



Pollinator Stewardship Council

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August 9, 2018

Kathleen S. O'Neill
Chief, Transportation, Energy and Agriculture Section
Antitrust Division
United States Department of Justice
450 5th St NW, Suite 8000
Washington, DC 20530

Dear Ms. O'Neill,

We join with other environmental, farming and consumer protection organizations asking you to use your authority under antitrust laws to block this biotechnology mega-merger of Bayer and Monsanto and protect farmers and consumers. Members of Congress and Americans on both sides of the aisle oppose these mergers. Senator Grassley (R-IA), Senator Lee (R-UT), Senator Leahy (D-VT) and Senator Klobuchar (D-MN), ranking Chairs and members of the Senate and House Judiciary Committee, all have shared concerns over the mergers.

The recent consolidations in the seed & agrochemical industry will result in mega-corporations controlling nearly 70 percent of the world's pesticide market, and more than 61 percent of commercial seed sales and 80 percent of the U.S. corn-seed market. This will have serious consequences for the market by limiting options to farmers, and consumers; and further tilt the balance away from independent science and the health and safety of the American people.

We summarize our top concerns with these mergers:

- The mergers pose significant potential threats to U.S. security interests; undermine food security in the United States and worldwide; disrupt trade flow; accelerate the international consolidation of the food and agribusiness industries to the detriment of American farmers, rural communities, and consumers.

- The mergers will eliminate head-to-head competition in agricultural biotechnology innovation, crop seed and chemical markets and reduce opportunities for pro-competitive research and development (R&D) collaborations.
- These mergers are already hurting U.S. workers. In the months since DuPont agreed to buy long-time U.S. rival Dow, executives have cut at least \$300 million from its research budget and laid off 1,700 of the corporation's 6,000 workers in Delaware, including as many as 700 in R&D.

Farmer Opposition

The majority of the national farming associations in the U.S. are opposed and concerned that the mergers will negatively impact American farmer's livelihoods, reduce competition, and decrease research and development. The *American Farm Bureau Federation* does not want to see research and development budgets for these companies decrease and agricultural innovation suffer. The *American Soybean Association* is concerned with impacts on innovation, research, marketplace competition and farm input costs for farmers. The *National Farmers Union* is firmly opposed to the mergers. They are concerned about national security risks, threats to global food security and U.S. national security, threats to U.S. energy security, distorted global trade, limited head-to-head competition in corn and soybeans, limited competition in biotechnology innovation, eliminated head-to-head innovation competition, reduced opportunities for pro-competitive research and development collaborations, and raised entry barriers through the creation of a vertically integrated platform of traits, seeds and chemicals. The *National Corn Growers Association* is concerned with domestic regulatory hurdles and delays in international approvals for new seed traits that provide significant barriers to market entry (as result of mergers). All three mergers in less than a year challenge farmers to keep up. This will impact the National Cotton Council and their members as the price of cotton could rise over 18% as a result of the mergers, according to a study from Texas A&M University. A combined Bayer-Monsanto company would control 70% of the southeast cottonseed market.

Limits to the Free Market

With fewer companies in the marketplace, fewer technology "platforms" will dominate the marketplace and make it hard for any small company to bring a new kind of seed, new seed trait or new herbicide to market. Farmers will be locked into using these platforms as fewer choices will be available in the marketplace.

Monsanto has increased profits simply by increasing sales of its flagship product with little incentive to modify it in any way. Monsanto will have less incentive for modification if it controls a greater share of the marketplace. High input prices will be locked-in and individual farmers will have little incentive or ability to purchase products from other companies. Research & Development (R&D) will be reduced if these mergers are approved.

The pharmaceutical sector is a prime example. By reducing the number of companies in a sector, deals can result in elimination of research funding and massive layoffs. Pfizer in particular came under scrutiny when it closed 6 of its 20 research sites after its \$68 billion acquisition of Wyeth in 2009 and cut R&D by 40%. Between 2009 and 2014, the pharmaceutical industry cut 156,000 jobs, many as a result of mergers and acquisitions, and many at research sites.

