

Commissioner Margrethe Vestager  
European Commission, Rue de la Loi 1049 Brussels

Subject: Bayer-Monsanto merger

Dear Commissioner Margrethe Vestager,

On Wednesday 5th April 2017, the European Commission has approved under the EU Merger Regulation the proposed acquisition of Syngenta by ChemChina. This acquisition is strengthening the concerns we were expressing already in our letter from 22nd September 2016 about the potential merger between the German pharmaceutical group Bayer and the American seed-maker Monsanto.

If such a merger were to occur, the resulting agrochemical enterprise would hold 24% of the world pesticide market and 29% of the world seed market, effectively strengthening a “dominant position”. The seed sector in the European Union is already extremely concentrated, especially in certain domains, like vegetable seeds for example, as was shown by the report “Concentration of market power in the EU seed market” published in 2014<sup>1</sup>. The subsequent impact of this merger on prices in the agricultural sector would be devastating for small and middle size farmers, which are already suffering from the globalised and concentrated food market<sup>2</sup>. This power unbalance and market concentration within the agro-chemical complex, is even more worrying than normal market concentration in other sectors because the products of these companies such as pesticides affect public health, food production and environmental degradation.

This merger (as well as the acquisition of Syngenta by Chem China and the merger between Dow and Dupont) is a threat to democracy and independent law-making, as shown by a very recent report by Ms. Hilal Elver, UN’s Special Rapporteur on the right to food, and the UN’s Special Rapporteur on Toxics, Baskut Tuncak<sup>3</sup>. Their report notes that the fact that these giant agrochemical enterprises manage at the same time the pesticide and the seed sector, leads to “*Serious conflicts of interest*”, and that “*the pesticide industry’s efforts to influence policymakers and regulators have obstructed reforms and paralysed global pesticide restrictions globally*”.

The two United Nations experts are therefore rightfully calling for a comprehensive new global treaty to regulate and phase out the use of dangerous pesticides in farming, and move towards sustainable agricultural practices. They claim that the “*excessive use of pesticides are very dangerous to human health, to the environment and that it is misleading to claim they are vital to ensuring food security*.”

It is mere economic common sense that a multi-billion euro take over by Bayer of Monsanto, will not lead to less but more pesticide use, as selling these products is their core business and the huge

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<sup>1</sup> Concentration of market power in the EU seed market, Ivan Mammana, January 2014:

[http://greens-efa-service.eu/concentration\\_of\\_market\\_power\\_in\\_EU\\_seed\\_market/files/assets/common/downloads/publication.pdf](http://greens-efa-service.eu/concentration_of_market_power_in_EU_seed_market/files/assets/common/downloads/publication.pdf)

<sup>2</sup> In February 2013, a report entitled Seed Giants vs US Farmers by Center for Food Safety had already showed that the increase in seed prices resulted from the seed industry concentration:

<http://www.centerforfoodsafety.org/reports/1770/seed-giants-vs-us-farmers#>

<sup>3</sup> Pesticides are “global human rights concern”, say UN experts urging new treaty:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21306&LangID=E#sthash.tVhnLHan.dpuf>

investment involved with the merger, will have to be earned back, in order to satisfy Bayer's shareholders (who will be informed of the merger at the annual shareholders meeting in Germany on April 28<sup>th</sup>). Allowing Bayer, through this operation, to achieve unprecedented global market dominance in these sensitive areas concerning public health and biodiversity; benefitting from an unbearable influence that would threaten the way we feed ourselves, as well as our access to affordable medical treatments, is simply not acceptable.

Furthermore the mentioned report of the two Special UN Rapporteurs is reinforced by the legal opinion published on April 18<sup>th</sup> by five international judges of the Monsanto Tribunal <sup>4</sup> in The Hague. After hearing 28 witnesses from around the world, and after 6 months of deliberation, the conclusions of these legal practitioners or practicing judges are too serious and well founded to be ignored by EU legislators in regard of the Monsanto-Bayer merger.

The Tribunal was asked to examine the effects of Monsanto's activities on the human rights of citizens and on the environment, and to offer conclusions about the conformity of Monsanto's conduct with the principles and rules of international human rights law and humanitarian law. Although the Tribunal has no investigative powers, nor is its advisory opinion binding, the advisory opinion it delivered is based on legal considerations, grounded in international human rights law and international humanitarian law.

The judges rightfully point out that the above-mentioned universal human rights treaties also form the basis of the responsibility of corporations as articulated by the UN Guiding Principles on Business and Human Rights<sup>5</sup>. The Tribunal is referring to "these Guiding Principles as a means, within the United Nations, to anticipate and enable further steps in the progressive development of international law" and point to the fact that "significantly, the Prosecutor of the International Criminal Court (ICC) decided on 15 September 2016 to include environmental concerns within its scope of investigation".

The Tribunal, has recognized Monsanto "guilty" of not respecting the right to a healthy environment, the right to food, the right to health and freedom of scientific research. The judges also state that there is a gross unbalance between corporate rights and obligations and that corporations are largely immune to liability for violations against human rights, which needs to be addressed by legislators.

For us as Green members of the European Parliament these recent juridical expert fact findings create extra reasons to oppose the Monsanto/Bayer merger, which will give a newly created agro-chemical giant unhealthy powers. It is time for European legislators to consider shifting the balance toward citizens' and farmer's rights, and to reduce the corporate grip on regulations.

The European Commission is entitled by the European legislation to open an investigation and ultimately reject such a merger which has the potential to have detrimental effects on both public health, agriculture and food production as well as a proper functioning free market. The acquisition of Monsanto by Bayer is rendered all the more problematic by the already approved acquisition of Syngenta by ChemChina in the same sectors.

Therefore, we ask you, Commissioner Margrethe Vestager, to prohibit this merger.

Yours sincerely,

Green MEP's

Bart Staes  
Yannick Jadot

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<sup>4</sup> [http://www.monsanto-tribunal.org/main.php?obj\\_id=1003881529](http://www.monsanto-tribunal.org/main.php?obj_id=1003881529)

<sup>5</sup> *UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, A/HRC/17/31, 21 March 2011 (available at: [www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf](http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf))

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