From: Keith Mudd [mailto:kmudd@rallstech.com]
Sent: Tuesday, December 29, 2009 11:32 AM
To: ATR-Agricultural Workshops
Cc: Keith Mudd
Subject: submission for comments on joint USDA/DOJ workshop on competition

Please find attached my comments for the USDA/DOJ hearings on competition in agriculture.

Keith Mudd
28907 Monroe Rd 391
Monroe City, Mo 63456
573-735-2742 office
573-248-5922 cell

To:

Attorney General Eric Holder

Agriculture Secretary Tom Vilsack

Sirs,

My name is Keith Mudd, I farm and live in Monroe City, Mo, and my operation is primarily a row crop operation raising corn and soybeans.

I'm writing to you today to express my concerns regarding an issue of vital importance to corn and soybean growers; the lack of completion in the marketplace in respect to seed traits and the seeds which serve as a delivery mechanism for those traits.

Let me stress this one point; my concern is with the genetically modified traits and their near monopoly control by one company. I'm quite sure you will hear from others in written testimony and at the hearing on March 12, 2009 in Ankeny, Iowa on concentration at the seed level.

The creation of genetically modified seed changed the seed business and how farmers purchase those seeds. Previous generations of farmers choose corn and soybean varieties based upon yield potential and certain plant characteristic such as dry down, standability and/or disease resistance. Yield potential, which is primarily determined by plant genetics, was always the first and most important factor.

Today's seed purchasing decision primarily revolves around selection of a genetically modified trait package with genetic and agronomic considerations taking secondary positions.

This makes the control of those genetically modified traits possibly the most crucial component of today's seed business.

It is my belief that certain players in the seed trait business have engaged in anti-competitive behavior.

BACKGROUND ON TRAIT DEVELOPMENT

Transgenic crops have been planted in the United States for over a decade. These genetically modified plants fall into one of two categories; Plants resistant to herbicides and plants resistant to insects.

Ciba Seeds (now Syngenta) and Mycogen Seeds introduced the first Bt corn hybrids in 1996. Bacillus thuringiensis is a naturally occurring bacterium, when corn is genetically altered to express this bacterial toxin it makes the corn plant poisonous to certain insect pest, notably the European corn borer.

Monsanto developed a genetically modified trait which allowed the application of a non-selective herbicide (RoundUp) to growing crops. In 1996, genetically modified Roundup Ready soybeans resistant to Roundup became commercially available, followed by Roundup Ready corn in 1998.

Bayer CropScience developed LibertyLink crops to compete with the RoundUp Ready trait in corn and soybeans. LibertyLink crops are resistant to non-selective herbicides with the active ingredient glufosinate.

Monsanto introduced corn resistant to corn rootworm in 2002 which produces the Bt toxin, which kills the corn rootworm larvae, in the corn roots.

These four genetically modified events, (Bt, RoundUp Ready, LibertyLink and CRW) comprise over 95 percent of all genetically engineered (GE) corn and soybean plantings.

ANTICOMPETITIVE BEHAVIOR

Monsanto introduced Roundup herbicide in 1974. The introduction of the first crops resistant to Roundup occurred in 1996.

In 1996, Monsanto acquired a minority interest in DeKalb Genetics Corporation (DeKalb). In 1998, Monsanto acquired the remaining shares in DeKalb and terminated existing projects that DeKalb had for developing glufosinate-tolerant (Liberty Link) corn traits.

In the late 1980's DuPont began working with Asgrow, a soybean and corn seed company, to develop sulfonylurea-resistant soybeans (STS). STS beans would have also competed with RoundUp Ready soybeans. Monsanto acquired complete control over Asgrow in 1997, and then caused Asgrow to breach its soybean research and development agreements with DuPont. When DuPont signed a second agreement with Asgrow in 1998 regarding the development and marketing of STS soybeans, Monsanto caused Asgrow to breach that agreement as well.

Introduced in 1994, STS soybeans were planted on six to eight million acres in 1998, roughly 10 percent of soybeans grown that year. By 2000 they had mostly disappeared from the marketplace.

AgrEvo (Bayer predecessor) was also trying to develop a glufosinate-based seed trait through a collaboration agreement with Asgrow. Had AgrEvo been able to develop and successfully marketed such seeds, growers could have sprayed glufosinate over these crops, and thus had a choice in both herbicide-tolerant seeds and herbicide. In or about February 1997, however, Monsanto promptly killed the glufosinate project as well, after acquiring Asgrow.