The mergers will reinforce themselves through the lock-in effect on investment. Due to taxes on capital gains (taxes incurred upon income from the sale of an asset), the huge swath of wealthy investors that will hold stocks in the merged companies will have little to no incentive to reinvest elsewhere. Merged companies will continue to increase profits while taxes will penalize investors who choose to sell and reinvest in other companies. It will become nearly impossible for new chemical companies to enter the market when investors interested in the sector will be penalized for attempting to liquidate and support any new start-ups. Finally, new companies will find it extremely difficult to go public and find willing investors (a necessity if the company wishes to compete with the new industry giants).

Monsanto's business model has been based on the creation of gene traits that would increase sales of its own products. The result was the creation of the most widely used agricultural chemical in history—glyphosate. In the U.S., 94-99 percent of corn seed is treated with neonicotinoids and 40-70 percent of soybean seeds are treated with neonicotinoids. Many farmers already find it very hard to find conventional non-treated seeds. If Bayer & Monsanto merge, Bayer, the leading manufacturer of the pesticides used to coat the seeds, and Monsanto, the leading manufacturer of seeds, will combine multiple stages of production for coated seeds into one company—furthering vertical integration.

Market Domination

If the Bayer-Monsanto merger is allowed to move forward, the resulting company would be the largest agribusiness in the world, selling 29 percent of the world's seeds and 24 percent of its pesticides. Monsanto already possesses a 97 percent share for soybean traits, a 75 percent share for corn traits, and a 95 percent share for cotton traits, a combined Bayer-Monsanto would have a greater (and for cotton a dominant) share of the seed market, where its traits are promoted. These market shares—by any antitrust metric—would be considered monopolistic. The merger would eliminate not only the direct competition between Bayer and Monsanto for traits, herbicide, and crop seed, but also the head-to-head competition in agricultural biotechnology innovation markets and reduce opportunities for pro-competitive research and development (R&D) collaborations. Monsanto alone has acquired almost 40 companies, including agricultural biotechnology firms and independent seed companies. The USDA has reported that the crop seed industry has suffered the greatest increase in concentration over time of any of the agricultural inputs studied. Between 1994-2010 crop seed prices more than doubled relative to the prices farmers received for commodity crops. Monsanto, as the dominant owner and developer of patented seed traits, can already exert considerable market power through its cross-licensing

agreements given Monsanto's dominant position with genetic traits, most producers of traited corn, soybean and cotton seeds in the United States must license traits from Monsanto. Monsanto is not obligated to cross-license its traits, and can do so at the prices and terms it dictates. Monsanto can affect how the licensee uses its traits, including whether its traits can be combined, or "stacked," with competitors' traits. This gives Monsanto a lot of market power, which it can use to thwart competition.

A Bayer-Monsanto merger would likely lessen competition even further. As the Financial Times reported, packages of seeds-traits-and-chemicals that only work with one another, such as Monsanto's Roundup Ready package, "already are making it harder for smaller rivals to compete." After this merger, even more traits, seeds, and herbicides could be potentially foreclosed. The merger would further limit the farmers' choices of the best seeds to suit their needs and force independent seed producers and customers to rely primarily on Bayer-Monsanto traits. This head-to-head competition would end post-merger. Bayer-Monsanto would control the leading herbicide and herbicide-tolerant trait as well as the most significant competitive alternative. As the antitrust scholar Peter Carstensen observed, "One of the worst things you could do is to link Liberty and Roundup in the same company. . . There's no incentive for somebody to develop a third alternative."¹ Not only would a Bayer-Monsanto merger likely violate the Clayton Act, but it would violate the specific terms of a court order.

Divesting of holdings within the merger is not sufficient to address the above listed concerns. Again, the Pollinator Stewardship Council joins with other environmental, farming and consumer protection organizations imploring the U.S. Department of Justice to use your authority under antitrust laws to block this biotechnology mega-merger of Bayer and Monsanto and protect farmers and consumers.

Sincerely,

A handwritten signature in cursive script that reads "Michele Colopy".

Michele Colopy, Program Director

¹ *An Antitrust Review of a Bayer-Monsanto Merger*, Maurice E. Stucke and Allen P. Grunes, The Konkurrenz Group, July 22, 2016, <https://s3-us-west-2.amazonaws.com/sou-assets/Konkurrenz-findings-on-Bayer-Monsanto.pdf>