

May 9, 2017

Senator Charles Grassley  
Chairman, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C., 20510

Senator Dianne Feinstein  
Ranking Member, Senate  
Judiciary Committee  
332 Hart Senate Office Building  
Washington, D.C., 20510

Senator Mike Lee  
Chairman, Subcommittee on Antitrust,  
Competition Policy and Consumer Rights  
361A Russell Senate Office Building  
Washington, D.C., 20510

Senator Amy Klobuchar  
Ranking Member, Subcommittee  
on Antitrust, Competition Policy  
and Consumer Rights  
302 Hart Senate Office Building  
Washington, D.C., 20510

Dear Chairman Grassley, Ranking Member Feinstein, Senator Lee, and Senator Klobuchar:

We are a group of 137 farmer, consumer, and environmental groups deeply concerned about growing concentration in the agricultural products sector and, in particular, about the proposed merger of Monsanto Company and Bayer AG.

As you know, the merger was proposed in the fall of last year and is currently under review by the Department of Justice (DOJ).

As you consider the nomination of Makan Delrahim to lead the Antitrust Division at DOJ we urge you to ensure that he will fully and skeptically evaluate the proposed merger, devote all necessary resources to the investigation, and hold the welfare of farmers, consumers, workers, and innovation foremost in his mind as he decides whether to block the merger.

If the merger were to go through, the new corporation will be the world's largest agribusiness company. Moreover, the proposed merger is pending amidst an overall wave of consolidation in the agribusiness sector, with the Dow Chemical Co. in the midst of merging with E. I. du Pont de Nemours and Company (DuPont) and China National Chemical Corporation (ChemChina) acquiring Syngenta AG. If all three deals close, the three resulting companies would control 70 percent of the world's pesticide market. They would control 83.7 percent of the U.S. corn seed market, 85.0 percent of the cottonseed market, and 76.2% of the soybean seed market.<sup>1</sup>

In addition, about 95 percent of all acres growing corn, soybeans, and cotton will contain a genetic trait owned by one of the Big Four companies if the merger wave goes through.<sup>2</sup> In addition, an analysis of genetically approved events shows that if the merger goes through Monsanto+Bayer will control 69 percent of all herbicide tolerance traits approved for use in the United States for alfalfa, canola, cotton, corn,

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<sup>1</sup> See Diane Bartz and Greg Roumeliotis, "Bayer's Monsanto acquisition to face politically charged scrutiny," Reuters, September 15, 2016; Henry Bryant, Aleksandre Maisashvili, Joe Outlaw, and James Richardson, "Effects of Proposed Mergers and Acquisitions Among Biotechnology Firms on Seed Prices," Report from Agricultural and Food Policy Center, Texas A&M, September, 2016 at p.6.

<sup>2</sup> Keith Fuglie, Paul W. Heisey, John L. King, and David Schimmelpfennig, "Rising Concentration in Agricultural Input Industries Influences New Farm Technologies," Amber Waves, USDA Economic Research Service, December 2012 at pp. 4-5.

soybean, and wheat.<sup>3</sup> In addition, Monsanto+Bayer will be the world's largest vegetable seed business for products like broccoli, green beans, carrots, and onions.<sup>4</sup>

Such a heavily consolidated seed and agricultural input industry makes it easier for cartel-like collusion that raises prices for farmers and other buyers and ultimately consumers all the while stifling innovation.

Even before these mergers were proposed, the outlook for American farmers has been deteriorating. A recent report from the Kansas City Fed warned:

Since 2013, profit margins have dropped precipitously for corn, soybeans, wheat, and cotton. The outlook for the farm economy has continued to worsen through 2016, despite some occasional rebounds in income and profit margins. As 2016 winds down, there will be increasing focus on the outlook for 2017 and likely more questions about the ability of some producers to continue to operate after experiencing losses for multiple consecutive years.<sup>5</sup>

Unless DOJ and Mr. Delrahim take this perilous situation seriously and act to block the merger, by the end of this year, four companies may control seed and chemical pricing and dictate all innovation in farming.

A number of studies have concluded that these mergers will very likely mean higher prices for farmers – putting the squeeze on their already slim profit margins. One study, from Texas A&M, indicated that just one of those mergers – Bayer and Monsanto – would drive up cotton seed prices by as much as 18%.<sup>6</sup>

Moreover history shows that concentration in the seed market is not beneficial to either farmers, consumers, workers, or innovation. In 1996 there were 600 independent seed companies; this number dropped to 100 by 2009.<sup>7</sup> This concentration resulted in crop seed prices more than doubling relative to the prices farmers received for commodity crops between 1994 to 2010.<sup>8</sup>

In addition to these substantive concerns, we are very worried about reports that President Trump met with the CEOs of Monsanto and Bayer, who sought his approval of the merger. According to the President's Press Secretary Sean Spicer, the CEOs promised jobs and investments if the merger were approved.<sup>9</sup> After they met with the President to discuss their proposed merger, *The Wall Street Journal* reported that investors had come to the conclusion that the president supports the merger. "They've been managing it in a smart manner," Fabrice Theveneau of Lyxor Asset Management, a Bayer shareholder, told the *Journal*. "If you can get access to the 'Big Man' directly, it obviously helps."<sup>10</sup>

These meetings have raised serious ethical concerns,<sup>11</sup> and we urge you to clarify with Mr. Delrahim how he will handle the possibility of unwarranted political interference with a law enforcement matter and maintain the credibility of the Antitrust Division.

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<sup>3</sup> See GM Approval Database, International Service for the Acquisition of Agri-biotech Applications

<sup>4</sup> See ETC Group, "Mega-Mergers in the Global Agricultural Inputs Sector: Threats to Food Security & Climate Resilience," Presentation to UN Committee on World Food Security, September, 2015 at p. 19.

