



February 12, 2010

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

RE: Antitrust Division, U.S. Department of Justice and the U.S. Department of Agriculture's Joint Public Workshop series on "Competition in Agriculture" - FR Doc. 2009-20671

Dear Sir or Madam:

The Independent Professional Seed Association (IPSA) offers this letter of input regarding the Joint Public Workshops by the Department of Justice and the Department of Agriculture exploring competition in agriculture scheduled throughout the year and specifically referenced above. IPSA represents independently-owned regional seed companies who welcome this joint review of issues facing U.S. agriculture.

IPSA members serve farmers through a variety of functions: from research to production and retail sales – each vital to the delivery of high-quality, competitively-priced farm seeds. IPSA members produce all types of farm seed – from corn, soybeans and small grains, to vegetable, turfgrass and conservation crops. These products also represent a wide range of choice for farmers – from organic, to conventional and biotech varieties.

Like any other aspect of agriculture, the seed industry has undergone tremendous change during recent history. The advent of biotechnology traits has changed the way farmers feed our nation and the world. Additionally, it has changed the participants involved in seed technology development, as well as the relationships among industry participants.

Biotechnology

Since the mid- to late-1990's, one of the most significant changes facing the seed industry is the development of biotechnology traits delivered as part of seed germplasm. These advances have come quickly, given the 10+ year development timeframe (and \$100+ million cost estimate) for bringing each new technology to market. New traits are also accompanied by significant regulation when entering the marketplace, which creates costs for seed producers and farmers. As the Departments make their review of issues facing the industry, these regulatory impacts and costs should not be overlooked.

The advent of biotechnology, and the licensing agreements governing their use, has given regional independent seed companies access to novel products they would likely not develop on their own. These new products offer seed companies more choices to remain competitive in their market area, and are generally viewed as positive.

It should be noted that these licensing agreements are private contracts between suppliers and their customers – IPSA does not have access to these contracts, nor does the Association review individual business agreements made by its members.

The development of new biotechnologies or new generations of existing technologies is increasingly competitive among trait providers, which can benefit farmers and consumers tremendously. Independent seed companies can remain competitive when new technologies are broadly licensed, and when given the freedom to market the “old” technology through a reasonable transition period.

Marketing

Historically, seed companies have had a regional orientation for their marketing efforts – producing seed varieties that meet the needs of farmers in a particular geographical area. In order to do this, companies have sought germplasm (and now biotech traits) from a variety of sources to create unique products best suited for the needs of their customers. This scenario has created opportunities for many seed companies to exist simultaneously. In fact, more than 250 corn ‘brands’ were in existence as late as the mid-1990’s.

During approximately the same time period, trait developers also began to enter the retail seed business, which has further confounded the relationship between input suppliers and their seed company-customers. Through acquisition of both publicly and privately owned seed companies, suppliers who license biotech traits and germplasm to regional seed companies may also own several retail seed brands, which directly compete for business in the same market area.

Broad access to biotech traits and elite germplasm from all suppliers at equitable price and margin opportunities is essential for the survival of independent seed companies, whose numbers have declined significantly during the past 15 years. By the way of example, IPSA seed company members have declined by nearly 40% from a high of approximately 145 to about 90 companies today. This is the result of both acquisitions and reduced profit opportunities for independent seed companies.

Intellectual Property

Strong intellectual property rights protection should continue to be extended to germplasm and biotech traits – several regional independent seed companies maintain aggressive breeding programs whose value is guarded through intellectual property rights and patent protections.

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The absence of strong intellectual property rights protection for germplasm and biotech traits risks the rapid devaluation of these products at a time when they have become integral to successful seed breeding and sales programs.

To ensure the continued development of new technologies to benefit all of agriculture, IPSA remains in strong support of patent protections for germplasm and biotech traits, including all permissible uses extended under current and future patent agreements.

Closing

The members of the Board of Directors of the Independent Professional Seed Association, on behalf of the Association's members, respectfully submit this letter for your consideration. (*IPSA Board action taken to approve this letter on February 12, 2010*)

If you have questions, or would like to discuss our letter or position in greater detail, please feel free to contact the Association at the address, phone number or email address listed below. Thank you for your time and consideration regarding this amendment. If you have questions, or would like to discuss this letter in greater detail, please feel free to contact the Association at the address, phone number or email address listed below. Thank you for your time and consideration.

Sincerely,

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