

United States Senate

WASHINGTON, DC 20510

July 20, 2017

The Honorable Jeff Sessions
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

We are writing to urge you to direct the Antitrust Division to conduct a thorough and impartial analysis of Bayer AG's proposed \$66 billion acquisition¹ of Monsanto Company. When conducting its analysis, the Antitrust Division must remain independent of political influences and carefully consider the impact this merger will have on agricultural businesses, farmers, and consumers.

During your confirmation hearing before the Senate Judiciary Committee on January 10, 2017, you were asked by Senator Klobuchar to comment on your commitment to making antitrust enforcement a priority and on the independence of the Attorney General when considering antitrust cases. In your response, you said:

*I have no hesitation to enforce antitrust law. I have no hesitation, if the finding justifies it, to say that certain mergers should not occur. And there will not be political influence in that process.*²

Further, in your written responses to Questions for the Record regarding mergers in the agricultural inputs sector, you wrote:

*...if I am confirmed as Attorney General, the Antitrust Division will conduct a thorough evaluation, consistent with federal law, of all proposed mergers and acquisitions to determine whether they violate federal antitrust law and policies.*³

This commitment has particular importance for the review of the Bayer-Monsanto transaction. We find it disturbing that in January, President-elect Trump met with both Bayer CEO Werner Baumann and Monsanto CEO Hugh Grant to discuss their transaction.⁴ Merger review is law enforcement. Even the appearance that the President is open to involving himself in an individual law enforcement decision would undermine the integrity of antitrust enforcement and the ability of the United States to advocate that other countries apply their competition laws fairly and without political bias. We appreciate your written commitment, after that meeting occurred, that

¹ Fortune, "Bayer, Monsanto Agree to Merge in \$66 Billion Deal," (September 14, 2016), <http://fortune.com/2016/09/14/bayer-monsanto-agree-to-merge-in-66-billion-deal/>.

² Senate Committee on the Judiciary, "Attorney General Nomination," (January 10, 2017), <https://www.judiciary.senate.gov/meetings/01/10/2017/attorney-general-nomination>.

³ Sessions Responses to Klobuchar QFRs, at 3.

⁴ Reuters, "Bayer says had productive meeting with Trump over Monsanto deal," (January 12, 2017), <http://www.reuters.com/article/us-monsanto-m-a-bayer-trump-idUSKBN14W17O>.

it would be improper to consider any personal, political, or nonlegal basis in making an enforcement decision. We believe it is important to emphasize this.

The agri-business industry has already experienced significant consolidation. According to a U.S. Department of Agriculture study, “[g]rowth in market concentration over time was most rapid in the global seed industry, where the market share of the four largest firms more than doubled from 21 to 54 percent between 1994 and 2009.”⁵ During that same time period, the study found that crop-seed prices more than doubled relative to the price farmers received for agricultural commodities.⁶ Further, crop-seed price increases outpaced increased yields.⁷

The Department’s recent approval of the Dow-DuPont merger without any divestitures or other relief in the seeds or traits markets only heightens our concerns. The industry appears to be moving towards three or four large vertically integrated companies that may have little incentive to compete with each other or support smaller companies that are not similarly integrated.

In light of the Dow-DuPont transaction, Bayer’s acquisition of Monsanto raises important concerns about innovation, a recent focus of the Department of Justice.⁸ According to the GM Crop Database, if the Bayer-Monsanto transaction is approved, just two companies would control over 60 percent of the genetic corn traits and almost 90 percent of soybean and cotton traits.⁹ Bayer and Monsanto alone are responsible for 51 percent of genetic events for corn, 68 percent for soybeans, and 61 percent for cotton.¹⁰

Although these statistics are not conclusive of the ultimate economic impact of the transaction, they raise important issues that deserve careful consideration. We need more research and development, not less. Competition provides strong incentives for research and development. Additional concentration could reduce those incentives.

Large-scale consolidations in the agricultural inputs sector could also significantly reduce competition, limit seed options for farmers, and raise prices for both farmers and consumers. The company created by the Bayer-Monsanto merger would control about 24 percent of the world’s

⁵ United States Department of Agriculture, “Research Investments and Market Structure in the Food Processing, Agricultural Input, and Biofuel Industries Worldwide,” (December 2011) at 14, <http://ageconsearch.tind.io/record/120324/files/err-130.pdf>.

⁶ *Id.* at 13.

⁷ Testimony of Diana Moss, President of the American Antitrust Institute, “Consolidation and Competition in the U.S. Seed and Agrochemical Industry,” (September 20, 2016) at 5, <https://www.judiciary.senate.gov/imo/media/doc/09-20-16%20Moss%20Testimony.pdf>.

