



16th May, 2017

**Notice under Section 6 (2) of the Competition Act, 2002 given by
China National Agrochemical Corporation**

Coram:

Mr. Devender Kumar Sikri

Chairperson

Mr. Augustine Peter

Member

Mr. G.P. Mittal

Member

Legal Representatives of Acquirer: J. Sagar Associates

Order under Section 31(1) of the Competition Act, 2002

1. On 24th August 2016, the Competition Commission of India (“**Commission**”) received a notice (“**Notice**”) given by China National Agrochemical Corporation (“**Acquirer**” / **CNAC**”), a wholly owned subsidiary of China National Chemical Corporation (“**ChemChina**”), under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The notice was filed pursuant to execution of a Transaction Agreement dated 2nd February 2016, entered into between ChemChina, CNAC and Syngenta AG (“**Syngenta**”). The Acquirer had earlier filed notice in Form I on 3rd March, 2016 on which the Commission observed that combined market shares of the Parties in multiple markets exceeded the threshold of 15 percent and accordingly, directed the Acquirer to refile notice of the proposed combination in Form II (hereinafter, CNAC and Syngenta are collectively referred to as “**Parties**”).



2. The proposed combination relates to acquisition by CNAC of shares and indirect sole control of Syngenta (“**Proposed Combination**”). As stated in the notice, ChemChina will acquire at least 67% shares of Syngenta and indirectly solely control Syngenta upon completion of the Proposed Combination.
3. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), *vide* letters dated 26th September, 2016, 18th October, 2016, 28th October, 2016, 21st December, 2016 and 14th February, 2017, the Acquirer was directed to remove defects in the Notice, provide complete information as per requirements of Form II and other material information necessary to assess the Proposed Combination. Complete information was furnished on 20th March, 2017.
4. In order to assist the Commission, views of third parties were sought and experts were engaged under the relevant provisions of the Act and Regulations framed thereunder. Further, considering the global nature of the Proposed Combination, the Commission also sought cooperation of other jurisdictions.
5. CNAC is a wholly owned subsidiary of ChemChina, which, in turn, is wholly owned by the Central Chinese Government. ChemChina is stated to be, *inter-alia*, active in the agrochemical sector through CNAC and CNAC’s subsidiary, Adama Agricultural Solutions Limited (“**Adama**”), an Israel based company. CNAC and Adama manufacture and sell off-patent active ingredients (“**AI**”) and formulations used for crop protection, seeds and lawn & garden products.
6. ChemChina has three subsidiaries in India *viz*; (i) Adama India Private Limited (“**Adama India**”), engaged in the business of manufacturing and packaging of crop protection products; (ii) Adisseo Animal Nutrition Private Limited, engaged in the sale of methionine; and (iii) Elkem South Asia Private Limited, engaged in the production and sale of metal and carbon products. As stated in the notice, Adama India does not



manufacture any AI in India. While CNAC/ChemChina do not manufacture any AI in India, they import and sell small quantities of the same in India.

7. Syngenta, a company based in Switzerland, is, *inter-alia*, globally active in research, development, manufacture and marketing of crop protection products and seeds designed to improve agricultural crop yields and food quality. It researches and develops both: (i) new AI and formulations for use in crop protection; and (ii) new seed strains and genetically modified seeds.
8. Syngenta has six subsidiaries in India: (i) Syngenta India Limited (“**Syngenta India**”), engaged in the business of manufacturing and trading of agrochemicals and processing of seeds; (ii) Syngenta Services Private Limited, engaged in providing business support services to its affiliate companies; (iii) Syngenta Crop Protection Private Limited, engaged in manufacture and trading of crop protection chemicals; (iv) Syngenta Biosciences Private Limited, engaged in providing research and technology services to Syngenta Crop Protection AG and other companies; (v) Syngenta Foundation India, engaged in promoting sustainable agriculture; and (vi) Devgen Seeds and Crop Technology Private Limited, engaged in activities relating to seeds research and development. It has been stated in the notice that Syngenta India does not manufacture any AI in India and that post 2013, it has not sold any AI in India.

Investigation under Section 29 of the Act

9. Based on assessment of information available on record, the Commission, in its meeting held on 21st April, 2017, observed that there are *prima facie* competition concerns, as discussed in subsequent paragraphs, in relation to the Proposed Combination and therefore, decided to issue a show cause notice (“**SCN**”), under sub-section (1) of Section 29 of the Act, to the Acquirer. Accordingly, SCN dated 24th April, 2017 was issued to the Acquirer, directing it to respond, in writing, within thirty days, as to why investigation in respect of the Proposed Combination should not be conducted. The Acquirer filed response to the SCN on 13th May, 2017 (“**Response to SCN**”), along with a voluntary remedy proposal (“**Remedy Proposal**”).



