

# Mergers: Commission opens in-depth investigation into proposed acquisition of Monsanto by Bayer

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"Seeds and pesticide products are essential for farmers and ultimately consumers. We need to ensure effective competition so that farmers can have access to innovative products, better quality and also purchase products at competitive prices. And at the same time maintain an environment where companies can innovate and invest in improved products."*

The proposed acquisition of Monsanto (US) by Bayer (Germany) would create the world's largest integrated pesticides and seeds company. It would combine two competitors with leading portfolios in non-selective herbicides, seeds and traits, and digital agriculture. Both companies are active in developing new products in these areas. Moreover, the transaction would take place in industries that are already globally concentrated, as illustrated by the recent mergers of [Dow and Dupont](#) and [Syngenta and ChemChina](#), in which the Commission intervened to protect competition for the benefit of farmers and consumers.

## **The Commission's preliminary concerns**

The Commission has preliminary concerns that the proposed acquisition could reduce competition in a number of different markets resulting in higher prices, lower quality, less choice and less innovation. In particular, the initial market investigation identified preliminary concerns in the following three areas:

- *Pesticides*

Monsanto's pesticide product glyphosate is the most sold non-selective herbicide in Europe. Bayer produces glufosinate ammonium, also a non-selective herbicide and one of the very few alternatives to glyphosate. According to the Commission's preliminary investigation, Monsanto and Bayer are two of a limited number of competitors in this field capable of discovering new active ingredients and developing new formulations, including addressing the growing problem of weed resistance to existing products.

In addition, the Commission will further assess both Monsanto's activities in biological pesticide products that would compete with Bayer's existing portfolio of chemical pesticide products, and the parties' overlapping activities in products that tackle varroa mites, a parasite affecting bee colonies in Europe.

- *Seeds*

Bayer and Monsanto are both active in the breeding of vegetable seeds. The Commission's initial investigation shows that the parties have high combined market shares in a number of these vegetable seeds markets, and that some of their products compete directly with each other.

Bayer and Monsanto are also active in the breeding and licensing of seeds for several field crops. Monsanto has the highest market share in oilseed rape seeds in Europe. Bayer, with the highest market share in oilseed rape seeds at global level, is one of the few players with the means to compete intensively in this market. Furthermore, both parties are important licensors of cotton seeds to their competitors in Europe, and both are investing in research and innovation programs for wheat.

- *Traits*

A trait is a characteristic of a plant, such as height, herbicide tolerance and insect or disease resistance, and can be developed in laboratories and introduced in certain plant varieties.

The Commission's preliminary investigation indicates that Monsanto has a dominant position in several traits markets worldwide. Bayer is one of the few competitors to Monsanto in certain traits markets, and has notably developed alternative herbicide tolerance traits to Monsanto's. The Commission will investigate in particular whether the transaction could lead to a reduction of competition in these markets, taking into account the existing links between the few worldwide competitors through cross-licensing and through research and development cooperations.

Finally, the merged entity would hold both the largest portfolio of pesticides products and the strongest global market positions in seeds and traits, making it the largest integrated company in the industry. The Commission will further investigate whether competitors' access to distributors and farmers could become more difficult if Bayer and Monsanto were to bundle or tie their sales of pesticide products and seeds, notably with the advent of digital agriculture. Digital agriculture consists in the collection of data and information about farms with the aim of providing tailored advice or aggregated data to farmers. Both Bayer and Monsanto are currently investing in this emerging technology.

The transaction was notified to the Commission on 30 June 2017. The Commission now has 90 working days, until 8 January 2018, to take a decision. The opening of an in-depth investigation does not prejudice the final result of the investigation.

On 31 July 2017, Bayer and Monsanto submitted commitments to address some of the Commission's preliminary concerns. However, the Commission considered these commitments insufficient to clearly dismiss its serious doubts as to the transaction's compatibility with the EU Merger Regulation. The Commission therefore did not test them with market participants.

Given the worldwide scope of Bayer and Monsanto's activities, the Commission is cooperating closely with other competition authorities, notably with the Department of Justice in the US and the antitrust authorities of Australia, Brazil, Canada and South Africa.

## **Background**

### *Petitions*

The Commission has been petitioned through emails, postcards, letters and

tweets expressing concerns about the proposed acquisition of Monsanto by Bayer. The Commission's mandate under the European merger control rules is to assess the merger solely from a competition perspective. This assessment must be impartial and is subject to the scrutiny of the European Courts.

The other concerns raised by the petitioners are subject to European and national rules to protect food safety, consumers, the environment and the climate.

