



November 19, 2025

via Email
record@judiciary-rep.senate.gov

The Honorable Charles E. Grassley
The United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Re: Response on written questions after testimony given to the U.S. Senate Judiciary Committee entitled, "Pressure Cooker: Competition Issues in the Seed & Fertilizer Industries" on October 28, 2025

Dear Chairman Grassley,

Thank you again for the opportunity to testify before the U.S. Senate Judiciary Committee. It was an honor to share our experience and perspective as an independent seed company in a highly consolidated industry.

I have received these follow-up questions from you as well as from Senator Cory Booker. My responses to those questions are attached. If you or your staff have additional questions or if I can provide additional assistance, please feel free to contact me.

I sincerely appreciate the Committee's bipartisan focus on these important issues and your leadership in examining competition in the agricultural input sector.

Sincerely,

John Latham
President
Latham Quality, Inc.
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Enclosures

cc: The Honorable Cory Booker

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Questions from Senator Grassley, Chairman
for John Latham – Latham Quality, Inc.
Hearing on “Pressure Cooker: Competition in the Seed & Fertilizer Industries”

1. In your opinion, what practical steps would help aspiring and new entrants in the seed and fertilizer industries reach farmers?

I cannot speak to the fertilizer industry, but within the seed industry there is a need to reduce barriers that currently limit new entrants. Access to breeding tools, gene-edited traits, and off-patent technologies could be improved through clearer, nondiscriminatory licensing standards. Today, licensing terms and contractual conditions are often set unilaterally by dominant firms, which makes it difficult for smaller firms to adopt technologies that are technically off-patent.

Oversight of licensing practices—particularly around patent extensions, bundled “product” patents, and restrictive agreements—would support innovation and encourage additional breeding companies to enter the market. Transparency in trait and technology fees would also allow farmers to understand what portion of their seed cost relates to technology rather than genetics.

I would suggest that, due to patents established on biological systems, the only way we will see a significant post-patent market in biotech traits is by revised legislation at USPTO and USDA. Currently, there is an unintended consequence between the position of USPTO and USDA’s Plant Variety Protection Act that needs to be corrected. This “consequence” occurs by the merger of the PVPA’s rules on protecting plant genetics and USPTO’s engineered biological patent rules. The combination of these two areas in seed limits the access to traits on patent expiration.

Finally, establishing industry-wide fair-dealing rules around rebates and loyalty programs would help ensure independent companies can choose the best genetics or traits for their customers without facing financial penalties. One potential example is a licensing standard that some internet technology companies have developed called the Fair Reasonable and Non-Discriminatory (FRAND). This standard allows innovators to be appropriately rewarded for their innovation while not stifling the innovations of others.

2. The 2023 Merger Guidelines between the Department of Justice (DOJ) and the Federal Trade Commission (FTC) emphasize trends toward concentration, entrenchment of dominant positions, and serial acquisitions. What thresholds and evidentiary showings make sense in seeds and fertilizer? For example, how should agencies treat a roll up of regional seed companies or vertical deals tying traits to chemistry or platforms?

The consolidation announcements in 2017 and the lack of action by the DOJ since then have created this issue. When the competition ratio in any business is a CR2 at 90%, as it is in corn specifically, government oversight demands action.

Consolidation over the past decade has resulted in four firms controlling all the traits in the three major row crops of corn, soybeans, and cotton and a majority of chemistry platforms, and digital tools. In evaluating mergers or acquisitions, particularly those involving vertical integration across seeds, traits, chemistry, and digital platforms, I believe regulators should consider not only seed brand market share but also trait-stack market share.

When one firm owns multiple components of the production channel, it can create a closed ecosystem where switching becomes costly or impractical. Such structures can allow for differential access to traits, delayed allocation of genetics, or selective pricing that reinforces dominance. Mergers that further expand this type of integrated control should receive heightened scrutiny.

The 2023 action was too little, too late. More action is needed now to correct this market issue.

3. Could you please provide us with some examples of where rebate ladders or the threat of lost allocations shut out rival brands at the state/county/local level? What information would you share with the appropriate federal agencies about these practices?