Competition Assessment

10. As per the Act, examination of the likelihood of a combination resulting in an AAEC is carried out in the context of relevant market(s). In terms of Section 2(r) of the Act, relevant market is defined as;

“The market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets”

11. The Commission observed that there are horizontal overlaps between the Parties *vis-à-vis* crop protection products. Accordingly, competition assessment of the Proposed Combination has been carried out by delineating relevant market(s) keeping in view the afore-mentioned overlaps.

Relevant Product Market

12. **Crop protection products:** The Commission observed that crop protection products include insecticides, fungicides and herbicides, used in agriculture to enhance crop yield and crop quality by protecting crops against damages caused by weeds, insects or fungi. The Commission further noted that these products are applied on the basis of type of crop and target pest *i.e.* insect, weed or fungi. Accordingly, crop protection products are normally sub-divided on the basis of their effectiveness on distinct types of pests infesting a crop. Insecticides are classified as those targeting chewing, sucking and broad-spectrum insecticides. Similarly, fungicides target a specific class/category fungus and herbicides may be classified into selective and non-selective categories.
13. For substitutability analysis between the Parties’ crop protection products, the Commission observed that the application method (as foliar or soil) and nature method (whether patented or off-patent) may also be relevant. The Commission also noted that the broader markets for insecticides, fungicides and herbicides can be analysed based on AI, formulation and mode of action.



Relevant Geographic Market

14. The Commission observed that the relevant geographic market is the territory of India.

Assessment of AAEC concerns

Market for crop protection products

15. Considering factors such as low combined market shares of the Parties, low increment and presence of several competitors and other competing products of competitors, the Commission did not find any competition concerns in the overlapping relevant markets except in the following:

- (i) Fungicides for Cereals -Wheat / Leaves-Rust;
- (ii) Fungicides for Soybeans / Leaves-Leafspots;
- (iii) Fungicides for Vegetables- Okra/Mildew-Oomycetes; and
- (iv) Insecticides for Other Speciality/Foliar/Chewing

16. Competition assessment of each of the aforesaid markets is given below:

- (i) ***Fungicides for Cereals-Wheat/Leaves-Rust:*** In India, Adama and Syngenta have market share in the range of 20-25 percent and 5-10 percent respectively and therefore, combined market share, post-combination, would be in the range of 25-35 percent. On perusal of data for three years, the Commission noted that market share of Adama in the year 2013 was 10-15 percent and that of Syngenta was 5-10 percent; while in 2014, the market share of Adama was 20-25 percent and that of Syngenta was 5-10 percent. Overall, combined market share of the Parties increased from 15-20 percent in 2013 to 25-35 percent in 2015. Further, competitors in this market are distantly placed in terms of market shares - Dupont (10-15 percent), Indofill (10-15 percent), Sulphur Mills Ltd (5-10 percent), Dow-Agrosciences ('Dow') (5-10 percent) and BASF (5-10 percent).



- (ii) ***Fungicides for Soybeans/Leaves-Leafspots***: In India, during 2015, Adama and Syngenta have market share of 40-45 percent and 15-20 percent, respectively and the combined market share, post-combination would be 55-65 percent. On perusal of data for three years, the Commission noted that market share of Adama in the year 2013 was 25-30 percent and that of Syngenta was 30-35 percent; while in the year 2014, the market share of Adama was 35-40 percent and that of Syngenta was 20-25 percent. Overall, the combined market share of the Parties had remained high during 2013-2015, with combined market share being 55-65 percent in 2013 and 55-60 percent in year 2015. Further, the competitors in this market are distantly placed in terms of market shares - Indofil (15-20 percent), Bayer (1-5 percent), BASF (10-15 percent) and Dow (5-10 percent).
- (iii) ***Fungicides for Vegetables-Leafy/Brassica/Okra/Mildew-Oomycetes***: In India, Adama and Syngenta have market shares of 10-15 percent and 20-25 percent, respectively and the combined market share, post-combination, would be high at 30-40 percent. Further, competitors in this market (along with market share) are BASF (25-30 percent), Indofil (15-20 percent), Bayer (15-20 percent) and Dow (5-10 percent).
- (iv) ***Insecticides for Other Speciality/Foliar/Chewing***: In India, Adama and Syngenta have market share of 25-30 percent and 35-40 percent, respectively and the combined market share, post-combination, would be 60-70 percent. Further, competitors in this market are distantly placed in terms of market shares - Dow (20-25 percent), Dupont (10-12 percent) and Chemtura (5-10 percent).
17. As regards entry conditions, the Commission observed that entry barriers exist as it requires a great deal of research, field trials and approvals from different authorities, which involves considerable time, to introduce a new crop protection product in the market.



