

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONSANTO COMPANY and
DELTA AND PINE LAND COMPANY,

Defendants.

Civil Action No.: 1:07-cv-00992

Hon. Ricardo M. Urbina

**PLAINTIFF UNITED STATES’S MOTION AND MEMORANDUM IN
SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA” or “Tunney Act”), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (which is attached) may be entered at this time without further hearing if the Court determines that entry is in the public interest. The defendants do not object to entry of the proposed Final Judgment without a hearing. The Competitive Impact Statement (“CIS”) filed by the United States in the above-captioned matter on May 31, 2007, and the Response to Public Comments, filed by the United States on March 5, 2007 and published in the *Federal Register* on April 4, 2008, explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

Thus, the proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest.

MEMORANDUM

I. Background

On August 14, 2006, Monsanto entered into an agreement to acquire Delta and Pine Land Company (“DPL”) for approximately \$1.5 billion. Over the following nine and a half months, the United States conducted an extensive, detailed investigation into the competitive effects of the proposed transaction. The United States filed a civil antitrust complaint on May 31, 2007 seeking to enjoin the proposed acquisition. As explained more fully in the Complaint, CIS, and Response to Public Comments, the likely effect of this acquisition as originally proposed would have been to lessen competition substantially for traited cottonseed sales in two geographic regions – the MidSouth and the Southeast. In addition, the acquisition would have eliminated DPL as a partner independent of Monsanto for competing trait developers, substantially delaying or preventing the development and introduction of cottonseed containing non-Monsanto traits. Accordingly, Monsanto’s acquisition of DPL would have substantially lessened competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. As a result, farmers likely would have had fewer choices of, and face higher prices for, traited cottonseed.

At the same time the Complaint was filed, the United States also filed an Hold Separate and Preservation of Assets Stipulation and Order (“HSSO”) and proposed Final Judgment that were designed to eliminate the anticompetitive effects of the acquisition in the affected areas. The proposed Final Judgment requires Monsanto to (a) divest the Enhanced Stoneville Assets to an

acquirer who is capable of using the assets to compete effectively, (b) divest to Syngenta certain DPL cottonseed lines containing transgenic cottonseed traits developed by Syngenta and to allow Syngenta to breed with those lines, and (c) modify certain trait licenses to eliminate restrictions on the use of non-Monsanto traits thereby permitting Monsanto trait licensees to breed and sell, without penalty, cottonseed containing non-Monsanto traits and cottonseed containing both licensed Monsanto traits and non-Monsanto traits. In the United States's judgment, the asset divestitures and license modifications required by the proposed Final Judgment remedy the competitive harms identified in the Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the HSSO and the proposed Final Judgment from the date of the signing of the HSSO, pending entry of the proposed Final Judgment by the Court and the required divestitures.¹ Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the HSSO until the expiration of time for appeal.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of comments on the proposed

¹ As explained in greater detail in the Response to Public Comments, (*see* 73 Fed. Reg. at 18615-16), Monsanto has already complied with the principal requirements of the proposed Final Judgment.

Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on May 31, 2007; published the proposed Final Judgment and CIS in the *Federal Register* on June 15, 2007, *United States v. Monsanto Co. and Delta and Pine Land Co.*, 72 Fed. Reg. 33336-01, 2007 WL 1708314; and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days beginning on June 28, 2007 and ending on July 4, 2007. The sixty-day period for public comments ended on August 27, 2007 and eleven comments were received. The United States filed its Response to Public Comments and the comments themselves with this Court on March 4, 2008, and published the Response and the comments in the *Federal Register* on April 4, 2008, 73 Fed. Reg. 18611 (2008). The Certificate of Compliance filed simultaneously with this Motion certifies that all the requirements of the APPA have now been satisfied.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

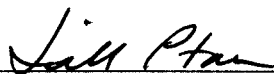
In its CIS filed on May 31, 2007 and its Response to Public Comments filed on March 4, 2008, the United States has explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. The proposed Final Judgment is within the range of settlements consistent with the public interest.

IV. Conclusion

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comments, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: April 15, 2008

Respectfully submitted,

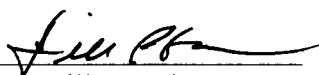


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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April 2008, I caused a copy of the foregoing Plaintiff United States's Motion and Memorandum in Support of Entry of Final Judgment and Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act to be served, by U.S. mail, postage prepaid, and by electronic mail to the attorneys listed below.


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