

June 15, 2022

Melissa R. Bailey
Associate Administrator
Agricultural Marketing Service, USDA
1400 Independence Ave SW
Washington, DC 20250

RE: USDA Agricultural Marketing Service request for public comment; “Competition and the Intellectual Property System: Seeds and Other Agricultural Inputs”; Docket Number AMS-AMS-22-0025; Federal Register Pages 15198-15201

Dear Associate Administrator Bailey:

On behalf of North Dakota Farmers Union (NDFU), thank you for the opportunity to comment on competition and the intellectual property system in seeds and other agricultural inputs. NDFU is the largest general farm organization in North Dakota, representing more than 50,000 farm, ranch and member families. Our members are concerned by highly concentrated seed and input markets and appreciate the United States Department of Agriculture’s (USDA) attention to this important issue. Fair and competitive input markets are critical to the long-term success of family farmers and ranchers.

Seeds and Intellectual Property

NDFU has, on several occasions, expressed concern and raised alarm about corporate consolidation and market power in the seed and agricultural biotechnology industry. The wave of seed and chemical mega-mergers in 2016 and 2017, left those markets highly concentrated.¹ With few, large companies controlling the markets and intellectual property for crop seeds and chemicals, farmers are concerned by a reduction in choice and innovation and increasing costs.

Reduced choice

While the introduction of GM seeds has largely been accompanied by increased productivity for farmers, insufficient competition appears to have also reduced farmers choice of seeds, including for conventional and locally and regionally adapted options. Procurement of conventional corn, soybean, and cotton seed has become difficult, and is a more common concern as seed companies cut back on their non-biotech offerings.² While there are a wide variety of GM seed options available, in practice not all varieties are available in all parts of the country. Moreover, there would likely be a wider variety of offerings with more robust competition among seed companies.

¹ These mergers include Bayer-Monsanto, Dow-DuPont, and ChemChina-Syngenta.

² Grooms, L., “Non-Biotech Soybean Seed: Is there enough?” April 1, 2009, <https://www.farmprogress.com/non-biotech-soybean-seed-there-enough>.

Reduced innovation

Increases in concentration do not persistently lead to greater incentives to innovate.³ Larger firms may have more capacity to innovate through research and development because they hold greater capital resources to employ for these purposes than comparatively smaller firms. But corporate consolidation may stifle innovation, since firms have less to gain from innovation without adequate competition, and new product development can cannibalize sales of a firm's existing product lines. Market concentration also alters competitive behavior, resulting in different firms focusing on specific market segments. Avoidance of direct competition among companies results in less diversity in research and development pipelines.

Increased cost

As USDA notes in its request for comment, the rising cost of seed is a major concern; GM seed increased in price more than 700 percent between 2000 and 2015. Additionally, there is evidence that seed companies wield their market power through price discrimination. For example, companies may label the same seed variety differently and offer different prices in different geographies and for different farm sizes.⁴ The consolidated industry structure also inhibits market disruptors, who can face retaliation for providing more transparent and lower pricing models.⁵

Need for Increased Public Research

One solution to ensuring farmers have access to affordable, locally-adapted seeds is increased investment in public agricultural research. Since 2002, investments in public agricultural research and development (R&D) spending has declined by 32%. This is particularly concerning as other large countries have increased their investment in public agricultural R&D.⁶ Stagnation in public agricultural research may jeopardize U.S. farmers' ability to compete with producers in other parts of the world. It also weakens farmers' ability to adapt to new pests, diseases and climate stresses.⁷

³ MacDonald, J., "Mergers and Competition in Seed and Agricultural Chemical Markets," April 3, 2017, Amber Waves. <https://www.ers.usda.gov/amber-waves/2017/april/mergers-and-competition-in-seed-and-agricultural-chemical-markets>.

⁴ Krueger, S., "Do you know how much seed zone pricing actually costs you?" November 7, 2018, <https://www.fbn.com/community/blog/do-you-know-how-much-seed-zone-pricing-actually-costs-you>; Brian Paff, "How much are farmers in your state paying for ag chemicals," February 14, 2020, <https://www.fbn.com/community/blog/in-state-price-variation-ag-chemicals>.

⁵ Kelloway, C., "Farmers sue big ag for allegedly sidelining e-commerce startups," March 4, 2021, <https://www.foodandpower.net/latest/crop-inputs-retail-antitrust-suit>.

⁶ Nelson, K. P., & Fuglie, K., *Investment in U.S. public agricultural research and development has fallen by a third over past two decades, lags major trade competitors*, Amber Waves, June 6, 2022, <https://www.ers.usda.gov/amber-waves/2022/june/investment-in-u-s-public-agricultural-research-and-development-has-fallen-by-a-third-over-past-two-decades-lags-major-trade-competitors/>.

⁷ Clancy, M., Fuglie, K., & Heisey, P., *U.S. agricultural R&D in an era of falling public funding*, November 10, 2016, <https://www.ers.usda.gov/amber-waves/2016/november/us-agricultural-r-d-in-an-era-of-falling-public-funding/>.



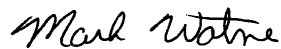
Public development of seeds and breeds, such as North Dakota State University's Foundation Seedstock program, make new seed varieties available to independent seed dealers and individual farmers.⁸ Programs like this give producers more local options for purchasing seeds and the opportunity to produce their own seeds. This contributes to productivity gains, while also giving producers another cost reduction strategy.

Conclusion

Thank you for your consideration of these comments. Please do not hesitate to contact me if you would like to discuss these matters further.

Sincerely,

NORTH DAKOTA FARMERS UNION



Mark Watne
President

⁸ North Dakota State University, *Foundation Seedstocks*, <https://www.ag.ndsu.edu/fss>.