Remedy Proposal:

18. The Commission considered the Remedy Proposal with respect to the aforesaid four relevant markets. In terms of the Remedy Proposal, the Acquirer has offered to divest following three formulated crop protection products sold by Syngenta in India as detailed below:

- (i) Propiconazole 250 EC [bearing registration number CIR-20432/95-Propiconazole (EC)-3] sold under the brand name 'TILT' in respect of fungicides for: (a) Cereals-Wheat/Leaves-Leaves Rust; and (b) Soyabeans/Leaves-Leafspot;
- (ii) Copper Oxy Chloride 50 WP [bearing registration number 2008350] sold under the brand name 'Blue Copper' in respect of fungicides for Vegetables-Okra/Mildew Oomycetes; and
- (iii) Emamectin Benzoate 5 SG [bearing registration number CIR 110222/2013-Emamectin Benzoate (SG) (343)-24] sold under the brand name 'PROCLAIM' in respect of insecticides for Other Specialty/Foliar/Chewing.

Analysis of Remedy Proposal

19. The Commission noted that in the relevant markets of fungicides for Soyabeans / Leaves-Leafspot and Insecticides for Other Specialty / Foliar / Chewing, Syngenta will cease to exist as a competitor as the products to be divested, *i.e.*, Tilt 250 EC and Proclaim 05 SG are the only products sold by Syngenta in these relevant markets. In the relevant market of fungicides for Cereals-Wheat/Leaves-Rust, the Commission noted that post-divestiture, Syngenta would have a negligible market share of 0-5 percent. In the relevant market for fungicides for Okra/Mildew-Oomycetes, Syngenta's market share will decline from about 20-25 percent to about 15-20 percent and consequently, the combined market share of the Parties would reduce to 25-30 percent. The Commission observed that the Remedy Proposal alleviates the concerns arising out of the Proposed Combination in relation to the above said markets.



Other areas of concerns

20. While carrying out competition assessment of the Proposed Combination, the Commission identified certain other concerns, *inter-alia*, relating to bundling, vertical integration, interoperability, restrictions in technology agreements, increasing control of Parties in the supply chain *etc.* in the agro-chemicals market as also enhanced market power of the combined entity to impede local system and innovation and ability of farmers as well as public sector research institutions to offer alternative integrated solutions.
21. The Acquirer, in Response to SCN, has submitted that inputs / raw materials used in manufacture of crop protection products *i.e.* AIs are neither manufactured by Adama India nor by Syngenta India. Further, while Adama India sells small quantities of AIs in India, Syngenta does not sell any AIs in India. It has been submitted that Adama does not manufacture seeds that could be modified to be used only with Syngenta's crop protection products. Further, the possibility of technical tying of Syngenta's seeds with Adama's crop protection products is inconceivable as Adama manufactures only generic crop protection products. Accordingly, even if the Parties were to attempt to technologically tie Syngenta's proprietary seeds with Adama's generic crop protection products, competing generic crop protection product manufacturers would quickly and easily produce products identical to Adama's products for use along with Syngenta's seeds. It has also been submitted that while Syngenta is a R&D company, Adama is not involved in R&D activities; thus, the Proposed Combination would not alter the ability of local (traditional, conventional/ modern and indigenous) system and innovation and ability of farmers as well as public sector research institutions to offer alternatives integrated solutions. It has also been submitted that both Syngenta India and Adama India sell their products to farmers through distributors / dealers, most of whom are non-exclusive dealers. In addition, it has been submitted that India has over 150,000 distributors of various sizes across the country and there is intense competition among the agrochemical producers for shelf space, given the non-exclusive nature of the distributors. Further, the Acquirer, in order to alleviate any concern arising out of the Proposed Combination, has undertaken,



as part of the Remedy Proposal, that Adama India and Syngenta India would operate as separate, independent and competitive businesses for a period of seven years.

