OCM Newsletter
June, 1999

Monsanto-DeKalb loses biotech suit

On April 22, a jury in Greensboro, NC found that Monsanto's subsidiary DeKalb Genetics Corp. had "fraudulently induced" Rhone-Poulenc Agro (RPA) to licence its glyphosate-tolerant gene used in Roundup Ready corn. The jury awarded RPA $15 million in compensatory damages and $50 million in punitive damages according to Feedstuffs magazine.

Since all Roundup Ready corn contains the RPA gene, Monsanto-DeKalb has no right to sell the seed. RPA and Monsanto are in settlement talks. If settlement fails, an injunction could be ordered preventing the sale of all Roundup Ready corn in the future.

This is another blow to Monsanto which has seen its first quarter 1999 profits reduced by 33%. Reluctance of consumers to purchase food containing biotech ingredients is increasing worldwide.

Monsanto as U.S. Trade Rep?

President Clinton, who enjoys significant financial contributions from Monsanto, has named Robert Shapiro, the company's CEO as a "special trade representative". With multi-lateral trade talks to be launched in Seattle later this year, it is troubling from the independent agriculture perspective to have Monsanto closely involved in spearheading the U.S. agenda.

Monsanto's past practices include sending Pinkerton investigators to trespass on farmer's fields to collect plant tissue samples to determine whether to sue farmers for violating it's patent rights on genetically modified (GM) seed. Steve Askew, national account manager for Monsanto, told the Agricultural Retailers Association convention last December that, with GM technology, "We're really talking about the integration of the ag industry." Monsanto also aggressively sues or threatens to sue people who publicly criticize its technology.

It is inevitable that Robert Shapiro will forcefully represent Monsanto's views in any trade negotiations or in any governmental planning strategies for trade negotiations. Meanwhile farmers and ranchers watch their input costs rise, farm gate prices fall, and their communities wither away.

Minnesota AG wants Cargill-Continental merger stopped

On May 7, 1999, Minnesota Attorney General Mike hatch asked the U.S. Justice Department to block Cargill Inc. from acquiring the grain operations of Continental Grain. He predicted that the deal would pound farmers, reduce competition and lead to higher prices for food.

Cargill objected to Hatch's concerns repeating the tired old monopolist's argument that a merger would increase efficiencies and better position farmers for the world markets. They didn't mention that Cargill thrives on low commodity prices because they can sell more grain, as former Cargill CEO Whitney MacMillan admitted in the 1980's.

The U.S. needs to depart from its past policy of coddling monopolists and take a stand for independent agriculture and rural communities. We have all learned that any efficiencies created by agribusiness mergers are captured in increased profits for the monopolists, not in higher prices for farmers and ranchers.

Retail food consolidation

The supermarket industry is consolidating rapidly thereby increasing the ability to extract monopoly profits from consumers while squeezing its suppliers. For farmers and ranchers, this means that the squeeze will be transferred to farm gate prices. Food processors will find it easier to press farmers than to fight their giant retail customers.

Royal Ahold, a Dutch conglomerate which owns a large number of supermarkets in the Northeast U.S., is in the process of purchasing the Pathmark Supermarket chain. This merger is being opposed by the members of the National Grocers Association (NGA) which represents mid-size food distributors and retailers. The NGA has hired economists, lawyers and formed coalitions in an attempt to stop the merger or reduce its anticompetitive effects.

Walmart may be the biggest single threat as it jumps into retail food with both feet. Using business practices which allowed it to become the largest discount department store in the country, Walmart has set its sights on the supermarket industry. Salomon Smith Barney analyst Richard Church told The New York Times that "the growth in [Walmart's] food business has been extraordinarily powerful."

This brings us to the Supreme Court's Illinois Brick case which prevents farmers from bringing antitrust actions against retailers because the farmers don't have a direct business relationship with retailers. However, because farmers are easiest to squeeze, damages from monopolistic activity gets transferred from the food processor to the farmer/rancher. Thus, Congress needs to strengthen the power of independent farmers to challenge retail concentration as one of many needed steps to return competitiveness to the food industry.

Intellectual Property Rights: Monopolists on Steroids

Intellectual property rights are arguably the biggest potential generator of profits and market power in the modern economy. Biotech companies have government sanctioned monopolies over broad swaths of the plant and animal genomes in the form of patent rights. These patents also cover scientific processes for altering or using the genome. Thus, biotech companies in the agricultural and pharmaceutical field are able to monopolize profits in the patented areas, exclude competitors for 20 years (the life of a patent), and prevent university, medical or government researchers from building from the patented knowledge.

Most people have no idea how powerful intellectual property rights are and will become. The new economy is based upon ideas and creativity. Patent rights, originally created to protect the backyard inventor, are now used by Monsanto, Novartis, DuPont/Pioneer and others to exclude competitors and take over large portions of the national and world food systems. In essence, they can assert ownership over the entire food chain because their genetics carry through the entire process.

