

**Questions For Record Of Senator Grassley (R-IA)**  
**Chairman, Senate Committee on the Judiciary**  
**Hearing on “Competition and Consolidation in the U.S. Seed and Agrochemical Industry”**  
**September 20, 2016**

**Questions for Mr. Fyrwald:**

1. At the September 20 hearing, you testified that the proposed merger between Syngenta and ChemChina:

“[A]llows Syngenta to remain Syngenta, with the same strategy, management, people, and culture. No jobs will be lost and no jobs will go overseas as a result of this transaction. We will remain subject to all federal and state laws. Our products will still need to meet our own high standards, as well as those regulators – and with the EPA, FDA and USDA and their sophisticated review processes. The only change with this transaction is in our shareholder base. ChemChina will be a financial owner.”

You also testified:

“We will remain a Swiss company headquartered in Switzerland with the same management. And we will have to obey laws, obviously in China, the United States, Switzerland, and everywhere in the world.”

On the day of the hearing, the United States Court of Appeals for the Second Circuit held that United States federal courts should abstain on grounds of international comity from hearing antitrust claims against Chinese companies alleged to have fixed product prices at the direction of the Chinese government. See *In re Vitamin C Antitrust Litig.*, No. 13-4791-cv, --- F.3d ---, 2016 WL 5017312, at \*13 (2d Cir. Sept. 20, 2016).

- a) **To your knowledge, is ChemChina currently subject to Chinese regulations controlling product prices?**

To my knowledge no, but this question is better directed at ChemChina to answer.

- b) **Following the acquisition, to what extent will Chinese regulations apply to Syngenta products?**

Syngenta is a global company and will obey all laws in any country that it operates, whether that’s in the United States, Switzerland, China or elsewhere. Our obligation will be to follow laws and regulations anywhere we sell our products, and our own code of conduct will not change with this acquisition.

- c) **In the event that Syngenta is subject to conflicting regulations of the United States and Chinese governments following the acquisition, how will Syngenta comply with the mandates of both governments?**

Syngenta is a global company that has been operating for over 200 years. We already have to comply with different laws and regulations wherever we have operations. This will not change as a result of the transaction.

2. **At the September 20 hearing, you told Senator Blumenthal that after being acquired by ChemChina, “Syngenta will not raise” the defense of foreign sovereign immunity to current or future litigation filed by residents of the United States. Can you make a similar commitment that, following the acquisition, Syngenta would not assert defenses based on any of the following theories against a lawsuit asserting antitrust claims in American federal court?**

- a) **Abstention based on international comity**
- b) **Act of state doctrine**
- c) **Foreign sovereign compulsion**
- d) **Political question doctrine**

Yes.

3. The Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1603 et seq., affords a presumption of foreign sovereign immunity to “agenc[ies] or instrumentalit[ies] of a foreign state,” defined as organizations “a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof.” The FSIA also provides that foreign state-owned companies are nevertheless subject to the jurisdiction of United States courts in actions based upon their commercial activities. See 28 U.S.C. § 1605(a)(2). Recently I introduced legislation—the STAR Act, S. 3323—that would amend the FSIA to attribute “commercial activities” of a foreign state-owned company to foreign state-owned affiliates of that company for purposes of subject-matter jurisdiction.

- a) **Following the acquisition, will Syngenta (including any corporate member or affiliate thereof) qualify as an “agency or instrumentality of a foreign state” for purposes of the FSIA?**

Syngenta will remain Syngenta, a Swiss company.

- b) **Following the acquisition, will Syngenta (including any corporate member or affiliate thereof) assert a defense to litigation in United States courts under the FSIA?**

All of Syngenta’s U.S. incorporated businesses are subject to all U.S. civil law. FSIA immunity does not and will not extend to the commercial activities of

Syngenta's U.S. businesses once the acquisition is completed. Further, in the ten years that ChemChina has been doing business in the U.S., it has never invoked FSIA or sovereign immunity in U.S. Courts.

- c) **Following the acquisition, will ChemChina assert a defense to litigation involving allegations against Syngenta (including any corporate member or affiliate thereof) in United States courts under the FSIA?**

FSIA immunity does not and will not extend to the commercial activities of our U.S. business.

- d) **At the September 20 hearing, you told Senator Blumenthal that you would consider entering into a consent decree with the Department of Justice providing that Syngenta will not assert the defense of foreign sovereign immunity in United States courts. Would ChemChina be willing to enter into a similar consent decree?**

That is a question for ChemChina, and I cannot speak on its behalf.