22. The Commission considered facts and material on record and approved the Proposed Combination subject to compliance with the divestiture commitments and undertaking as given in the Remedy Proposal and directed as follows:

Divestment Products

23. The Divestment Products shall include the following:
- a. Intellectual Property Rights (“IPRs”): Absolute assignment of all registered trademark rights, packaging and design rights used exclusively by the Divestment Products in India, including:
 - i. brand names and registered trademarks as described in Schedule I;
 - ii. packaging and design rights as described in Schedule II;
 - b. Inventories: All semi-finished and finished Divestment Products held by Syngenta India as on the Closing Date for sale in India.
 - c. Technical Information and Know-how: An exclusive, royalty-free, irrevocable and perpetual India-wide license to use all information and know-how in whatever form held by Syngenta India, to the extent that such information and know-how is: (i) exclusively related to the Divestment Products in India and (ii) required by the Approved Purchaser to develop, register, produce, manufacture, formulate, distribute, market and sell the Divestment Products in India, including, without limitation:
 - i. Product formulations, specifications, manuals, instructions and recipes and manufacturing know-how, including the information contained in the registration dossiers for the Divestment Products;
 - ii. customer/distributor lists, sales, marketing and promotional information;
 - iii. business plans and forecast;
 - iv. technical or other expertise;
 - v. customer records, credit records and other records existing at the time of Closing;



Provided in each case that Syngenta and Syngenta India may redact from such documents any information that does not relate to the Divestment Products.

Provided further that Technical Information and Know-how shall also include, upon the request of the Approved Purchaser, non-exclusive, perpetual, royalty free license to use all information and know-how in whatever form held by Syngenta India that is shared across one or more products in addition to the Divestment Products, but is necessary for the economic viability, marketability and competitiveness of the respective Divestment Products, solely for use in relation to the Divestment Products.

- d. Licences and Permits: All licences, permits, product registrations obtained from the Central Insecticides Board Registration Committee (“**CIBRC**”) and authorisations (including market authorisations) issued by any governmental organisation necessary to manufacture and market the Divestment Products in India.
- e. Contracts: All contracts (including toll-manufacturing agreements for the Divestment Products), commitments and customer orders that exclusively relate to the Divestment Products in India held by Syngenta India at the Closing Date.
- f. Goodwill: The goodwill relating to the Divestment Products in India at the time of the divestment together with the exclusive right for the Approved Purchaser(s) to represent itself as carrying on the business of Divestment Products.
- g. At the option of the Approved Purchaser(s), Syngenta and Syngenta India shall extend such transitional support and enter into transitional agreements/arrangements as may be reasonably required by the Approved Purchaser(s) under the supervision of a Monitoring Agency to ensure continued supply of the Divestment Products in India, such as: (i) advising on technical knowledge documentation, (ii) supporting the Approved Purchaser(s) in acquiring specific equipment, (iii) assisting in training the Approved Purchaser’s staff, and (iv) providing guidance on regulatory and legal aspects related to the transfer of licences of the Divestment Products referred to above.

24. The Divestment Products shall not include any of the following:

- a. brand names, trade mark rights and packaging and design rights identified in Schedule I and Schedule II for use by Syngenta and Syngenta India outside India and



- any other intellectual property not specifically identified in Schedule I and Schedule II;
- b. any manufacturing facilities of either Party;
 - c. any personnel of either Party;
 - d. IPRs which do not contribute to the Divestment Products and/or are not necessary to ensure the economic viability, marketability and competitiveness of the respective Divestment Products;
 - e. any rights to either Party's domain name;
 - f. any marketing authorisations currently held by Syngenta outside of India for the Divestment Products;
 - g. any rights to the Divestment Products outside of India;
 - h. books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Approved Purchaser(s) shall be entitled to obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;
 - i. general books of account and books of original entry that comprise either Party's permanent accounting or tax records;
 - j. monies owed to Syngenta India by customers for the purchase of the Divestment Product(s), and monies owed by Syngenta India to suppliers for materials used in the production of the Divestment Product(s), or to suppliers for the production of the Divestment Product(s); and
 - k. Syngenta names or logos in any form that do not relate to the Divestment Products.

Preservation of Economic Viability, Marketability and Competitiveness

25. Until the Closing Date, Syngenta India shall take such steps as are necessary to maintain economic viability, marketability, and competitiveness of the Divestment Product(s) and shall prevent the destruction, removal, wastage, deterioration, sale, disposition, transfer or impairment of the Divestment Product(s), except as would occur in the ordinary course of business.



