



**United States Senate Judiciary Committee:
Hearing on Competition and Consolidation in the U.S. Seed and Agrochemical
Industry**

Response of the National Corn Growers Association

October 12, 2016

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Senator Charles Grassley Questions

1. Are you familiar with S.3323, a bill I introduced to ensure American companies and consumers have a chance to prove up claims they may have against foreign state-owned entities? Do you believe that this bill will help American companies, farmers and consumers be on the same footing as foreign companies controlled by foreign sovereigns?

Answer: Although the National Corn Growers Association does not have a policy on the Foreign Sovereign Immunities Act, we have adopted a policy opposing non-transparent state enterprises. Additionally, our policy states that farmers should not be held liable if they use crop protection products according to label directions. By extension, this last policy is based upon a presumption that manufacturers and distributors will be liable their products. Accordingly, NCGA would support legislation to clarify the ability of farmers, consumers and businesses to seek legal recourse against a subsidiary of state-owned enterprise under the “commercial exemption” of the FSIA.

2. Larger companies sometimes have trouble innovating due to bureaucracy or market dominance. How do you see these proposed transactions enhancing or hampering the ability to innovate?

Answer: While it may be true that an entrepreneur can be more creative and nimble in developing a new idea, that new idea is worth little if that entrepreneur cannot bring that product to market and receive a return on his or her investment. Conversely, large companies may or may not be as innovative, but their ability to make long-term investments that bring products to market in a timely fashion is the foundation of their success. With costs for bringing a new seed trait to market approximately \$136 million and costs for a new chemical product nearing \$300 million, it is difficult to imagine a small company that could raise that cash for a single product—then find a distribution system that could ensure delivery of bulk products to farmers spread across all 50 states and around the world. As such, the short answer is that the size of the new companies simply reflects today’s market. Fewer farmers means fewer customers who, in turn, must cover the higher fixed costs that stem from 3-5 year regulatory delays for new seed products. We believe that intense competition will exist for these new companies to continue to deliver innovative products to farmers at a price that reflects a farmer’s ability and willingness to pay.

Senator Patrick Leahy, Questions to all witnesses

1. All farmers, whether they use genetically engineered (GE)-traited technologies or not, are still looking for non-GE choices to expand their rotations and to seek higher value markets. Many of you have discussed the impact that the pending seed and chemical company mergers will have on innovation. Some have argued that the mergers will enhance innovation, and others that it will stifle innovation. Those who are concerned about less innovation if the mergers are approved have noted the difficulty in crafting a potential remedy for that concern, as questions about innovation present unique challenges that are far more complex than simply divesting existing businesses or product lines.
 - a. What are the potential opportunities and mechanisms for enhancing public plant breeding capacity to address the loss in diversity of seed choices for farmers, and the many needs of farmers that will not be addressed by the private sector, whether or not we continue to see mergers in seed companies?

Answer: Universities and USDA do not have the funding, employees or infrastructure to develop breeds for hybrid production that are competitive with private hybrids. Even if public breeding programs were significantly expanded, public institutions still lack the transfer mechanism to move hybrids to farmers. There are still several vital roles for publicly funded research. Notably, general production research is lacking in both the private and public sectors. This research demand is driven by the increasing pressures put on farmers by regulators, food companies, environmentalists and consumers. Public institutions can also play a valuable role in unbiased ground-truthing of new technologies.

- b. As you consider the challenges farmers are facing today needing access to seeds that are well adapted to their farming systems, soils, and the changing climate, would you support additional investments in public research on diversification of seed stocks and publicly available plant varieties in this country that could lead to greater genetic diversity?

Answer: The NCGA does support additional investments in public research. And while public institutions may not be able to effectively compete against private industry in the breeding of corn hybrids, our Land Grant Universities can still have a significant role in addressing the needs of farmers. With additional investments, our public institutions are capable of doing pre-breeding work that can help farmers. This includes the development of breeding populations, adaptation of tropical germplasm to temperate environments and the phenotypic screening of germplasm collections for positive traits such as improved nutrition and biotic and abiotic stress resistance.

Senator Ted Cruz Questions

1. Earlier this month, the Agricultural and Food Policy Center (AFPC) at Texas A&M University issued a report, “Effects of Proposed Mergers and Acquisitions Among Biotechnology Firms on Seed Prices.” This report concludes that the proposed mergers between Dow and Dupont and Monsanto and Bayer will increase seed prices for corn, soybeans, and cotton. Notably, the report indicates that the price of cotton could increase by almost 20%. Do you have any response to these findings? Will seed prices increase? If not, what did the report get wrong?

Answer: NCGA reviewed the Texas A&M (TAMU) study. In comparison to our analysis, the TAMU market share estimates are slightly higher, but not significantly different than the estimates used in our analysis. This difference should, largely, explain the HHI difference between the two analyses. The NCGA/ASA study was primarily focused on U.S. corn and soybeans, so we did not undertake a cotton seed market analysis. Our analysis also included impacts in herbicide and insecticide as well as seed impacts relative to our South American competitors. As the TAMU analysis notes “contestability” is a function of barriers to entry/exit. While they accurately indicate the significant capital costs associated with a seed company as a barrier to entry, we feel they underestimate the financial burden regulatory approvals play in limiting market participants. In our opinion, this is the leading barrier. There are numerous regional seed companies that developed germplasm attractive to farmers. A few regional companies have even attempted to independently develop biotechnology traits. However, their inability to absorb the time and cost of regulatory approval has kept these from the market. Likewise, the recent growing market share of at least three regional companies that rely on licensing traits indicate there is still significant competition in the industry. The TAMU analysis indicates the potential for modest increases in corn and soybean seed, but significant increase in cotton seed prices. However, these price increases are predicated on the key assumption that the mergers will be permitted to go forward without mandated divestitures. In a letter sent to the Department of Justice this summer, the NCGA asked the Department to “determine whether remedies should be applied that could ensure healthy competition . . .” While the assumption of no divestitures is necessary for their model application, and relevant to the Department’s investigation, we fully expect the government agencies investigating these mergers to recommend divestiture when and where such a remedy is needed.

