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From: Censky, Steve [mailto:scensky@soy.org]
Sent: Wednesday, December 30, 2009 2:26 PM
To: ATR-Agricultural Workshops
Cc: Paul, Bev (Gordley)
Subject: Agricultural Competition Comments

Dear Sir or Madam,

Attached are initial comments from the American Soybean Association on competition issues within the agricultural industry. As noted in our letter, we will be providing additional comments to the DOJ before the first workshop in March. In addition to these electronic comments, we also are sending two hard copies to you via FedEx.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Stephen Censky

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December 30, 2009

Legal Policy Section
Antitrust Division
U.S. Department of Justice
450 5th Street, NW, Suite 11700
Washington, DC 20001

Dear Sir or Madam:

On behalf of U.S. soybean producers whom the American Soybean Association represents, we appreciate the interest of the Department of Justice and the Department of Agriculture in exploring competition issues in the agriculture industry. Competition is essential to increasing the efficiency and productivity of U.S. agriculture as farmers strive to meet growing world demand for food, feed, and fuel.

The American Soybean Association believes the USDA should be more active in reviewing and providing recommendations to the DOJ on agribusiness mergers and acquisitions. In recent years, we have seen increased consolidation in various agricultural industries. Many farmers have questioned why high levels of concentration have not been more thoroughly reviewed and analyzed by the federal government to determine their impact on competition.

In response to the request for comment, the American Soybean Association (ASA) has distributed a survey to our producer-members asking for additional input. We will be providing more detailed comments on competition issues prior to your first Workshop scheduled for March 12, 2010.

ASA has identified four principles that we believe should guide agricultural competition:

1. Competition within and among domestic industries must be safeguarded.
2. We support innovation, including protecting patent rights.
3. Following patent expiration, growers should see a reduction in prices through generic competition.
4. Foreign competitors should be subject to the same requirements and costs for accessing intellectual property as apply in the United States.

Following are our initial comments on competition in several of the sectors identified in your request.

Seed Industry

ASA's policy resolutions have long supported the development and commercialization of new soybean traits in order to enhance the profitability of U.S. soybean farmers. Our policy supports the intellectual property rights of the developers of these traits, domestically and internationally. We believe that intellectual property protection and rewarding innovation is critical to maintaining the growth and development of the soybean industry.

While ASA strongly supports intellectual property protection and rewarding innovation, we believe it is important that competition be promoted and safeguarded. Our primary concerns are:

- The terms of licensing agreements with seed companies and trait providers related to the availability and usage of traits and germplasm should not in any way thwart competition.
- Issues related to competition are arising with the approaching expiration of the first patents for agriculture biotechnology traits. The first patent to expire will be for Roundup Ready soybeans (RR1) in 2014, and patents on other soybean biotech traits will be expiring thereafter. No statutory or regulatory process is in place to ensure and facilitate the continued registration of ag biotech traits in key export markets after patent expiration. Farmers understand that such a process is essential in maintaining market access, promoting and competition.
- There are multiple implications of patent expiration for international trade, including uncertainty about the process to maintain registrations in foreign markets. Soybean producers have learned that once an ag biotech trait is commercialized, it will be detectable for many years after registration is discontinued. The absence of commercially viable tolerances for the adventitious presence of ag biotech traits in both the U.S. and foreign markets makes this a particularly important concern.

Other Industries that Support Soybean Production

Soybean farmers have watched with concern as industries that support production and distribution have consolidated. Two such industries are the rail industry and the fertilizer industry.

Major railroads have shrunk to seven Class 1 railroads, with only four controlling 93% of the market. Soybean producer concerns about high surface transportation costs, particularly in the rail industry, led to the creation of the Soy Transportation Coalition (STC) in 2006. A recent study by the STC (<http://www.soytransportation.org/rrmovementofsoybeans.html>) noted the volumes of

soybeans and soy products that are moved at potentially excessive rates. Much of this increased cost is passed on to farmers.

Additionally, consolidation in the fertilizer industry at manufacturing and distribution has led to fewer choices for farmers and challenges in securing fertilizer at competitive rates.

We are aware of the ongoing Justice Department investigation into seed industry issues. We encourage scrutiny of the other industries that are similarly consolidated.

On behalf of the American Soybean Association, we appreciate your consideration of our concerns and look forward to a continuing dialogue with both the Departments of Justice and Agriculture on these issues.

Sincerely,

Robinson W. Joslin
President