OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 9 March 2018

regarding a draft decision relating to

CASE M.8084 - BAYER/MONSANTO

Rapporteur: LATVIA

Operation

1. The Advisory Committee (13 Member States) agrees with the Commission that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Union Dimension

2. The Advisory Committee (13 Member States) agrees with the Commission that the Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Product and Geographic Markets

3. The Advisory Committee (13 Member States) agrees with the Commission’s definitions of the relevant product markets for vegetable seeds and in particular:
   3.1. That vegetable seed markets encompass both licensing and seed commercialisation?
   3.2. That the relevant level to assess price effects is at segment level.

4. The Advisory Committee (13 Member States) agrees with the Commission’s definitions of the relevant product markets for broad acre crop seeds, namely as to the segmentation of the:
   4.1. Upstream and downstream markets for oilseed rape (“OSR”);
   4.2. Upstream and downstream markets for cotton; and
   4.3. Upstream and downstream markets for wheat.

5. The Advisory Committee (13 Member States) agrees with the Commission’s definitions of the relevant product markets for broad acre crop traits, namely as to the segmentation of the:
   5.1. Markets for single traits licensing; and
   5.2. Markets for stacks licensing.
6. The Advisory Committee (13 Member States) agrees with the Commission’s definitions of the relevant product markets for crop protection formulated products, namely as to the segmentation of the:
   6.1. Markets for agricultural non-selective herbicides;
   6.2. Markets for non-agricultural non-selective herbicides;
   6.3. Markets for herbicide tolerance systems;
   6.4. Markets for seed treatments;
   6.5. Markets for fungicides;
   6.6. Markets for insecticides;
   6.7. Markets for microbial crop efficiency products;
   6.8. Markets for bee health products targeting *varroa destructor*; and
   6.9. Markets for digitally-enabled agronomic prescriptions.

7. The Advisory Committee (13 Member States) agrees with the Commission’s definition of the spaces in which innovation competition takes place, namely as to the definition of the:
   7.1. Innovation spaces for broad acre crop traits;
   7.2. Innovation spaces for non-selective herbicides;
   7.3. Innovation spaces for HT Systems;
   7.4. Innovation spaces for fungicides;
   7.5. Innovation spaces for insecticides;
   7.6. Innovation spaces for microbial crop efficiency products; and

8. The Advisory Committee (13 Member States) agrees with the Commission’s definitions of the relevant geographic markets in relation to the:
   8.1. Markets for vegetable seeds;
   8.2. Upstream and downstream markets for broad acre crop seeds;
   8.3. Markets for broad acre crop traits;
   8.4. Markets for crop protection products; and
   8.5. Markets for digitally-enabled agronomic prescriptions.

**Competitive Assessment**

9. The Advisory Committee (13 Member States) agrees with the Commission's assessment that the Transaction would significantly impede effective competition with regard to product/price competition in the:
   9.1. Markets for vegetable seeds;
   9.2. Upstream and downstream markets for broad acre crop seeds, namely OSR (downstream markets) and cotton (upstream market);
   9.3. Markets for broad acre crop traits;
   9.4. Markets for agricultural non-selective herbicides for perennial crops;
   9.5. Markets for industrial vegetation management (pre-post-emergent and post-emergent) non-agricultural non-selective herbicides;
   9.6. Markets for nematicidal seed treatment; and
   9.7. Markets for digitally-enabled agronomic prescriptions of fungicides for broad acre crops.

10. The Advisory Committee (13 Member States) agrees with the Commission's assessment that the Transaction would significantly impede effective competition with respect to innovation competition for:
    10.1. Broad acre crop traits;
    10.2. Non-selective herbicides; and
10.3. Herbicide tolerance systems.

11. The Advisory Committee (13 Member States) agrees with the Commission's assessment that the Transaction would not significantly impede effective competition further to the relationship between the Parties' activities in:
11.1. Certain markets for vegetable seeds;
11.2. Markets for wheat seeds;
11.3. Innovation in certain markets for foliar fungicides;
11.4. Innovation in certain markets for foliar insecticides;
11.5. Upstream insecticidal and fungicidal seed treatment markets and downstream treated seeds markets (vertical relationship);
11.6. Microbial crop efficiency products, both in terms of product and price competition and innovation competition;
11.7. Innovation in the market for bee health products targeting *varroa destructor*; and
11.8. Bundling of seeds and crop protection products both at the distributor level and at the grower level.

**Remedies**

12. The Advisory Committee (13 Member States) agrees with the Commission that the divestiture of the Vegetable Seeds Divestment Business will address the competition concerns in relation to vegetable seeds.

13. As regards the BASF Divestment Package, the Advisory Committee (14 Member States) agrees with the Commission that:
13.1. The divestiture of the Broad Acre Divestment Businesses will address the competition concerns in relation to broad acre crop seeds and traits markets, and innovation competition;
13.2. The divestiture of the GA Divestment Business and the Glyphosate Assets will address the competition concerns in relation to glyphosate and glufosinate ammonium;
13.3. The divestiture of the NemaStrike Assets will address the competition concerns in relation to nematicide seed treatment;
13.4. The [NSH lines of research 1, 2 and 3] Data Transfers and Licences will address the competition concerns in relation to the Parties' respective innovation efforts for non-selective herbicides and HT Systems;
13.5. The Digital Agriculture Licence will address the competition concerns in relation to digitally-enabled prescriptions of fungicides for broad acre crops in the EEA as well as the issues raised in the market test; and
13.6. BASF would appear to be prima facie a suitable purchaser of the BASF Divestment Package, subject to further investigation.

14. The Advisory Committee (13 Member States) agrees with the Commission that, subject to full compliance with the Final Commitments and the approval of BASF as purchaser of the BASF Divestment Package and of the Purchaser of the Vegetable Seeds Divestment Business, the Transaction would not significantly impede effective competition in the internal market or in a substantial part of it.

**Compatibility with the Internal Market**

15. The Advisory Committee (13 Member States) agrees with the Commission that the Transaction should therefore be declared compatible with the internal market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.