



# COMMONWEALTH of VIRGINIA

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August 24, 2007

Donna N. Kooperstein  
Chief, Transportation, Energy & Agriculture Section  
Antitrust Division  
United States Department of Justice  
325 Seventh Street, N.W., Suite 500  
Washington, DC 20530

**Re: United States v. Monsanto Company, et al., No 1:07-cv-00992 (D.D.C. filed  
May 31, 2007)(Urbina, J.)**

Dear Ms. Kooperstein:

Pursuant to 15 U.S.C. § 16(b), the Attorneys General of Virginia, Arkansas, Delaware, Kentucky, Maryland, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and West Virginia hereby submit the attached comments related to the Proposed Final Judgment pending in the above-referenced matter. Please contact me at (804) 786-6557 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Oxenham Allen".

Sarah Oxenham Allen  
Assistant Attorney General  
Antitrust and Consumer Litigation Section  
Office of the Virginia Attorney General

Attachment

**COMMENTS OF THE  
ATTORNEYS GENERAL OF VIRGINIA,  
ARKANSAS, DELAWARE, KENTUCKY, MARYLAND,  
NEW MEXICO, NORTH CAROLINA, OHIO, OKLAHOMA,  
RHODE ISLAND, TENNESSEE, UTAH, AND WEST VIRGINIA  
ON THE PROPOSED FINAL JUDGMENT IN  
*UNITED STATES V. MONSANTO COMPANY, ET AL.***

Pursuant to § 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the Attorneys General of Virginia, Arkansas, Delaware, Kentucky, Maryland, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and West Virginia (*hereinafter*, “the Attorneys General”), submit the following comments on the Proposed Final Judgment (“PFJ”) produced to the court by the United States Department of Justice (“the United States” or “DOJ”) in the above-referenced matter.

**I. INTRODUCTION**

As the chief law enforcement officers of their respective states, the Attorneys General are charged with enforcing state and federal antitrust laws. The Attorneys General often are called upon to evaluate and gauge the competitive benefit or harm of proposed business acquisitions to the citizens and economies of their respective states. The Attorneys General strive to preserve fair competition, protect their citizens from unlawful restraints, and promote the development, production and distribution of alternative product choices in the marketplace. As a result, the Attorneys General have a strong interest in antitrust enforcement actions by the United States that will impact their states.

Agriculture is an important industry affecting local and state economies, as well as the Gross National Product. Its gross outputs account for more than \$250 billion of the gross domestic product and more than \$68 billion in exports. *See* “Gross Domestic Product by Industry Accounts,” U.S. Department of Commerce, Bureau of Economic Analysis, *available at* [http://www.bea.gov/industry/gpotables/gpo\\_action.cfm?anon=52440&table\\_id=19025&format\\_type=0](http://www.bea.gov/industry/gpotables/gpo_action.cfm?anon=52440&table_id=19025&format_type=0); “Foreign Agricultural Trade of the United States,” U.S. Department of Agriculture (“USDA”), *available at* <http://www.ers.usda.gov/Data/FATUS/monthlysummary.htm>. Cotton, together with corn and soybeans, accounts for nearly 60% of the value of all U.S. crops. *See* “Crop Values – 2003 Summary,” USDA, National Agricultural Statistics Service. These three crops have a combined annual value of more than \$58 billion. *See* “Crops & Plants – National Statistics,” USDA, National Agricultural Statistics Service. In 2006, the cotton market alone generated more than \$5 billion in annual revenues for U.S. farmers. *See* DOJ Complaint (“Complaint”), at ¶ 1.

Biotechnology (*alternatively*, “biotech”) has revolutionized U.S. agriculture by enabling farmers to protect crops from certain insects, the effects of herbicides, and other soil and plant conditions that evolve over time. By altering the genetic makeup of seeds to produce crops with desirable traits, such as insect resistance and herbicide tolerance, biotechnology has made it

possible for farmers to increase production yields and decrease costs, particularly the costs of pesticides sprayed on crops after planting. Today, approximately 87% of cotton, 91% of soybeans, and 73% of corn grown in the United States is from genetically modified seeds. *See* “U.S. Farmers Plant Largest Corn Crop in 63 Years,” USDA, *available at* [http://www.nass.usda.gov/Newsroom/2007/06\\_29\\_2007.asp](http://www.nass.usda.gov/Newsroom/2007/06_29_2007.asp).