Many independent companies have already shared information with federal agencies. Although I must respect confidentiality obligations, I can state that rebate programs combined with royalty increases have created economic pressures that disadvantage independent firms relative to captive brands.

These programs often make it difficult for independents to compete on an equal footing and can affect dealer and customer choices at the local level. When rebates are structured in tiers or tied to loyalty requirements, independents can be effectively excluded despite offering competitive products.

4. Could you describe recent incidents, dates, counties, and how it impacted acres, where a supplier or retailer used rebate leverage or allocation delays to punish switching? If such incidents occurred, did you share that information with the appropriate federal authorities?

I cannot provide specific dates, locations, or customers in this public forum due to confidentiality obligations and concerns about retaliation. However, I can describe how these programs generally operate.

Rebates are frequently tied to year-over-year volume requirements. Weather events such as widespread prevent-plant years can cause dramatic, uncontrollable volume swings. Returned seed does not always count toward annual totals, and missing a tier can result in losing the entire rebate (and, quite often, their profit) for the year.

Additionally, some dealer programs from the dominant firms can provide significant rebates only when the dealer commits the vast majority of purchases to a dominant platform, effectively discouraging them from carrying independent brands.

5. Will you commit to itemized invoices, seed price vs. trait/tech fees, so an Iowa farmer can compare a 2025 hybrid across brands apples-to-apples?

Most technology providers require confidentiality regarding trait fees and do not permit companies to disclose itemized trait costs to farmers. Independent companies must sign agreements that restrict disclosure of pricing structures. Increased transparency would benefit farmers, but current agreements generally prohibit it. Transparency is important, but non-discriminatory trait pricing is as important between independent companies, dominant firms' own captive brands, and their "favored" companies.

6. Restrictive licensing and pricing practices for GM seeds have been a cause of concern. Which specific practices, if halted by appropriate government intervention, would have the most positive impact on promoting competition in the seed market and reducing the prices that farmers pay for seed?

Royalty and licensing practices have significant effects on independent companies. In general, independents pay published royalties while captive brands may receive internal pricing advantages or bundled incentives. This can result in situations where independent companies face higher effective input costs.

In addition, cross-licensing and favored-nation arrangements among larger firms can restrict access to certain genetics or traits. Establishing standards similar to FRAND frameworks—ensuring fair, reasonable, and non-discriminatory licensing—could improve parity and enhance overall competition.

7. As of October 28, 2025, what is the prevailing price per metric ton of monoammonium phosphate (MAP) in the United States compared with Brazil, and what are the principal causes of any price differential(s)?

I do not have direct knowledge of current MAP pricing in the United States or Brazil, as our company does not operate in the fertilizer market.

Questions from Senator Booker
for John Latham – Latham Quality, Inc.
Hearing on “Pressure Cooker: Competition in the Seed & Fertilizer Industries”

1. Most large seed firms selling commodity crop seeds require smaller seed firms like yours to sign purchasing contracts before they even have access to the seeds they have purchased. While purporting to protect companies' intellectual property, these contracts include provisions that hurt smaller seed firms. For example, most agreements allow the independent firms to use seeds for only one growing season, allow the large seed firms to access the smaller firm's property for crop data collection and observation not only that growing season but years after, as well as permit the large firms access to the smaller firm's production and sales records.¹

a. Which commodity crop seeds that you sell require signed contracts before gaining access to seed stock?

All major traited corn and soybean technologies require licensing agreements before companies may access seed or traits. These agreements typically include provisions regarding single-season use, reporting, inspections, and record verification.

b. What do the contract provisions entail? Typical contracts include:
Single-season use restrictions (no saving seed)

While agreements vary, they commonly include:

- Restrictions on seed use and growout
- Frequent reporting and forecasting obligations (of products, customers, etc.)
- Audit rights allowing the trait owner to inspect seed companies' financials, production volumes, and sales records (by product, customer, customer location, etc.)
- Field access for stewardship or compliance reviews
- Limitations on geographic markets and testing
- Prepayment or financial assurance requirements

These provisions are generally non-negotiable due to market concentration.

¹ Spiegel et al., *Seeds for Rent: The Farmers' Guide to Technology Use Agreements*, CENTER FOR AGRICULTURE & FOOD SYSTEMS (Feb. 2025), <https://cafs.vermontlaw.edu/wp-content/uploads/seeds-for-rent-the-farmers-guide-to-technology-use-agreements-2025.pdf>.