26. Until the Closing Date, Syngenta India shall maintain the operations of the Divestment Product(s) in the regular and ordinary course of business and in accordance with past practices (including regular repair and maintenance) and shall use its best efforts to preserve the existing relationships with suppliers, vendors, customers, agencies, and others having business related to the Divestment Product(s).
27. Without limiting the generality of the foregoing, until the Closing Date, the Syngenta India shall provide such sales, managerial, administrative, operational and financial support as is necessary in the ordinary course of business to promote the continued effective operation of the Divestment Product(s) in accordance with standards similar to those existing prior to the Effective Date.
28. Within 7 days from the Effective Date, Syngenta and Syngenta India shall appoint a senior management level employee in India having sufficient experience in the operations and management of the Divestment Product(s) who shall, under the supervision of the Monitoring Agency, ensure that the economic viability, marketability and competitiveness of the Divestment Product(s) are maintained till the Closing Date (“**Hold Separate Manager**”). The Hold Separate Manager shall, on a monthly basis, report in writing to the Monitoring Agency and if applicable, the Divestiture Agency on the continued economic viability, marketability and competitiveness of the Divestment Product(s). The Hold Separate Manager shall report immediately, in writing, to the Monitoring Agency and if applicable, Divestiture Agency of any failure on the part of the Acquirer/Parties to comply with the Order.
29. With respect to the Divestment Product(s), Syngenta or any affiliate of Syngenta, for a period of 5 years after the Closing Date, shall not introduce and/or sell any new product in India with substantially the same formulation as the Divestment Product(s). This shall, however, not prevent or restrict Syngenta, any affiliate of Syngenta or any person that becomes an affiliate of Syngenta following the Closing Date from marketing or selling, obtaining or maintaining a product registration for any product other than the Divestment Product(s) or products with substantially the same formulation as the Divestment Products that is sold in India at the Closing Date.



Ring-fencing in relation to Divestment Products

30. The Parties and their Affiliated Undertakings shall ensure that Confidential Information obtained by the Parties and/or their Affiliated Undertakings is eliminated and is not used by the Parties or their Affiliated Undertakings. For this purpose, the Parties shall implement, or procure implementation of necessary and adequate measures. The Parties shall also ensure that the participation in relation to Divestment Products in the central information technology network will be discontinued to the extent possible, provided however, such discontinuation should not affect the viability and competitiveness of Divestment Products.
31. The Parties shall ensure that the combined entity does not obtain any confidential information relating to the Divestment Products that is not already known to Parties.
32. The Parties may obtain or keep information relating to the Divestment Products which is reasonably necessary for the Divestiture or the disclosure of which is required by law or which is reasonably required by the Parties to comply with their financial reporting or other legal obligations (including in relation to tax filings).

Due Diligence and reporting

33. Syngenta India shall provide sufficient information regarding the Divestment Product(s) to the Approved Purchaser so that such Approved Purchaser is able to undertake reasonable due diligence of the Divestment Product(s).
34. Syngenta India shall keep the Monitoring Agency and if applicable, Divestiture Agency informed regarding the Approved Purchaser and developments regarding the Divestment of the Divestment Product(s) by submitting written reports regarding the same within ten days of the end of every month following the Effective Date.



No acquisition of influence

35. Subject to the provisions of paragraph 29, the Parties shall, for a period of 5 years from the Closing Date, not acquire direct or indirect influence over the whole or part of the Divestment Product(s).

Purchaser Requirements

36. Syngenta and Syngenta India shall ensure that the purchaser proposed by the Parties meets the following requirements:
- a. The purchaser is structurally independent of and has no structural link with the Parties;
 - b. The purchaser has the financial resources, proven expertise, manufacturing capability/ability to outsource manufacturing and incentive to maintain and develop the Divestment Product(s) as a viable and active competitor in the Indian crop protection market;
 - c. The purchaser is neither likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Order 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 Product(s) (the criteria for the purchaser hereinafter referred to as the “**Purchaser Requirements**”).

Sale and Purchase Agreement and Purchaser

37. Within a period of 6 months or the period as extended by the Commission upon CNAC’s request, from the Effective Date, CNAC shall submit fully documented and reasoned proposal(s), including the name of purchaser(s) satisfying the Purchaser Requirements specified in paragraph 36 above, and a copy of the final agreement(s) to be entered, to the Commission and the Monitoring Agency, for the Commission’s approval. [...].