Despite the increasingly important role of biotech seeds in U.S. agriculture, barriers to entry in the market are extremely high. Successful entry requires long lead times, large capital expenditures, highly trained and experienced personnel, retail distribution outlets, and access to a broad collection of elite germplasm (the genetic material required for the development of traits that gives the plants their characteristics. *See* Complaint, at ¶ 5.). Desirable traits have to be developed in laboratories, successfully crossed with varieties of elite germplasm to produce seeds that have the proven desirable qualities, and field-tested in conditions farmers actually confront. *See generally* Jane Dever and E. Margaret Hamill, “Breeding: Approaches to Fiber Quality Improvement,” 2005 EFS Systems Conference Presentations, *available at* <http://www.cottoninc.com/2005ConferencePresentations>; *and* Monsanto.com, “The DNA of Our Business,” *available at* [http://www.monsanto.com/Monsanto/content/media/pubs/2005/MON\\_2005\\_DNA\\_of\\_our\\_business.pdf](http://www.monsanto.com/Monsanto/content/media/pubs/2005/MON_2005_DNA_of_our_business.pdf). The process often requires thousands of attempts before a trait can be developed and used to breed commercial seed varieties. *See* Complaint, at ¶ 28. Once a trait is successfully developed, it must receive regulatory approval by multiple agencies, in both the United States and abroad, which can cost millions of dollars. *Id.* Market acceptance of new biotech traits also takes time. Farmers tend to be conservative in adopting new biotech seed varieties, and therefore these seed varieties often take several seasons to attain maximum penetration and market share in various regions. As the United States acknowledges in its Complaint, the development of a single trait “typically takes eight to twelve years and costs over \$40 million.” *Id.* at ¶ 28. *See also id.* at ¶ 43. Because of these extraordinarily high barriers to entry, there are a limited number of companies in the world capable of successfully developing biotech traits.

Monsanto Company (“Monsanto”) is the dominant biotech trait company in the United States. Delta and Pine Land Company (“DPL”) is the largest cotton seed company in the United States. The Attorneys General are concerned that Monsanto’s acquisition of DPL will eliminate competition in the market for cotton biotech traits and seeds, stifle innovation and product choice, and result in supra-competitive prices to U.S. farmers and consumers. Monsanto will be able to eliminate competition in cotton biotech trait development and commercialization by foreclosing other companies from developing cotton biotech traits with DPL or from incorporating competing traits into DPL seeds. The Attorneys General also are concerned that the acquisition will have ripple effects that will stall or eliminate the development of competing biotech traits for other crops, such as corn and soybeans, allowing Monsanto to maintain a degree of control over U.S. agriculture that has never before been possessed by a single company. The acquisition also may allow Monsanto to engage in exclusionary business practices in cotton. Such exclusionary business practices could include long-term, highly restrictive licensing agreements, “loyalty” programs, bundling requirements, and other restrictions that effectively could prevent competing cotton traits from coming to market.

While DOJ recognizes the serious anticompetitive effects of the acquisition, its PFJ fails

to sufficiently remedy those effects and, therefore is not in the public interest.

## **II. THE ACQUISITION CEMENTS MONSANTO'S CURRENT MONOPOLY POSITION IN BIOTECH TRAITS AND WILL GIVE THE COMPANY MARKET POWER IN COTTON SEEDS**

No other company has experienced Monsanto's level of success in the development, production and distribution of biotech traits. It is undisputed that Monsanto enjoys large monopoly shares with respect to every commercially important trait in cotton, corn and soybean seeds. In 2006, over 96% of all cotton planted with biotech traits contained Monsanto traits, while 95% contained *only* Monsanto traits – the 1% difference is attributable to Monsanto traits that were combined with either Bayer CropScience or Dow's PhytoGen traits. *See* Complaint, at ¶ 3. *See also* Bill Freese, "Cotton Concentration Report: An Assessment of Monsanto's Proposed Acquisition of Delta and Pine Land," International Center for Technology Assessment, February 2007, at 8-9.

