



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

December 29, 2009

Ms. Christine A. Varney
Assistant Attorney General for Antitrust
Legal Policy Section, Antitrust Division
U.S. Department of Justice
450 Fifth Street, Northwest
Suite 11700
Washington, D.C. 20001

Dear Ms. Varney:

**Comments Regarding Agriculture and
Antitrust Enforcement Issues in our
21st Century Economy**

We write this letter as a comment for the Antitrust Division of the United States Department of Justice and the United States Department of Agriculture's joint public workshop series, beginning on March 12, 2010. We make no statement as to legality of any of actions or inactions that may be in dispute between the businesses mentioned in this letter.

In Alabama, agriculture is the number one industry, providing more than 70,000 operator jobs. Cotton is a major component of agriculture in Alabama. In 2009, Alabama farmers planted more than 260,000 acres of cotton. In the year 2007, cotton farm gate receipts were in excess of \$105 million. According to recent statistics, Alabama is ranked ninth for cotton production throughout the United States.

The statistics concerning the cotton industry above for Alabama can be considered greatly lower compared to prior years. However, for these reasons, the issues regarding access to technology are critical to our economy and the future of production agriculture. Alabama farmers must have access to emerging technology to remain competitive in the ever-expanding global market.

Presently, there is more choice in terms of seed varieties and seed traits available in the marketplace than ever before. Technology has had many impacts on crop production and is the reason there are so many quality options in the marketplace. Seed quality, which improved greatly due to innovation and technological advancements, improves crop productivity and quality. It is intellectual property protections that drive this new innovation by enabling inventors to capture the value of their creations and to share innovations broadly

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with other economic actors, while preserving their value. Innovative companies can produce results only if they know that their intellectual property rights are assured and protected. Competition is now thriving in the agricultural sector. We are proud to have a record of supporting a free market that creates an environment in which this is possible.

In a case of significance to the State of Alabama, Monsanto Company, et al. v. E.I DuPont De Nemours, et al., DuPont's biotechnological failure in creating its own herbicide-resistant seeds caused the company to enter into a licensing agreement with Monsanto. If it is true that DuPont did not negotiate for stacking rights in its contract with Monsanto, then DuPont should not be entitled to use antitrust laws in an effort to fix their own innovative failure. It is our understanding that, in all crops, Monsanto has some licensees that have negotiated for stacking rights. It is further our understanding that the price DuPont negotiated for its license from Monsanto did not include the right to stack the Optimum GAT trait with the Roundup Ready trait. We can understand our sister states' concerns that Monsanto dominates the trait market. However, governmental interference in contractual disputes like this one could chill the investments companies like Monsanto have made that have earned the loyalty and increased the productivity of Alabama and indeed, American, farmers. For that reason, we urge you not to threaten intellectual property rights, and, therefore, jeopardize future innovations in the agricultural sector – innovations that allow American farmers to continue to feed the world with fewer farmers and less land.

Thank you for the chance to provide these comments on this issue of great importance to American agriculture.

Sincerely,



Troy King
Attorney General



Ron Sparks
Commissioner
Alabama Department of
Agriculture and Industries

TK:RS:CP:oi