UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FEDERAL TRADE COMMISSION,

STATE OF CALIFORNIA,

STATE OF COLORADO,

STATE OF ILLINOIS,

STATE OF INDIANA,

STATE OF IOWA,

STATE OF MINNESOTA,

STATE OF NEBRASKA,

STATE OF OREGON,

STATE OF TEXAS,

and

STATE OF WISCONSIN,

Plaintiffs,

v.

SYNGENTA CROP PROTECTION AG,
SYNGENTA CORPORATION,
SYNGENTA CROP PROTECTION, LLC,

and

CORTEVA, INC.,

Defendants.

Case No. [22-cv-828]

COMPLAINT

[PUBLIC REDACTED VERSION OF DOCUMENT FILED UNDER SEAL]

1. For many years, Defendants Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Crop Protection, LLC (collectively, "Syngenta") and Corteva, Inc. ("Corteva") have unfairly impeded competitors and artificially inflated the prices that U.S. farmers pay for crop-protection products. Defendants do this by deploying a set of so-called "loyalty programs," which are designed to severely limit the availability of lower-priced generic products. Through this scheme, Defendants have suppressed generic competition and maintained monopolies long after their lawful exclusive rights to particular crop-protection products have expired. These unlawful business practices have cost farmers many millions of dollars a year.

2. Plaintiffs Federal Trade Commission and the states of California, Colorado, Illinois, Indiana, Iowa, Minnesota, Nebraska, Oregon, Texas, and Wisconsin, by and through their Attorneys General, petition this Court pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b); Section 16 of the Clayton Act, 15 U.S.C. § 26; and applicable state laws to enter permanent injunctions, other equitable relief, and monetary relief against Syngenta and Corteva to undo and prevent their unlawful conduct in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Section 3 of the Clayton Act, 15 U.S.C. § 14; Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; and state competition and consumer protection laws.

I. NATURE OF THE CASE

3. Every year, U.S. farmers purchase over ten billion dollars of crop-protection products (also commonly known as agricultural "pesticides"), crucial farm

inputs that improve crop yields and food security for everyone in the United States. And every year, U.S. farmers collectively pay many millions of dollars more than they should for these products because of Defendants' so-called "loyalty programs," which function as unlawful exclusionary schemes. Defendants design those programs to exclude and marginalize competitive generic products even after relevant patent and regulatory exclusivity periods expire and thereby to maintain excessive, supracompetitive prices. This law enforcement action seeks to end those "loyalty programs" and restore competition in this vital sector of the economy.

4. Congress has enacted a comprehensive regulatory regime for the crop-protection industry that promotes the twin goals of product innovation and price competition. "Basic" manufacturers like Defendants Syngenta and Corteva initially develop, patent, and register the active ingredients within crop-protection products. They may then exploit the commercial potential of their innovations through lawfully obtained exclusive rights for a period of years. After patent and regulatory exclusivity periods expire, generic manufacturers may enter the market with equivalent products containing the same active ingredients and relying upon the same toxicology and environmental impact data. Unimpeded competition from generic products predictably leads to dramatic price reductions. This regulatory structure thus incentivizes innovation while encouraging price and other competition—all of which benefits U.S. farmers and consumers.

5. Defendants systematically undermine and frustrate the goals of this system. When exclusivity periods for crop-protection products expire and generic manufacturers

threaten to launch lower-priced competing products, Defendants use their loyalty programs to exclude generic manufacturers from the traditional distribution channel, which is a critical link between manufacturers and farmers.

6. Under their respective programs, Defendants offer each participating distributor—collectively constituting over [redacted] of all sales—substantial payments to exclude or minimize generic manufacturers. Defendants promise the distributor a complex set of incentive payments based on its purchases of branded crop-protection products, paid as [redacted] on one critical condition: the distributor must limit its purchases of comparable generic products to a set percentage share, usually [redacted] or less, and sometimes as low as [redacted]. Defendants term this a "rebate" for "loyalty." In substance, however, these are exclusion payments to distributors. Defendants pay a portion of their elevated profits to distributors in exchange for the distributors excluding Defendants' generic competitors, resulting in near-exclusivity for Defendants.

7. Defendants' loyalty programs are designed to hinder the entry and expansion of generic maufacturers, resulting in, among other things, higher prices than would have otherwise prevailed and costing farmers many millions of dollars in overcharges. Distributors participate in and comply with Defendants' loyalty programs because Defendants both offer rewards for participation and [redacted]. Distributors profit more from accepting Defendants' exclusion payments than they would from distributing lower-priced generic products in substantial volumes. The

loss of these payments can have severe financial consequences for distributors, [redacted].

8. A small number of large distributors dominate the sale of crop-protection products in the United States. [redacted]. Each Defendant's scheme almost entirely forecloses generic competitors from efficient distribution of their products, preventing generic competitors from making significant sales to national distributors that collectively account for approximately [redacted] or more of U.S. crop-protection product sales.

9. Each Defendant expressly designs its program to maintain its ability to price its products above competitive levels while still retaining large market shares. Defendants thus enjoy outsized profits during the "post-patent" period—when prices would otherwise fall substantially.

10. Defendants' loyalty programs enable Defendants to maintain high prices and dominant market positions years after exclusivity for an active ingredient has expired. Defendants' schemes have forced generic manufacturers to exit markets encumbered by loyalty programs or to decide not to enter due to those programs. Even when they offer competitive products, generic manufacturers are relegated to selling limited volumes, often through undesirable, less efficient channels of distribution.

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