Divestiture Agency

38. If the Closing has not taken place as specified in paragraph 37, the Commission shall appoint a Divestiture Agency to divest the Divestment Products. The appointment of the Divestiture Agency shall take effect from commencement of Second Divestiture Period or the day of its appointment, whichever is later. Upon receipt of the notice of the Commission regarding the appointment of Divestiture Agency, the Parties must, within the period prescribed by the Commission, execute a comprehensive power of attorney in favour of the Divestiture Agency to effect the sale of Divestment Products and take all actions and declarations which the Divestiture Agency considers necessary or appropriate for achieving the sale of Divestment Products, including the power to appoint advisors to assist with the sale process. The power of attorney shall include the authority to grant sub-powers. During the Second Divestiture Period, the Divestiture Agency shall have the sole authority to sell the Divestment Products at no minimum price to an Approved Purchaser. Upon request of the Divestiture Agency, the Parties shall cause the documents required for effecting the sale and the Closing to be executed.
39. The Divestiture shall not be effected by the Divestiture Agency unless and until the Commission has approved the terms of sale and purchase agreement (including any ancillary agreement) and the purchaser proposed by the Divestiture Agency.
40. If the Monitoring Agency and the Divestiture Agency are not the same legal or natural persons, the Monitoring Agency and the Divestiture Agency shall cooperate with each other during the Second Divestiture Period in order to facilitate each other's tasks.
41. A copy of the Divestiture Agency Agreement shall be provided to the Parties and the Parties shall use their best efforts to facilitate the Divestiture Agency in performance of its duties and obligations provided in the Divestiture Agency Agreement. Any failure by the Parties in such facilitation may be deemed to be a contravention of the Order.



Sale of Divestment Products within Second Divestiture Period:

42. Within the Second Divestiture Period, the Divestiture Agency shall divest at no minimum price the Divestment Products, to an Approved Purchaser.
43. The Divestiture Agency shall have the discretion as to the manner in which it sells the Divestment Products. The Divestiture Agency shall include in the sale and purchase agreement, or other disposal arrangement (as well as in any ancillary agreements) (a) such terms and conditions as it considers appropriate for an expedient sale in the Second Divestiture Period; and (b) such customary representations and warranties and indemnities as are reasonably required to affect the sale. The Divestiture Agency shall protect the legitimate commercial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Second Divestiture Period.
44. During the Second Divestiture Period, the Divestiture Agency shall provide the Commission a comprehensive monthly (or otherwise at the Commission's request) report on the progress of the Divestiture process. The monthly reports shall be submitted within ten days after the end of every month with a simultaneous copy to the Monitoring Agency and a non-confidential copy to the Parties.

Maintaining Adama India and Syngenta India as separate entities / competitors

45. The Parties shall ensure that each of Adama India's and Syngenta India's businesses will be managed independently and in the best interest of that company with a view to ensure their continued economic viability, marketability and competitiveness and its independence from the other company's businesses. Accordingly, the Parties shall, for a period of 7 years after the Closing Date, (hereinafter "**Period of Separate Operations**" or "**PSO**"):
- a. maintain Syngenta India and Adama India as distinct separate legal entities;
 - b. operate Adama India and Syngenta India as separate, independent and competitive businesses (including efforts to generate new business) consistent with the practices of



Adama India and Syngenta India and their respective businesses, capital and independent strategic plans;

- c. maintain distinct management of Adama India and Syngenta India with no interlocking directorships and ensure that the staff of Adama India and Syngenta India have no involvement in each other's business or operations and that the management and employees of each of Adama India and Syngenta India do not report to any individual who is in any way employed, engaged or related to the respective other company's business or operations;
- d. use their best efforts to preserve Adama India's and Syngenta India's existing relationships with suppliers, distributors, vendors, customers, agencies, and other Third Parties having business related to Adama India and Syngenta India;
- e. ensure that (i) Adama India and Syngenta India conduct any dealings between them (including executing any agreements) on an arm's length basis; (ii) perform all maintenance and replacements of their assets in the ordinary course of business; and (iii) keep their IT systems, rebate policies and distribution networks separate from each other;
- f. not transfer any personnel from Adama India to Syngenta India or vice versa; and
- g. prevent exchange of Confidential Information between Syngenta India and Adama India.

Ring-fencing in relation to PSO

46. The Parties shall also ensure that personnel from Adama India and Syngenta India will not be able to access Confidential Information on the other company from any central information technology networks, until the expiry of the PSO.
47. The employees of the Parties who provide support to Adama India and Syngenta India, if any, shall retain and maintain Confidential Information as confidential and shall not provide, discuss, exchange, circulate, or otherwise furnish any such information to or with any employee of the other company.



48. The Parties may obtain or keep information relating to Adama India and Syngenta India, the disclosure of which is required by law or which is reasonably required by the Parties to comply with their financial reporting or other legal obligations (including in relation to tax filings).
49. The Parties are required to submit an annual certificate of compliance from their respective managements to the Commission and a copy to the Monitoring Agency to confirm that the obligations set out in paragraphs 45, 46, 47 and 48 are being complied with. Further, such annual certificate of compliance shall be submitted to the Commission within 60 business days of the yearly anniversary of the Effective Date.