DPL also has had unparalleled success, with a 50% national share of the U.S. cotton seed market. *See* Evren Ergin, "DPL-Monsanto: Antitrust/Merger Analysis," Lehman Brothers, September 12, 2006, at 3. In the cotton-growing states of the South, where biotech traits are especially valued, DPL's dominance is even greater. It holds an 86% market share in the Southeast region, which includes the states of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia, and a 73% market share in the MidSouth region, which includes the states of Louisiana, Arkansas, Mississippi, Tennessee, and Missouri. *See* "Cotton Varieties Planted, 2006 Crop," USDA, Agricultural Marketing Service – Cotton Program, September 22, 2006, available at [http://www.ams.usda.gov/cottonrpts/MNPDF/mp\\_cn833.PDF](http://www.ams.usda.gov/cottonrpts/MNPDF/mp_cn833.PDF). These market shares are slightly higher for DPL seeds that include biotech traits – an 87% share of traited cottonseeds in the Southeast and a 79% share in the MidSouth. *See* Complaint, at ¶ 4.

DPL's success reflects the high quality of its germplasm library and its proven ability to develop and commercialize new cotton biotech seed varieties. *See id.* at ¶ 26. As a result, DPL is the primary and most important vehicle for biotech trait developers to get competing cotton biotech traits to market. No other seed company can match DPL as a development partner because of DPL's extensive and unique library of elite germplasm -- which is suitable across a full range of geographic regions -- brand name loyalty, and industry-leading technical personnel with unmatched breeding expertise and capabilities. *See* Competitive Impact Statement, at ¶ II(B)(2). In fact, DPL claims to have three times the breeding capabilities of any other seed company in the world. *See* Tom Jagodinski, "Delta and Pine Land" (presentation, 2006 Merrill Lynch Agricultural Chemicals Conference, June 14, 2006 (Slide #3)). In 2006 alone, DPL spent almost \$25 million, or 6% of revenues, on research and development. *See* Delta & Pine Land Co., Annual Report (Form 10-K)(November 14, 2006), at 42.

The Attorneys General are concerned that, if approved, the PFJ will enhance Monsanto's monopoly power in cotton biotech trait markets. Requiring Monsanto to divest itself of its current cotton seed company, Stoneville<sup>1</sup>, as a condition to approve the acquisition, the United

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<sup>1</sup> With only four significant seed companies prior to the PFJ (DPL, Bayer CropScience, Stoneville and Dow's

States only strengthens Monsanto's monopoly position by permitting Stoneville's 12% market share to be traded for DPL's market shares of 50-86%. Further, Monsanto secures complete control of DPL's breeding programs and seed sales. As a result, Monsanto could, and likely will, undermine DPL's collaborations with Monsanto's competitors to the detriment of U.S. cotton farmers and consumers.

### III. THE ACQUISITION HAS SERIOUS ANTICOMPETITIVE EFFECTS

The acquisition threatens to substantially reduce competition in the development, production and distribution of cotton biotech traits and seeds.

DPL, in partnership with other companies, is a significant trait development competitor of Monsanto, which now will have the ability and incentive to eliminate, or at least significantly delay, DPL's trait development partnerships with competitors. See Competitive Impact Statement, at ¶ II(A). As the United States acknowledges in its Complaint, DPL "is an attractive partner that is well suited to quickly introduce new trait technologies due to the strength and breadth of its germplasm base and breeding programs as well as its technical service capabilities, know-how, brand recognition and market position." Complaint, at ¶ 26. No other seed company has the combination of assets and experience to foster trait development collaborations and bring to market competing cotton biotech traits and seeds.