2. In the last quarter century, the agricultural industry has consolidated dramatically into the “Big Six” companies that now control the market. With these proposed mergers, it looks like we’re heading toward a “Big Four.” In her written testimony, Dr. Moss states that the Dow/DuPont and Monsanto/Bayer mergers “will likely raise entry barriers for smaller innovators and increase the risk that they are foreclosed from access to technology and other resources needed to compete effectively.” Can you respond to this? How would these mergers affect the smaller businesses and entrepreneurs in Texas?

Answer: In our earlier letter to the Department of Justice, we noted the estimated cost of bringing a new seed variety to market is \$136 million and a new crop protection chemical may cost upwards of \$300 million to move from product concept to market. The market barrier that limits the entry for small innovators is not market competition, but rather the phalanx of regulatory hurdles and delays that have driven up costs and product delivery times.

NCGA recognizes that larger companies exhibit more risk adverse practices and tend to have longer more bureaucratic innovation timelines while ultimately having the resources to bring products to market. We have spoken to the venture capital and technology incubator communities and they recognize that a reduced number of outlets for technology developers could be a challenge for entrepreneur exit strategies. They have countered this challenge by recognizing the fact that fewer exit points and greater internal bureaucracy creates a strong market for innovation. The consolidated companies will become more dependent on the innovation communities to take the risks that they can’t. Additionally, the landscape for new plant biology has fundamentally changed, trending toward technologies that have much lower regulatory burdens. Ensuring these burdens remain commensurate with the products produced will expand the outlets for new technologies to other market players that include regional, local or unaligned seed companies.

3. Several of the people I have spoken with in the farm and agricultural industry believe that effects stemming from these mergers should be reviewed collectively. If you disagree, could you please explain why?

Answer: We do not agree that you should review these mergers collectively. Each of these mergers, at least in part, is driven by the current down turn in commodity markets. As agricultural commodity prices decline producers have responded by reducing expenditures to remain profitable. Ultimately, this has reduced sales and margins for agri-industry. While all of the companies face a similar challenge caused by low commodity prices, each merger is unique. For example, the Dow/DuPont merger is a merger of two giant chemical companies that have significant agriculture subsidiaries. The driver is the merger of parents, not the merger of the subsidiaries. As each merger is unique, the likely remedies to market concentration will be unique. While one merger may require little or no divestiture to maintain competition, another may require significant asset or product spinoffs. In the end, you can look at the reduced profitability in agriculture collectively, but you cannot collectively analyze how agri-industry will respond. We are hopeful that, as the Department of Justice does seek to apply remedies, any spin-offs or divestitures will broaden and enhance competition—rather than compound current market concentration.

4. The Wall Street Journal has noted that Federal Reserve policies after the financial crisis inflated asset prices, and more recently, that the end of Fed stimulus has led the dollar to rise sharply, which has given us falling prices in many farm commodities. We have seen this effect very clearly in Texas's energy industry, which has seen prices fall more than in half since 2014, hitting the entire regional economy. Do swings in commodity prices, specifically crop prices, have a negative impact on the agricultural industry as whole?

Answer: Yes. See the previous answer.

Senator Sidney Blumenthal Questions

1. In your judgment, how is access to innovative traits for regional seed companies best guaranteed?

Answer: Regional seed companies currently rely on trait providers for licensing traits. Regional and small companies do not have the resources to develop their own traits and get them through the regulatory process. The best way to ensure their access to new traits is to avoid imposing overly burdensome regulation on advanced breeding techniques (i.e. gene editing, etc.) that are not scientifically- or risk-based. With these new techniques, sensible regulation systems will democratize the development of traits.

- a. Will the mergers discussed in our hearing positively or negatively affect the access currently enjoyed by these regional companies?

Answer: It is unrealistic to believe the current technology providers will cancel or restrict future trait licensing. Approximately 1/3 of the seed corn industry is made up of regional or smaller seed companies. Restricting access to traits would deprive the trait developers of significant revenue, without any perceived gain in market share. Further, new advanced breeding techniques have the potential to level the playing field in future trait development.

2. What sort of impediments to success do these regional companies face now?

Answer: The largest impediment for regional seed companies is access to germplasm. NCGA is attempting to level the playing field through the opening of the National Agricultural Genotyping Center, which offers companies access to high throughput genotyping and other technologies they cannot access through other means.

3. Does further concentration in the market, brought about by mergers such as the ones discussed in our hearing, increase or lessen the likelihood that these regional companies will be able to compete for the long term?

Answer: It is difficult to project how these mergers may affect regional seed companies over the long-term. For now, however, we know that, first, these regional companies' market share has grown through a combination of competitive pricing, quality, and service. Second, we believe that the major companies will continue to have a strong economic incentive to license technology to these smaller companies—specifically to increase the revenues from these licensed traits as a means of covering fixed costs and research investments. And finally, we know that farmers will continue to choose the right products to match their location and their farm. As long as this choice exists, we do believe that a competitive market can still function to the benefit of farmers.