging Parties importing all their products at the expense of local manufacturing in the North West. This will have an adverse effect on the agrochemicals sector or region and thus raises a public interest concern. The Commission finds that the likelihood of the Merging Parties importing most of their products at the expense of using the Manufacturing Plant will affect the economy two-fold, namely, (i) by import substitution and/or (ii) likely job losses should the Manufacturing Plant be closed or relocated elsewhere whether within South Africa or internationally.

2.3. In order to allay the concerns of the Commission, the Merging Parties have provided an undertaking that the Manufacturing Plant will not be relocated outside of South Africa for a certain period.

2.4. In order to remedy the abovementioned negative impact on a particular industrial sector, the Commission hereby imposes the Conditions as set out below.

3. Conditions to the approval of the Merger

3.1. For a certain period of years, following the Implementation Date, the Manufacturing Plant shall not be relocated to premises that are outside of the North West Province of the Republic of South Africa.

4. Monitoring of compliance with the Conditions

4.1. The Merging Parties shall notify the Commission of the Implementation Date within 5 Days of its occurrence.

4.2. The Merging Parties shall submit an affidavit prepared by a senior official confirming compliance with the Conditions as set out in clause 3.1 on the anniversary of the Implementation Date for the duration of the Conditions.

4.3. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

4.4. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.5. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298