Monsanto's acquisition of DPL likely will end DPL's development partnerships, eliminating the only near-term challenges to Monsanto's monopoly position in cotton biotech. DeltaMax, DPL's joint venture with E.I du Pont de Nemours and Company ("DuPont") and Pioneer Hi-Bred International, Inc. ("Pioneer") to develop a trait known as *Optimum™ GAT™*, would provide cotton farmers a competitive herbicide-tolerant trait alternative for the first time. However, the Attorneys General understand that DuPont and Pioneer have exercised their right to terminate DeltaMax as a result of DOJ's decision to allow their competitor, Monsanto, to consummate its merger agreement with DPL during the pendency of the Tunney Act proceeding. DeltaMax's demise is a serious loss of potential competition that threatened Monsanto's dominance in herbicide-tolerant traits. Herbicide tolerance is considered the most important biotech trait by farmers in most states. See "2007 Acreage Report," USDA, National Agricultural Statistics Service, at 25, available at <http://usda.mannlib.cornell.edu/usda/current/Acre/Acre-06-29-2007.pdf> (report generally shows that market penetration for herbicide-tolerant seeds is higher in most states than that of insect-resistant seeds). Because of DeltaMax's termination, Monsanto's cotton herbicide-tolerant trait dominance is assured for the foreseeable future. The Attorneys General are not aware of the current status of DPL's collaboration with Syngenta AG to develop an insect-resistant cotton biotech trait called *VipCot™*, which would pose a competitive threat to Monsanto's almost complete monopoly of insect-resistant traits in cotton.

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Phytogen Seed Company) and a handful of smaller seed companies, the cotton seed market is highly concentrated. Stoneville, which was recently acquired by Bayer CropScience in connection with the PFJ, has a 12% share of the cotton seed market, making it the third largest cotton seed company. See Evren Ergin, "DPL-Monsanto: Antitrust/Merger Analysis," Lehman Brothers, September 12, 2006, at 3.

The acquisition also harms competition by eliminating DPL as the vehicle for biotech trait developers to commercialize and distribute competing cotton biotech traits. Once under Monsanto's control, DPL will lack the incentive to sell competing traits at the expense of Monsanto's monopoly biotech traits. With its 50-86% shares of the highly concentrated cotton seed market, DPL is the primary engine of biotech trait developers to bring competing new traits to market through finished seeds. Without an independent DPL, competing cotton biotech trait developers may not have sufficient non-DPL outlets to license their traits.

In addition, as DOJ acknowledged in its Complaint at ¶ 27, certain aspects of Monsanto's current license provisions to seed companies harm competitors by prohibiting combining, or "stacking," of non-Monsanto biotech traits with Monsanto traits. The Attorneys General understand that Monsanto's licenses with regional corn and soybean seed companies, which, like DPL, are known as independent seed companies, contain similar restrictions. These restraints severely limit the ability of Monsanto licensees to deal with Monsanto competitors and appear to lack any legitimate business purpose. The PFJ addresses this competitive concern by requiring Monsanto to modify its biotech trait licenses with cotton seed companies to remove the stacking prohibitions. *See* Competitive Impact Statement, at ¶ III(C). The Attorneys General applaud this remedy. Unfortunately, as discussed below, this remedy, along with the divestiture of Stoneville to Bayer CropScience ("Bayer") and the nonexclusive licensing of a small number of germplasm lines, will not restore the competition that will be lost as a result of Monsanto's acquisition of DPL.

If biotech trait developers are unable to commercialize and distribute to farmers the competing traits they develop, they will not be able to justify their significant research and development expenditures and will be deterred from entering the cotton biotech market. The lack of opportunities in cotton biotech may spill over to other important cash crops where Monsanto also enjoys a dominant position in biotech traits. The cottonseed traits that DPL is developing in partnership with Monsanto's competitors have numerous cross-crop applications. Denying biotech trait developers market opportunities in cotton will deprive them of the revenues required to sustain expensive research and development programs in other important crops, such as corn and soybeans. Knowledge that otherwise would have been transferable to other crops will be lost, putting other trait developers at a competitive disadvantage. Monsanto's domination in cotton also may increase its leverage over retailers, particularly national retailers who sell DPL cotton seed in the South, possibly making it even more difficult to compete effectively with the bundles Monsanto packages that include crop protection chemicals and seeds across multiple crops.