Monitoring Agency

50. The Commission shall, under Regulation 27 of the Combination Regulations, appoint an independent agency as Monitoring Agency for the purpose of supervising the Divestment process and ensure that each of Adama India and Syngenta India are in compliance with paragraphs 45, 46 , 47 and 48 of the Order until the expiry of PSO.
51. The Monitoring Agency shall undertake such functions which shall include, *inter alia*, the following:
- Overseeing the on-going management of the Divestment Product(s) with a view to ensure its continued economic viability, marketability and competitiveness and monitor compliance with the Order by the Parties;
 - Proposing such reasonable measures as the Monitoring Agency considers necessary to ensure compliance with the Order, in particular maintenance of full economic viability, marketability and competitiveness of the Divestment Products, holding separate of divestment products and non-disclosure of competitively sensitive information.
 - Reviewing and assessing potential purchasers as well as the progress of the Divestment process and verifying that at each stage of the Divestment process, potential purchasers receive sufficient information relating to the Divestment



Product(s), in particular by reviewing the relevant data room documentation, information memorandum and due diligence process.

- d. Submitting to the Commission a written report within 10 days after the end of every month which shall cover (a) the operation and management of the Divestment Product(s); and (b) the progress of the Divestment process as well as potential purchasers. It shall report immediately in writing to the Commission of any failure on part of the Parties to comply with the Order. A non-confidential copy of the said report will be provided to the Parties;
- e. Submitting to the Commission a written report containing its recommendations as regards (a) the suitability of the purchaser proposed by the Parties in accordance with the Purchaser Requirements in paragraph 36 above; and (b) whether the Divestiture is being carried in accordance with the Order;
- f. Assuming the other functions assigned to the Monitoring Agency under the Monitoring Agency Agreement; and
- g. Ensuring that Parties do not obtain any confidential information exclusively relating to the Divestment Product(s) after Divestment and that the confidential information exclusively relating to the Divestment Product(s) (if any) shall not be used by the Parties.

52. The Monitoring Agency shall also undertake the following functions to ensure that each of Adama India and Syngenta India's businesses will be managed independently:

- a. monitor that the Parties are in compliance with paragraphs 45, 46 , 47 and 48 of the Order;
- b. submit to the Commission a written report within ten days after the end of every quarter;
- c. provide a non-confidential copy of the said report to the Parties; and
- d. report immediately in writing to the Commission of any failure on the part of the Parties to comply with the conditions mentioned in paragraphs 45, 46 , 47 and 48 of the Order.



Duties and obligations of the Parties

53. Syngenta India shall keep the Monitoring Agency and the Divestiture Agency, if applicable, informed of all developments in the Divestiture process. Further, the Parties shall provide necessary cooperation, assistance and information to the Monitoring Agency and to the Divestiture Agency, if applicable, as is reasonably required by the Monitoring Agency and Divestiture Agency to perform their duties. This shall include providing copies of the documents required and providing full and complete access to Syngenta India's books, records, documents, management or other personnel, facilities, sites and technical information required by the Agency to fulfil its duties under the Monitoring Agency Agreement, the Divestiture Agency Agreement and the Order.
54. The Monitoring Agency and Divestiture Agency, if applicable, shall be provided access to data room documentation and all other information granted to potential purchasers in the due diligence process.
55. The Parties shall indemnify the Monitoring Agency, its employees and agents and Divestiture Agency its employees and agents ("**Indemnified Party**") and hold each Indemnified Party harmless against any liabilities arising directly out of the performance of the Indemnified Party's duties under the Order, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Indemnified Party.
56. The Commission may at any time request information from the Parties that is reasonably necessary for the effective implementation of the Order.
57. In case the Parties fail to comply with the commitments provided in Remedy Proposal, the Proposed Combination shall be deemed to have caused appreciable adverse effect on competition in India.
58. Schedules and Appendix A annexed to the Order shall form an integral part of the Order.



59. In carrying out the aforesaid, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.
60. The Order shall stand revoked, if any time, the information provided by the Acquirer is found to be incorrect.
61. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
62. This approval is without prejudice to the penalty proceedings which may be initiated against the Acquirer under Section 43A of the Act.
63. The Secretary is directed to communicate to the Acquirer accordingly.



