

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAYER AG and
MONSANTO COMPANY,

Defendants.

STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Stipulation and Order:

A. “Bayer” means Defendant Bayer AG, a German corporation with its headquarters in Leverkusen, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Monsanto” means Defendant Monsanto Company, a Delaware corporation with its headquarters in St. Louis, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “BASF” means BASF SE, a Societas Europaea with its headquarters in Ludwigshafen, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Divestiture Assets” means (1) the Balance Herbicide Divestiture Assets; (2) the Broad Acre Seeds and Traits Divestiture Assets; (3) the Digital Agriculture Divestiture Assets; (4) the Glufosinate Ammonium Divestiture Assets; (5) the Midwest Soybean Germplasm Divestiture Assets; (6) the Pipeline Herbicide Divestiture Assets; (7) the Seed Treatment Divestiture Assets; and (8) the Vegetable Seed Divestiture Assets, as those terms are defined in Section II of the proposed Final Judgment.

E. “Divestiture Businesses” means the Balance Herbicide Business, the Broad Acre Seeds and Traits Business, the Digital Agriculture Business, the Glufosinate Ammonium Business, the Pipeline Herbicide Business, the Seed Treatment Business, and the Vegetable Seed Business, as those terms are defined in Section II of the proposed Final Judgment.

F. “Relevant Personnel” means all Bayer employees who have supported or whose job related to the Divestiture Businesses at any time between January 1, 2015 and the Divestiture Closing Date, as that term is defined in Section II of the proposed Final Judgment.

II. OBJECTIVES

A. The proposed Final Judgment filed in this case is meant to ensure Bayer and Monsanto’s prompt divestiture of the Divestiture Assets for the purpose of preserving competition in various markets in the agricultural industry, including markets for various seeds, seed traits, and crop protection products. If approved by the Court, the proposed Final Judgment

would fully resolve the United States' claims in this antitrust lawsuit, which sought to enjoin the acquisition by Bayer of Monsanto. Under the proposed Final Judgment, BASF would acquire the Divestiture Assets from Bayer and Monsanto. The United States has determined, for the purposes of this settlement, that BASF is an acceptable purchaser of the Divestiture Assets.

B. Central to the relief offered by the proposed Final Judgment is the requirement that BASF undertake certain actions to effectuate the complete and expeditious transfer of the Divestiture Assets to achieve the competitive objectives of the proposed Final Judgment. Among other actions, BASF must promptly apply for licenses, registrations, and permits for the Divestiture Assets to replace those held by Bayer; and BASF must implement strict firewall procedures to prevent the exchange of competitively sensitive information through the ongoing relationships between BASF and Bayer necessitated by the divestitures. Relief cannot be effectively accomplished without BASF's participation, and BASF has agreed to be bound as a party-defendant by the Final Judgment. BASF shares an interest in the resolution of this litigation and shares common issues of law and fact with Bayer and Monsanto such that joinder is proper under Rule 20(a) of the Federal Rules of Civil Procedure and under Section 15 of the Clayton Act, 15 U.S.C. § 25. *See United States v. Pabst Brewing Co.*, 183 F. Supp. 220, 221 (E.D. Wis. 1960) (holding that “[i]n a proceeding under § 7 of the Clayton Act, the court has authority to grant relief not only against parties who are found to have violated that section, but also against other parties if such relief is necessary to eliminate the effects of an acquisition offensive to the statute”); *see also United States v. Phillips Petroleum Co.*, 367 F. Supp. 1226, 1261–62 (C.D. Cal. 1973) (denying dismissal to a defendant as a properly joined party “against whom relief may be granted”).

C. This Stipulation and Order ensures that the relief afforded in the proposed Final Judgment will be effective by: (1) ensuring, prior to the completion of all of the proposed divestitures, that Monsanto remains an economically viable and ongoing business concern that will remain independent of Bayer and not influenced by Bayer except as specifically permitted herein, and that competition is maintained during the pendency of the ordered divestitures; (2) ensuring, prior to the completion of all of the proposed divestitures, that the Divestiture Assets remain economically viable and ongoing business concerns; and (3) ensuring that Bayer, Monsanto, and BASF will be bound by the terms of the proposed Final Judgment during the settlement approval process that will occur under the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. § 16(b)-(h).

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto with respect to this action. The Complaint states a claim upon which relief may be granted against Bayer and Monsanto under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Pursuant to Section V of this Stipulation and Order filed simultaneously with the proposed Final Judgment, BASF has consented to this Court’s exercise of specific personal jurisdiction over it in this matter solely for the purposes of settlement and for the entry and enforcement of the proposed Final Judgment. Venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court’s own motion, at

any time after compliance with the requirements of the APPA, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Bayer, Monsanto, and BASF and by filing that notice with the Court. Bayer and Monsanto agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Bayer and Monsanto's receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Bayer and Monsanto shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Bayer, Monsanto, and BASF shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section VIII, as though the same were in full force and effect as the final order of the Court.

