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**Re: 2022APR001**

**19 July 2023**

**Syngenta response to the RFI follow-up questions relating to the Fresh Produce Market Inquiry (Case number: 2022APR0051)**

Dear Derrick Bowles/Mogau Aphane

Please see below our follow-up response to the RFI referenced above. This document should be read together with the referenced annexures provided therein. For ease of reference our annexures are referenced in line with the numbering and subheadings of your request for information sent to Syngenta South Africa. This document and the annexures thereto are confidential, and we accordingly enclose a Form CC7 and Schedule. We will provide the Commission with a non-confidential version of the submission in due course.

Follow up questions

1. Kindly provide the following information regarding the regulation of vegetable seeds:
  - 1.1. From a regulatory perspective, is it preferable for Syngenta to import seeds into South Africa, as opposed to producing them domestically? Please explain your viewpoint in detail.

[Redacted content]



1.2. Detail any other known issues pertaining to delays emanating from regulations or acquiring certain approvals for vegetable seeds in South Africa.

*We are currently not experiencing any challenges in emanating from regulations or acquiring approvals for vegetables seeds in South Africa.*

2. Kindly provide the following information relating to your previous submission:

**2.1.** In some of the submitted Syngenta distribution agreements with your distributors (i.e. Q21 – Starke Ayres and InteliSeed), the contracts stipulate that “All disputes arising out or in connection with this agreement shall be exclusively resolved by the competent courts in Amsterdam, the Netherlands” (own emphasis added – see Starke Ayres agreement at clause 23.1, and InteliSeed agreement at article 12.1). **Kindly provide a thorough explanation of why distribution agreements drafted by Syngenta seek to prevent certain South African distributors from approaching a South African court to resolve a dispute, as well as explaining why this term is not applied consistently to all distributors.**

[Redacted]

**2.2.** In some of the submitted Syngenta distribution agreements with your distributors (i.e. Q21 – Starke Ayres and InteliSeed), the contracts stipulate that “targeted sales volumes” shall be agreed between the parties and in the absence of agreement, Syngenta shall set the minimum targets. In addition, should a distributor not meet those targets, Syngenta may then terminate those agreements entirely (see Starke Ayres agreement at clause 3.2 – 3.3, and InteliSeed agreement at article 2.2). As the agreements also identify both of these distributors as non-exclusive distributors of Syngenta’s products in South Africa, **kindly provide a thorough explanation of why Syngenta would need to impose a sales volume target on a distributor that is already in competition with other distributors.**

[Redacted]

[REDACTED]

2.3. In submitted Syngenta distribution agreements with your distributors, the contracts require distributors to register the seed varieties in Syngenta’s name in South Africa and at their own cost, but that if the agreement is terminated or expires, that distributor must reassign that registration to an entity chosen by Syngenta, without Syngenta needing to compensate the distributor for this. **Kindly provide a thorough explanation of the motivation underlying Syngenta’s inclusion of this clause, including an explanation of why distributors bear both the financial costs at registration as well as at termination/expiration.**

[REDACTED]

3. Kindly provide the following information regarding Syngenta's product distribution:
- 3.1. Provide copies of the most recent contracts that set out the distribution terms between Syngenta and your top 5, as well as your bottom 5 distributors.

[REDACTED]

- 3.2. Does Syngenta offer identical pricing to its distributors? If not, kindly detail the various pricing structures, particularly those that may be offered to larger distributors and the rationale for such approach.

[REDACTED]

- 3.3. How many Historically Disadvantaged Persons (HDP) distributors (if any) does Syngenta utilise? Provide their relevant details.

*CP and VEG SEEDS: We currently do not have any distributors who are HDPs.*

- 3.4. Do Syngenta's appointed distributors sell your seeds and crop protection products in all 9 provinces? If not, stipulate which provinces are excluded and the reasons.

*CP: Our products are sold throughout the 9 provinces.*

*VEG SEEDS: Syngenta sells its seed varieties to distributors through its legal entity in the Netherlands, Syngenta Seeds, BV, Distributors then in turn sell to growers via their sales team in all 9 provinces.*

4. Kindly provide the following information regarding directorships:

- 4.1. Does Syngenta (or any of its parent or subsidiary firms) possess any controlling or non-controlling shareholding in any of the downstream distributors of agricultural inputs in South Africa? If so, provide the relevant details.

*No, we do not hold any shareholding in any of the downstream distributors.*

4.2. Between 2017 to present, did Syngenta (or any of its parent or subsidiary firms) have any directors who held cross-directorships in either a competitor or a downstream distributor of agricultural inputs? If so, provide the relevant details.

*None of our directors held cross-directorships in either our competitor or downstream distributors.*

5. Kindly provide the following information regarding Syngenta’s seed varieties:

5.1. Regarding the sale of your seeds in South Africa, can any farmer purchase any of your seed varieties from your distributors, or do Syngenta (or your distributors) reserve the sale of certain varieties only to certain farmers? If so, provide details.

*Please note that Syngenta does not sell seeds directly to growers. Any grower can purchase any seeds through our network of distributors.*

5.2. Provide a list (with descriptions) of any Intellectual Property (IP) owned by Syngenta that pertain to your seeds and crop protection products sold in South Africa. In your response, provide the date of registration, duration of IP and whether or not the IP has lapsed.

*Please refer to Annexure 2 for the list of IP certificates related to Vegetable Seeds that Syngenta holds in South Africa.*

5.3. What percentage of the seed varieties that you sell in South Africa have open IPs?

[REDACTED]

6. The following questions relate to the information contained in the submitted Microsoft Excel sheets titled “17. CP Financial Information” and “17. Veg seeds financial information”:

6.1. In your response to question 17.5 in “17. CP Financial information” you indicate that “we do not use Net Profit per product as a measurement of our business profitability, on average our net profit margin ranges between 2% and 2.9%.” However, in the Microsoft Excel sheet titled “17. Veg seeds financial information” it appears that the net profit margins achieved for vegetable seeds range between 51% and 64% during the 2018 – 2022 financial years. Kindly clarify and/or confirm if: (i) you do not assess profitability based on net profit ratio; (ii) the correctness of the net margin information contained in the abovementioned spreadsheet; (iii) if the net margin information is correct, are you able to reproduce the

same for pesticides/herbicides etc. and if so, provide such information in similar form to the vegetable information.

[Redacted]

[Redacted]

■

[Redacted]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

6.2. In relation to “17 Veg Seeds financial information”, may you kindly define and/or describe what constitute (i) COGS at Standard and (ii) function expense.

(i) [Redacted text block]

[Redacted text block]

[Redacted text block]

Yours Faithfully,

A handwritten signature in black ink, appearing to be 'P. Monyamane', is written over a solid horizontal line.

Phote Monyamane

Authorized signatory of Syngenta South Africa (Pty) Ltd