



Commissioner Vestager - DG Competition
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels

October 6, 2017

Dear Commissioner Vestager,

Concerns: Bayer AG acquisition of Monsanto - case M.8084 notified to the Commission on 30 June 2017 under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings

As the International Panel of Experts on Sustainable Food Systems (IPES-Food) – a group of international scientists and practitioners working for food systems reform, we are requesting to intervene in the Directorate’s review of the proposed acquisition of Monsanto by Bayer AG.

IPES-Food has just completed a two-year study of concentration trends in the agri-food industry with special attention to the implications for agricultural producers and for consumers. Our report, “Too big to feed: Exploring the impacts of mega-mergers, consolidation and concentration of power in the agri-food sector”, will be presented to the UN/FAO Committee on World Food Security when governments meet in Rome October 9–13. A copy of the report will be shared with the Commission imminently.

Although our report covers all sectors of the agri-food system, we are particularly concerned that a merger between Bayer AG and Monsanto will exacerbate the already unhealthy concentration in seeds and pesticides not just within the European Union but around the world.

We would welcome an opportunity to make a presentation in the review process as well as to submit written documentation.

Allow us to give you a brief insight into IPES-Food’s perspective on the Bayer – Monsanto acquisition.

Members of our panel have been monitoring concentration in plant breeding and pesticide development since the mid-1970s and have carefully documented the changes in market share as well as the arguments presented by merging entities as to the effects of such mergers.

While major enterprises such as General Electric in the 1920s and 30s, Standard Oil of New Jersey (ExxonMobil) in the 1950s and 60s, and Royal Dutch Shell in the 1970s, did enter the

seed market in the expectation of profiting from new breeding technology (e.g. radiation plant breeding in the case of General Electric, for example) or a new marketing service (e.g. combining retail sales of fertilizers, seeds and pesticides with fuel sales in the case of ExxonMobil and Royal Dutch Shell), commercial plant breeding was almost entirely in the public domain or in the hands of producer cooperatives and small family seed companies until the 1970s. At that time, inspired by potential synergies between plant breeding genetics and pesticide development, companies primarily engaged in pharmaceuticals and crop chemicals began to acquire small seed companies. Whereas no single enterprise could claim to have even 1% of global commercial seed sales in the 1970s, today, the leading six seed and pesticide enterprises have more than 60% of the global seed market and more than 70% of the pesticide market. If the current round of acquisitions continues as proposed, the three surviving entities will have substantially more than 60% of the combined world sales in both seeds and pesticides.

As in the past, a major driver toward concentration has been the potential to exploit new technologies. In the 1970s and 1980s, companies saw the potential for new biotechnologies to allow them to develop herbicide-tolerant plant varieties meaning that their proprietary pesticides could be marketed with their proprietary seeds. The economics of bringing seeds and pesticides together were – and are – persuasive: the development of a new pesticide is more than twice as expensive as the breeding of a new GM plant variety. Thus, it is most efficient to adapt new plants to old chemicals. Trends in pesticide development confirm that companies have focused on plant breeding and much less on chemicals.

Today, the driving new technology is the Big Data control of plant genomics, chemical research and farm machinery. Our panel is concerned that the merger between Bayer and Monsanto is, to a considerable extent, about the control of Big Data. We are also concerned that if these latest mergers are successful, they will inspire another round of much larger mergers involving farm machinery companies. The growth of digital agriculture, in which precision farming is guided by the provision of tailored services to farmers guided by detailed data at farm level, encourages such a development.

The Merger Regulation requires from the Commission that it prohibit any merger which would "significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position" (Art. 2(3)). This assessment should be guided, inter alia, by an analysis of "the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition" (Art. 2(1), al. 2, b)).

The Panel's research indicates that this increased concentration in seed and pesticide sectors has been deleterious for both farmers (the "intermediate consumers", in the language of the Merger Regulation) and consumers (the "ultimate consumers"). Two studies looking at the seed industry in different European countries show that private plant breeding has narrowed its focus to fewer species and that the diversity within species may also have declinedⁱⁱ. Studies in the USA show that seed prices for major proprietary crops have increased substantially and far exceeded the increase in prices farmers received for their crops^{iii,iv}.

Panel members have noted that, over the years, merging enterprises have suggested that greater concentration would increase the diversity of species and varieties in the marketplace, giving farmers more options and providing consumers with more nutritious and more diverse foods. There is no evidence, however, to suggest that these goals have been met in any country. In fact, all the evidence available points to the very opposite conclusion. Not a single new species has been introduced into the European food system since the era of large-scale mergers began. The dominant companies in this highly-concentrated seed sector devote at least 40% of their R&D expenditures to just one crop – maize^v.

The Panel has emphasized in past contributions that the need to adapt to climate change requires greater innovation in the species and varieties of crops and seeds offered to farmers. If farmers do not have access to this diversity, new pests and diseases could imperil their productivity, increase prices for producers and consumers, and impact food security.

We are aware, of course, that under the Merger Regulation, the appraisal of the Commission should be guided solely by considerations related to the impact of the proposed merger on the degree of effective competition in the common market. However, consumer welfare ("the interests of the intermediate and ultimate consumers") may be taken into account in making such an assessment – indeed, the Merger Regulation provides that it must. We offer to provide evidence showing that these interests would be seriously jeopardized by the proposed merger, which – far from stimulating innovation and providing farmers and consumers with a wider range of choices – shall increase uniformity and reduce the ability for farmers to diversify their production.

We would welcome an opportunity to discuss these and other related issues with you as you review the Bayer – Monsanto acquisition.

Yours sincerely,



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Also on behalf of:

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ⁱ Hilbeck, A., Lebrecht, T., Vogel, R., Heinemann, J.A. and Binimelis, R., 2013. Farmer's choice of seeds in four EU countries under different levels of GM crop adoption. *Environmental Sciences Europe*, 25 (1)

ⁱⁱ Solberg, S.O. and Breian, L., 2015. Commercial cultivars and farmers' access to crop diversity: A case study from the *Agricultural and Food Science*, 24(2), pp.150-163.

ⁱⁱⁱ Fuglie, K., Heisey, P., King, J., Pray, C., Day-Rubenstein, K., Schimmelpfennig, D., Wang, S.L., Karmarkar-Deshmukh, R., 2011. Research Investments and Market Structure in the Food Processing, Agricultural Input, and Biofuel Industries Worldwide. *USDA, Economic Research Service*, December 2011.

^{iv} Schnitkey, G., Sellars, S., 2016. Growth Rates of Fertilizers, Pesticides, and Seed Costs over time. *Farmdoc daily* (6):130, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, July 12, 2016.

^v Fujisaka, S., Williams, D., Halewood, M., 2011. The impact of climate change on countries' interdependence on genetic resources for food and agriculture, *FAO, Commission on Genetic Resources for Food and Agriculture*, Background Study Paper No. 48, 2011, p.7. URL <ftp://ftp.fao.org/docrep/fao/meeting/017/ak532e.pdf>