June 15, 2022

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


Dear Associate Administrator Bailey:

On behalf of the nearly 20,000 family farmer, rancher, and rural members of the South Dakota Farmers Union (SDFU), thank you for the opportunity to comment on competition and the intellectual property system regarding seeds and other agricultural inputs. We are pleased to provide comments and information that will assist USDA in preparing a report connected to the Executive Order on Promoting Competition in the American Economy. These comments focus primarily on seeds and agricultural equipment.

Seeds and Intellectual Property

SDFU and its national counterpart, the National Farmers Union (NFU), have, on several occasions, expressed concern and raised the alarm about corporate consolidation and market power in the seed and agricultural biotechnology industry. ¹The Farmers Union Fairness for Farmers campaign brings the devastating impact monopolies have had on family agriculture into

¹ https://nfu.org/fairness-for-farmers/
the national spotlight. Unchecked consolidation in the agricultural seed and biotechnology sector has led to a spate of mergers and acquisitions, culminating in three mega-mergers in 2016 and 2017. Thus few, large companies control the markets and intellectual property for seeds for major crops. Consequences of this market power include reduced choices in seed for farmers, suboptimal innovation by seed companies, and higher prices paid by farmers for seed.

Reduced choice

While the introduction of genetically-modified (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. 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.

Reduced innovation

Increases in concentration do not persistently lead to greater incentives to innovate. 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. With fewer firms, it is also easier to coordinate behavior, which


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


could reduce research and development through tacit agreements among firms for each to focus on different segments of the marketplace.

Unfair prices

As USDA notes in its request for comment, the rising cost of seed is a major concern; GM seed has 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. Another example includes alleged price discrimination against Farmers Business Network (FBN), which claims that seed and chemical companies have conspired against it because of its promise to offer farmers better prices and more price transparency through its online retail marketplace.

Agricultural equipment and intellectual property

The main point of contention regarding farmers’ right to repair their own agricultural equipment is farmers’ inability to access, on fair and reasonable terms, the software tools they need to diagnose and repair their equipment. Equipment manufacturers like John Deere have claimed that giving farmers access to certain software tools could allow them to tamper with safety and emissions controls or infringe on the company’s intellectual property. Thus, equipment manufacturers have only provided farmers access to a limited set of tools. Farmers assert that these companies are deliberately locking farmers out of fixing their own equipment.

NFU and several state Farmers Union divisions and other organizations, have filed a complaint with the Federal Trade Commission (FTC) alleging that “John Deere withholds from its customers diagnostic software and other information necessary to repair the Deere equipment

_____________


they own." Furthermore, the complaint alleges that this withholding violates the Sherman Act and constitutes an unfair and deceptive trade practice. Deere’s putative concerns about intellectual property theft are unreasonable, since Deere only needs to provide farmers with the embedded software required for diagnosis and repair, not the original source code. These issues are outlined at greater length in the complaint to the FTC.

Farmers are heavily reliant on equipment such as tractors, combines, sprayers, and other tools to do their jobs. The digitization of this technology has had multiple benefits for farmers, but it has also resulted in significant repair headaches and reduced options for repair due to the restrictions imposed by certain manufacturers. Paired with consolidation in authorized equipment dealership networks, farmers have fewer repair options, and may face higher costs and longer wait times for repair.10

Conclusion

If you have any questions or would like to discuss SDFU’s position further, please contact Doug Sombke, SDFU President, via e-mail at dsombke@sdfu.org or by phone at 605-350-4211.

Sincerely,

Doug Sombke
President