These anticompetitive effects are more significant today than in 1999, when DOJ blocked Monsanto's first attempt to acquire DPL. Biotech traits are more important and valued today than in 1999. DPL's market shares, particularly in the cotton-growing regions of the South, are even higher today. *Compare* "Cotton Varieties Planted, 1999 Crop" and "Cotton Varieties Planted, 2006 Crop," USDA, Agricultural Marketing Service – Cotton Program. Unlike 1999, however, Monsanto's monopoly traits were about to face real and meaningful competition in the near future as a result of joint development partnerships that did not exist then. The harm to competition today is real and immediate, and regrettably, the PFJ does not remedy it.

#### **IV. THE PFJ DOES NOT REMEDY THE ANTICOMPETITIVE EFFECTS**

In its Complaint, the United States acknowledges the significant anticompetitive effects that the acquisition will have on the development, production and distribution of cotton biotech traits and seeds. Complaint, at ¶¶ 37-42. The United States concludes that the acquisition violates the antitrust laws because it “will eliminate competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed.” *Id.* at ¶ 41. Nonetheless, the United States has agreed to settle its action against Monsanto and DPL by requiring Monsanto to (1) divest Stoneville to an approved buyer, which DOJ has subsequently approved to be Bayer, and (2) provide nonexclusive access to Stoneville of (a) twenty lines of elite DPL germplasm and (b) certain Monsanto cotton germplasm lines. *See* Competitive Impact Statement, at ¶ III(A). The settlement fails to remedy the likely anticompetitive effects of the acquisition.

##### **A. The Divestiture Of Stoneville Fails To Preserve Meaningful Competition In Cotton**

A divested Stoneville falls far short of replicating the assets and expertise that DPL offers. The United States has recognized that “[a] company with a large collection of high quality, or elite, germplasm has a competitive advantage because the company has the ability to identify the best genetic material and use it in a wide variety of possible crossing combinations, resulting in a greater likelihood of developing a successful variety.” Complaint, at ¶ 16. As DOJ acknowledges, DPL has “over ninety years of germplasm development.” *Id.* at ¶ 17. DPL also has “the largest cotton germplasm collection, with by far the greatest track record of success in the important MidSouth and Southeast regions, and an extensive breeding program,” and “more breeding capabilities than any competitor.” *Id.*

The new Bayer-Stoneville entity will have access to only 20 lines from DPL’s extensive germplasm library, the largest collection of cotton germplasm in the United States. Complaint, at ¶ 17. Stoneville was first acquired by Monsanto in 1996, *see* Competitive Impact Statement, at ¶ II(B)(3), but then sold in 1999 and reacquired in 2005 as part of Monsanto’s efforts to develop a cotton seed unit. *See* Complaint, at ¶ 32. The divestiture of Stoneville appears to conflict with DOJ’s own Antitrust Division Policy Guide To Merger Remedies (“Policy Guide”) (Oct. 2004). Those guidelines make clear that “[t]he Division favors the divestiture of an existing business entity that already has demonstrated its ability to compete in the relevant market.” *See id.* at 12. As Monsanto’s cotton seed unit, Stoneville has only a limited track record in demonstrating its “ability to compete in the relevant market.” In fact, the divested “parts” that the PFJ pieces together have never been operated as a unit and would require substantial reconfiguration. Even if Stoneville could operate as a single unit with the licensed parts, it necessarily will have to start from scratch to duplicate DPL’s success in the breeding of commercial varieties -- a process DOJ acknowledges takes at least eight to ten years. *See* Complaint, at ¶ 15. The time and expense required to establish the Bayer-Stoneville combination as a viable and effective partner for competing biotech trait developers necessarily precludes any real competition with Monsanto for a period of time that is well outside of the two-year window

typically used by the federal competition authorities to define effective new entry under § 3.2 of the 1992 Horizontal Merger Guidelines, jointly issued by DOJ and the Federal Trade Commission. In the meantime, Monsanto will use its head start in the development and distribution of cotton biotech traits to its competitive advantage.