⁸ See Press Release, U.S. Dep’t of Justice, Applied Materials Inc. and Tokyo Electron Ltd. Abandon Merger Plans After Justice Department Rejected Their Proposed Remedy (Apr. 27, 2015), <https://www.justice.gov/opa/pr/applied-materials-inc-and-tokyo-electron-ltd-abandon-merger-plans-after-justice-department>.

⁹ See Testimony of Diana Moss, President of the American Antitrust Institute, “Consolidation and Competition in the U.S. Seed and Agrochemical Industry,” (September 20, 2016) at 9, <https://www.judiciary.senate.gov/imo/media/doc/09-20-16%20Moss%20Testimony.pdf>.

¹⁰ See Testimony of Diana Moss, President of the American Antitrust Institute, “Consolidation and Competition in the U.S. Seed and Agrochemical Industry,” (September 20, 2016) at 9, <https://www.judiciary.senate.gov/imo/media/doc/09-20-16%20Moss%20Testimony.pdf>.

pesticides sales.¹¹ Together, Bayer-Monsanto and Dow-DuPont would control 76 percent of the market for corn and 66 percent of the market for soybeans.¹² Roger Johnson, the National Farmers Union's president, echoed these concerns in the Senate Judiciary Committee's hearing on agricultural consolidation, testifying that, among other issues, farmers could have fewer options in the marketplace as a result of recent and proposed consolidation.

Others take a different view of the proposed transaction. Bayer and Monsanto have said that they largely do not compete directly with each other. Further, the companies maintain that their incentives to cross-license broadly would not change after the merger. And the combination of complementary assets, according to the parties, will increase innovation that will benefit farmers and, eventually, consumers. The Department of Justice must carefully examine the facts to assess these issues and be confident that any further consolidation will not harm farmers and food prices before approving any acquisition.

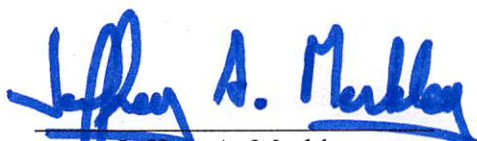
It is imperative that the Antitrust Division thoroughly analyze the proposed Bayer-Monsanto merger. We encourage the Antitrust Division to work with the Department of Agriculture to evaluate the impact that this deal will have on competition in the agricultural inputs market and on farmers who work every day to feed our world.

Thank you for your attention to this matter. We look forward to your reply.

Sincerely,



Amy Klobuchar
United States Senator



Jeffrey A. Merkley
United States Senator



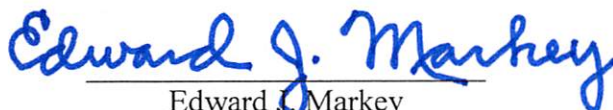
Al Franken
United States Senator



Richard Blumenthal
United States Senator



Kirsten Gillibrand
United States Senator



Edward J. Markey
United States Senator

¹¹ Chicago Tribune, "Is the Bayer-Monsanto Merger too big to succeed?," (September 16, 2016), <http://www.chicagotribune.com/business/ct-bayer-monsanto-merger-20160916-story.html>.

¹² See Testimony of Diana Moss, President of the American Antitrust Institute, "Consolidation and Competition in the U.S. Seed and Agrochemical Industry," (September 20, 2016) at 7, <https://www.judiciary.senate.gov/imo/media/doc/09-20-16%20Moss%20Testimony.pdf>.



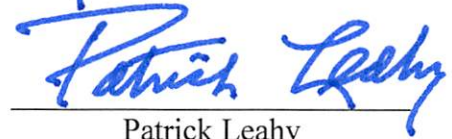
Margaret Wood Hassan
United States Senator



Elizabeth Warren
United States Senator



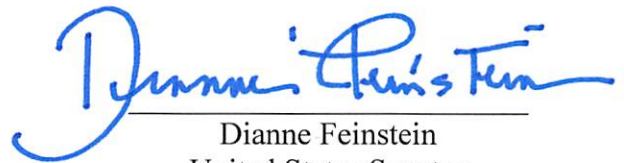
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Patrick Leahy
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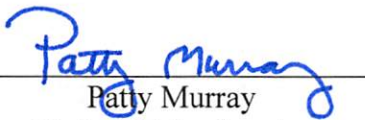
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United States Senator



Tammy Baldwin
United States Senator



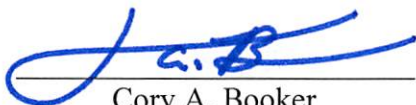
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Patty Murray
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Sherrod Brown
United States Senator



Cory A. Booker
United States Senator



Jack Reed
United States Senator



Charles E. Schumer
United States Senator