



The American
Antitrust Institute

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**AAI Issues Antitrust White Paper on
Monsanto's Proposed Acquisition of Delta and Pine Land**

Press Release

Today the American Antitrust Institute (AAI) issued an antitrust White Paper on Monsanto's proposed acquisition of Delta and Pine Land (D&PL). The deal was announced in mid-August and is currently in the second-request stage at the Department of Justice (DOJ). Monsanto is a leading developer and licensor of commercial agricultural biotechnology, including genetic traits for cotton, and D&PL is a leading producer of genetically modified cotton seed. The transaction re-attempts an aborted 1998 merger between the same companies.

AAI President Albert Foer noted that White Paper "Frames out the major competitive issues in the case. The AAI encourages the Antitrust Division to evaluate the proposed merger's effect on competition in light of the broader public policy concerns raised by the control of agricultural supply chains by large market players." The AAI White Paper, which is based on publicly available information and conversations with market participants and experts, analyzes six major issues raised by the transaction.

The paper's author, Diana Moss, AAI Vice President and Senior Fellow, explained that the combination would vertically integrate two large players—one in the market for cotton traits (Monsanto), and one in the market for cotton seed (D&PL). "The merger could enhance the ability and incentive of the combined entity to foreclose competitors from input and output markets. This would harm competition and consumers such as farmers and U.S. buyers of cotton-based products." Moss added that "among other factors, Monsanto's and D&PL's high market shares, highly concentrated relevant markets, and competitor concerns over Monsanto's past conduct should put the possibility of foreclosure on the antitrust radar screen."

The White Paper notes other possible competitive concerns. For example, the merger could also eliminate D&PL as a potential competitor in cotton traits, since it has been pursuing joint development partnerships with some Monsanto competitors. The merger could also reduce choices available to cotton farmers by hastening the elimination of conventional (non-genetically modified) cotton seed. Foer noted that "entry and efficiencies—which can sometimes temper competitive concerns in merger cases—may not win the day for Monsanto/D&PL. Even though the antitrust agencies have paid

relatively little attention to vertical mergers or potential competition in recent years, we think the DOJ must carefully scrutinize these arguments.”

Because Monsanto has proposed the up-front divestiture of its Stoneville cotton seed asset and a commitment to continue to license its commercial traits, a central question will be whether such a fix should be accepted as sufficient to maintain the degree of competition that existed before the acquisition. The White Paper raises doubts that the fix satisfactorily addresses all potential competitive questions. Moss commented, “These commitments should be carefully evaluated and may not go nearly far enough, should the DOJ decide not to block the deal and instead come to terms with the parties.”

The American Antitrust Institute (www.antitrustinstitute.org) is an independent non-profit organization that frequently comments on current developments in the field of antitrust.

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