Furthermore, it is clear that DPL's technology, infrastructure, breeding capabilities and expertise are significantly superior to Stoneville's. The PFJ does not remedy the disparity by providing the divested Stoneville with any of DPL's breeding expertise, personnel, facilities or development assets that the United States acknowledged made DPL an attractive development partner. *See* Complaint, at ¶ 26. In this respect, the PFJ is inconsistent with DOJ's Policy Guide, which provides that "[a]n existing business entity should possess not only all the physical assets, but also the personnel, customer lists, information systems, intangible assets, and management infrastructure necessary for the efficient production and distribution of the relevant product." *See* Policy Guide, at 12. Without the breeding assets and personnel that have made DPL the partner of choice for biotech trait developers, a divested Stoneville cannot replace DPL's ability to bring to market biotech traits that can compete with Monsanto's monopoly varieties.

In addition, Stoneville has been divested to Bayer, a trait development competitor of Monsanto. Because of this, Stoneville can never duplicate DPL's unique position as an independent cotton seed company that can use its successful and high-quality germplasm to partner with several different biotech companies to develop viable competitive alternatives to Monsanto's monopolies in traits. Even if it were technically possible for a rival trait company to successfully develop a biotech trait that could compete against a Monsanto trait, it must have a seed vehicle with which to partner to commercialize the trait and bring it to market so that farmers could actually benefit from having the choice of which trait to buy. Stoneville will not have the motivation, as DPL did, to partner with outside trait developers since it is owned by a trait development company, so there will no longer be a feasible alternative to DPL's independence as a cottonseed company and a trait development partner.

Even apart from the loss of an independent cottonseed company, DOJ also implicitly recognizes that a divested Stoneville is not the equivalent of DPL by requiring Monsanto to provide Stoneville access to 20 lines of DPL germplasm. However, the availability of 20 lines of DPL germplasm does not "restore competitive conditions the merger would remove." Policy Guide, at 4. The PFJ makes clear that Stoneville's access to those germplasm lines is non-exclusive. *See* Competitive Impact Statement, at ¶ III(A)(2). Thus, even post-acquisition, Monsanto retains the right to sell the most popular seeds from those lines and even preclude their use with non-Monsanto cotton biotech traits. This also is inconsistent with DOJ's Policy Guide, which recognizes that permitting a merged firm "to retain access to the critical intangible assets may present a significant competitive risk." Policy Guide, at 16. Because the PFJ fails to enhance Stoneville's breeding capabilities, access to such lines will not challenge Monsanto's monopoly position, even with respect to any of those 20 lines.

**B. Access To Identified Cotton Germplasm Ignores The Evolving Nature Of Biotech Traits and Seeds**

The PFJ's requirement that Monsanto provide access to certain lines of cotton germplasm

lines does not remedy the anticompetitive effects of the acquisition for yet another reason. The PFJ ignores the reality that elite germplasm is constantly being improved upon to enhance the effectiveness of the underlying traits to address evolving plant, soil, and other conditions that change over time. As a result, the best germplasm today becomes obsolete in a relatively short period of time. *See generally, declining market shares of existing germplasm lines as newer lines are introduced in “Cotton Varieties Planted, 1999 Crop” through “Cotton Varieties Planted, 2006 Crop,”* USDA, Agricultural Marketing Service – Cotton Program. Thus, to stay competitive, cotton biotech trait developers must have access to new and improved lines of germplasm.

The availability of certain existing lines of cotton germplasm cannot replace the need for Monsanto’s competitors to have ongoing access to improved germplasm. One of DPL’s strengths has been its ability to continually develop new lines of elite germplasm. Once DPL falls captive to Monsanto’s control, access by Monsanto’s competitors to DPL’s next generation of germplasm will terminate. With an overwhelming monopoly in biotech traits, Monsanto will have no incentive or obligation to make DPL’s next generation of germplasm available to competitors. *See Complaint, at ¶¶ 16-17.*

In addition, the 20 lines of cotton germplasm that the PFJ licenses to Stoneville constitute only a very small subset of DPL’s extensive germplasm library. Some of those lines are merely under development, and there is no guarantee that they will be commercially successful in the future. Further, the PFJ does not provide the divested Stoneville with any of DPL’s facilities or personnel with expertise handling those lines. Instead, it allows Monsanto to retain access to those lines, as well as the facilities and expertise DPL has employed to develop them. Consequently, the availability of a limited number of cotton germplasm lines does not guarantee or enhance Stoneville’s ability to effectively compete against Monsanto.