This is not only a domestic problem but an international problem. These companies are injecting their control over ideas into the other countries of the world. Multi-lateral agreements called WIPO or TRIPs are the mechanisms for this globalist agenda. Whenever you see Microsoft, Disney, or Monsanto complaining about being victimized by "theft" of their intellectual property rights in other countries, they are trying to use the governments of other countries to protect their private monopolies. Is this corporate welfare?

The solution is for private actors to stay away from biotechnology, in production or consumption, and choose alternative routes to prosperity and health which are unencumbered by agribusiness cartels.

USDA wants vertical integration in the pork industry

USDA-ERS released a May report by taxpayer compensated USDA employee Steve Martinez stating that the pork industry is changing its structure rapidly thereby reflecting the past changes in the poultry industry. It is no secret that the pork industry is vertically integrating through packer ownership and production contracts. However, the USDA departs from family farmers and ranchers in viewing this trend as positive.

Martinez states that such vertical integration in the broiler industry facilitated rapid adoption of new technology, improved quality control, assured market outlets for broilers, and provided a steady flow of broilers for processing. He ignores the fact that the broiler industry was decimated and concentrated into a few economic goliaths with tremendous political clout in Washington.

Mr. Martinez' cheery report illuminates a fundamental problem within USDA. Despite the current ag crisis, and despite some warm and fuzzy speeches about family farmers and ranchers, they want the food industry to go far beyond its current level of concentration. It is time for new legislation renaming the USDA as the USDGA - United States Department of Global Agribusiness.

Increased rejection of biotechnology

With the world-wide consumer rejection of genetically modified (GM) food products, the market for non-GM food is opening up opportunities for independent producers who don't want to be beholden to Monsanto, Novartis and DuPont/Pioneer. Northstar Genetics, a regional supplier of wheat and soybean seed, announced in early May that it is selling Cleanbean, a verified non-GM soybean seed for the 1999-2000 growing season. It is providing an identity preserved tag on the product to identify the seed as clean.

In April, Unilever, a large food manufacture in Britain, announced that it would not purchase products from GM grain. Tesco, a large supermarket in Britain with locations in Eastern Europe, said it was phasing out GM products carrying its own brand.

On May 17, the influential British Medical Assn. (BMA) called for an open-ended moratorium on GM plantings. The BMA report, "The Impact of Genetic Modification on Agriculture, Food and Health", warns that any adverse effects from GM technology are likely to be irreversible.

Also in May, Cornell University researchers reported that Bt corn pollen kills Monarch butterflies, a species already under severe threat due to disruption of their wintering grounds in Mexico. The Bt toxin had previously been promoted as harmful only to the corn borer and harmless to non-target organisms such as bees and ladybugs.

Although the ag biotech industry argues that there is no evidence that GM crops are unsafe, *Monsanto Monitor*, a Dutch publication, reports that Shapiro publicly admitted that there is no evidence that GM crops are safe either. Thus, the R&D investments of the ag biotech companies are appearing increasingly risky. Farmers should strongly consider whether to pursue opportunities that involve non-GM crops which are accepted by consumers.

Beef checkoff referendum

The Livestock Marketing Assn. (LMA), in loose cooperation with the Western Org'n of Resource Councils (WORC), have been given a "clarification" by the USDA Agricultural Marketing Service (AMS) which effectively extends the time for collecting petitions for a vote on the beef checkoff program. The AMS said that the 12 month period to collect petitions would be determined by the most current signatures and all other signatures dated back one year.

Thus, the 12 month period does not begin with the date petition efforts began. The LMA claims to have the required 108,000 signatures (10% of cattle producers according to AMS' determination) but wants more in case some signatures are ruled invalid.

LMA wants the federal law changed to require periodic votes on the checkoff. WORC contends that the checkoff is being used to promote meat packer interests and big cattle feeder interests at the direct expense of small and mid-sized ranchers. National Cattlemen's Beef Assn. president George Swan said NCBA was "disappointed" in LMA's decision to go the 12-consecutive-month route.

Smithfield Foods keeps on growing

Smithfield Foods, Inc., the largest vertically integrated U.S. pork packer and producer has continued its acquisition binge by agreeing to invest $24 million in Mexico. The money will go to form a joint venture to own and operate a vertically integrated pork processing business in Sonora, Mexico. Of course, all of Smithfield's Mexican pork which is imported into this country will bear the USDA approved label. Smithfield has recently purchased pork packing companies in Poland and France.

Smithfield has completed its acquisition of Carroll's Foods, Inc. and Carroll's affiliated companies and interests. Smithfield became the country's number one pork packer after acquiring John Morrell and Co. two years ago.