Schedule I

Mark Name/ Brand	Trademark Type	Classes	Current Registration Number	Current Renewal Date	Registered Owner
PROCLAIM	WORD MARK	05	833551	22 December, 2018	SYNGENTA PARTICIPATIONS AG
PROCLAIM LOGO (INSECT WITH LOCK)	DEVICE MARK	01	1363488	13 June, 2025	SYNGENTA PARTICIPATIONS AG
PROCLAIM LOGO (INSECT WITH LOCK)	DEVICE MARK	05	1363489	13 June, 2025	SYNGENTA PARTICIPATIONS AG
TILT	WORD MARK	05	869864	05 August, 2019	SYNGENTA PARTICIPATIONS AG
TILT (DEVICE-BA)	DEVICE MARK	05	1983412	22 June, 2020	SYNGENTA PARTICIPATIONS AG
BLUE COPPER	WORD MARK	05	2008350	12 August 2020	SYNGENTA PARTICIPATIONS AG

Schedule II

Design right for the PROCLAIM container/jar:

Syngenta reference number: 73312-IN-D-ORG-NAT-1

Design Patent number: 196488

Expiration date: 29 July 2019, with no possibility of renewal.

Registered Owner: Syngenta India Limited



Appendix A

Glossary

Act: Shall mean the Competition Act, 2002.

Affiliated Undertakings: Undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the term “Control” shall bear the meaning provided in Explanation (a) to Section 5 of the Act.

Approved Purchaser(s): The entity proposed by the Parties and approved by the Commission as acquirer of the respective Divestment Product(s) in accordance with the criteria set out in Order.

Approved Sale and Purchase Agreement: The sale and purchase agreement for the sale of the Divestment Product(s) executed by Syngenta and Syngenta India and the Approved Purchaser(s), as duly approved by the Commission.

Closing: The transfer of the legal title of the Divestment Product(s) to the Approved Purchaser(s).

Closing Date: The date on which the Closing takes place.

Confidential Information: Any business secrets, know-how, commercial information, or any other information of a proprietary nature relating to Adama India or Syngenta India that is not available in the public domain.

Divestment or Divest or Divestiture: Sale, transfer, assignment and/or licence of the Divestment Product(s) by Syngenta and Syngenta India to the Approved Purchaser(s).



Divestment Products: Following formulated crop protection products sold by Syngenta in India: (i) Propiconazole 250 EC [bearing the registration number CIR-20432/95-Propiconazole (EC)-3] sold under the brand name ‘TILT’;(ii) Emamectin Benzoate 5 SG [bearing the registration number CIR 110222/2013-Emamectin Benzoate (SG) (343)-24] sold under the brand name ‘PROCLAIM’; and (iii) Copper Oxy Chloride 50 WP [bearing the registration number 2008350] sold under the brand name ‘Blue Copper’.

Divestiture Agency: One or more natural or legal person(s), independent from the Parties, which is appointed by the Commission, and which has the duty to Divest the Divestment Product(s) during the Second Divestiture Period. The Monitoring Agency may also act as Divestiture Agency

Divestiture Agency Agreement: The agreement executed by and between the Commission and the Divestiture Agency.

Effective Date: The date on which the Order is received by the Acquirer.

First Divestiture Period: [...].

Monitoring Agency: One or more natural or legal person(s), independent from the Parties, who is appointed by the Commission, and who has the duty to monitor the Divestment of the Divestment Product(s) in India and to ensure that each of Adama India and Syngenta India are in compliance with paragraphs 45, 46, 47 and 48 of the Order until the expiry of PSO. The Monitoring Agency may be appointed as the Divestiture Agency by the Commission.

Monitoring Agency Agreement: The agreement executed by and between the Commission and the Monitoring Agency regarding the monitoring of the Divestment of the Divestment Product(s) in India and monitoring of compliance with paragraphs 45, 46, 47 and 48 of the Order.



COMPETITION COMMISSION OF INDIA
(Combination Registration No.C-2016/08/424)



Order: Shall mean the Commission's order approving the Proposed Combination.

Parties: CNAC and Syngenta are collectively referred to as the Parties.

Second Divestiture Period : [....].

Syngenta: Syngenta AG, incorporated under the laws of Switzerland, with its registered office at Schwarzwaldallee 215, 4058 Basel, Switzerland.

Syngenta India: Syngenta India Limited, incorporated under the laws of India, with its registered office at Survey No. 110/11/3, Amar Paradigm, Near Hotel Sadanand, Baner Road, Pune-411045, Maharashtra, India.

Third Party(ies): Any entity other than the Parties and the Approved Purchaser.