## **V. THE ACQUISITION POTENTIALLY ALLOWS MONSANTO TO ENGAGE IN EXCLUSIONARY BUSINESS PRACTICES**

The acquisition potentially allows Monsanto to engage in exclusionary behavior, which could include a series of acquisitions of independent seed companies and germplasm providers to enhance its monopoly position in both seeds and traits; long-term, highly restrictive licensing agreements that encourage the sale of Monsanto’s biotech traits exclusively; licensing restrictions that prevent independent seed companies from combining Monsanto biotech traits with non-Monsanto traits; and bundling rebates on seeds, traits and chemicals to exclude competitors from retail distribution channels. These restrictions potentially could stymie innovation, limit product choices and result in higher prices. With DPL under its control, Monsanto will have the ability to foreclose competing cotton biotech traits from entering the cotton seed markets. Monsanto’s monopolization of the cotton biotech trait market also may create an incentive to impose supra-competitive technology fees for seeds containing Monsanto’s traits, which would eliminate any efficiencies farmers otherwise would realize from the merger or in a competitive cotton biotech trait market.

The Attorneys General are concerned that the acquisition of DPL may permit Monsanto

to maintain and consolidate its monopoly position in biotech traits. The lack of viable competition in cotton traits, coupled with Monsanto's market power in the other seed trait markets, compels a closer examination of the potential anticompetitive effects of Monsanto's business practices in all markets.

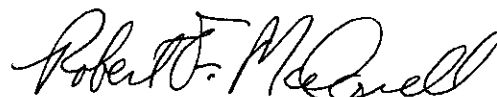
## VI. CONCLUSION

The PFJ fails to remedy the anticompetitive effects of the acquisition in the markets for cotton biotech traits. If approved in its present form, the acquisition will further cement Monsanto's monopoly in those markets with severe and unwarranted consequences for farmers and consumers. With Monsanto's huge head start, biotech trait developers will have no incentive to expend the necessary research and development costs that are required for the successful entry of competing traits and seeds. Current joint development efforts with DPL will terminate or stagnate -- eliminating the only near-term opportunities for meaningful competition in cotton -- innovation will be stifled, and cotton farmers and consumers will suffer from the lack of market choices and the imposition of supra-competitive product prices.

The adverse consequences of the acquisition also will extend beyond cotton. The loss of revenue that the acquisition will cause in cotton will impact the ability of trait developers to bring to market biotech traits in other crops, such as corn and soybeans. Research and development efforts investigating traits in cotton that could be developed and incorporated into other crops now will be lost.

The PFJ fails to effectively restore competition in the market for cotton biotech traits, and should be rejected.

Respectfully Submitted,

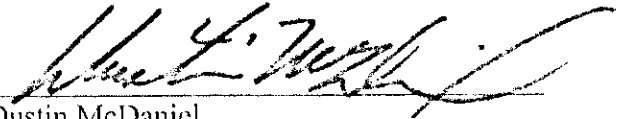


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Robert F. McDonnell  
Attorney General of Virginia  
Office of the Attorney General  
900 E. Main Street  
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Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

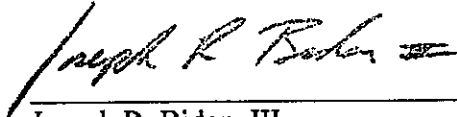
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dustin McDaniel", written over a horizontal line.

Dustin McDaniel  
Attorney General of Arkansas  
Office of the Attorney General  
323 Center Street, Suite 1100  
Little Rock, AR 72201

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph R. Biden, III". The signature is written in black ink and is positioned above a horizontal line.

