

From: Bill Wenzel <bwenzel2@aol.com>
Sent: Thursday, December 31, 2009 6:12 PM
To: ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>
Subject: Comments - Agriculture & Antitrust Enforcement Issues in Our 21st Century Economy
Attach: Seed Report.Final.pdf

Dear Mr. Tobey,

Please find attached the Farmer to Farmer Campaign on Genetic Engineering's Report entitled, **Out of Hand: Farmers Face the Consequences of a Consolidated Seed Industry**. The Farmer to Farmer Campaign on Genetic Engineering, together with the National Family Farm Coalition (NFFC) and Farm Aid, request that the Report be entered into the record in its entirety as our organizational comments on anticompetitive practices in the seed industry.

Major findings in the Report include:

- Seed industry concentration is indisputable. The top 4 firms account for 43% of the global seed market and 50% of the proprietary seed market (i.e. branded seed with intellectual property protections). In corn seed, the top 3 firms control nearly 100% percent of the market. Monsanto's market power is unmatched. Its subsidiaries control 60% of the U.S. corn and soybean market through direct sales and licensing agreements. 90% of soybean and cotton acreage and 80% of the corn acreage in the U.S. is planted with one or more of Monsanto's traits.
- Patents and intellectual property rights in seeds and genetics have been a major contributing factor in seed industry concentration. The Supreme Court decision in *Pioneer v. JEM Ag Supply* allowing patent law application to seeds coupled with aggressive use of restrictive licensing agreements and the high cost of seed research and development have driven competition out of the marketplace. At least 200 independent seed companies have been lost in the last 13 years alone. Independent seed companies that license traits from Monsanto say these licensing agreements are anti-competitive in nature and are unreasonably onerous.
- Seed prices have skyrocketed as the seed industry became concentrated. Corn seed prices jumped by over 30% between 2008 and 2009 alone, resulting in nearly \$100/bag increases. Soybean prices doubled in some regions during this time. Much of the increase is the result of technology fee increases (i.e. \$6.50/bag in 2003 to \$17.50/bag in 2008).
- Farmers' choice in seed has dwindled as the seed industry became concentrated. Monsanto has employed a *trait penetration plan* to force farmers to use multi-stacked, genetically engineered (GE) seed varieties. Monsanto has developed regional pricing programs offering low cost varieties to lure farmers to buy these GE varieties. As farmer adoption rates rise, conventional and other less expensive GE varieties (e.g., single and double stack varieties) are reduced or eliminated, forcing farmers to use the higher priced, multi-stacked varieties. In 2009, triple stack Monsanto corn varieties were priced as high as \$350/bag – a \$100/bag increase over 2008 prices, while conventional varieties typically cost \$50-100/bag less. In 2009, 70% of corn seed sales were triple stack varieties, arguably due to lack of other seed options.
- Patent/Intellectual Property Law have impacted farmers' choice in seeds. Patents have effectively resulted in a prohibition on seed saving. Farmers historically have had the ability to save seed, which provided them with options and choices that are no longer available. This loss has also influenced seed prices since farmers can no longer opt to use their own seed (i.e. seed saving had the effect of holding down seed prices). Threat of liability/lawsuits for alleged patent infringement by patent-owners has also led farmers to adopt GE varieties and/or continue using those varieties while the availability of lower priced, higher performing

options has dried up due to lack of public funding for plant breeding/seed development.

- Existing public policy has thwarted innovation. The ability to obtain utility patents in seeds and genetics coupled with the Bayh-Dole Act mandates allowing companies to acquire intellectual property rights in innovations derived from publicly funded research to develop commercial applications, has resulted in less innovation in new seed varieties. Seed researchers and breeders find it difficult (if not impossible) to access a wide variety of plant genetics to conduct seed development research. Furthermore, accessing these genetics often comes with strings attached, including confidentiality agreements and industry veto power over research.

In order to address the problems of seed industry concentration, we recommend that the U.S. Department of Justice in collaboration with the U.S. Department of Justice:

1. Conduct a comprehensive assessment of the anti-competitive practices in the seed industry that have resulted in high seed prices and reduced seed choices to farmers and have limited the access of genetic material to seed breeders and developers.
2. Use all available antitrust enforcement powers to restore innovation, competition, access to genetic material, choice in seeds and fair seed prices to farmers, researchers and other seed-related industries.
3. Support legislation to eliminate utility patents for seeds and plant genetics and to reinstate the protections afforded under the Plant Variety Protection Act (PVPA) as the exclusive authority for protecting economic interests in seeds and plant genetics.

Should you have any questions regarding the Report, please feel free to contact Bill Wenzel (contact information below) or Kristina Hubbard, **Out of Hand** author and Farmer to Farmer Campaign on Genetic Engineering Consultant, at kristina.hubbard@gmail.com or (406) 544-8946.

Respectfully submitted,

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