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Sent: Wednesday, December 30, 2009 2:19 PM
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Subject: Comments on Competition Issues in the Agricultural Industry

Legal Policy Section, Antitrust Division

December 30, 2009

U.S. Department of Justice
450 5th Street, N.W., Suite 11700
Washington, D.C. 20001

RE: Competition Issues in the Agricultural Industry

While these comments will arrive near the deadline, I trust they will be fully considered.

They go beyond standard antitrust issues and clearly suggest the need for further analysis and discussion of the links between issues of concentration and new sources of monopoly - especially monopolistic technologies such as genetic modification and current patent and trade regimes which create very strong national and international incentives for developing oligopolies and monopolies.

When I testified before Congress in 1979 against H.R. 999: Plant Variety Protection Act Amendments - which was designed to greatly extend and expand the limited protection given ornamental plant breeders to agricultural plant breeders - I asserted that roughly 90% of the value of crop seeds was their genetic endowment, that another 9.9 % derived from the 10,000 years of domestication and improvement carried out by our ancestors, and that at best only .1% could be attributed to modern crop breeding and/or genetic modification. My conclusion was that this did not give plant breeders any legitimate claim to 'ownership.'

Even the passage of these amendments in 1980, farmers still had the right to save their own 'seed corn' for the next crop year from a current year's newly protected varieties.

It should be noted that the corn hybrids developed in the 1930's had a 'natural' protection which required farmers to buy seeds from the hybridizers each year since planting the corn grown from hybrid would break down into the components of the hybrid, lowering the yield below the best standard open pollinated varieties.

It should be noted that in Europe, seed companies there seeking to protect their patents were forcing the loss of many traditional varieties of vegetables by lobbying European and international organizations to 'standardize' their varieties as those approved for sale and growth. These anti-competitive measures were further incorporated into a quasi-international agency - WIPO (the World Intellectual Property Organization) which along with the FAO/WHO Codex Alimentarius were - and still are - strongly influenced by the European and increasingly the US seed oligopolies. WIPO's jurisdiction over seed patents issues were later transferred to WTO.

The few farmer protection measures in the US Plant Variety Protection Act of 1979 were eliminated by later amendments and especially by the Diamond v. Chakrabarty Supreme Court decision allowing patenting of life forms - a decision which almost cavalierly ignored the Constitution's language on patents and well as the normal court practice of referring a legal dispute over a fundamental expansion of a constitutional provision to Congress for further consideration and possible legislation.

The history of the seed industry since then has ranged from large companies buying independent seed companies to control the sources of the seeds that they further want to control through the monopolistic technology of genetic modification which is now protected by both patents and the proprietary genetic technologies, to companies like Monsanto effectively shifting the burden of proof from them to farmers they claim had grown its GMO seeds illegally, forcing farmers - if they had the legal resources - to try to demonstrate that their seeds had been 'contaminated' from adjacent GMO fields. Additionally, there has been little protection for organic growers losing their valuable USDA certification because of GMO genetic drift from adjacent fields.

When I was in Australia on sabbatical, my host was on the Australian New Zealand Food Authority and it was preparing regulations which would have required that the shipping, processing, and distribution streams of GMO plants be kept separate. Before these were issued, Monsanto - evidently pursuing a 'facts on the ground' strategy - shipped in cargo shiploads of G MO seeds, despite appeals not to do so.

One of the most egregious abuses of plant patenting involves attempts made to patent common property plants in developing countries that have important food and/or medicinal uses, such as the neem tree in India, in order to try to expropriate and monopolize these common biological resources. Many of these countries have since sought to inventory such traditional plants and protect them from patenting.

These are but a few examples of how large corporations use favorable patent, IPR, and trade rules and combine them with technologies that are essentially monopolistic since only large and wealthy corporations (or governments) have the resources to develop and deploy them.

My strong recommendation is that the Legal Policy Section expand the current set of hearing to include the above issues which underlie and cross-cut all of the currently scheduled sectoral workshops. While these sector workshops are valuable and important, there is also the need to examine how our larger legal/constitutional frameworks have become biased towards monopolistic control once combined with today's monopolistic technologies and institutional regimes.

I would be willing to expand on the above history and examples if that would be useful in pursuing the larger issues described above.

Yours sincerely,

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