<sup>5</sup> Nathan Kauffman, "U.S. Farm Economy Slumps into the Fourth Quarter," Federal Reserve Bank of Kansas City, September 28, 2016.

<sup>6</sup> See Texas A&M Report, *supra* note 1.

<sup>7</sup> Matthew Wilde, "Independent Seed Companies A Dying Breed," *The Courier*, May 31, 2009.

<sup>8</sup> Keith O. Fuglie, Paul W. Heisey, John L. King, Carl E. Pray, Kelly Day-Rubenstein, David Schimmelpfennig, Sun Ling Wang, and Rupa Karmarkar-Deshmukh, "Research Investments and Market Structure in the Food Processing, Agricultural Input, and Biofuel Industries Worldwide," USDA Economic Research Service, ERR-130, December 2011, at p. 19.

<sup>9</sup> "Bayer to boost U.S. jobs, investments amid Monsanto deal: Trump spokesman," Reuters, January 17, 2017.

<sup>10</sup> Christopher Alessi, "Trump Backing for Bayer's Monsanto Deal Buys Investors," *The Wall Street Journal*, February 20, 2017.

<sup>11</sup> Josh Boak, "Trump's CEO meetings raise ethics questions," AP, January 14, 2017.

Thank you for your attention to our concerns.

ActionAid USA

American Federation of Government Employees, Local 3354, St. Louis, MO

Alliance for a Clean Environment Western Australia

Alliance for Democracy

All-Creatures.org

Animals Are Sentient Beings, Inc.

Association for the Tree of Life

American Bird Conservancy

Animals are Sentient Beings, Inc.

As You Sow

Baltimore Lutheran Campus Ministry

Beyond Pesticides

Biofuelwatch

Bold Visions Conservation

Californians for Alternatives to Toxics

Californians for Pesticide Reform

Center for Biological Diversity

Center for Environmental Health

Center for Food Safety

Center for Sustainable Medicine

Central Maryland Beekeepers Association

Citizens for GMO Labeling

Colorado Pesticide Reform Coalition

Community Agroecology Network

Community Alliance for Global Justice

Connecticut Families Against Chemical Trespass

Corporations v Democracy National Issue Committee of Women's International League for Peace & Freedom - US Section

Cottonwood Environmental Law Center

Crawford Stewardship Project

Cuatro Puertas

DC Environmental Network

Dogwood Alliance

Earthjustice

Earth Open Source Institute

Ecology Center

Ecological Farming Association

Endangered Habitats League

Endangered Species Coalition

Experimental Farm Network

Fair World Project

Family Farm Defenders

Farm Aid

Farm and Ranch Freedom Alliance

Farmworker Association of Florida

Food Chain Workers Alliance

Food Democracy Now!

Food, Equity, Entrepreneurship & Development (FEED)  
Food Fight  
Food First  
Food Forward  
Food for Maine's Future  
Food and Water Watch  
FOODwatch Washington  
Friends of the Earth Australia  
Friends of the Earth U.S.  
Gap Mountain Goats  
GE Free New Zealand  
Gene Ethics  
Georgia ForestWatch  
Global Exchange  
GM Cropwatch  
GM-Free Australia Alliance  
GMO Free California  
GMO Free Florida  
GMO Free USA  
GMO Inside  
Green America  
Health Care Without Harm  
Humming for Bees  
Illinois Right to Know GMO  
Iowa Citizens for Community Improvement  
International Federation of Organic Agriculture Movements  
Judith Schwartz, Author  
Local Futures/ISEC  
MADGE Australia Inc  
Mangrove Action Project  
Maryland Pesticide Education Network  
Midwest Pesticide Action Center  
Missouri Farmers Union  
Multinational Exchange for Sustainable Agriculture  
National Farmers Union  
National Family Farm Coalition  
National Organic Coalition  
National Organization for Women of New Jersey  
Noah's Notes  
Northeast Organic Dairy Producers Alliance  
Northeast Organic Farming Association Connecticut  
Northeast Organic Farming Association of Massachusetts  
Northeast Organic Farming Association of New Jersey  
Northeast Organic Farming Association of New York  
Northeast Organic Farming Association of Vermont  
Northwest Atlantic Marine Alliance  
Occidental Arts and Ecology Center  
Ohio Ecological Food and Farm Association  
Olympia Beekeepers Association

One Fish Foundation  
Organic Consumers Union  
Organic Seed Alliance  
Organic Seed Growers and Trade Association  
Organization for Competitive Markets  
PCC Natural Markets  
Pesticide Action Group Washington  
Pesticide Action Group Western Australia  
Pesticide Action Network North America  
Pollinator Friendly Alliance  
Pollinate Minnesota  
Rachel Carson Council  
Raptors Are the Solution  
Real Food Challenge Towson University  
Regeneration International  
Roots of Change  
Rural Advancement Foundation International  
Rural Vermont  
Santa Cruz Permaculture  
Save Our Sky Blue Waters  
SAVE THE FROGS!  
Save Our Trees Washington  
Sequoia ForestKeeper  
Sierra Club  
Slow Food USA  
Soil Carbon Coalition  
South Australia Genetic Food Information Network  
SumOfUs  
Sustainable Arizona  
Sustainable Food Center  
Sustainable Economics Law Center  
Tennessee Ornithological Society  
Texas Organic Farmers and Gardeners Association  
The Acequia Institute  
The Conscious Kitchen  
The Cornucopia Institute  
The Lands Council  
The Organic & Non-GMO Report  
Toxics Action Center  
Toxics Free NC  
Turning Green  
Turtle Island Restoration Network  
Western Organization of Resource Councils  
Wild Earth Guardians