### *Companies and products*

**Bayer**, headquartered in Germany, is a diversified pharmaceuticals, consumer health, agriculture (Bayer Crop Science) and animal health company. This transaction mainly concerns the Bayer Crop Science division. Bayer Crop Science operates three business segments: (i) Crop Protection; (ii) Seeds and Traits; and (iii) Environmental Science. Bayer is also active in developing digital agriculture technologies.

**Monsanto**, headquartered in the US, is an agriculture company which produces seeds for broad acre crops, fruits and vegetables as well as plant biotechnology traits. It also provides pesticide products, including the glyphosate herbicide under the "Roundup" brand and other herbicides for agricultural and non-agricultural use. Additionally, Monsanto is involved in research on biological agriculture and provides farmers with digital agriculture services through its 'Climate Corporation' business.

### *Merger control rules and procedures*

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede effective competition in the European Economic Area or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are two other on-going phase II merger investigations: the [proposed acquisition of NXP by Qualcomm](#) and the [proposed acquisition of Haldex by Knorr-Bremse](#).

More information will be available on the competition [website](#), in the Commission's public [case register](#) under the case number [M.8084](#).

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## **Italy earthquake: EU ready to provide assistance**

Today, following the earthquake on the island of Ischia of Italy, Commissioner for Humanitarian Aid and Crisis Management Christos **Stylianides** has issued the following statement: *"Today our heart is in Italy, with the Italian people and authorities. Once again the country has sadly suffered another deadly earthquake, this time on the island of Ischia, with initial reports of casualties and damages to infrastructures including hospitals and churches. We offer our condolences to families and friends who have lost loved ones. The EU is fully ready to help. Our 24/7 Emergency Response Coordination Centre has been in immediate contact with the Italian Civil Protection authorities since the early hours. We stand ready to provide any immediate assistance the national authorities could require. The EU's emergency Copernicus satellite mapping system is also available to help the national civil protection authorities. Let me commend the brave first responders working tirelessly on the scene to save lives. They are an example for us all."* The full statement is available in [English](#) and [Italian](#). A factsheet on how the EU can help countries affected by natural disasters is available [here](#). [Photos](#) and [video](#) stockshots of the EU's Emergency Centre are also available. (For more information: Carlos Martin Ruiz De Gordejuela – Tel.: +32 229 65322; Daniel Puglisi – Tel.: +32 229 69140)

## **L'UE investit dans un réseau moderne de distribution d'eau en Roumanie**

Près de 66,5 millions d'euros du [Fonds de Cohésion](#) sont investis dans deux grands projets d'infrastructure de gestion de l'eau en Roumanie. La Commissaire à la politique régionale Corina **Crețu** a commenté: *"Chaque euro de la politique de Cohésion investi dans ces projets contribue à améliorer nettement la qualité de vie en Roumanie. Une eau potable plus saine et accessible et un environnement mieux protégé; voilà un nouvel exemple d'une Europe qui se soucie du bien-être de ses citoyens."* Dans le comté de Mehedinți, dans le Sud-Ouest du pays, 39 millions d'euros sont investis dans l'amélioration des systèmes de distribution et de traitement de l'eau, avec notamment la réhabilitation de 7 sources d'eau potable, la construction de 8 réservoirs de stockage et des travaux sur un réseau de distribution d'eau et d'égout de plus de 200 km. Près de 140 000 personnes bénéficieront de ce projet, qui devrait être achevé à la fin de 2019. Dans le comté d'Arad, à l'Ouest du pays, 27,5 millions d'euros financent aussi un meilleur accès à l'eau potable et gestion des eaux usées, avec notamment la réfection et l'extension de 15 km de réseau de distribution d'eau et la modernisation de 6 usines de traitement des eaux résiduaires. Près de 253 000 habitants profiteront d'une eau plus saine et d'un environnement préservé. Plus d'informations sur les fonds européens en Roumanie sont disponibles sur [la plateforme Open Data](#). (Pour plus d'informations: Johannes Bahrke – Tel.: +32 229 58615; Sophie Dupin de Saint-Cyr – Tel.: +32 229 56169)

## **Mergers: Commission clears acquisition of Arzignanese and Pasubio by CVC**

The European Commission has approved, under the EU Merger Regulation, the acquisition of Arzignanese S.r.l and Pasubio S.p.A, both of Italy, by CVC Capital Partners SICAV-FIS S.A. of Luxembourg. Arzignanese and Pasubio are active in the tanning of leather and the production of finished leather products for use in various sectors, including automotive interiors, furniture and luxury goods. CVC provides advice to and manages investment funds and platforms. The Commission concluded that the proposed acquisition would raise no competition concerns because it did not find any horizontal or actual vertical overlaps between the activities of Arzignanese and Pasubio and those of CVC or the portfolio companies of CVC Funds. Any potential vertical overlaps would not be material. The transaction was examined under the simplified merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8573](#). *(For more information: Ricardo Cardoso – Tel.: +32 229 80100; Yizhou Ren – Tel.: +32 229 94889)*