As a result of the Carroll's Foods acquisition, Smithfield became the nation's number one hog producer. Previously, Carroll was number two with 185,000 sows while Smithfield was number four with 150,000 sows. Now, the combined entity surpasses number one Murphy Family Farms and number three Continental Grain.

Smithfield now owns 27% of its requirements for hogs and is the most vertically integrated hog packing company. To avoid legislative prohibitions on packer feeding in certain states including Iowa, F.J. "Sonny" Faison, former owner of Carroll's Foods, purchased Carroll's Foods of the Midwest based in Everly, Iowa. But Faison is on Smithfield's Board of Directors. Thus, the transaction technically avoids packer feeding laws while maintaining a close non-ownership connection. Do you suppose there will be preferential treatment under the Packers & Stockyards Act?

World Trade in Agriculture

The U.S. Trade Representative USTR Charlene Barshefsky is seeking comments from the ag industry to set the agenda for the November round of World Trade Organization (WTO) talks. "We're going to bring in farmers, bring in ranchers," she stated. The New York Times, in an unusually candid comment, recently noted that the Office of the USTR is the protector of Corporate America's global interests. The "farmer-rancher" rhetoric continues to cover-up the pro-consolidation agribusiness policy which the U.S. is promoting.

The direct effects of the free trade has been to hard wire the domestic commodity markets into a lower priced world market. The agribusinesses which often represent the U.S. in WTO talks, including Cargill and Monsanto, only want high volume sales between countries so they may expand profits and market power. Farm gate prices are driven down as agribusiness foists lower prices on farmers and ranchers.

Consumers don't see price benefits because the increasingly consolidated food industry internalizes the savings to create higher profits, higher executive salaries, and higher stock prices. The farmers and consumers get the crumbs, if anything. Does nobody value price competition at all levels among a wide diversity of smaller firms as a matter of policy?

Ag vitamin price fixing

The collusive industry structure which the government is allowing in the food industry has been partially revealed in the recent agreement by the world's biggest vitamin makers to pay the biggest antitrust penalty in history. Roche Holding AG of Switzerland agreed to pay $500 million while BASF AG of Germany agreed to pay $225 million. The penalties dwarfed ADM's recent penalty of $100 million, the previous record fine.

Significantly, OCM member Buck Watson, an attorney from Huntsville, Alabama, is one of the plaintiff's attorneys who sparked the price fixing case. Watson says the case started as an agricultural vitamin case involving one of his clients in Alabama. The private litigation is now a class action pending in federal court. The companies face significant liability from Watson's case.

How do companies avoid price competition without colluding with competitors? They buy their competitors, internalize the collusion and derive monopoly profits. The planned Cargill acquisition of Continental Grain should be stopped to prevent additional "internalized collusion".

OCM News

OCM board member **Bill Loughmiller** of Twin Falls, Idaho, was appointed to the 36 member National Potato Promotion Board by the Secretary of Agriculture on May 3, 1999. The Potato Board administers an industry-funded national research and promotion program as authorized by the 1971 Potato Research and Promotion Act.

OCM board member **Cap Dierks**, Chair of the Nebraska Ag Committee, earlier presented a bill to the Nebraska legislature to require mandatory price reporting and a ban on packer owned livestock. In May, the measure passed by a unanimous 48-0 vote. Sen. Dierks efforts have forced the issue at the national level as the meat packers are currently on the defensive in Congressional price reporting hearings.

OCM member **Dr. William Heffernan**, Univ. of Missouri rural sociologist, will make a presentation on ag biotechnology at the National Agricultural Biotechnology Conference in Lincoln, Nebraska. The conference is June 6 through 9. Dr. Heffernan has concerns about the accelerating consolidation resulting from biotechnology as well as other issues.

OCM member **Dr. Robert Taylor**, ag economist from Auburn Univ. in Alabama, has been writing about consolidation in agriculture. Dr. Taylor argues that antitrust enforcement authorities need to consider joint ventures, strategic alliances, partial ownership arrangements and other cooperation between agribusinesses to determine whether a company has a troublingly high market share within an industry. Presently authorities tend to only consider the market share a firm possesses in the absence of those important factors.

Last month's newsletter announced that the Pickett v. IBP case achieved class action status as of April 28, 1999. OCM member **David Domina**, an attorney from Omaha, Nebraska, argued the successful motion for class certification. Domina made history by achieving the first class action under the Packers & Stockyards Act since its enactment in 1921. Class members are all cattle producers who sold fed cattle directly to IBP from February 1994 through April 28, 1999.

OCM ANNUAL MEETING

Remember to reserve August 20 and 21 for the annual OCM meeting to be held in Omaha, Nebraska. Experts from across the country will be present to discuss the state of competition in the food industry and potential solutions.