

Bayer Faces U.S. Hurdles for Monsanto Antitrust Nod

By Nalattaporn Pichaisawad, LL.M. Candidate 2018 | March 23, 2018

The road to success is not a bed of roses. Although their deal was approved by more than thirty authorities around the globe, Bayer A.G. (“Bayer”), the German conglomerate chemical firm, still faces a legal [challenge](#) in the United States to win antitrust approval to buy American seeds supplier Monsanto Company (“Monsanto”). The U.S. government is worried that \$62.5 billion deal could seriously hurt competition.

Looking back to August of last year, the decision on whether to approve the symbolic transaction has been postponed twice and suspended four other times. The deadline for the merger approval is currently scheduled to take place on April 5, 2018.

The significant proposed acquisition between Bayer and Monsanto would make the company the world's largest integrated pesticide and seeds business. In fact, this would create a company with a market share of more than a quarter of the world’s seed and pesticides business. The transaction will constitute to the destruction of competition in at least three markets: pesticides, seeds, and traits.

In the United States, EU, and Brazil, the authorities are attempting to conduct further investigation of how combining Bayer and Monsanto will impact the price and supply of key products for farmers.

One of the effective solutions to solve potential antitrust issues is to sell a company’s assets when company seeking regulatory approval for a deal. After the CEO meetings, Bayer decided to resolve antitrust issue by selling assets to another company in order to carry out its project and achieve its \$60 billion-plus takeover of St. Louis-based Monsanto. In particular, Bayer agreed to [sell](#) parts of its seed and herbicide assets to rival, BASF, for \$7 billion to solve EU regulatory concerns. Moreover, Bayer agreed to divest its vegetable seeds business to BASF.

In the [EU](#), the review of the Monsanto deal by the European Commission (“the Commission”) is set to greenlight after in-depth investigation by the Commission. The European Competition Commissioner, Margrethe Vestager, indicated that Bayer properly addressed its concern by selling its assets to competitor. She firmly stated that “Our decision ensures that there will be effective competition and innovation in seeds,



pesticides and digital agriculture markets also after this merger." The competitors can effectively compete with each other and the number of the competitors in these relevant markets will remain the same.

However in the United States, the intense review procedure is being led by Assistant Attorney General for the Antitrust Division, Makan Delrahim, who also spearheaded the filing of the antitrust lawsuit to [block](#) AT&T Inc.'s takeover of Time Warner Inc.

From the [Justice Department's antitrust division](#)'s view, although selling the assets to BASF, a good buyer who can compete effectively in the business, does help with some of the issues, the officials do not think it goes far enough. The government would like Bayer to take a step further and divest more.

In its substantive standard of review of the proposed merger, the Justice Department is analyzing the economic relationship among entities on the same level of market ("horizontal restraint") as well as the economic relationship along supply chains ("vertical restraint")

No one knows what the future holds, but the companies still have hope after two previous deals - the combination of Dow Chemical Co. and DuPont Co. and China National Chemical Corp.'s takeover of Syngenta AG that won antitrust clearance.