**Questions For Record Of Senator Leahy (D-VT)**  
**Ranking Member, Senate Judiciary Committee**  
**Senate Judiciary Committee Hearing on “Consolidation and Competition in the U.S. Seed and**  
**Agrochemical Industry”**  
**September 20, 2016**

**Question for all witnesses:**

1. All farmers, whether they use genetically engineered (GE)-traited technologies or not, are still looking for non-GE choices to expand their rotations and to seek higher value markets. Many of you have discussed the impact that the pending seed and chemical company mergers will have on innovation. Some have argued that the mergers will enhance innovation, and others that it will stifle innovation. Those who are concerned about less innovation if the mergers are approved have noted the difficulty in crafting a potential remedy for that concern, as questions about innovation present unique challenges that are far more complex than simply divesting existing businesses or product lines.
  - a. **What are the potential opportunities and mechanisms for enhancing public plant breeding capacity to address the loss in diversity of seed choices for farmers, and the many needs of farmers that will not be addressed by the private sector, whether or not we continue to see mergers in seed companies?**

Our customers, including the many independent seeds companies we support with technology, and we are fortunate that in our situation, we are not merging, but rather changing shareholders. This enables us to continue with business as usual supplying our products and services, and investing in R&D to meet the evolving needs of growers. Syngenta does not have any overlap in seeds or in research and development with ChemChina, and the structure of our transaction will benefit growers by enabling us to focus on beneficial, long-term development without having to be responsive to short-term investors need.

We are always looking for new ways to collaborate with public and private sector organizations to enhance capacity. For example, in 2014, we launched our first Breeding Academy, which allows us to collaborate across divisions and functions to develop new products for farmers. And we have plant breeding programs with the University of Nebraska and North Carolina State University in place to encourage innovation and leadership in this area. It is through partnerships like these that we hope we can support innovation for farmers now as well as help equip the next generation of plant breeders with the skills and expertise they need.

Further, we are leaders and support the emerging area of open access to the vast stores of agricultural information and data that can benefit researchers and farmers. We are not talking about growers’ individual, competitive farm

information, but aggregate information that can help growers around the world be more successful and more competitive for everyone's benefit. For example, as a founding member of the International Licensing Platform, we are working with industry partners to improve access to patented vegetable traits through an e-licensing platform. The idea is to make it easier to exchange know-how and genetic breeding material and to speed the development of diverse crop varieties. Syngenta's Traitability website provides quick and easy access to some of our patented native traits and enabling technologies.

We are working with GODAN, Global Open Data for Agriculture and Nutrition. GODAN supports the proactive sharing of open data to make information about agriculture and nutrition available, accessible and usable to help with the urgent challenge of ensuring world food security. GODAN is a rapidly growing group, currently with over 370 partners from governments, NGO's, academia and the private sector. We are exploring what information can and should be released that will have a positive impact in this global effort.

- b. **As you consider the challenges farmers are facing today needing access to seeds that are well adapted to their farming systems, soils, and the changing climate, would you support additional investments in public research on diversification of seed stocks and publically available plant varieties in this country that could lead to greater genetic diversity?**

Yes, we welcome any investment that encourages R&D in genetic diversity. With the acquisition by ChemChina we ensure the continued funding of our R&D strategy which is to bring farmers new tools and solutions to help them farm productively and sustainably.

**Questions For Record Of Senator Cruz (R-TX)**  
**Erik Fyrwald, CEO, Syngenta International AG**  
**Senate Committee on the Judiciary**  
**Consolidation and Competition in the U.S. Seed and Agrochemical Industry**  
**September 20, 2016**

**Questions:**

- 1. Several of the people I have spoken with in the farm and agricultural industry believe that effects stemming from these mergers should be reviewed collectively. If you disagree, could you please explain why the mergers shouldn't be reviewed collectively?**

I am confident that the agencies will properly study all of the current transactions in the sector, in the most appropriate manner, and come to the right conclusions that ensure protections for American farmers and consumers.

- 2. The Wall Street Journal has noted that Federal Reserve policies after the financial crisis inflated asset prices, and more recently, that the end of Fed stimulus has led the dollar to rise sharply, which has given us falling prices in many farm commodities. We have seen this effect very clearly in Texas's energy industry, which has seen prices fall more than in half since 2014, hitting the entire regional economy. Do swings in commodity prices, specifically crop prices, have a negative impact on the agricultural industry as whole? Would it be better for your company to have a more stable dollar and more stable commodity prices? What role do Federal Reserve policies play when your company makes decisions, such as the decision to merge with another company?**

We feel and see the struggles of a down agriculture economy. Fluctuating commodity prices can have an impact on the sector, and the strong dollar can put pressure on U.S. producers. A stable dollar and stable commodity prices would help farmers ride out the cycles better and allow farmers to plan and prepare for all eventualities more effectively.

**Questions For Record Of Senator Blumenthal (D-CT)**  
**Senate Judiciary Committee Hearing on “Consolidation and Competition in the U.S. Seed and Agrochemical Industry”**  
**September 20, 2016**

**Questions for Mr. Fyrwald:**

1. **How much operational control will ChemChina and the Chinese government have over Syngenta after this merger?**

The only thing that will change with this acquisition is Syngenta’s investor base: Syngenta will have a single shareholder and become a private company. Syngenta will remain a Swiss based company, with the same management team in place and same headquarters. Our products, sales force, technical support and distribution will also stay the same.

In fact, ChemChina has a long and successful track record of investing in international companies and allowing them to operate with a high degree of autonomy.