## **Mergers: Commission clears acquisition of sole control of Visma by HgCapital**

The European Commission has approved, under the EU Merger Regulation, the acquisition of sole control of Visma AS of Norway by HgCapital of the UK. Visma is active in developing and providing a diverse portfolio of IT services, business software and web hosting solutions. HgCapital is a private equity investment firm. The Commission concluded that the proposed acquisition would raise no competition concerns taking into account that HgCapital already had control over Visma prior to the transaction and that the transaction is a change from joint to sole control. The transaction was examined under the simplified merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8579](#). In 2014, the Commission approved the acquisition of joint control over Visma by HgCapital, KKR and Cinven in case [M.7280](#). *(For more information: Ricardo Cardoso – Tel.: +32 229 80100; Yizhou Ren – Tel.: +32 229 94889)*

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## **Italy earthquake: Statement by Commissioner for Humanitarian Aid and Crisis Management Christos Stylianides**

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to infrastructures including hospitals and churches.

We offer our condolences to families and friends who have lost loved ones.

The EU is fully ready to help. Our 24/7 Emergency Response Coordination Centre has been in immediate contact with the Italian Civil Protection authorities since the early hours.

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The EU's emergency Copernicus satellite mapping system is also available to help the national civil protection authorities.

Let me commend the brave first responders working tirelessly on the scene to save lives. They are an example for us all.

### **Links**

Photos: [European Commission's Emergency response centre](#)

Video: [European Commission's Emergency response centre](#)

Factsheet: [EU: a world leader in helping those affected by crises](#)

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## **Daily News 21 / 08 / 2017**

### **Statement by European Commission President Jean-Claude Juncker following the incident in Turku, Finland**

*"It is with great concern that I have learnt of the violent attacks in Turku, Finland. While details are still emerging, we strongly condemn this unprovoked attack which comes only 24 hours after the horror that unfolded in Spain. My thoughts are with the victims and their loved ones. I express my full solidarity with the security forces working to keep people safe on the ground, as well as with all the people of Finland and Prime Minister Juha Sipilä. The European Commission is at their full disposal for any support they may need."* The full statement is available online in [English](#), [Finnish](#) and [Swedish](#). (For more information: Alexander Winterstein – Tel.: +32 229 93265; Tove Ernst – Tel.: +32 229 86764)

### **Mergers: Commission clears acquisition of the tyre business of Reiff group by Bain Capital**

The European Commission has approved, under the EU Merger Regulation, the acquisition of sole control over the tyre business of Reiff group of Germany

by Bain Capital Investors, L.L.C. of the US. Reiff is a distributor of replacement tyres on the wholesale and retail level, predominantly in Germany. It also supplies wheel rims, complete wheels and ancillary services, and operates a truck tyre re-treading business. Bain Capital is a private equity investment firm active across most industries. The Commission concluded that the proposed acquisition would raise no competition concerns given the limited overlap between the companies' activities. The transaction was examined under the simplified merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8545](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Yizhou Ren – Tel.: +32 229 94889)

### **Concentrations: la Commission autorise l'acquisition d'Assystem GPS par Ardian**

La Commission européenne a approuvé, en vertu du règlement européen sur les concentrations, l'acquisition par Ardian France SA de la branche d'activité dite "GPS" (Global Product Solutions) du groupe Assystem ("Assystem GPS"), toutes deux basées en France. Assystem GPS est une division du groupe international d'ingénierie et de conseil en innovation Assystem, présent dans vingt pays. Assystem GPS est spécialisée dans l'ingénierie produits et les services post-développement dans les secteurs de l'aérospatial, de l'automobile, du transport et de l'industrie. Ardian est une société d'investissement privé indépendante présente en Europe, en Amérique du Nord et en Asie. Ardian détient une participation dans Trigo, société active dans le secteur de l'ingénierie industrielle. La Commission a conclu que la concentration envisagée ne soulèverait pas de problème de concurrence, compte tenu de son impact très limité sur la structure du marché. L'opération a été examinée dans le cadre de la procédure normale de contrôle des concentrations. De plus amples informations sont disponibles sur le [site internet concurrence](#) de la Commission, dans le [registre public](#) des affaires sous le numéro d'affaire [M.8548](#). (Pour plus d'informations: Ricardo Cardoso – Tel.: +32 229 80100; Yizhou Ren – Tel.: +32 229 94889)

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