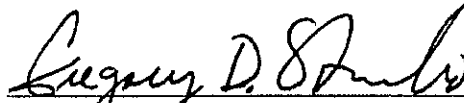
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Joseph R. Biden, III  
Attorney General of Delaware  
Office of the Attorney General  
820 N. French Street  
Wilmington, DE 19801

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

ON BEHALF OF THE COMMONWEALTH OF KENTUCKY:

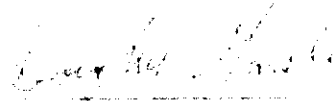
Respectfully submitted,

A handwritten signature in black ink, reading "Gregory D. Stumbo", written over a horizontal line.

GREGORY D. STUMBO  
ATTORNEY GENERAL  
Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601  
(502) 696-5300

Comments of the Attorneys General on  
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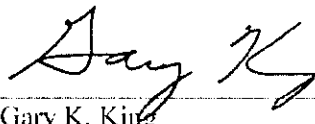
Respectfully submitted,



Douglas F. Gansler  
Attorney General of Maryland  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202

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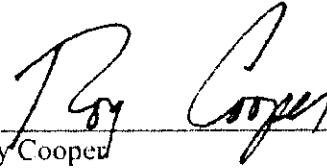
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary K.", written over a horizontal dotted line.

Gary K. King  
Attorney General of New Mexico  
Office of the Attorney General  
408 Galisteo Street  
Santa Fe, New Mexico 87501

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Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

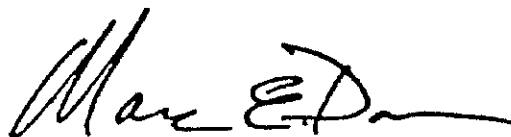
Sincerely,

A handwritten signature in black ink, reading "Roy Cooper". The signature is written in a cursive style with a horizontal line underneath it.

Roy Cooper  
Attorney General of North Carolina  
Office of the Attorney General  
114 W. Edenton Street  
9001 Mail Service Center  
Raleigh, NC 27699-9001

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marc Dann". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

Marc Dann  
Attorney General of Ohio  
Office of the Attorney General  
30 East Broad Street  
Columbus, OH 43215

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*


Respectfully submitted,

A handwritten signature in black ink, appearing to read "W.A. Edmondson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

W.A. DREW EDMONDSON  
OKLAHOMA ATTORNEY GENERAL  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105

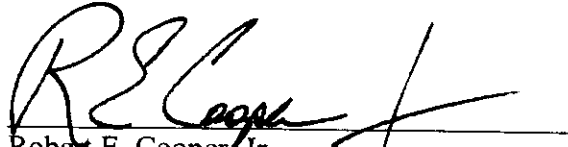
Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

Respectfully submitted,

  
Patrick C. Lynch  
Attorney General of Rhode Island  
Department of the Attorney General  
150 South Main Street  
Providence, RI 02903

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. E. Cooper, Jr.", written over a horizontal line.

Robert E. Cooper, Jr.  
Attorney General of Tennessee  
Office of the Attorney General and Reporter  
425 Fifth Avenue North  
Nashville, TN 37202

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

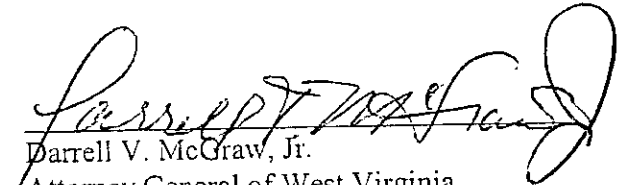
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark L. Shurtleff", with a large, sweeping flourish at the end.

Mark L. Shurtleff  
Attorney General of Utah  
Office of the Attorney General of Utah  
State Capitol Complex, Suite E320  
Salt Lake City, Utah 84114-2320

Comments of the Attorneys General on  
Proposed Final Judgment in  
*United States v. Monsanto Company, et al.*

Respectfully submitted,



Darrell V. McGraw, Jr.  
Attorney General of West Virginia  
Office of the Attorney General  
State Capitol  
Charleston, WV 25305