2. **What assurances, if any, can you give this committee that the concerns voiced by the Secretary of Agriculture and others, that this deal could put U.S.-based agricultural companies at a competitive disadvantage due to unfair or inconsistent regulatory practices, is unfounded?**

After the transaction closes, Syngenta, will remain a Swiss company and will continue to operate as a foreign company in China, subject to the same Chinese laws as other foreign companies. As a result, any expansion in access to the Chinese market for Syngenta may also benefit other foreign companies, including competitors in the U.S., an outcome similar to developments in the pharmaceutical industry in recent years in China.

**Questions For Record Of Senator Perdue (R-GA)**  
**Senate Judiciary Committee Hearing on “Consolidation and Competition in the U.S. Seed and Agrochemical Industry”**  
**September 20, 2016**

**Questions for all company witnesses:**

Over the last two decades the ag seed and chemical industry has seen a substantial increase in the cost and time of getting new technologies from discovery and development to farmers in the field. Studies have shown that it takes an average of 13 years and \$136 million to get new biotechnology registrations and 11 years and \$286 million to get new crop protection products to market. A large portion of these increased costs are from the increasingly complex federal regulatory framework.

- **In what ways do federal regulations specifically impact your company’s process from discovery to registration?**

Our products are subject to many regulations from United States Department of Agriculture, Environmental Protection Agency, Food and Drug Administration, and many other agencies. Within these agencies, many laws govern different aspects of our business. Each law has a history of regulations and other guidance associated with its implementation. For example, the Coordinated Framework for Biotechnology governs the policies of the federal agencies involved with the review of biotechnology research and products. Under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA Office of Pesticide Programs registers (permits) pesticides after a thorough evaluation and review of extensive scientific data set. Initial permitting takes years and more than 200 scientific studies; all pesticides are re-registered every 15 years on rolling cycle. The United States Fish and Wildlife Services (FWS) and National Marine Services (NMFS) administer the Endangered Species Act, and all federal agencies are required to ensure their actions, including those of EPA registering active ingredients, will not jeopardize the continued existence of any species with listed status.

- **In what ways could this regulatory burden be eased on your company?**

The most important factors necessary to an effective regulatory review process are that it is science-based, transparent and that reviews are conducted with predictable timelines. Before any plant protection product is brought to market, it is thoroughly tested to characterize its environmental fate and the potential for effects on human health and the environment, supporting rigorous EPA registration reviews. We must ensure that defined regulatory timelines are met while maintaining the scientific foundation of our risk-based process to make sure that the judicious use of crop protection products will continue to be available and enable American farmers grow food, fiber and fuel for a growing population in a sustainable manner.



## **Questions for Syngenta:**

Today's hearing is intended to shed light on the potential effects these deals will have on competition within the sector, and on how this would affect U.S. farmers. An interesting aspect of the Syngenta acquisition is that ChemChina is not currently a major player in the U.S. market.

- **What effect do you think your deal will have on market competition in the United States?**

This acquisition will have no impact on market competition because ChemChina and Syngenta have fundamentally different business models. Syngenta is an agricultural company and ChemChina is a chemical company. We have little to no head-to-head competition with each other in the U.S. This is not a merger. It is a change in financial ownership.

This transaction means Syngenta remains Syngenta. It will preserve our ability to maintain competition in the marketplace and provide choice for our customers.

- **What do you say to those who worry that it will undermine competition?**

We understand that some of the changes taking place in the sector have raised concerns among some stakeholders, but our acquisition by ChemChina preserves choice and competition in agriculture because it allows Syngenta to remain Syngenta, with the same strategy, management, people and culture. It preserves our core business model so that the company can continue to operate as it always has. This is not an industry concentrating merger of two companies.

I understand the CFIUS review of the ChemChina deal is now complete. These CFIUS reviews are designed to consider any potential national security issues that could arise from a transaction.

- **I'm interested in your perspective on concerns expressed by National Farmers Union about the potential implications of the ChemChina deal.**

We respect the National Farmers Union's view. We have enjoyed a productive relationship with the NFU in the past, and we look forward to that continuing in the future.

CFIUS, with USDA participation, undertook a thorough review of all national security issues related to our transaction and reached a path forward allowing the deal to proceed pending antitrust review and approval.

**China is notorious for denying US companies access to their markets and for lengthy foot dragging and bureaucratic delaying tactics on product approvals for their domestic market. Is there any quid pro quo in the ChemChina - Syngenta transaction that in any way opens the Chinese domestic market to foreign companies? Or, have we again rolled out the welcome mat here only to have the door slammed in our face in China?**

We believe ChemChina's acquisition of Syngenta reflects a desire by Chinese companies to participate in more productive and sustainable agriculture practices worldwide, including in China. We hope the acquisition will encourage further openness to the use of modern agricultural technologies in China and to encourage improved intellectual property protections for all agriculture technology companies.

- **I understand that in order to win approval from the US Government for the sale of Syngenta to ChemChina, it was necessary for Syngenta to agree to measures to mitigate threats to US national security. Mr. Fyrwald, what exactly did you and Syngenta agree to do?**

We met all of the concerns relative to national security in the CFIUS process and wish to respect the confidentiality of that process.