

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](#).