C. Bayer and Monsanto shall not consummate the proposed transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

D. This Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above or (2) the proposed Final Judgment is not entered pursuant to this Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Bayer, Monsanto, and BASF represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that they will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. JOINDER OF BASF AS A DEFENDANT

It is hereby stipulated and agreed by and between Plaintiff and Bayer, Monsanto, and BASF that, upon approval and entry by the Court, BASF be added as a Defendant in this action for purposes of settlement and for entry and enforcement of the proposed Final Judgment.

VI. NOTICE OF COMPLIANCE

Within twenty (20) business days after the entry of this Stipulation and Order, Bayer, Monsanto, and BASF will inform the United States and any Monitoring Trustee of the steps they have taken to comply with this Stipulation and Order.

VII. HOLD SEPARATE AND PRESERVATION OF MONSANTO

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Monsanto shall operate as an independent, ongoing, economically viable, competitive business held separate, distinct, and apart from Bayer's operations.

B. Bayer and Monsanto shall not coordinate any aspect of their operations, including the marketing or sale of any products. Bayer and Monsanto shall take all steps necessary to ensure that:

(1) Bayer does not attempt to influence, direct, or control the management of Monsanto with regard to any aspect of its operations; and

(2) the management of Monsanto acts to maintain and increase Monsanto's sales and revenues, and maintain operational, promotional, advertising, sales, technical, customer-service, and marketing support at 2018 levels or previously approved levels for 2019, whichever are higher.

C. Bayer shall not, except as approved by the United States, remove, sell, lease, assign, transfer, destroy, pledge, or otherwise dispose of any asset of Monsanto outside of the ordinary course of business.

D. Other than for cause, Bayer and Monsanto shall not transfer or terminate, or alter to the detriment of any employee, any current employment or salary agreement for any Monsanto employee who on the date of entry of this Stipulation and Order works for Monsanto; provided, however, that this Section VII(D) does not prohibit any employment agreement between Bayer and any Monsanto employee that is entered into prior to the date of this Stipulation and Order and that becomes effective upon consummation of the proposed transaction.

E. Bayer and Monsanto shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of Monsanto.

F. During the period that Monsanto is held separate from Bayer, Bayer may take actions required to support Monsanto's continued operation as an independent and viable business. Prior to taking any actions pursuant to Section VII(F) of this Stipulation and Order, Bayer must obtain approval from the United States. The United States will have sole discretion regarding the approval of any such actions.

VIII. PRESERVATION OF THE DIVESTITURE ASSETS

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Bayer and Monsanto shall preserve, maintain, and continue to operate the Divestiture Assets as ongoing, economically viable, competitive businesses.

B. Bayer shall use all reasonable efforts to maintain and increase the sales and revenues of the products and services produced or sold using the Divestiture Assets and shall maintain at 2018 levels or previously approved levels for 2019, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Divestiture Assets. Bayer and Monsanto shall also ensure that all plans and efforts to improve current products sold using the Divestiture Assets are continued.

C. Bayer shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing

businesses, consistent with the requirements of Section VIII(A) and Section VIII(B) of this Stipulation and Order.

D. Bayer and Monsanto shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

E. Bayer and Monsanto shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

F. Bayer shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

G. Bayer, Monsanto, and BASF shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

H. Bayer's Relevant Personnel shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by Relevant Personnel pursuant to Bayer's regular, established job posting policy. Bayer shall provide the United States with ten (10) business days' notice of such transfer.

I. Subject to the approval of the United States, Bayer and Monsanto shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Bayer and Monsanto's compliance with this Section. This person or persons shall have complete

managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment, and shall make all business decisions relating to the operations of the Divestiture Assets, including all production, sale, pricing, and discounting decisions, independent of Bayer and Monsanto. In the event any such person or persons is unable to perform his or her duties, Bayer and Monsanto shall appoint, subject to the approval of the United States, a replacement within ten (10) business days. Should Bayer and Monsanto fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

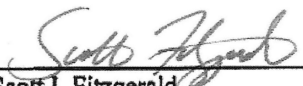
IX. DURATION OF OBLIGATIONS

The obligations of Bayer, Monsanto, and BASF under Section VII and Section VIII of this Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Bayer, Monsanto, and BASF are released from all further obligations under this Stipulation and Order.

Dated: 5/29/18

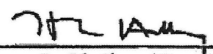
Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:



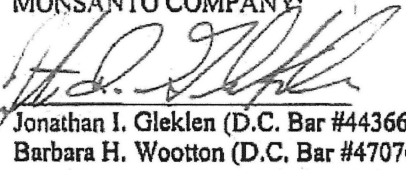
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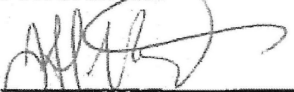
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ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, 2018.

United States District Judge