NATIONAL
CORN GROWERS
ASSOCIATION

July 14, 2016

Renata Hesse
Principal Deputy Assistant Attorney General
U.S. Department of Justice Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Ms. Hesse:

The National Corn Growers Association (NCGA) is a trade association that represents 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs throughout the United States. Our members have a direct interest in ensuring a competitive marketplace for crop production inputs—including seeds and crop protection chemicals. On behalf of these members, we are writing to share our perspective on the proposed Dow-DuPont merger.

This merger, and other proposed combinations within the seed and agro-chemical industries, are taking place against a backdrop of challenging times within the farm economy and rural America. Over the course of the past two years, net farm income has fallen 55% since 2013[1] and farm debt-to-asset ratios are climbing to levels not seen since 2002[2]. These financial indicators signal a weakness in the farm economy that is reverberating through the agribusiness industry. Layoffs in the agriculture equipment industry[3] and the crop input sector[4] are a natural and expected response to the drop in farm income. Just as lower commodity prices are forcing changes at the farm-level, agribusiness companies are, also, looking for ways to adapt to today's changing economic environment.

To fully understand the impact of this merger, the NCGA's Board of Directors sought out experts who could assist in analyzing the impact this proposed merger would have on our farmer-members. Specifically, we asked these experts to compare the product lines of Dow and DuPont to identify areas of potential overlap, we sought a quantitative assessment of the various product categories using the Herfindahl-Hirschman Index, we requested an analysis of research and development activity to assess future concentration issues, we sought to understand any potential benefits that may accrue to farmers as a result of this merger, and we asked for recommended action steps that might mitigate any deleterious effects the merger might have for farmers and farm input pricing. The purpose of this letter, then, is to summarize our findings and convey three specific points relative to this proposed merger.

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[1] See http://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/2016-farm-sector-income-forecast.aspx.
[2] See http://www.ers.usda.gov/data-products/chart-gallery/detail.aspx?chartId=57202.
[3] See, e.g. https://www.deere.com/en_US/corporate/our_company/news_and_media/press_releases/2016/corporate/2016mar10-corporaterelease.page and http://www.thegazette.com/subject/news/business/economy/kinze-manufacturing-to-lay-off-121-20160419
[4] See http://www.usnews.com/news/business/articles/2016-01-06/monsanto-swings-to-1q-loss-amid-lower-seed-sales.

1. We Are Concerned with Increased Seed Market Concentration Resulting from this Merger

Our quantitative analysis of the proposed Dow-DuPont merger examined the market share changes within the corn herbicide, insecticide, and seed markets. Using the Herfindahl-Hirschman Index, our analysts calculated a 91 point HHI increase for corn herbicides and no increase in the HHI for corn insecticides. We understand the Department of Justice uses a 200-point HHI increase as a guide for identifying significant increases in market concentration.[5] Given the relatively low HHI calculations within the corn herbicide and insecticide markets, we have few concerns that the merger will diminish market competition within these two markets. Conversely, within the corn seed market—which under Justice's guidelines would already be considered to be highly concentrated[6]—the merged Dow-DuPont company would result in an HHI increase of 396 points. This increase in market concentration does cause us significant concern that seed industry competition could be diminished as a result of this merger. We would ask the Department to carefully evaluate the seed market impacts to determine whether remedies should be applied that could ensure healthy competition within the corn seed market.

2. Synergy and Innovation Stemming from the Merger Can Benefit Farmers

Our analysis shows that the seed market today is dominated by two companies: Monsanto and DuPont-Pioneer—but this market share analysis reflects just part of the story within the corn seed market. Monsanto's strength has been in the development of new seed traits that have helped farmers address persistent weed and pest problems. DuPont-Pioneer's strength has been in its germplasm development and seed distribution network. The Dow-DuPont combination brings together Dow's trait development expertise with Pioneer's germplasm and distribution network—making the new company a far stronger competitor with the current industry leader. While we are concerned about the loss of a competitive market player within the corn seed industry, at the same time, we acknowledge that true competition isn't based solely upon the number of players within a given market. Strong competition can result from having two, evenly-matched companies fighting for share within the seed, chemistry, and trait development markets.

As we evaluate farmer access to seeds and traits, we do see additional potential benefits arising from this merger. Dow's seed products have been delivered primarily through a retailer network. DuPont-Pioneer has relied, extensively, upon its farmer-dealer network for seed delivery. Again, by merging Dow's trait development expertise with Pioneer's germplasm—and by taking advantage of the existing dual system for delivering seeds to farmers—farmers could see greater access to a broader range of seed products coming from the new company.

Finally, our analysis notes that the complementary product lines of Dow and DuPont within the crop protection chemical market—actually will create stronger competition within this market. Bayer and Syngenta dominate the global market today. A broader offering from a new Dow-DuPont company could actually provide greater access to, and a broader portfolio delivered from, the domestic agrochemical retail market. This enhanced competition at the retail level could result in more favorable farmer pricing of crop protection chemical products.

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[5] See, e.g., https://www.justice.gov/atr/herfindahl-hirschman-index.

[6] Our estimate of the current HHI for the seed industry is 2604—above the DoJ's threshold of 2500 used to determine a highly concentrated industry.

3. Global Challenges Affecting Crop Input Market Access and Pricing

With respect to any merger analysis, the common concerns revolve around how the merger might affect future innovation, product access, and pricing. While competition within the marketplace is certainly one factor affecting these elements, within the seed and crop protection markets, there are larger, global, forces that are having an even greater effect on product innovation, access, and affordability. Namely, domestic regulatory hurdles for crop protection chemicals and delays in international approvals for new seed traits are government actions that have erected barriers to market entry, slowed down or stopped new innovations coming to market, and driven up the cost of seed and chemistry products. For example, a recent estimate projects costs to launch a new seed trait at $136 million over 13 years.[7] Recent industry estimates calculate the cost to register and launch a new crop protection chemical at almost $300 million.

These large capital investments, coupled with long lead times from innovation to product launch, result in fewer and fewer companies that are actually able to comply with the needed regulatory testing and/or have the ability to invest significant capital for long periods of time with no return. The resulting affects are: 1) less innovation—meaning that farmers have fewer tools to combat weed and insect pressure; and 2) higher costs—as companies have higher development costs and shorter cost recovery periods. These issues may not be directly on-point with the Department's merger analysis, but these issues are certainly relevant to the global business environment driving consolidation within the agribusiness sector.

We appreciate your consideration of the above points. We hope this information is useful as the Department completes its analysis of the proposed merger.

Sincerely,

Chip Bowling

Chip Bowling, President
National Corn Growers Association

cc: Mr. Lowell Stern, Department of Justice

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[7] *Genetically Engineered Crops: From Idea to Product*, Jose Rafael Prado, et al. Annual Review of Plant Biology, Vol. 65: 769-790 (April 2014)