In September 1997, Monsanto acquired Holdens Foundation Seed, another large seed and technology company, and in 1998 similarly caused Holdens to withdraw its support for glufosinate-tolerant corn traits.

CURRENT TRENDS

Since the invention of various traits it has been in the trait provider's best interest to "stack" multiple traits onto one hybrid or variety. The more traits stacked onto the seed the higher price the seed commands.

In instances this is beneficial to the farmer customer if he has need for a particular combination of traits. On many occasions though the farmer has no desire for certain traits but must purchase the entire "stack" to get the one or two traits he desires.

Often, when new combinations of traits are offered, the seller will lower the price for the new combination to a level competitive with the older traits, before the new addition. In doing so the farmer is under the assumption that the new trait is costing him nothing or very little. In actuality the seller has two prices here; the list price (with that price being reflective of all the traits included in the seed) and the selling price (that price for which he will sell the seed). The selling price is often only marginally higher than the old price before the additional traits are added however; the list price is substantially higher. The selling price is lowered through a series of complex programs and discounts.

Initially, the new seed with a stacked traits may very well be the cost, or nearly so, of the old seed. But in actuality something else is happening here. After several years of farmers buying these new stacked traited seeds at the current selling price, the seller makes a decision. He discontinues the production of the older seed (with the fewer traits) and only offers the stacked hybrids with multiple traits. At the same time the discount s and programs change and the seed now sells for the premium price, full list. The seed provider then explains the disappearance of the older trait package with the justification that nobody purchased the old trait package; consequently, it is no longer available. Only the new trait package, loaded up, at full list price.

To offer an analogy, this is similar to a new car shopper looking for a car with air conditioner and power seats. He has no interest in purchasing a DVD player for the car but all the cars the dealer has with air conditioning and power seat also have the DVD player. The dealer can say he isn't charging for the DVD player but the car buyer knows better. In a few years

the car buyer cannot find a car without a package of amenities including air conditioning, power seats and a DVD player.

SUMMARY

In my opinion, farmers have benefited from biotechnological advancements. So too have seed companies, especially those seed companies who also have the ability to develop genetically engineered seeds.

Farmers have embraced the technology supported by the fact that over 90% of all corn, soybean and cotton acreage in this country is planted to GE seeds.

Of concern is the fact that one company, Monsanto, controls over 70% of corn, 99% of soybean and 97% of cotton traits. When confronted with these figures Monsanto denies having market share levels this high. They repeatedly claim they do not have those levels of market share in GE seeds. True! But they do have those levels of market share in the trait business. Monsanto often confuses the two issues.

How does Monsanto retain such a high percentage of traited acreage in this country? I concede that the initial inventor of any product should have 100% market share in the beginning. As popular and profitable as the RoundUp ready system has been, why hasn't a competitive system emerged? Could it be that an effort has been underway for almost a decade to intercept and dismantle any competing technology before it becomes commercialized?

Monsanto has rejected competition, preferring conquest instead. According to Dr. Neil Harl, Iowa State Professor in Agriculture and Professor of Economics, *"Competition is the most critical element of a price oriented, market economy. Without competition, firms become complacent, are less likely to innovate, tend to become arrogant and indifferent and are able to produce less and obtain a higher price for their output."* Many farmers view Monsanto through the lens Dr. Harl describes.

Monsanto's control over the seed trait business, their ability to control not only price, but manage how their product is utilized after licensing it to other seed companies, remind me of the words of Senator John Sherman as he warned his fellow Senators. Sherman warned "*The popular mind is agitated with problems that may disturb social order, among them all none*

is more threatening than the inequality of condition…and opportunity that has grown… out of the concentration of capital into vast combinations to control production and trade and to break down competition." Later in the same speech, he observed; "*If we will not endure a king as a political power we should not endure a king over the production, transportation, and sale of any of the necessaries of life. If we would not submit to an emperor we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity."*

Respectfully submitted,

Keith Mudd

BOD member of the Organization for Competitive Markets

28907 Monroe Road 391

Monroe City, MO 63456

573-735-2742 office

573-248-5922 cell