

Opening Statement

Consolidation and Competition in the U.S. Seed and Agrochemical Industry

Senator Mike Lee

September 20, 2016

Introduction

Thank you Chairman Grassley. I know how important the issues we are here to discuss are to you, Mr. Chairman, and I'd like to thank you and your staff for your leadership on this hearing.

The subject of today's hearing is the unprecedented consolidation in the seed and agrochemical industry involving five of the so-called "Big Six" companies. Each of these deals raises complicated antitrust questions. Taken together, these deals propose to fundamentally reshape the agricultural industry. This hearing will help assess the competitive risks—and benefits—these transactions may present, both on their own and collectively.

The Dow and DuPont transaction proposes to bring together two classic American companies. The companies plan to merge and then split into three different entities, with the Agriculture company to include DuPont Crop Protection, DuPont Pioneer, and Dow AgroSciences. This new agricultural company would combine Dow's chemical and trait expertise with DuPont's strength in germplasm and seeds, which, according to the parties, would allow the combined entity to realize potentially significant efficiencies in research and development with its broader range of proficiencies.

ChemChina proposes to acquire Syngenta for \$43 billion. Syngenta is currently the largest seller of pesticides in North America, and the deal may serve to foster sales in China and emerging markets. I have heard repeatedly from farmers in Utah about the acquisition of Syngenta by ChemChina. Should this acquisition be successful, ChemChina, owned by the Chinese government, will control one of the world's largest manufacturers and distributors of agrichemicals and pesticides. Our farmers are concerned about the effects this type of state ownership may have on the Chinese government's already stringent approval process for importation of seed traits and crops. Preferential treatment by China of Syngenta products could significantly impact competitiveness throughout the industry. However, it is at least possible that China might improve the transparency and timeliness of its approval process if it possesses a greater stake in trait developments and the agrochemical industry.

And just last week, Bayer announced an agreement to purchase Monsanto for \$66 billion. The deal would allow Bayer to add Monsanto's portfolio of seed and trait products to Bayer's chemistry strength. The proposed transaction raises hard questions that will need to be considered. These questions include whether the transaction would combine assets that less than 10 years ago the DOJ required Monsanto to divest due to the likely competitive harm that the combination would have caused. And, particularly in light of the previously mentioned transactions, regulators will have to consider whether there will remain any appropriate buyer for any assets that Bayer might be required to divest if there are competitive concerns. However, as with the proposed Dow and DuPont transaction, Bayer post-acquisition would have expertise in chemistry, seeds, and traits, potentially allowing it to create more innovative, integrated solutions and do so in a much more efficient manner.

As with any merger, the relevant antitrust inquiry under the Clayton Act is whether the effects of the deal "may be substantially to lessen competition, or tend to create a monopoly." And while each of these proposed transactions will be investigated individually, the context of these deals taking place concurrently is also important to consider.

The seed industry is vital not just to our nation's farmers, but also to each individual consumer. My office has heard many complaints about the potential anticompetitive harms these deals may cause. These concerns include the loss of head-to-head competition, particularly in the corn, soybean and cotton seed markets, reduced incentives and ability to innovate, foreclosure of competing agricultural companies from access to necessary inputs, such as germplasm and traits, and restricted access to foreign markets. On the other side of the ledger are the companies' and other deal proponents' claims of new efficiencies and an increase in research and development through more streamlined processes combining a wide array of areas of expertise, which would both be welcome developments in a sector that has been hurt by low commodity prices in recent years.

These deals are complicated and the nature of the antitrust inquiry very fact intensive, so I look forward to hearing from and engaging with our witnesses regarding these issues.

Finally, I think it is important to note that, while the final determination regarding the competitive impact of the deals will be made by the DOJ and FTC, the Judiciary Committee and the Subcommittee on Antitrust can make a valuable contribution to the conversation by closely examining any competitive concerns and looking at what other forces or market realities may be driving consolidation in the agricultural industry. We will, if necessary, return to any topics that require additional exploration in a subsequent Antitrust Subcommittee hearing. For now, I look

forward to hearing from our esteemed witnesses and the productive discussion their testimony will no doubt inspire.