Final Report of the Hearing Officer

Case M.8084 – BAYER / MONSANTO

1. On 30 June 2017 the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Bayer Aktiengesellschaft ("Bayer" or "Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Monsanto Corporation ("Monsanto") by way of purchase of shares (the "Transaction"). Bayer and Monsanto will be referred to collectively as "the Parties".

2. The Commission's first phase investigation raised serious doubts as to the compatibility of the Transaction with the internal market and the EEA Agreement, in particular as to the effects on competition in crop protection, seeds, traits and digital agriculture. On 22 August 2017, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation to which the Notifying Party submitted written comments on 4 September 2017.

3. On 19 September 2017 and on 26 January 2018 the second phase period for reviewing the Transaction was extended pursuant to Article 10(3) of the Merger Regulation by a total of 15 working days.

4. On 4 October 2017 and 16 October 2017, the Commission adopted two decisions pursuant to Article 11(3) of the Merger Regulation suspending the merger review time limit due to the failure of the Parties to provide certain requested documents. The first suspension lasted from 21 September 2017 until 13 October 2017 and the second from 10 October 2017 until 3 November 2017, at which dates the requested documents were provided.

5. Upon their request, I have recognised Arbeitsgemeinschaft bäuerliche Landwirtschaft e.V., Avaaz Foundation, DowDuPont Inc. and IPES-Food as interested third persons in the current proceedings.

---

1 Pursuant to Article 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

6. The Commission adopted a statement of objections in this case on 14 December 2017, and this was notified to the Parties on the same day. The Parties responded to the statement of objections on 9 January 2018. The Parties did not request the opportunity to develop their arguments in a formal oral hearing.

7. The Commission sent several letters of facts, on 26 January 2018 and 1 and 8 February 2018, allowing the Parties to comment on additional factual elements.

8. The Parties submitted a formal set of commitments on 2 February 2018. On 5 February 2018 the Parties submitted a slightly revised version of the commitments. The Commission market tested these commitments on 6 February 2018. On the basis of feedback from the Commission's targeted market test of this package, the Parties submitted updated commitments on 16 February 2018 (the "Final Commitments").

9. In the draft decision the Commission comes to the conclusion that the Final Commitments are adequate and sufficient to eliminate the significant impediment to effective competition in the areas where a significant impediment to effective competition has been identified. As a result, the Commission declares the Transaction compatible with the internal market and the EEA Agreement, subject to conditions and obligations intended to ensure that Bayer complies with the Final Commitments.

10. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.

11. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 12 March 2018

Wouter WILS