



EUROPEAN COMMISSION

Hearing Officer

Final Report of the Hearing Officer¹
Syngenta / Monsanto's Sunflower Seed Business
(COMP/M.5675)

Syngenta Crop Protection AG (hereinafter, referred to as "Syngenta") notified the Commission on 28 April 2010 its acquisition of sole control of the global sunflower seed business of Monsanto Company (hereinafter, referred to as "Monsanto") by way of purchase of assets.

The proposed acquisition has no EU dimension. However, on 1 October 2009 Spain requested to refer the case to the Commission pursuant to Article 22(1) of Council Regulation (EC) No 139/2004² (hereinafter, referred to as "the Merger Regulation"). In accordance with Article 22(2) of the Merger Regulation, the Commission informed the competent authorities of the other Member States and the undertakings concerned of the request. Pursuant to Article 22(2) of the Merger Regulation, Hungary joined the request for referral. On 12 November 2009, the Commission decided to accept the requests to examine the concentration and informed the Member States and the undertakings of its decision.

Upon examination of the notification, the Commission concluded that the notified operation raised serious doubts as to its compatibility with the internal market and the Agreement on the European Economic Area. Accordingly, on 21 June 2010, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

Further to the opening of proceedings, and in order to dispel the serious doubts resulting from the proposed transaction, Syngenta submitted a first set of commitments which were market tested. Following the market test, the notifying party submitted an improved remedy package on 17 September 2010. The amended commitments address the Commission's competition concerns raised by this transaction, notably in the Spanish and Hungarian markets for commercialisation of sunflower seeds.

In effect, Syngenta commits to divest the hybrids commercialised by Monsanto in 2009 and 2010 in Spain and in Hungary as well as the pipeline hybrids under official registration in Spain and Hungary. The notifying party further undertakes to divest

¹ Pursuant to Article 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings – OJ L162, 19.06.2001, p.21.

² OJ L 24, 29.01.2004 p. 1.

Monsanto's elite parental lines used to create hybrids commercialised in 2009 and 2010 in Spain and Hungary, those currently undergoing an official trialling/testing process in both these countries, as well as the pipeline parental lines developed with the aim to produce hybrids targeted at Spain and Hungary. The commitments include notably the right to use, cross, breed and license the offered parental lines and to commercialise and license the resulting hybrids within the relevant territories (Spain and/or Hungary, the EU and other countries, depending on the different rights involved).

Thereby, the Commission finds that the amended commitments constitute an acceptable remedy to the overall competition concerns raised by this transaction.

It suggests to clear the notified concentration subject to the conditions and obligations without issuing a Statement of Objections and conducting an Oral Hearing pursuant to Articles 8(2) and 10(2) of the Merger Regulation.

No queries or submissions have been made to me by the notifying party, the other involved party or any third party. In view thereof and taking into account that the case does not call for any particular comments as regards the right to be heard, I consider that the parties' right to be heard in this case has been respected.

Brussels, 3 November 2010

(signed)

Michael ALBERS