- c. How would you manage your seed business differently in the absence of these contract provisions?

Compliance obligations require *significant* administrative resources. Absent some of these requirements, independent companies could devote more attention to breeding, testing, and service to growers, particularly in underserved regions where regionally adapted genetics are needed.

- d. Do these contracts allow the seed firms to review your client lists?

Independent companies must submit Grower Point of Sale (GPOS) data to verify grower licensing and compliance. While our own pricing information can be redacted, these submissions inevitably provide dominant firms with nearly an unlimited visibility into the market. Receiving all customer data from nearly all competitors puts others at a strategic disadvantage. Many agreements also contain audit rights covering product guides, seed tags, and other materials.

- 2. The predatory licensing contracts large seed firms force on smaller seed firms each growing cycle can be extremely lengthy, often dozens of pages. They are also very detailed, requiring an attorney's review. The contract terms available to smaller seed firms also barely differ among the largest seed companies. Due to the market dominance of only a few seed firms, commodity firms have few options but to accept these contracts' restrictive terms.²

- a. Have you been able to hire an attorney to review each contract you receive from a large seed firm?

Independent companies often engage attorneys, but the agreements are lengthy and technically complex. Reviewing every clause thoroughly is challenging for smaller firms given both cost and time constraints, especially since the agreements are not subject to negotiation.

- b. Are you always aware of what you are agreeing to?

We make our best efforts to understand the agreements, but the combination of legal complexity and lack of negotiation renders complete understanding difficult for smaller companies with limited legal resources.

² *Id.*

- c. Do these contracts often bind you to arbitration agreements?

Many agreements include mandatory arbitration and designate venues favorable to the dominant firm. Given the long production cycle in seed, delays in resolving disputes can significantly affect independent companies.

- d. Do you have any opportunity to negotiate these contracts?

Independent companies rarely have much right to negotiate, because the dominant firms know that we have no other viable options if we want to remain competitive. Because of these agreements and the expensive inventory that independent companies own and bear the risk for, there are very limited alternatives for independent companies to exit these agreements and/or the industry as a whole. Many agreements also have clauses that require an independent company to get prior approval from the dominant firm to maintain their license if they sell their firm.

- 3. Researchers recognize that thriving mid-sized farms can boost resilience in the face of extreme weather, pandemics, and other disruptions.³ However, for decades, the number of midsize farms has been declining.⁴ Consolidation within the agricultural sector, predatory contracting, and vertical integration have made market access difficult for mid-scale farmers. Today, many midsize farms cannot successfully compete in commodity markets.

[OB]

- a. How has consolidation in the agricultural sector impacted midsize farms you work with?

Consolidation has reduced the number of local dealers and limited access to regionally adapted genetics. Larger farms often receive more favorable terms, while small and mid-sized operations may face higher costs and fewer choices.

- b. How would increased competition in the seed and fertilizer industry help small and mid-sized farm viability?

More independent companies mean more localized products helping mid-sized farmers fight against local seed diseases. Transparency of trait technology pricing along with providing fair access to lower cost seed (including post-patent technologies) would provide a huge benefit to small and mid-sized farmers. Ending vertical lock-in allows farms to choose the best product for their fields.

³ *Supporting Midsized Producers*, MULTISTATE RESEARCH FUND IMPACTS (Dec. 2023), <https://www.mrfimpacts.org/single-post/supporting-midsized-producers>.

⁴ *Id.*

4. While many seed technologies include patented inventions, once those patents expire major seed companies still benefit financially, manipulating a system intended to encourage post-patent competition. For example, in your testimony you discussed how smaller seed firms such as yours are being charged extremely high royalties even for off-patent technology. During the past five years, royalties for seed corn have gone from 42% of the costs to now 70% of the costs for a bag of corn.⁵

- a. Please describe how the off-patent royalty programs large seed agribusinesses employ impacts your business.

As consolidation has increased, access to diverse genetics has narrowed. The dominant seed firms have increased their trait and genetic royalties to independent companies with the numbers you state from 42% to 70% of a bag of corn. The vast majority of those increases are passed along to the farmer and/or absorbed by the independent companies. Many times, the small to mid-size farms take the highest price increases. These price increases aren't just on the newest technology, but on older technologies that are off-patent or are soon to be off-patent. The dominant firms combine genetic and trait patents to extend patent life well beyond the 20 years patents are supposed to last. We have many farmers in our area that either don't need expensive traits because they have less insect pressure, or their fields are on marginal ground that can't produce more than 150-bushel-per-acre corn. These farmers should have options to make their farms profitable and not be forced into expensive technology because they have no other options.

- b. How do these royalty programs impact the prices that you charge farmers for seeds?

High royalty costs translate directly into higher seed prices for farmers. Farmers cannot see trait fees on an invoice and often don't realize that the majority of their cost is royalties going to the dominant firms and not seed genetics. The system prevents price competition and suppresses innovation.

5. Over the past 100 years, farmers, universities, plant breeders and others have transformed the seed market by producing seeds that are more resilient and economically productive.⁶ However, corporate capture of our seed industry has manipulated this system such that

⁵ Chris Clayton, Ag Input Consolidation Scrutinized, PROGRESSIVE FARMER (Oct. 28, 2025), <https://www.dtnpf.com/agriculture/web/ag/columns/washington-insider/article/2025/10/28/senators-probe-market-power-behind>.

⁶ U.S. Dept. of Agric., Agricultural Marketing Service, *More and Better Choices for Farmers: Promoting Fair Competition and Innovation in Seeds and Other Agricultural Inputs* (Mar. 2023), <https://www.ams.usda.gov/sites/default/files/media/SeedsReport.pdf?utm>.

plant breeders have less autonomy, seed stock is less resilient, and farmers are losing opportunities to adapt to a rapidly changing climate.

- a. In your experience, what is the impact of a consolidated seed industry on the ability of farmers and entrepreneurs to develop new seeds that are responsive to local changing climates?

The dominant firms focus on broad-acre national hybrids, not regionally adapted solutions. Access to elite genetics is rationed or delayed for independents since consolidation. The lack of new corn breeders into the marketplace and having the vast majority of genetics owned by just two firms has narrowed genetic diversity and weakened resilience to disease and stress.

- b. How does corporate dominance by a few powerful players in the seed industry stifle innovation?

The rebates and other programs make it very difficult for new breeders or new gene editing companies to enter the market. The dominant firms control the industry so they don't need to invest in innovation because they will keep their market share because of the lack of competition. We have seen fewer new technologies come forward and less investment in innovation. Dominant firms often retire traits and genetics early before they go off-patent or lock newer traits behind their own brands. Independent breeders cannot test new combinations of genetics and traits without restrictive contracts. Farmers lose access to small-company innovations, especially region-specific disease tolerance, drought resilience, and soil interaction traits.

6. Corporate consolidation in the seed and fertilizer industry has only worsened over the past decade. In 2017, Dow and Dupont merged into a new firm, Corteva, and in 2018, ChemChina acquired Syngenta, and Bayer acquired Monsanto.⁷

- a. How have these recent mergers impacted your business?

Post-merger agreements have generally become more complex and more restrictive, with increased reporting, monitoring, and prepayment requirements. Loyalty programs often span seed, chemistry, and digital platforms, increasing switching costs for both retailers and farmers.

⁷ U.S. Dept. of Agric., Econ. Rsch. Serv., *Mergers in Seeds and Agricultural Chemicals: What Happened* (Feb. 15, 2019), <https://www.ers.usda.gov/amber-waves/2019/february/mergers-in-seeds-and-agricultural-chemicals-what-happened>.

- b. Have royalty prices that you and farmers pay to large seed firms changed since 2017? How?

Royalty rates have risen significantly, including technologies that are off-patent or near expiration. This trend has increased the cost of goods sold for independent firms and, ultimately, raised prices for farmers.

- c. How have the loyalty programs that Corteva, Syngenta and Bayer offer been modified since these mergers took place?

Loyalty structures have become more complex and more integrated across product categories. These programs can reduce dealer and farmer flexibility, limit competition within local markets, and contribute to higher prices.